

APPENDIX: V

DOCUMENT NUMBER: NTSB Record 13

DATE OF DOCUMENT: October 14, 1997

TOTAL NUMBER OF PAGES: 01

TOTAL NUMBER OF PAGES WITHHELD ENTIRELY: 0

TOTAL NUMBER OF REDACTED PAGES: 01

DESCRIPTION OF DOCUMENT: Comments by an employee of The Boeing Company concerning the NTSB Trajectory Study

The NTSB received this document from an employee of The Boeing Company Air Safety Investigation Team, which is part of the Boeing Commercial Air Group (CAG/ASI). This document contains Boeing's comments concerning the NTSB Trajectory Study, portions of which were employed in the creation of the simulation of the flight of TWA 800. An employee of The Boeing Company prepared the comments that are contained in this document, which were received and considered by the NTSB at the time the draft Trajectory Report was being considered by NTSB investigators. NTSB Record No. 10, a fax cover sheet, was used as a cover sheet for this document when it was faxed to the NTSB. The Trajectory Study, when completed, was included in the public docket concerning TWA 800 at Exhibit 22A. It is found in this Vaughn index as Exhibit VI to the Declaration of Dennis

Crider. The supporting data for the study is found at Exhibit 22B.

In view of the discussion in this document of the draft study, including the deliberations that were a part of the study's preparation, and the inclusion in the comments of personally identifying information concerning certain Boeing employees, certain information from this document was withheld pursuant to exemptions (b) (4) (b) (5) and (b) (6) of the Freedom of Information Act (FOIA). This document, NTSB Record No. 13, was responsive to a FOIA request of the plaintiff and, in the NTSB's response to the earlier request, was withheld in its entirety. Subsequent evaluation of the document resulted in a determination that certain portions of it could be disclosed without the release of material exempt under the FOIA. The releasable portions of this document were originally released in the Vaughn index filed in CV 02-8708-AHM and continue to be released.

This document contains, in the comments made by a Boeing CAG/ASI employee, references to particular sections (page and paragraph numbers) of the draft NTSB Trajectory Study. These references, in conjunction with the comments made by the Boeing employee, reveal the organization and content of

the predecisional, draft study, which if disclosed, would expose the agency's decision-making process in the context of this study in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its investigative function. Consequently, the references to sections of the draft study were withheld pursuant to exemption (b)(5) of the FOIA.

Certain of the comments by the Boeing employee, quote and discuss portions of the draft study so that disclosure of the Boeing employee's comment would constitute disclosure of the draft report of the NTSB study as well. The discussion of the draft study represented by the comments from the Boeing employee is a part of the NTSB investigative process, conducted with a party participant of the investigation, which discussion is intended to determine if the NTSB study should be amended prior to its presentation to the Members of the Safety Board. The five-member Safety Board is the ultimate decision-maker as to the probable cause(s) of an accident, and the safety recommendations that follow from that determination of cause. The discussions in this document were predecisional since they occurred well in advance of the completion and publication of the study. The discussions are deliberational, as well, in that they embrace the proposed

means of completion of the study that will be presented to the Board subsequent to the time of the discussion in the document. The Safety Board was anticipated to use the study and its recommendations to make decisions that would alter maintenance of systems, training of personnel, or construction of systems so as to prevent future accidents. Taking into consideration the predecisional and deliberative nature of certain portions of the document, they have been withheld pursuant to the operation of exemption (b) (5) of the FOIA.

The names and signature of the Boeing employees were redacted from this document pursuant to exemption (b) (4). The redacted information, voluntarily submitted by Boeing, is considered by Boeing to be commercial in nature and to reveal commercial operations, which from Boeing's perspective, makes the withheld information confidential in nature.

