

THE FREEDOM OF INFORMATION ACT 1966

DATED MATERIAL -Since 9/11 FOIA data has become scarcer and more difficult to

The Freedom of Information Act is a Federal Statute that assists persons retrieve information, records and documents from the archives of the United States government and directly from its various agencies. It is a form of open records act. It provides that at a reasonable cost the Government will provide all records to a requester for so long as they do not fall into several categories of exceptions. This original act delineated 9 categories of information that could be withheld. They Are:

1. National Security Material
2. Agency rules and Procedures
3. Matters excluded by other statute.
4. Trade secrets and proprietary agreements with the government
5. Agency material that would be exempt from legal discovery
6. Privacy provisions
7. Law enforcement investigations (ongoing)
8. Information of financial operations (competitive disclosure)
9. Geological surveys (oil reserves etc.)

In 1974 the act was amended with three additional changes.

These changes sped up the production of releasable documents, gave congress the right to review classification of documents, and provided an "investigatory exemption "from disclosure.

In 1986 the Act was again amended to facilitate the penchant for more government secrecy as requested by the Reagan administration. It was a very large change since previously under the exceptions from the release of information it was incumbent on the government to show that harm would result from the release. The new amendment only requires a government agency show the possibility of harm to deny a request. This of course became the dam to slow the flow of legitimate inquiry.

HOW DOES IT WORK

The requester writes a specific request to the government agency responsible for holding the documents requested. It is helpful to stamp the envelope "FREEDOM OF INFORMATION REQUEST" or address it to the Freedom of information Office.

Within ten days they are supposed to answer with an affirmative reply or with a denial. Often the letter will acknowledge the request and ask for more time due to the size, scope or old documents that need to be retrieved. A request may be partly answered and partly denied. A document may be forwarded that has been sanitized due to portions being privileged through an exception.

When a request is denied the requester has the opportunity to appeal within 20 days to the head of that agency. If the request is still turned down then the requester may seek judicial review in his home, his principal place of work, where the records are located or D.C. Federal District Court.

If an attorney is required to file such a lawsuit and he wins the government

will pay his attorney's fees and expenses. In pursuing an Aviation case, what you can get is as important and helpful as what you can't. The following listing is a sample of things that are readily obtainable through F.O.I.A. requests:

- F.A.A. Air Traffic Controllers Manual
- F.A.A. C.A.M.I. toxicology and drug screen.
- F.A.A. Tower tapes.
- F.A.A. Departure or approach control tapes.
- F.A.A. Air Route Traffic Control Tapes.
- F.A.A. A.T.I.S. weather tapes.
- F.A.A. Radar data for aircraft flight path.
- F.A.A. Tower movement logs.
- F.A.A. Sector manning records.
- F.A.A. Facility sector log.
- F.A.A. Aircraft records on registration and title.
- F.A.A. Airmen records.
- F.A.A. Airmen medical records.
- F.A.A. Facility status log.
- F.A.A. Facility check after accident.
- F.A.A. Telephonic and radio conversations from flight service.
- F.A.A. Training records.
- F.A.A. Punitive action and violation records.
- F.A.A. Form 337 STC changes.
- F.A.A. Service Difficulty reports.
- F.A.A. Airworthiness Directive file and history.
- F.A.A. Data on certification of a specific airplane.
- F.A.A. Aircraft certification documents (testing)
- N.T.S.B. Factual accident report.
- N.T.S.B. Public hearing transcript.
- N.T.S.B. Public Docket documents.
- N.T.S.B. Data on similar accidents and incidents.
- N.T.S.B. Pictures.
- I.C.A.O. Accident reports (foreign).
- U.S.A.F 110 -14 reports.
- U.S.A.F 127-4 reports.
- U.S.A.F. Engineering tear down reports.
- U.S.Army Accident Reports.
- U.S.Navy Accident reports.
- U.S.Navy Accident reports.
- U.S. Navy Engineering teardown reports.
- Military service records. Widow signature
- Military flight training records. Widow signature
- Armed Forces Pathology and Toxicology Reports. Widow signature
- U.S. Weather Service reports for reconstruction.
- U.S. Weather radar photographs.
- Weather satellite photos.

EROS DATA CENTER high altitude photos.

In short the Act is still a very good way to obtain data quickly, cheaply and without much hassle. It also acts as a way to gather information without disclosing to an opposing attorney the scope of your knowledge. Another thing that a well thought out request exposes is the fact that the information does exist even if you are not free to obtain it through the act. This in itself is invaluable information to possess. In fact I have used the denial of a Freedom of Information Request for an existing specific document as proof that the document existed in a civil case against a manufacturer who had been required author and provide that document to the government.

It is a great tool. If you learn of the document through FOIA, but can't get it because of an exception, just go back and get it through discovery later. Forget the appeal process in most cases since it is usually a rubber stamp for a denial.

I do say though use F.O.I.A. extensively; it's cheap, efficient, quiet, and sometimes surprisingly productive. For the materials listed above it is a lead pipe cinch.

OBTAINING INFORMATION

As discussed earlier the F.O.I.A. act is a very helpful tool in obtaining information from the U.S. Government. The government is required by law to release government records to the public. There are several commonly used exceptions to the release of such data. The most common are:

1. Classified National Security
2. Privileged, Official Business, Safety Board privilege (portions of military accidents)
3. Privacy Act restrictions
4. Discretionary government discussions before decisions.
5. Proprietary agreements where disclosure jeopardizes trade secrets.

The privilege for military safety board materials applies only to, unsworn testimony, opinions, conclusions and recommendations for safety as well as causation. All purely factual findings are releasable. The military runs two safety investigations simultaneously, and the SAFETY BOARD has the privilege not the J.A.G. report. It has become common for the SAFETY BOARD to release most of its factual material to the J.A.G. board for inclusion in their releasable report.

However this is not always the case, and it is usual for the Safety board to only release sample exemplars of their photo records which are releasable in their entirety.(since they are factual) Naturally the national security and privacy restrictions apply as well. Privacy Act restrictions are typically invoked as to medical, autopsy, military records and personnel files. This may be simply overcome by including a waiver by next of kin.

As to all government records obtained through F.O.I.A. a separate request and slight additional cost will get the requester a certified "BLUE RIBBON " sealed attestation that the records were a true and correct copy of government record. Such a copy precludes the necessity of proving up the documents through testimony of a government archivist. Most Federal Judges will accept the letters of request and transmittal as evidence enough of the documents authenticity.

I routinely go to the added expense and time to obtain a BLUE RIBBON copy. Somehow it just looks more official in the courtroom.

Where to Obtain Documents.

AIR FORCE:

1. Safety Boards Report- **U.S.A.F. Safety Center**, Norton A.F.B., San Bernardino California. Reg. 127-4 now located at Albuquerque New Mexico
 - a. Safety statistics
 - b. Safety trends and predictions
 - c. Systems Safety Materials
2. J.A.G. Report, **Headquarters, Washington, D.C.** 110 -14
 - a. set up depositions, through J.A.G. office, (can be done at command level)
3. MAINTENANCE HISTORY of aircraft or aircraft type, aircraft components, M.T.B.F. etc.
 - a. Obtain from cognizant S.P.O. (SPECIAL PROGRAM OFFICE), Wright Patterson A.F.B. - Dayton, Ohio (for aircraft in development or production)
Or
 - b. Obtain from cognizant logistical depot. (For aircraft out of production)
4. AIRCRAFT DEVELOPMENT and qualification records, U.S.A.F Systems Command , Andrews A.F.B. or cognizant S.P.O.
5. AIRCRAFT FLIGHT TEST REPORTS, Edwards Air Force Base, Ca.

NAVY:

1. Safety Boards Report- **NAVAL AIR Safety Center**, Norfolk Naval Air Station, Norfolk, Va.
 - a. Safety statistics
 - b. Safety trends and predictions
 - c. Systems Safety Materials
2. J.A.G. Report, **NAVY Headquarters, Washington, D.C.**
 - a. set up depositions, through J.A.G. office, (can be done at command level)
3. MAINTENANCE HISTORY of aircraft or aircraft type, aircraft components, M.T.B.F. etc.
 - a. Obtain from cognizant NAVAL AIR SYSTEMS COMMAND DESK. (Similar to a SPECIAL PROGRAM OFFICE), Arlington Va. (for aircraft in development or production)
Or
 - b. Obtain from cognizant NADEP Naval Air Depot formerly Naval Air Rework Facility. (For aircraft out of production)

4. AIRCRAFT DEVELOPMENT and qualification records, U.S.N. Naval Air Systems Command, Arlington Va. (cognizant DESK)

5. AIRCRAFT FLIGHT TEST REPORTS, Naval Air Test Center, Naval Air Station Patuxent River, Md.

ARMY:

1. Safety Boards Report- **ARMY Safety Center, FT. RUCKER, Alabama**

- a. Safety statistics
- b. Safety trends and predictions
- c. Systems Safety Materials

2. J.A.G. Report, **ARMY Headquarters, Washington, D.C.**

A. set up depositions, through J.A.G. office, (can be done at command level)

3. MAINTENANCE HISTORY of aircraft or aircraft type, aircraft components, M.T.B.F. etc.

a. Obtain from cognizant A.S.O.Alexandria Va. (for aircraft in development or production)

Or

b. Obtain from cognizant logistical depot. (For aircraft out of production)

4. AIRCRAFT DEVELOPMENT and qualification records, A.S.O. Alexandria VA

5. AIRCRAFT FLIGHT TEST REPORTS, ARMY TEST, Edwards Air Force Base, Ca.

F.A.A.:

F.A.A. HEADQUARTERS, WASHINGTON

1. A.D.

2. Advisory Circulars

3. F.A.A. Publications Lists

4. ARCHIVES of old regulations, changes and proposed rulemaking.
Public hearing docket.

F.A.A., OKLAHOMA CITY

a. AIRMEN'S RECORDS, licenses, tests, recurrent, punitive etc.

b. AIRCRAFT TITLE

c. AIRCRAFT MAINTENANCE PROBLEMS (S.D.R. formerly M.D.R.s)

d. AERONAUTICAL COMPONENT PROBLEMS (S.D.R.)

e. C.A.M.I. toxicology

f. C.A.M.I. AIRMENS' MEDICAL RECORDS, physicals

g. FACILITY FLIGHT CHECK.

- h. A.T.C. SCHOOL
- i. INVESTIGATION SCHOOL

F.A.A. REGIONAL OFFICES

- a. CERTIFICATION and VERIFICATION COMPLIANCE DOCUMENTS for REGION
- b. S.T.C. for REGION (form 337)
- c. CERTIFICATE ACTIONS INITIATED WITHIN REGION (legal)
- d. RETENTION OF A.T.C. TAPES,(through legal and local facility)
(Computer 3 days, voice one month)
- e. OVERSIGHT OF MANUFACTURERS IN REGION
- f. OVERSIGHT OF AIRLINES, COMMUTERS and F.B.O. in REGION
- g. OVERSIGHT of MAINTENANCE FACILITIES in REGION

F.A.A. LAKEHURST N.J.

- a. RESEARCH and DEVELOPMENT PROGRAMS

N.T.S.B. :

N.T.S.B. WASHINGTON

- a. BOARDS ACCIDENT REPORTS .(not to be used in court)
- b. ACCIDENT REPORTS. (FACTUAL)
- c. INCIDENT REPORTS.
- d. ADMINISTRATIVE ACTIONS (CERTIFICATE)
- e. METAL LAB REPORTS.
- f. DATA, voice recorder, flight data recorder, sound lab, reconstruction computer.
- g. Board Publications.
- h. Board recommendations.
- i. SAFETY STATISTICS.
- j. RELEASABLE PORTIONS OF FOREIGN REPORTS(those released to them by host nation)
- k. Computer accident/ incident listing by category/aircraft or component type.
- L. TRANSCRIPTS OF PUBLIC HEARINGS.
- M. EXHIBITS TO PUBLIC HEARINGS.
- N. DOCUMENTS TURNED IN TO PUBLIC DOCKET.

N.T.S.B. REGIONAL OFFICES

- A. Set Up Local depositions of factual investigator
- c. May obtain some factual documents to an accident investigation. (Most refer you to D.C.)

FOREIGN ACCIDENT REPORTS

- 1. N.T.S.B. Washington, will release portions on which they worked if they have permission of host nation.

2. State Department Washington. They will release what they have with permission of host nation as per agreements.
3. I.C.A.O. Montreal. They will release what they have as public docket.
4. HOST NATION: See addresses, they will release what they deem appropriate.
5. Most effective way, pay an investigator or law firm in the host nation. (Often expensive)

U.S. CLIMATIC CENTER, ASHEVILLE, N.C.

- a. Historical Weather data, reports.
- b. Weather Radar data.
- c. Photographs of weather radars.

E.R.O.S. Data Center, Sioux Falls, SD.

1. Satellite earth pictures.
2. High altitude aircraft pictures.

U.S. STATE DEPARTMENT

1. INTERNATIONAL AVIATION AGREEMENTS
2. STATE DEPARTMENT WAIVERS OF F.A.A. certification standards for foreign aircraft. (Agreements that cut foreign manufacturers slack)
3. Foreign Accident Reports.

STATE and LOCAL AGENCIES,

1. FIRE RESPONSE
2. POLICE RESPONSE and REPORTS (state, local) (identity of first witnesses)
3. RADIO DISPATCH LOGS
4. 911 calls
5. Photographs all sources
6. Local Medical and hospitals
7. Local media coverage (photo's)
8. Local coroner
9. Quiet but officious intermeddlers (possible D.E.A., F.B.I., C.I.A., military?)(
People who act with apparent authority without identifying themselves)