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(b) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

§ 801.54 Trade secrets and commercial or financial information.

Pursuant to 5 U.S.C. 552(b)(4), trade secrets and items containing commercial or financial information that are obtained from a person and are privileged or confidential are exempt from public disclosure.

§ 801.55 Interagency and intra-agency exchanges.

(a) Pursuant to 5 U.S.C. 552(b)(5), any record prepared by an NTSB employee for internal Government use is exempt from public disclosure to the extent that it contains—

(1) Opinions made in the course of developing official action by the NTSB but not actually made a part of that official action, or

(2) Information concerning any pending NTSB proceeding, or similar matter, including any claim or other dispute to be resolved before a court of law, administrative board, hearing officer, or contracting officer.

(b) The purpose of this section is to protect the full and frank exchange of ideas, views, and opinions necessary for the effective functioning of the NTSB. These resources must be fully and readily available to those officials upon whom the responsibility rests to take official NTSB action. Its purpose is also to protect against the premature disclosure of material that is in the developmental stage, if premature disclosure would be detrimental to the authorized and appropriate purposes for which the material is being used, or if, because of its tentative nature, the material is likely to be revised or modified before it is officially presented to the public.

(c) Examples of materials covered by this section include, but are not limited to, staff papers containing advice, opinions, or suggestions preliminary to a decision or action; preliminary notes; advance information on such things as proposed plans to procure, lease, or otherwise hire and dispose of materials, real estate, or facilities; documents exchanged in preparation for anticipated legal proceedings; material

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intended for public release at a specified future time, if premature disclosure would be detrimental to orderly processes of the NTSB; records of inspections, investigations, and surveys pertaining to internal management of the NTSB; and matters that would not be routinely disclosed in litigation but which are likely to be the subject of litigation.

§ 801.56 Unwarranted invasion of personal privacy.

Pursuant to 5 U.S.C. 552(b)(6), any personal, medical, or similar file is exempt from public disclosure if its disclosure would harm the individual concerned or would be a clearly unwarranted invasion of the person's personal privacy.

§ 801.57 Records compiled for law enforcement purposes.

Pursuant to 5 U.S.C. 552(b)(7), any records compiled for law or regulatory enforcement are exempt from public disclosure to the extent that disclosure would interfere with enforcement, would be an unwarranted invasion of privacy, would disclose the identity of a confidential source, would disclose investigative procedures and practices, or would endanger the life or security of law enforcement personnel.

§ 801.58 Records for regulation of financial institutions.

Pursuant to 5 U.S.C. 552(b)(8), records compiled for agencies regulating or supervising financial institutions are exempt from public disclosure.

§ 801.59 Geological records.

Pursuant to 5 U.S.C. 552(b)(9), records concerning geological wells are exempt from public disclosure.

Subpart G—Fee Schedule

§ 801.60 Fee schedule.

(a) *Authority.* Pursuant to 5 U.S.C. 552(a)(4)(i) and 52 FR 10,012 (Mar. 27, 1987), the NTSB may charge certain fees for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section, or where a waiver or reduction of fees is granted under paragraph (e) of

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this section. The NTSB may collect all applicable fees before sending copies of requested records to a requester. A requester must pay fees in accordance with the instructions provided on the invoice the FOIA Office sends to the requester.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests. This includes the furtherance of commercial interests through litigation. When it appears that the requester will use the requested records for a commercial purpose, either because of the nature of the request or because the NTSB has reasonable cause to doubt a requester's stated use, the NTSB shall provide the requester with a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses that an agency actually incurs in searching for, reviewing, and duplicating records in response to a FOIA request. This includes the salaries of employees performing the work, as listed below, but does not include overhead expenses such as the costs of office space.

(3) *Duplication* means the copying of a record, or of the information contained in a record, in response to a FOIA request.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. In order for a requester to demonstrate that their request falls within the category of an "educational institution," the requester must show that the request is authorized by the qualifying institution and that the requester does not seek the records for commercial use, but only to further scholarly research.

(5) *Representative of the news media* or "news media requester" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the

public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization (for example, a journalist may submit a copy of a publication contract for which the journalist needs NTSB records).

(6) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. "Review" also includes processing the record(s) for disclosure, which includes redacting and otherwise preparing releasable records for disclosure. The NTSB may require review costs even if the NTSB ultimately does not release the record(s).

