

Section 3(c) of the Administrative Procedure Act provides that matters of official record shall be made available by agencies to persons properly and directly concerned, except "as otherwise required by statute" and except for the "information held confidential for good cause found." The requirements of section 3 are also inapplicable, by its own terms, to "any function of the United States requiring secrecy in the public interest" and to "any matter relating solely to the internal management of an agency." Additional authority for the withholding of information is found in sections 204(a), 902(f), 1001, and 1104 of the Federal Aviation Act, described in greater detail below.

Records and materials in the possession of the Board which are not available for public inspection are described in section 1.6 (c) and (d) of the public notice PN-15 and generally include:

(1) Matters classified in the interest of national defense.

(2) Records, letters, memorandums, files, and information created by or coming into the possession of, or within the knowledge of the Board or its staff in the discharge of their official duties. Section 1.6(d) further provides, however, that material in this category "may be disclosed in response to a request to persons having a legitimate interest if the disclosure of such information is found by an authorized employee to be appropriate to the furtherance of the objectives of the act or is approved by the Board upon good cause shown. Information ordered by the Board to be withheld may be disclosed only by direction of the Board."

Section 442 of the Board's administrative regulations describes the procedures governing the disclosure of information, other than defense information, by employees and former employees of the Board.

The Board's general authority to classify its materials as public and nonpublic, and to withhold information, stems from section 204(a) of the Federal Aviation Act (72 Stat. 743(a), 49 U.S.C. 1324(a)), which authorizes the Board to promulgate rules, regulations, and procedures necessary to the discharge of its duties. In addition, there follows a description of provisions of the Federal Aviation Act, and implementing Board regulations, which authorize the withholding or preclude the revealing of information in specific areas.

As provided by section 1001 of the Federal Aviation Act (72 Stat. 788, 49 U.S.C. 1481), Board proceedings shall be open to the public unless the Board "determines that secrecy is requisite on grounds of national defense," in which latter case the record of such proceeding would not be available for public inspection. As regards secrecy of documents on grounds of national defense, the Board's action is controlled by the more comprehensive provisions of Executive Order 10501, which requires classification of documents containing official information which requires protection in the interests of national defense, and regulates use of such documents. The Board is subject to section 2(b) of this order, making the Chairman the sole authority for classification of such documents which originate with the Board. Executive Order 10501 is implemented by section 441 of the Board's administrative regulations, attached hereto, which sets forth the procedures governing the classifying and protection of information in the interest of national defense.

Section 1104 of the Federal Aviation Act (72 Stat. 797, 49 U.S.C. 1504) authorizes the Board to withhold documents from the public where "a disclosure of such information would adversely affect the interests of such person [objecting to the disclosure], and is not required in the interest of the public." This policy has been applied to written evidence and oral testimony in economic proceedings by section 302.39(b) of the Board's Procedural Regulations, 14 C.F.R. 302.39(b), and to information elicited in accident investigations by section 303.23 of the Board's Procedural Regulations, 14 C.F.R. 303.24.

Part 305 of the Board's Procedural Regulations, 14 C.F.R. 305, which governs informal nonpublic investigations, provides that the "record of such proceedings shall constitute internal Board documents which shall not be available to the general public" (pt. 305.10). See, also section 302.314 of the Board's Procedural Regulations, 14 C.F.R. 302.314, which precludes the disclosing of certain information by parties to mail-rate conferences.

Section 701(e) of the Federal Aviation Act (72 Stat. 781, as amended, 49 U.S.C. 1441) provides that:

No part of any report or reports of the Board relating to any [aircraft] accident or the investigation thereof, shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports.