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ISASI Annual Conference 2016

Reykjavik, 17-20 Oct 2016



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International Civil Aviation Organization

Agenda

1. Independence of Investigations

2. Protection of Safety Information





Stakeholders





ICAO USOAP audits

6.005 : Does the legislation provide for the independence of the accident investigation authority in charge of conducting aircraft accident and serious incident investigations?



54.44% Unsatisfactory



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CHAPTER 1. DEFINITIONS

Accident investigation authority. The authority designated by a State as responsible for aircraft accident and incident investigations within the context of this Annex.

CHAPTER 3. GENERAL

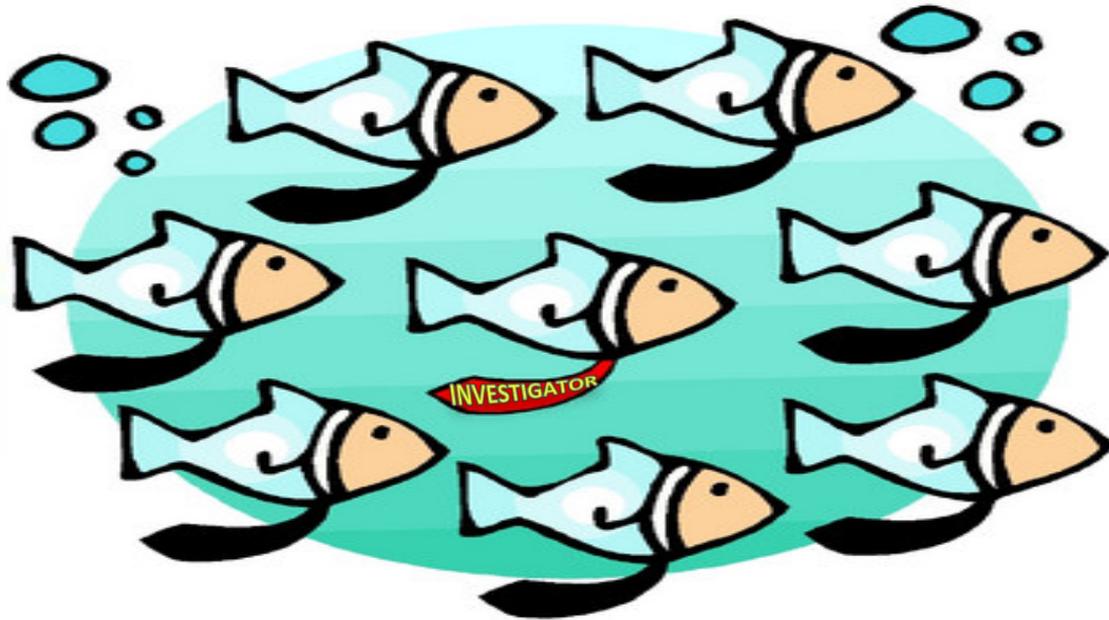
INDEPENDENCE OF INVESTIGATIONS

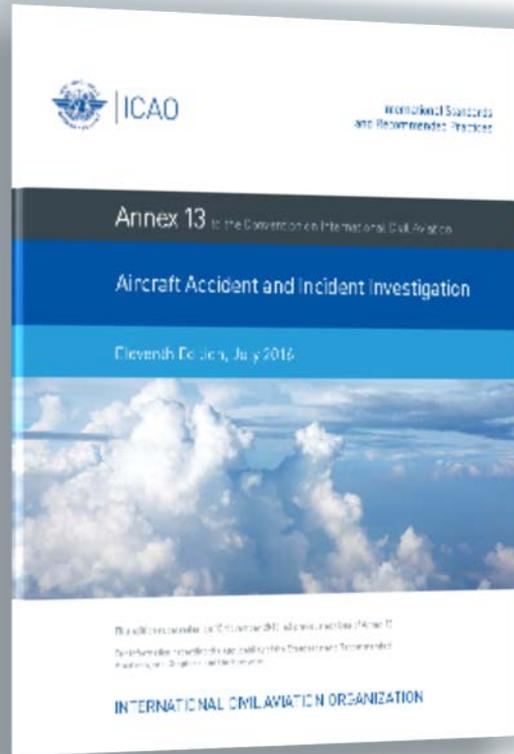
3.2 A State shall establish an accident investigation authority that is independent from State aviation authorities and other entities that could interfere with the conduct or objectivity of an investigation.

Note.— Guidance on the independence of an accident investigation authority is contained in the Manual of Aircraft Accident and Incident Investigation, *Part I* — Organization and Planning (Doc 9756) and the Manual on Accident and Incident Investigation Policies and Procedures (Doc 9962).



