



National Transportation Safety Board
Washington, D.C. 20594

April 10, 2014

Dr. Orly Taitz
ESQ
Defend Our Freedoms Foundation
29839 Santa Margarita
Ste. 100
Rancho Santa Margarita, CA 92688

Re: National Transportation Safety Board (NTSB)
Freedom of Information Act (FOIA) No. FOIA-2014-00145
December 11, 2013, Kalaupapa, HI (WPR14FA068)

Dear Dr. Taitz:

This letter is in response to your FOIA request for records from the above NTSB Investigation. This investigation is currently ongoing.

The Safety Board does not release records from pending investigations, because such release would impede the progress of the investigation and deter uninhibited deliberations and discussions regarding certain aspects of the investigation. As such, the Safety Board denies requests for records from pending investigations in accordance with Exemptions 5, and 7(A) of the FOIA, as explained below. Please note that, once the investigation is approaching conclusion, the Safety Board makes publicly available all information that was pertinent to each investigation in the form of a "public docket." This letter describes public dockets in detail, and provides instructions regarding how you can put your name and contact information on a list to receive the public docket information.

Congress has charged the Safety Board with investigating transportation accidents, determining the probable causes of the accidents, and issuing safety recommendations in order to prevent future accidents. 49 U.S.C. §§ 1131 (investigations) and 1135 (safety recommendations). Disclosure of records from a pending investigation would undermine the Safety Board's independence, objectivity, and effectiveness, which are critical to the Board's ability to investigate transportation accidents effectively. Preliminary records reflecting the Board's deliberative process are exempt from disclosure pursuant to Exemption 5 of the FOIA. See, e.g., NLRB v. Sears, Roebuck & Co. 421 US 132, 148-51 (1975); Ancient Coin Collectors Guild v. U.S. Dep't of State, 2011 WL 1437419, *506 (D.C. Cir.) (citing Wolfe v. Dep't of Health and Human Servs., 839 F.2d 768, 773 (D.C. Cir. 1988)(en banc)). The Safety Board cannot guarantee that preliminary materials, such as records from a pending investigation, would be accurate or complete; therefore, release of such information would result in confusion and compromise the Board's work. Similarly, material reflecting the Safety

Board's deliberative process is exempt from disclosure in order to ensure the free flow of information during the course of the Board's investigations. Mead Data Cent., Inc. v. Dep't of the Air Force, 566 F.2d 242, 256 (D.C. Cir. 1977).

In addition, the FOIA does not require the Safety Board to release records when such release could interfere with the progress of an ongoing investigation. 5 U.S.C. § 552(b)(7)(A). At times, the Safety Board's investigations lead to other agencies' regulatory rulemaking. Courts have long recognized that the provisions of Exemption 7 apply to regulatory civil enforcement, not simply the enforcement of criminal statutes. See, e.g., Rugiero v. United States Dep't of Justice, 257 F.3d 534, 550 (6th Cir. 2001) (explaining that the "Court has adopted a per se rule" that applies not only to criminal enforcement actions, but to "records compiled for civil enforcement purposes as well"), cert. denied, 534 U.S. 1134 (2002); Rural Hous. Alliance v. United States Dep't of Agriculture, 498 F.2d 73, 81 & n.46 (D.C. Cir. 1974) (stating that "law enforcement purposes ... include both civil and criminal purposes"). Within this statutory framework, records from an ongoing Safety Board transportation investigation are exempt from disclosure under FOIA Exemption 7(A).

As mentioned above, at the conclusion of each investigation, the Safety Board makes investigative information available to the public in the form of "public dockets." These public dockets of information are voluminous and include all information that the investigators have deemed as pertinent to the investigation. In addition, when requesters seek all information from a specific investigation, the Safety Board's FOIA Office, in accordance with applicable case law, places such requests on a specific "track," and answers them on a first-in, first-out basis. Open Am. v. Watergate Special Prosecution Force, 547 F.2d 605, 614-616 (D.C. Cir. 1976). Therefore, the most efficient and timely way that requesters can receive information from an investigation is to place their names on a waiting list for receiving all information on the public docket for the particular investigation. I strongly recommend that you place your name on this list, and you will receive the information on the public docket once it becomes available.


The Safety Board's records facility, General Microfilm, Inc. (GMI), will record your name and contact information and, once the information in the public docket becomes available, GMI will send you all records from the public docket you seek for a fee. The contact information for General Microfilm, Inc. is as follows: 630 Files Cross Road, Martinsburg, West Virginia 25404, (304) 267-5830, <http://www.general-microfilm.com>. Public dockets are also available on the Safety Board's web site at <http://www.nts.gov/investigations/dms.html>.

In addition, with regard to aviation accident investigations, the Safety Board's public website also contains a database with information regarding most investigations. The public can use this database to determine the general status of an investigation, and obtain the preliminary, factual or probable cause report regarding the information from aviation investigations. You may search the aviation accident investigation database at <http://www.nts.gov/aviationquery/index.aspx>.

In summary, submitting a FOIA request is not the most expeditious way that you can receive the information you seek. Therefore, I recommend that you contact GMI and utilize the Safety Board's aviation accident database, as described above.

To the extent that I have denied your FOIA request, you may appeal my decision by writing to:
Mr. David L. Mayer, Managing Director, NTSB, 490 L'Enfant Plaza East, SW, Washington, DC
20594.

Sincerely,

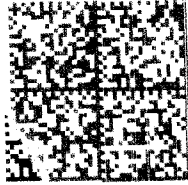

for Melba D. Moyer
FOIA Officer

NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C. 20594

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