

APPENDIX: V

DOCUMENT NUMBER: NTSB Record 25

DATE OF DOCUMENT: Unknown

TOTAL NUMBER OF PAGES: 01

TOTAL NUMBER OF PAGES WITHHELD ENTIRELY: 01

TOTAL NUMBER OF REDACTED PAGES: 0

DESCRIPTION OF DOCUMENT: Handwritten Notes of Comments on Study

A staff member of the NTSB wrote this one-page document to record comments given by 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, and perhaps the Main Wreckage Flight Path Study. An employee of the NTSB received these comments and considered them at the time the draft Trajectory Report, and perhaps the Main Wreckage Flight Path Study, was being reviewed by NTSB investigators. (Both the Trajectory Study and the Main Wreckage Flight Path Study, when completed, were included in the public docket concerning TWA 800 at Exhibit 22A and 22C, and can be found in this Vaughn index at Exhibits VI -

VII to the Crider Declaration.) The supporting data for the Trajectory Study is found at Exhibit 22B, and additional reports related to the Main Wreckage Flight Path Study are at 22D through 22F (which can be found as Exhibits VIII-X to the Crider Declaration.)

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 a certain Boeing employee, 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 contains, in the comments made by the Boeing CAG/ASI employee, references to particular sections of the draft NTSB Trajectory Study, and perhaps the Main Wreckage Flight Path 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 the 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 comments to the draft study were withheld pursuant to exemption (b) (5) of the FOIA.

Certain of the comments by the Boeing employee indicate portions of the draft study so that disclosure of the Boeing employee's comment would constitute disclosure of parts 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 the document, it has been withheld pursuant to the operation of exemption (b)(5) of the FOIA.

The name and telephone number of the Boeing employee was redacted pursuant to exemption (b)(4). This personal identifying 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 a Boeing employee would identify the professional staff of Boeing that was 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 name of an employee of Boeing that was 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 this 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. (See Declaration of Richard S. Breuhaus of The Boeing Company). If the withheld information were released, names and contact information for 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. (See Declaration of Dennis Crider). 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. (See Declaration of Richard S. Breuhaus).

The name and telephone number of the employee of Boeing was also withheld pursuant to exemption (b)(6). The individual is not a government employee; rather, he is an employee of a private corporation. Given the commercial value of the information that is in the possession of this individual and the curiosity that has arisen surrounding the accident investigation of the crash of TWA Flight 800, release of the name of this Boeing employee would permit the invasion of the employee's personal privacy and would make him subject to unwanted and possibly unmanageable contact from a host of individuals unknown to him. It is clear, therefore, that an employee of Boeing has a privacy interest in his/her name and other identifying information and in the non-disclosure of his/her name 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 name and telephone number of a Boeing employee does 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 employee's 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 employee.