(7) *Search* means the process of looking for and retrieving records or information within the scope of a request. "Search" includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The NTSB will make an effort to conduct such searches in the least expensive manner.

(c) *Fees.* In responding to FOIA requests, the NTSB will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (d) of this section:

(1) *Search.* (i) The NTSB will charge search fees for all requests, unless an educational institution, a noncommercial scientific institution, or a news media representative submits a request containing adequate justification for obtaining a fee waiver. These fees, however, are subject to the limitations of paragraph (d) of this section. The NTSB may charge for time spent searching even if the NTSB does not locate any responsive record or if the NTSB withholds the record(s) located because such record(s) are exempt from disclosure.

(ii) The NTSB will charge \$4.00 for each quarter of an hour spent by clerical personnel in searching for and retrieving a requested record. Where clerical personnel cannot entirely perform a search and retrieval (for example, where the identification of records within the scope of a request requires

the assistance of professional personnel), the applicable fee will instead be \$7.00 for each quarter hour of search time spent by professional personnel. Where a request requires the time of managerial personnel, the fee will be \$10.25 for each quarter hour of time spent by these personnel.

(2) *Duplication.* The NTSB will charge duplication fees, subject to the limitations of paragraph (d) of this section.

(i) The NTSB utilizes the services of a commercial reproduction facility for requests for duplicates of NTSB public dockets and publications.

(ii) Regarding the reproduction of non-public records in response to a FOIA request, the NTSB will charge \$0.10 per page for the duplication of a standard-size paper record. For other forms of duplication, the NTSB will charge the direct costs of the duplication.

(iii) Where the NTSB certifies records upon request, the NTSB will charge the direct cost of certification.

(3) *Review.* The NTSB will charge fees for the initial review of a record to determine whether the record falls within the scope of a request, or whether the record is exempt from disclosure. Such fees will be charged to requesters who make a request for commercial purposes. The NTSB will not charge for subsequent review of the request and responsive record; for example, in general, the NTSB will not charge additional fees for review at the administrative appeal level when the NTSB has already applied an exemption. The NTSB will charge review fees at the same rate as those charged for a search under paragraph (c)(1)(ii), above.

(c) *Limitations on charging fees.* For purposes of this section:

(1) The NTSB will not charge a fee for notices, decisions, orders, etc. provided to persons acting as parties in the investigation, or where required by law to be served on a party to any proceeding or matter before the NTSB. Likewise, the NTSB will not charge fees for requests made by family members of accident victims, when the NTSB has investigated the accident that is the subject of the FOIA request.

(2) The NTSB will not charge a search fee for requests from edu-

cational institutions or representatives of the news media.

(3) The NTSB will not charge a search fee or review fee for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for commercial use, the NTSB will provide the following items *without* charge:

(i) The first 100 pages of duplication (or the cost equivalent) of a record; and

(ii) The first two hours of search (or the cost equivalent) for a record.

(5) Whenever the total fee calculated under paragraph (c) of this section is \$14.00 or less for any request, the NTSB will not charge a fee.

(6) When the NTSB's FOIA Office determines or estimates that fees to be charged under this section will amount to more than \$25.00, the Office will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If the FOIA Office is able to estimate only a portion of the expected fee, the FOIA Office will advise the requester that the estimated fee may be only a portion of the total fee. Where the FOIA Office notifies a requester that the actual or estimated fees will exceed \$25.00, the NTSB will not expend additional agency resources on the request until the requester agrees in writing to pay the anticipated total fee. In circumstances involving a total fee that will exceed \$250.00, the NTSB may require the requester to make an advance payment or deposit of a specific amount before beginning to process the request.

(7) The NTSB may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided at 31 U.S.C. 3717 and will accrue from the date of the billing until the NTSB receives payment. The NTSB shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

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(8) Where a requester has previously failed to pay a properly charged FOIA fee to the NTSB within 30 days of the date of billing, the NTSB may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the NTSB begins to process a new request or continues to process a pending request from that requester.

(9) Where the NTSB reasonably believes that a requester or group of requesters acting together is attempting to divide a request into multiple series of requests for the purpose of avoiding fees, the NTSB may aggregate those requests and charge accordingly.

(d) *Requirements for waiver or reduction of fees.* For fee purposes, the NTSB will determine, whenever reasonably possible, the use to which a requester will put the requested records.