Independence \neq Isolation





Protection of safety Information

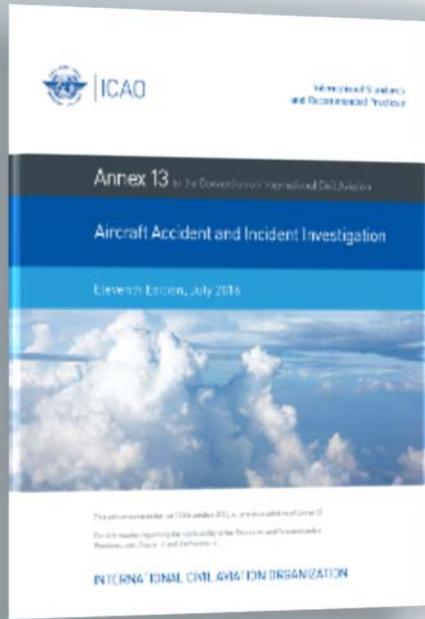




► Balance between protection and administration of justice



Protection of Safety Information



- **Group of Experts on Protection of Accident and Incident Records (GPAIR)** established to enhance provisions and guidance material related to protection of certain accident and incident records, and flight recorder recordings in routine operations





GEPAIR

Annex 13

- Restructure/expansion of Para 5.12
- ~~Attachment E~~  Appendix 2

Annex 6

- Standards on protection of CVR, AIRs, FDRs.
(outside scope of investigations)





Annex 13

5.4.4 Recommendation.— *A State should ensure cooperation between its accident investigation authority and judicial authorities so that an investigation is not impeded by administrative or judicial investigations or proceedings.*

Note.— *Cooperation may be achieved by legislation, protocols, agreements or other arrangements, and may cover the following subjects: access to the site of the accident; preservation of and access to evidence; initial and on-going debriefings of the status of each process; exchange of information; appropriate use of safety information; and resolution of conflicts.*



Annex 13

Protection of accident and incident investigation records

5.12 The State conducting the investigation of an accident or incident shall not make the following records available for purposes other than accident or incident investigation, unless the competent authority designated by that State determines, in accordance with national laws and subject to Appendix 2 and 5.12.5, that their disclosure or use outweighs the likely adverse domestic and international impact such action may have on that or any future investigations:

a) cockpit voice recordings and airborne image recordings and any transcripts from such recordings;

b) records in the custody or control of the accident investigation authority being:

- 1) all statements taken from persons by the accident investigation authority in the course of their investigation;
- 2) all communications between persons having been involved in the operation of the aircraft;
- 3) medical or private information regarding persons involved in the accident or incident;
- 4) recordings and transcripts of recordings from air traffic control units;
- 5) analysis of and opinions about information, including flight recorder information, made by the accident investigation authority and accredited representatives in relation to the accident or incident; and
- 6) the draft Final Report of an accident or incident investigation.



Annex 13



5.12.1 Recommendation.— *States should determine whether any other records obtained or generated by the accident investigation authority, as a part of an accident or incident investigation, need to be protected in the same way as the records listed in 5.12.*

5.12.4 States shall ensure that requests for records in the custody or control of the accident investigation authority are directed to the original source of the information, where available.

5.12.4.1 Recommendation.— *The accident investigation authority should retain, where possible, only copies of records obtained in the course of an investigation.*



Annex 13

5.12.5 States shall take measures to ensure that audio content of cockpit voice recordings as well as image and audio content of airborne image recordings are not disclosed to the public.

5.12.6 States issuing or receiving a draft Final Report shall take measures to ensure that it is not disclosed to the public.

Note.— *Appendix 2 contains additional provisions on the protection of accident and incident investigation records. These provisions appear separately for convenience but form part of the SARPs.*



Annex 13

Information — Accidents and incidents

5.14.1 **Recommendation.**— *States should cooperate to determine the limitations on disclosure or use that will apply to information before it is exchanged between them for the purposes of an accident or incident investigation.*



Annex 13

APPENDIX 2. PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS

1. INTRODUCTION

Note 1.— The disclosure or use of records listed in Chapter 5, 5.12, in criminal, civil, administrative or disciplinary proceedings, or their public disclosure, can have adverse consequences for persons or organizations involved in accidents and incidents, likely causing them or others to be reluctant to cooperate with accident investigation authorities in the future. The determination on disclosure or use required by 5.12 is designed to take account of these matters.



APPENDIX 2. PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS

Note 2. — *In accordance with 5.12, the provisions specified in this Appendix are intended to:*

a) *assist States in developing national laws, regulations and policies to protect accident and incident investigation records appropriately; and*

b) *assist the competent authority in making the determination as required by 5.12.*

1. Throughout this Appendix:

a) **balancing test** refers to the determination by the competent authority, in accordance with 5.12, of the impact the disclosure or use of accident and incident investigation records may have on current or future investigations; and

b) **record(s)** refers to those listed in 5.12.



APPENDIX 2. PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS

2.1 States shall accord the protections in 5.12 and this Appendix to the entire recording of the cockpit voice recorder and airborne image recorder, and any transcripts from such recordings. These protections shall apply from the time an accident or incident occurs and continue after the publication of the Final Report.

