

MILAN  
BERGAMO  
AIRPORT

BGY

THE PROTECTION OF ACCIDENT & INCIDENTS  
RECORDS AND THE RIGHTS OF FAMILY VICTIMS  
WHAT'S THE RIGHT BALANCE?

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Security Manager  
Deputy ERP Manager



ICAO

International Standards  
and Recommended Practices

## Annex 13 to the Convention on International Civil Aviation

# Aircraft Accident and Incident Investigation

Twelfth Edition, July 2020

## APPENDIX 2. PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS



ICAO

### Chapter 4

#### INTERACTIONS OF ACCIDENT INVESTIGATION AUTHORITIES

##### 4.4 INTERACTIONS BETWEEN FAMILIES OF VICTIMS OF ACCIDENTS AND THE ACCIDENT INVESTIGATION AUTHORITY

*Note.— Guidance on assistance to accident victims and their families is included in the Manual on Assistance to Aircraft Accident Victims and their Families (Doc 9973) and the ICAO Policy on Assistance to Aircraft Accident Victims and their Families (Doc 9998).*

## Doc 10053

### Manual on Protection of Safety Information

Part I – Protection of Accident and Incident Investigation Records  
First Edition, 2016



## Annex 13 – Chapter 5

### *Protection of accident and incident investigation records*

5.12 The State conducting the investigation of an accident or incident shall not make the following records available for purposes other than accident or incident investigation, unless the competent authority designated by that State determines, in accordance with national laws and subject to Appendix 2 and 5.12.5, that their disclosure or use outweighs the likely adverse domestic and international impact such action may have on that or any future investigations:

- a) cockpit voice recordings and airborne image recordings and any transcripts from such recordings; and
- b) records in the custody or control of the accident investigation authority being:
  - 1) all statements taken from persons by the accident investigation authority in the course of their investigation;
  - 2) all communications between persons having been involved in the operation of the aircraft;
  - 3) medical or private information regarding persons involved in the accident or incident;
  - 4) recordings and transcripts of recordings from air traffic control units;
  - 5) analysis of and opinions about information, including flight recorder information, made by the accident investigation authority and accredited representatives in relation to the accident or incident; and
  - 6) the draft Final Report of an accident or incident investigation.

## Annex 13 - Appendix 2

### Protection of the Accident and Incident Investigation Records

#### 2. GENERAL

2.1 States shall accord the protections in 5.12 and this Appendix to the entire recording of the cockpit voice recorder and airborne image recorder, and any transcripts from such recordings. These protections shall apply from the time an accident or incident occurs and continue after the publication of the Final Report.

#### *Non-disclosure of audio or image recordings to the public*

2.3 States shall take action to achieve the non-disclosure of audio content of cockpit voice recordings as well as image and audio content of airborne image recordings to the public, as per 5.12.5, such as:

- a) prevention of disclosure through the adoption of national laws, regulations and policies; or
- b) adoption of authoritative safeguards such as protective orders, closed proceedings or in-camera review; or
- c) prevention of disclosure of recordings through technical means, such as encrypting or overwriting, before returning the cockpit voice recorders or airborne image recorders to the owners.



## Annex 13 - Appendix 2

### Protection of the Accident and Incident Investigation Records

#### 4. ADMINISTRATION OF THE BALANCING TEST

4.1 Where the request is for a record to be disclosed or used in a criminal, civil, administrative or disciplinary proceeding, the competent authority shall be satisfied that a material fact in question in the proceedings cannot be determined without that record, before administering the balancing test.