(1) The NTSB will furnish records responsive to a request without charge, or at a reduced charge, where the NTSB determines, based on all available information, that the requester has shown that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations of activities of the government, and

(ii) Disclosure of the requested information is not primarily in the commercial interest or for the commercial use of the requester.

(2) In determining whether disclosure of the requested information is in the public interest, the NTSB will consider the following factors:

(i) Whether the subject of the requested records concerns identifiable operations or activities of the federal government, with a connection that is direct and clear, and not remote or attenuated. In this regard, the NTSB will consider whether a requester's use of the documents would enhance transportation safety or contribute to the NTSB's programs.

(ii) Whether the portions of a record subject to disclosure are meaningfully informative about government operations or activities. The disclosure of information already in the public domain, in either a duplicative or sub-

stantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) Whether disclosure of the requested information would contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. The NTSB will consider a requester's expertise in the subject area and ability to effectively convey information to the public.

(iv) Whether the disclosure is likely to enhance the public's understanding of government operations or activities.

(3) In determining whether the requester is primarily in the commercial interest of the requester, the NTSB will consider the following factors:

(i) The existence and magnitude of any commercial interest the requester may have, or of any person on whose behalf the requester may be acting. The NTSB will provide requesters with an opportunity in the administrative process to submit explanatory information regarding this consideration.

(ii) Whether the commercial interest is greater in magnitude than any public interest in disclosure.

(4) Additionally, the NTSB may, at its discretion, waive publication, reproduction, and search fees for qualifying foreign countries, international organizations, nonprofit public safety entities, State and Federal transportation agencies, and colleges and universities, after approval by the Chief, Records Management Division.

(5) Where only some of the records to be released satisfy the requirements for a waiver of fees, the NTSB will grant a waiver for those particular records.

(6) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (e)(2) and (e)(3) of this section, insofar as they apply to each request. The NTSB will exercise its discretion to consider the cost-effectiveness of its use of administrative resources in determining whether to grant waivers or reductions of fees.

(e) Services available free of charge.

(1) The following documents are available without commercial reproduction cost until limited supplies are exhausted:

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- (i) Press releases;
 - (ii) Safety Board regulations (Chapter VIII of Title 49, Code of Federal Regulations);
 - (iii) Indexes to initial decisions, Board orders, opinion and orders, and staff manuals and instructions;
 - (iv) Safety recommendations; and
 - (v) NTSB Annual Reports.
- (2) The NTSB public Web site, located at <http://www.nts.gov>, also includes an e-mail subscription service for press releases, safety recommendations, and other announcements.

§ 801.61 Appeals of fee determinations.

Requesters seeking an appeal of the FOIA Officer's fee or fee waiver determination must send a written appeal to the NTSB's Managing Director within 20 days. The NTSB's Managing Director will determine whether to grant or deny any appeal made pursuant to § 801.21 within 20 working days (excluding Saturdays, Sundays, and legal public holidays) after receipt of such appeal, except that this time limit may be extended for as many as 10 additional working days, in accordance with § 801.23.

PART 802—RULES IMPLEMENTING THE PRIVACY ACT OF 1974

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AUTHORITY: Privacy Act of 1974, Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a); Independent Safety Board Act of 1974, Pub. L. 93–633, 88 Stat. 2166 (49 U.S.C. 1901 *et seq.*); and Freedom of Information Act, Pub. L. 93–502, November 21, 1974, amending 5 U.S.C. 552.

SOURCE: 41 FR 22358, June 3, 1976, unless otherwise noted.

Subpart A—Applicability and Policy

§ 802.1 Purpose and scope.

The purpose of this part is to implement the provisions of 5 U.S.C. 552a with respect to the availability to an individual of records of the National Transportation Safety Board (NTSB) maintained on individuals. NTSB policy encompasses the safeguarding of individual privacy from any misuse of Federal records and the provision of access to individuals to NTSB records concerning them, except where such access is in conflict with the Freedom of Information Act, or other statute.

[41 FR 39758, Sept. 16, 1976]

§ 802.2 Definitions.

In this part:

Board means the five Members of the National Transportation Safety Board, or a quorum thereof;

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence;

National Transportation Safety Board (NTSB) means the agency set up under the Independent Safety Board Act of 1974;