2.2 States shall accord the protections in 5.12 and this Appendix to the other records listed in 5.12 b). These protections shall apply from the time they come into the custody or control of the accident investigation authority and continue after the publication of the Final Report.



APPENDIX 2. PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS

2.3 States shall take action to achieve the non-disclosure of audio content of cockpit voice recordings as well as image and audio content of airborne image recordings to the public, as per 5.12.5 of this Annex, such as:

- a) prevention of disclosure through the adoption of national laws, regulations and policies; or
- b) adoption of authoritative safeguards such as protective orders, closed proceedings or in-camera review; or
- c) prevention of disclosure of recordings, through technical means such as encrypting or overwriting, before returning the cockpit voice recorders or airborne image recorders to the owners.



APPENDIX 2. PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS

3. COMPETENT AUTHORITY

In accordance with 5.12, each State shall designate a competent authority or competent authorities appropriate to the task of administering the balancing test.

Note.— Different competent authorities may be designated for different circumstances. For example, the competent authority designated for applying the balancing test in criminal or civil proceedings may be a judicial authority. Another competent authority may be designated for applying the balancing test in cases where the purpose of the request for disclosure is for public accessibility.



APPENDIX 2. PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS

4. ADMINISTRATION OF THE BALANCING TEST

4.1 Where the request is for a record to be disclosed or used in a criminal, civil, administrative or disciplinary proceeding, the competent authority shall be satisfied that a material fact in question in the proceedings cannot be determined without that record, before administering the balancing test.

4.2 When administering the balancing test, the competent authority shall take into consideration factors such as:

- a) the purpose for which the record was created or generated;
- b) the requester's intended use of that record;
- c) whether the rights or interests of a person or organization will be adversely affected by the disclosure or use of that record;
- d) ...



APPENDIX 2. PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS

5. RECORDS OF THE DECISIONS

Recommendation.— *The competent authority should record the reasons for its determination when administering the balancing test. The reasons should be made available and referred to as necessary for subsequent decisions.*

Note.— *States may submit the decisions recorded to the International Civil Aviation Organization in one of the working languages of the Organization to be archived in a public database.*



APPENDIX 2. PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS

6. FINAL REPORT

Recommendation.— *In order to limit the use of the Final Report for purposes other than the prevention of accidents and incidents, States should consider:*

- a) instituting a separate investigation for those other purposes; or*
- b) differentiating between the parts of the Final Report in order to allow the use of factual information contained therein while preventing use of analysis, conclusions and safety recommendations for apportioning blame or liability; or*
- c) preventing the use of the Final Report as evidence in proceedings to apportion blame or liability.*



APPENDIX 2. PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS

7. ACCIDENT AND INCIDENT INVESTIGATION PERSONNEL

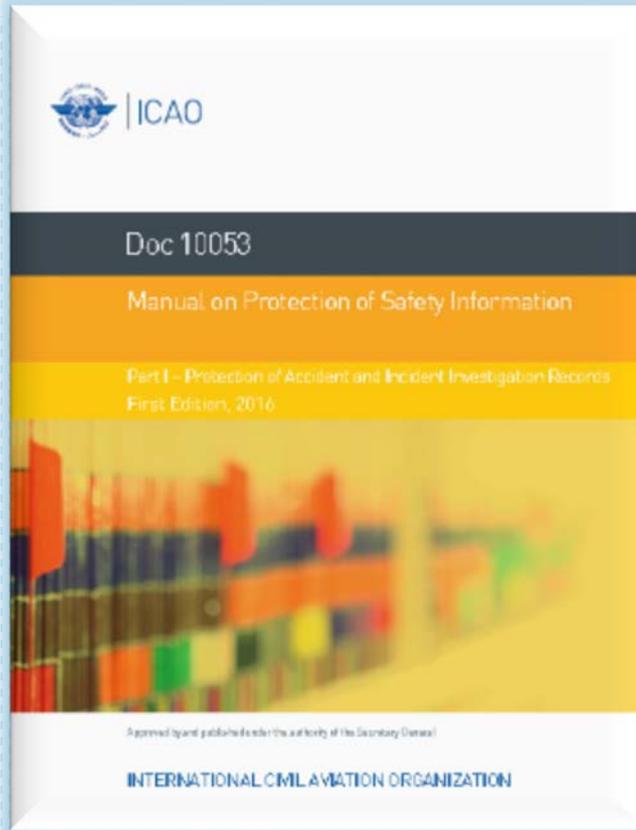
Recommendation.— *In the interest of safety and in accordance with Chapter 3, 3.1, of this Annex, States should consider that accident investigation personnel not be compellable to give an opinion on matters of blame or liability in civil, criminal, administrative or disciplinary proceedings.*



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**Manual on Protection of Safety Information,
Part I — Protection of Accident and Incident Investigation Records**
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