Boeing's employees, including the engineers and technical staff in CAG/ASI, are vital to the design, manufacture, sale and support of commercial aircraft, which are a primary product of the company. Boeing invests a great deal of time, money and other resources educating and training its personnel in order to develop their skills and

usefulness to Boeing's commercial operations. Boeing engineers and technical staff in their daily work routinely create, have access to, and use Boeing proprietary information that is commercially valuable to Boeing. Further, they routinely access and use the proprietary information of Boeing's suppliers and customers, which information was provided to Boeing by its suppliers and customers with the expectation that it would be held confidential. Use and disclosure of proprietary information, whether that of Boeing, a supplier or customer, is restricted by agreements between Boeing and its employees, suppliers, and customers. Boeing has policies and procedures to prevent disclosure of proprietary information, which is not customarily made available to the public.

Disclosure of the withheld information concerning Boeing's employees would identify the professional staff of Boeing that are involved in the technical and professional activities of CAG/ASI, which would link particular employees with particularized commercial operations of Boeing. Additionally, it would identify and disclose the names of those employees of Boeing that are in possession of and familiar with the proprietary information of Boeing and its suppliers and customers. Boeing therefore has a

commercial interest in withholding from disclosure the identifying information concerning its employees and the proprietary information they have created, accessed, or used in the course of their employment.

As a normal business practice to prevent burdensome or improper contact between Boeing's employees and third parties who might have an adverse interest in Boeing's business, Boeing generally does not release direct contact information for its employees. If the withheld information were released, names of employees who have access to or knowledge of Boeing's commercially valuable proprietary data would be available to the public in general and to Boeing's competitors in particular. Armed with the basic knowledge of the employees' knowledge, skills, and responsibilities, Boeing's competitors could attempt to hire these individuals away from Boeing or otherwise seek to gain information from them. In short, public disclosure of the withheld information, to the extent that it may cause substantial harm to Boeing's competitive position, would also be likely to impair the NTSB's ability to have direct access and information concerning the professional and technical staff of Boeing. If, as a result of disclosure of identifying information concerning its employees, the employees were subject to burdensome or

improper contact, it would be more difficult and expensive for Boeing to offer its most experienced and knowledgeable employees to support NTSB investigations. Loss of the investigative asset that the Boeing employees represent would significantly impair the NTSB's ability to complete its accident investigation work. For Boeing, loss of members of its highly skilled workforce would have a detrimental effect on Boeing's ability to compete in a very demanding global marketplace.

The names and signature of the employees of Boeing were also withheld pursuant to exemption (b)(6). These individuals are not government employees; rather, they are employees of a private corporation. Given the commercial value of the information that is in the possession of these individuals and the curiosity that has arisen surrounding the accident investigation of the crash of TWA Flight 800, release of the names of these Boeing employees would permit the invasion of the employees' personal privacy and would make them subject to unwanted and possibly unmanageable contact from a host of individuals unknown to them. It is clear, therefore, that the employees of Boeing have a privacy interest in their names and other identifying

information and in the non-disclosure of their names and other identifying information.

Taking into consideration the public interest in the disclosure of the material withheld under (b)(6), as public interest is defined in the FOIA, it does not appear that the withheld information is of the type in which there is a public interest or, if an interest exists, it is minimal. That is, the names and identifying information of Boeing employees do not shed light on the agency's performance of its statutory duties. Thus, it appears that there is little to no public interest in the disclosure of this information and that the Boeing employees' right to privacy outweighs any such interest. The disclosure of the information, without revealing information concerning how the NTSB performs its statutory duties, would constitute a clearly unwarranted invasion of the personal privacy of the Boeing employees.

"Trajectory Study", by Dennis Cridor, dated January 30, 1997
Initial Comments

Page Para Comment

(b)(5)



- January 30, 1997 is out of date. ✓
- What is the ground rule for determining the impact point?
- "It's" is a contraction of "it is" or "it has." "Its", without the apostrophe, is the possessor.
- I don't know the formalities or boundaries between teams, but is this treading on the "sequencing" team's area?
- Are we to assume that the reader knows, a priori, what the red area is, as opposed to the green or yellow?
- "without a stable lift vector" should be "i.e. no lift" ○ ✓



(b)(5)



✓ (b)(5)



✓ (b)(5)
✓ (b)(5) (b)(6)

(b)(5)



(b)(4)
(b)(5)
(b)(6)

10/14/97