

BEFORE THE **64573**
FEDERAL AVIATION ADMINISTRATION
 Washington, DC.

In the matter of
 Protection of Voluntarily Submitted
 Information; Proposed Rule

DEPT. OF TRANSPORTATION
 DOCKETS

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COMMENTS OF

FAA-99-6001-16

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

The Reporters **Committee** is a voluntary, unincorporated association established in 1970 by news editors and **reporters** to defend the First Amendment and freedom of information rights of the print **and broadcast** media. The Reporters Committee **sponsors**, as a special **project**, the FOI Service Center, which advises reporters on issues of access to governmental records and proceedings,

The FOI Service Center of the Reporters Committee handles calls **daily** from reporters and **editors** around the country who are frustrated in their efforts to obtain information **from** the federal **government**. They have faced arbitrary use of the exemptions to the Freedom of Information Act, lengthy delays in responses to their FOI and other requests and outright refusal by federal agencies to acknowledge the public's interest in information about the workings of its government.

The failure of federal **agencies** to **provide** information on their activities affects the ability of reporters to cover government' activities accurately and Promptly.

In **turn**, the inability of reporters to gain information that should be available to the public ultimately means many citizens who rely upon the media cannot get information. They cannot reap the benefits of open **government** intended by Congress when it initially enacted the **FOI** Act and as it has repeatedly amended it in the years since **its** passage.

PURPOSE OF THESE REPORTERS COMMITTEE COMMENTS

The purpose of these Reporters Committee Comments is to **urge** the **FAA** to implement cautiously the legislation regarding protection of voluntarily submitted information, a segment of a 1996 appropriations measure. **In** our view, the agency must consider the limitations on withholding that Congress set out in this **measure**.

It is questionable whether the federal courts **could** allow this measure in the **1996** appropriations law to block public access to information that has been subject to the Freedom of Information Act for more **than 30** years.

We would challenge the law's sufficiency **as a** nondisclosure **statute** under the strenuous requirements of **Exemption 3** to the **FOI Act**.

We **also** seriously doubt that the judicially **developed standards for** protecting "voluntarily submitted" commercial and financial information **under Exemption 4** would, by **analogy**, justify a law protecting safety information from public scrutiny. **Exemption 4** considers that **commercial entities outside the government** would **on** voluntarily submit information that might **harm** their competitive **position** if the agency can promise secrecy. That is a far **different** scenario than this one in which an agency charged **with** protecting public safety chooses to seek cooperation from that **industry**

Recognizing that the FAA must implement this new law whatever its deficiencies, we would nonetheless exhort the agency **to** limit the scope of the protection for information to the greatest extent possible.

Reporters have **an** excellent record in reporting on safety problems in the **airline** and other industries. Repeatedly they have used the **FOI** Act to monitor government regulation of **industries and identify the** need for change. In **turn**, lawmakers have considered and adopted remedies.

In our **view**, there cannot be too many eyes on safety. However thorough the FAA and the National Transportation **Safety** Board may be in monitoring the airline industry, the **public** will be better assured that the **airlines** are safe when the press and public are also watching for problems.

In these comments we ask the FAA to **revise several** specific proposals that we feel impose too great of a limitation **on public access**.

We also hope that *in* drawing up final rules, the agency will consider other ways of making **as** much information as **possible** available to the public even as it provides for the limitations on disclosure in the brief outline of the new law.

Although the **FAA** acknowledges a **strong public interest in information** involving airline safety, its specific commentary *on* these proposals promises **broad** withholding, not broad **disclosure**.

We hope that the final rules will **recognize the need for required** submissions of information concerning safety and security.

THESE PROPOSALS ENCOURAGE **VOLUNTARY** NOT MANDATORY SUBMISSIONS

We strongly believe that the FAA should obtain needed information by mandate when that information involves safety **and security and should not** rely on the voluntary submissions of information **by the industry** it regulates. Certainly it should encourage whistle-blowing and the protection of whistleblowers but already there are **strong laws for** their **protection**.

However gracious and pleasant the relationship between the FAA **and** the industry it regulates might be, if the industry could choose **to** provide safety and security information rather than be required **to do so**, we believe that a responsible agency will require, not just "ask for," information it needs to insure safety and security.