*Note.— A material fact in question is a legal term used to refer to a fact that is significant or essential to the matter at hand, that one party alleges and that the other controverts, and is to be determined by the competent authority administering the balancing test.*

4.2 When administering the balancing test, the competent authority shall take into consideration factors such as:

- a) the purpose for which the record was created or generated;
- b) the requester's intended use of that record;
- c) whether the rights or interests of a person or organization will be adversely affected by the disclosure or use of that record;
- d) whether the person or organization to whom that record relates has consented to make that record available;
- e) whether suitable safeguards are in place to limit the further disclosure or use of that record;
- f) whether that record has been or can be de-identified, summarized or aggregated;
- g) whether there is an urgent need to access that record to prevent a serious risk to health or life;
- h) whether that record is of a sensitive or restrictive nature; and
- i) whether that record reasonably indicates that the accident or incident may have been caused by an act or omission

## Annex 13 - Appendix 2

### Protection of the Accident and Incident Investigation Records

#### 6. FINAL REPORT

**Recommendation.**— In order to limit the use of the Final Report for purposes other than the prevention of accidents and incidents, States should consider:

- a) instituting a separate investigation for those other purposes; or
- b) differentiating between the parts of the Final Report in order to allow the use of factual information contained therein while preventing use of analysis, conclusions and safety recommendations for apportioning blame or liability; or
- c) preventing the use of the Final Report as evidence in proceedings to apportion blame or liability.

*Note.*— In accordance with Chapter 6, 6.5, Final Reports are publicly available in the interest of accident prevention and are not subject to protection under 5.12. However, the use of portions of the Final Report, in particular the analysis, conclusions and safety recommendations, as evidence before national courts in view of assigning blame or determining liability is against the purposes for which the investigation was undertaken.



## Doc. 10053 – Chapter 4

### 4.4 INTERACTIONS BETWEEN FAMILIES OF VICTIMS OF ACCIDENTS AND THE ACCIDENT INVESTIGATION AUTHORITY

*Note.— Guidance on assistance to accident victims and their families is included in the Manual on Assistance to Aircraft Accident Victims and their Families (Doc 9973) and the ICAO Policy on Assistance to Aircraft Accident Victims and their Families (Doc 9998).*

4.4.1 An aircraft accident is an unexpected and usually a catastrophic event. Although the objective of an aircraft accident investigation is separate from the provision of family assistance, the accident investigation authority has a responsibility to provide relevant, timely and validated information to the families and the accident survivors regarding the progress of the investigation, provided that it does not compromise the objective of the investigation. This responsibility arises out of concern for persons who have suffered distress and loss as a result of an aircraft accident and has led to increased efforts by the aviation industry and ICAO to establish policies, practices and procedures which address the needs of victims and their families.

4.4.2 In cases where the State of Occurrence delegates the accident investigation to another State, the delegated State should accept the responsibility to provide information about the progress of the investigation to family members and survivors. Moreover, it should be noted that Annex 13, Chapter 5, Standard 5.27, provides that a State that suffered fatalities or serious injuries to its citizens has the right to appoint an expert to participate in the investigation, who shall be entitled to: visit the scene of the accident; have access to the relevant factual information which is approved for public release by the State conducting the investigation, and information on the progress of the investigation; and receive a copy of the Final Report. The former State also has the right to assist in the identification of victims and to meet with its citizens who survived the accident.

## Doc. 10053 – Chapter 4

4.4.3 As the accident investigation authority conducts the investigation, family members and survivors should be provided, through periodic advisories, with updated, validated information on the progress of the investigation, and of the conclusion of the investigation before the Final Report is released to the public. To the extent appropriate, the families should be invited to attend public meetings related to the accident and should be provided with copies of media releases and reports before or as they are issued to the media through the accident investigation authority's normal process. Families should also be notified of the upcoming release of such reports and the scheduling of meetings in order to plan accordingly. Care should be taken when providing information in multiple languages to ensure that translations are accurate.

