

NTSB 26

APPENDIX: V

DOCUMENT NUMBER: NTSB Record 26

DATE OF DOCUMENT: October 15, 1997

TOTAL NUMBER OF PAGES: 04

TOTAL NUMBER OF PAGES WITHHELD ENTIRELY: 04

TOTAL NUMBER OF REDACTED PAGES: 0

DESCRIPTION OF DOCUMENT: Air Line Pilots Association (ALPA) Letter and Notes with comments on reports - two copies

This record consists of two copies of a letter sent to the NTSB by an employee of ALPA, who served as the ALPA representative on the investigation. Each copy of the letter has a different set of handwritten notes by an NTSB staff member. The letter contains comments on a draft of the NTSB Trajectory Study for TWA flight 800. An employee of ALPA prepared the comments that are contained in this document, which were received and considered by the NTSB at the time the draft Trajectory Study report was being written, reviewed and considered by NTSB investigators. Portions of which were employed in the creation of the simulation of the flight of TWA 800.

why separate document  
NTSB Record # "

NTSB Record No. 11, 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. The supporting data for the study is found at Exhibit 22B.

In view of the discussion in this letter of the draft study, including the deliberations that were a part of the study's preparation, and the inclusion in the letter's comments of personally identifying information concerning a certain ALPA employee, particular portions of the information in this document were withheld pursuant to exemptions (b) (4), (b) (5) and (b) (6) of the Freedom of Information Act (FOIA).

The two copies of this letter, each with its handwritten notes, were responsive to a prior FOIA request of the plaintiff and, in the NTSB's response to that request, were withheld in their entirety. Subsequent evaluation of the letters has resulted in a determination that certain portions of them could be disclosed without the release of material exempt under the FOIA. The releasable portions of the letters were released in the Vaughn index filed in CV 03-8708-AHM and are released once again here.

With regards to the information still withheld, this document contains, in the comments made by the ALPA employee, references to a number of sections of the draft NTSB Trajectory Study. These references, in conjunction with the comments made by the ALPA employee, reveal the organization and content of the predecisional, draft NTSB 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 ALPA employee, quote, and discuss in detail, portions of the draft NTSB study so that disclosure of the ALPA employee's comments 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 ALPA 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 were deliberational, as well, in that they embraced the proposed means of completion of the study that would 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 information from the Trajectory

Study report revealed in certain portions of the letter, these portions have been withheld in each copy of the letter pursuant to the operation of exemption (b)(5) of the FOIA.

Each copy of the letter from ALPA has the handwritten notes of an employee of the NTSB adjacent to particular comments in the letter. The notes of the NTSB employees respond and further comment upon the matters addressed by ALPA in its letter. The handwritten notes themselves reveal preliminary issues and matters that the NTSB staff members were reviewing for the NTSB Trajectory Study. Disclosure of the handwritten notes would reveal the nature of the NTSB's deliberations in the course of its drafting of the Trajectory Study, which would also expose the NTSB's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions. It would also have a chilling effect on the authors of the notes and those participating in the investigation by making them wary of engaging in frank and open discussion for fear of the preliminary and speculative information shared in their discussions being disclosed. Protecting frank and open discussion such as that depicted in this document enhances the quality of agency decisions. To avoid the chilling effect of disclosure and protect the deliberative process, the handwritten notes of the NTSB staff members were withheld pursuant to exemption (b)(5) of the FOIA.

The name of the ALPA employee was withheld pursuant to exemption (b)(4) from each copy of the letter. The name, if disclosed, would identify a particular ALPA employee by name. The redacted information, voluntarily submitted by ALPA, is considered by ALPA to be commercial in nature and to reveal commercial operations, which, from ALPA's perspective, makes the withheld information confidential in nature.

ALPA's employees, particularly its engineers and technical staff, such as the author of the ALPA letter to the NTSB, are vital to ALPA's monitoring and review of certification, testing and maintenance of aircraft; which are some of the primary areas where ALPA speaks on behalf of its members. ALPA engineers, like those in the manufacturing industry, require a great deal of education and training in order to enter the technical aviation career field and to maintain currency and proficiency. ALPA funds much of the training and education to maintain proficiency and develop specialized knowledge. Disclosure of the withheld information concerning ALPA's employee would identify a member of the professional staff of ALPA that is involved in the technical and professional activities of its Engineering and Accident Investigation Department, which would link a particular employee with a particular commercial operation of ALPA. Additionally, it would identify and disclose an employee of ALPA that is in possession of and familiar with the proprietary information of Boeing that was used in the Trajectory Study. ALPA clearly, therefore, has a commercial

interest in withholding from disclosure the identifying information concerning its employee.

If the withheld information were released, the name of an ALPA employee who has access to or knowledge of commercially valuable proprietary data would be available to the public in general and to ALPA's competitors in particular. Armed with the basic knowledge of the employee's knowledge, skills, and responsibilities, ALPA's competitors could attempt to hire this individual away from ALPA or otherwise seek to gain information from him or her. In short, public disclosure of the withheld information, to the extent that it may cause substantial harm to ALPA's competitive position, would also be likely to impair the NTSB's ability to have direct access and information from the professional and technical staff of ALPA.

If, as a result of disclosure of identifying information concerning its employee, the employee was subject to burdensome or improper contact, it would be more difficult and expensive for ALPA to offer its most experienced and knowledgeable employees to support NTSB investigations. Concerned about the vulnerability of its workforce, ALPA may be reticent to allow access to its employees, whose knowledge and resources are vital to the NTSB's ability to complete its accident investigation work. Loss of members of its highly skilled workforce clearly would have a detrimental effect on ALPA's ability to provide representation to the NTSB on behalf of the air line pilots. Loss of the investigative

asset that ALPA's employees represent would significantly impair the NTSB's ability to complete its accident investigation work while, for ALPA, loss of members of its highly skilled workforce would have a detrimental effect on its ability to compete in the marketplace.

The name of the ALPA employee was also withheld pursuant to exemption (b)(6). This individual is not a government employee; rather, he or she 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 ALPA employee would permit the invasion of the employee's personal privacy and would make him or her subject to unwanted and possibly unmanageable contact from a host of individuals unknown to him or her. It is clear, therefore, that this employee of ALPA has a privacy interest in his/her name and in the non-disclosure of his/her name.

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 of this ALPA 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 ALPA 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 ALPA employee.



October 15, 1997

Mr. Dennis A. Crider  
Vehicle Performance  
NTSB/RE-60  
490 L'Enfant Plaza East, SW  
Washington, D.C. 20594

Dear Mr. Crider:

ALPA has reviewed the Trajectory Study for the TWA 800 accident. We were unable to review it in detail due to the short turnaround time available. Nevertheless, we would like to offer the following general comments for your consideration.

1)

[REDACTED]

(b)(5)

2) There are several assumptions in the study that should be more fully substantiated.

a)

b)

c) The derivation of  $C_D$  values in Attachment 10.

[REDACTED]

(b)(5)

3)

a)

b)

[REDACTED]

(b)(5)

4)

5)

[REDACTED]

(b)(5)

[REDACTED]

(b)(5)

[REDACTED]

It is unfortunate that ALPA and the other parties to the investigation were not afforded the opportunity to participate in this study. Our combined efforts might have been effective in addressing the above issues. We urge the Board to consider party participation as the standard, not the exception, for such endeavors in the future.

[REDACTED]

(b)(5)

If you have any specific questions or comments, please feel free to contact me at

[REDACTED]

[REDACTED] } (b)(4)  
(b)(6)

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b) 

c) 

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5)  (b)(5)

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