Similarly we believe that a responsible **press and public will act with** additional eyes to monitor the issues of safety **and security, matters** of compelling public interest. They can do so only if they are able to obtain as much information as **possible**,

SPECIFIC PROPOSALS PROVIDE FOR TOO MUCH WITHHOLDING

We have examined several specific proposals which we believe should be revised.

* Section 193.3: "Information" to be withheld is broadly defined

In commentary to this section, the FAA promises submitters that it will consider the definition of information to be "inclusive," covering data, reports, source and other information.

In complying with this law, the FAA should only withhold information which, if disclosed, would discourage similar important voluntary submissions in the future. It should withhold no more information than that. If a submitter bolsters its case with data, reports, etc., ~~those data and reports should be publicly available unless there a.3~~ substantial reason **to believe** their release would lead the submitters to refuse to supply that information in the future. **If** submitted information will **not** even identify the submitter, it certainly **should** be available for public as well as agency evaluation.

* Section 193.3: "**Summarized**" not only "**statistical**" or "**general**"

This definition of "**summarized**" appears to discourage release of an **actual** description of any event describing a **saafety** problem, promising instead that the FAA will only describe the **events "statistically" or in some** other more general form.

This promise goes too far. The law allows nondisclosure of **submitted records to** protect the submitter **of** information. Any **withholding** beyond that limited purpose **should not be** allowed.

The public **may** well gain a clearer understanding of the parameters of safety from anecdotal information than from statistical or **general** information. **And** any release of information that **can** contribute to public understanding of airline safety issues is very important.

• Section 193.3: "**Voluntary**" designations would be too broad

The **FAA's** commentary on the definition of "**voluntary**" indicates that information may be designated as "voluntary" because **it** is part of a **program**, existing **or** future, that the FAA will use to collect information from willing participants.

Although we are not entirely clear as to what "**programs**" are anticipated here as "voluntary" and, therefore, secret, we object to the labeling **of** information gathered **in** an entire program as "voluntary" in order to avoid disclosure. Withholding **information** from the public **on** matters of airline safety and security is a serious **matter**. Withholding **must** be limited to those items that actually **meet** the criteria outlined in the appropriations law.

* Section 193.7 Disclosure of Information

We are very, very concerned about the agency's claim with regard to the requirement that the **Administrator must find that** withholding the **information** would be consistent with **safety** and security.

Although the new disclosure provision in the appropriations law specifically requires the agency to find withholding would be "consistent with safety and security," the **FAA** says that **it** will be infrequent that the FAA will find it advisable to release the information" if **the other factors are met**.

We believe that the FM should give thoughtful consideration to the law's requirement here. Withholding information in government files should never be a rubber-stamp operation. when the law requires the agency to make a finding that withholding **"is consistent with"** safety and security, it **MUST do so**. Absent that considered finding **by** the **agency**, the new law simply does not apply.

* Section 193.9 **FOQA** would receive too broad protection

An example of a protected program described in the **commentary is the FOQA** flight recorder program.

It is our understanding that **airlines avoid the collection of** information for fear chat disclosure would be **required**, that information routinely collected is recorded **over even though an** analysis of the details contained in these recordings would be enormously useful to **the** FAA and the public in evaluating **safety issues**.

The FAA understandably could better **regulate airline safety if the** airlines made this information available to it.

We do not understand why **the** FAA cannot **require airlines to maintain, rather than destroy, this information**. **This would seem to us to be** well within the mandate of **the** agency to **regulate the industry for** purposes of safety,

we note that the federal government has experienced no difficulty under the existing Freedom of Information Act **in** protecting privacy **of**

individuals (Exemptions 6 and 7c) or against harm of competitive interests (Exemption 4) .

What the FOI Act does mandate, however, is release of Segregative portions of records, portions that do not cause the harms that these exemptions protect against.

We are fearful that the FAA's intention to designate information in whole programs as not available not only exceeds the mandate of the appropriations law but will keep the public and the press from reviewing records that no one intended to be off limits.

Respectfully submitted,

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