4.4.4 In some cases, families and survivors may also consider that they should be entitled to listen to and/or view the CVRs and/or AIRs, and to have access to a transcript of these recorders. The disclosure or use of these types of ambient workplace recordings for purposes other than those for which the recordings were made may be perceived as constituting an invasion of privacy for operational personnel. For that reason, States are required to ensure the non-disclosure of these sensitive records to the public. Families and survivors may benefit from an explanation in this regard. Requests for these records should be referred to the competent authority designated by the State for the administration of the balancing test, in accordance with Standard 5.12 of Annex 13 (see Chapter 3 for more details). It will also be beneficial for family and survivors' groups to understand the technicalities of Final Reports, which should indicate that such documents are not intended to be used in proceedings to apportion blame or liability.

4.4.5 To ensure the timeliness of the release of validated information to accident victims and their families, the accident investigation authority should consider appointing one person as a liaison or focal point to ensure effective communication with other providers of family assistance, and to coordinate visits to the accident site by the families and survivors when required. The liaison should maintain close contact with the IIC in order to provide him/her with information on any inquiries that are being received. The liaison should be aware of what information can be released, to ensure that the information will not hamper the progress or compromise the objective of the investigation.

## Doc. 10053 – Chapter 4

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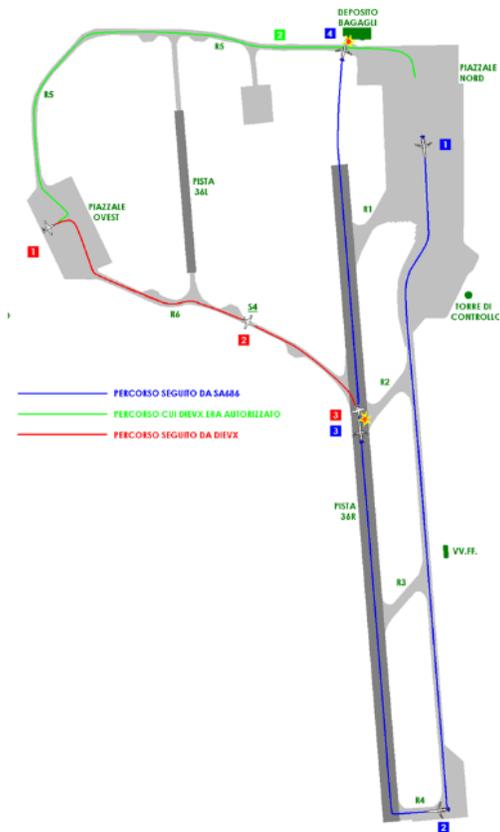
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# The Milano-Linate's Air Accident – Oct. 8<sup>th</sup>, 2001

## What Happened



## A.N.S.V. Final Report

### AGENZIA NAZIONALE PER LA SICUREZZA DEL VOLO

(istituita con decreto legislativo 25 febbraio 1999, n. 66)  
Via A. Benigni, 53 - 00156 Roma - Italia  
tel. +39 0682078219 - 0682078200 - fax +39 068273672

### RELAZIONE D'INCHIESTA

(deliberata dal Collegio dell'Agenzia nella riunione del 20 gennaio 2004)

INCIDENTE OCCORSO AGLI AEROMOBILI  
BOEING MD-87, marche SE-DMA  
e CESSNA 525-A, marche D-IEVX  
Aeroporto Milano Linate  
8 ottobre 2001

N. A/1/04

## Criminal Proceeding Technical Report

N. 40021/01 R.G. Mod. 21

**PROCURA DELLA REPUBBLICA**  
**presso**  
**il TRIBUNALE DI MILANO**

RELAZIONE TECNICA  
su  
INCIDENTE AERONAUTICO

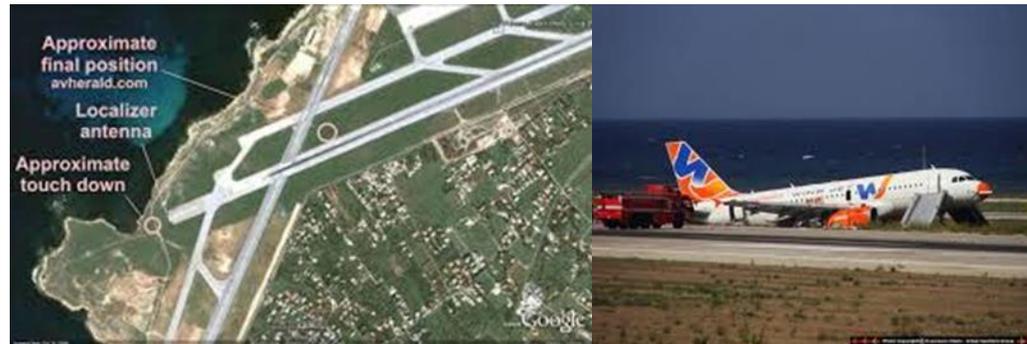
COLLISIONE IN PISTA  
tra  
Boeing MD 87 (volo SAS 686)  
e  
Cessna CITATION 525A (D-IEVX)

Aeroporto di Milano LINATE 08 Ottobre 2001

A cura del Consulente Tecnico Com.te Mario PICA

# The Palermo's Airport Air Accident – Sept. 24<sup>th</sup>, 2010

## What Happened



### Incidente all'aeroporto di Palermo, lite ad alta quota

**CRONACA** 17 novembre 2010

### “Palermo’s Airport Accident, Fight in the Sky”

**ANSV** > Press releases

User tools

Printer friendly

Important: Many documents are published in Adobe Acrobat format (the required reader is available from Adobe Italia.)

Adobe Reader

17/11/2010

**September 24th air accident in Palermo: disclosure of CVR (Cockpit Voice Recorder) contents – the ANSV (Agenzia nazionale per la sicurezza del volo, Italian flight safety agency) position**

Referring to the information reported by the press, relative to the partial contents of the CVR of the A319, registration marks EI-EDM, involved in the accident occurred in Palermo on September 24th, ANSV – with no intent to comment on the reliability of the information, as its investigation is still ongoing – remarks nevertheless that the disclosure of CVR contents contravenes international regulations provisions on the matter (Annex 13 to the Convention on International Civil Aviation, relative to safety investigations). ANSV therefore, as in similar previous circumstances, reserves to take all initiatives in order to protect the content of CVRs, which shall be used with the sole objective of prevention within the limits indicated in the above mentioned Annex 13

REGULATION (EU) No 996/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 20 October 2010  
on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC  
(Text with EEA relevance)

- (g) cockpit voice and image recordings and their transcripts, as well as voice recordings inside air traffic control units, ensuring also that information not relevant to the safety investigation, particularly information with a bearing on personal privacy, shall be appropriately protected, without prejudice to paragraph 3.

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## Protection of Investigation Records

National Laws, Regulations and/or Policies

List of decisions of States Competent Authority

Protocols/Agreements between AIAs and Judicial Authorities

Search:

State	Competent Authority	Title of the Decision	Type of Record(s)
Australia	High Court of Australia	Australian National Airlines Commission v. The Commonwealth [1975] HCA 33; (1975) 132 CLR 582	CVR recordings
Australia	Western Australian Supreme Court	Cifuentes v. Fugro Spacial Solutions Pty Ltd [2009] WASC 316	Facts, opinions, analysis and conclusions related an Australian Transport Safety Board - "ATSB" investigation
Australia	Federal Court of Australia	Elbe Shipping SA v. Giant Marine Shipping SA [2007] FCA 1000	Witness statements, analysis and opinions, documents obtained from parties investigated, photographs, vessel traffic service records
Canada	Ontario Superior Court of Justice	Société Air France v. NAV Canada 2010 ONCA 598	CVR recordings
Canada	Ontario Superior Court of Justice	Société Air France v. Greater Toronto Airports Authority 2009 CanLII 69321 (ON SC)	CVR recordings

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NOW IT'S YOUR TURN...

