

White Paper on the National Transportation Safety Board's Authority and Process for Utilizing and Disclosing Proprietary Information

- The docket in which this white paper is contained may contain documents bearing “confidential,” “restricted,” “for official use only,” or similar markings. The National Transportation Safety Board (NTSB) has worked with the providers of all such documents in advance of public disclosure and has reached agreements permitting the NTSB to disclose the information.
- In order to carry out its mission of determining the probable causes of accidents and incidents, the NTSB may occasionally disclose information that submitters claim is proprietary.
 - By statute, the NTSB has the authority to make such disclosures to protect the public health and safety. As a general matter, a disclosure to protect the public health and safety provides information that assists or is relevant to the determination of probable cause of the accident/incident or an ensuing safety recommendation.
 - In releasing proprietary information, however, the NTSB is required to give the submitter of that information advance notice of, and an opportunity to comment on, the proposed disclosure, unless the delay in providing notice and comment would itself be detrimental to health and safety. 49 U.S.C. § 1114 (b)(1)(D).
 - Further, in disclosing proprietary information, the NTSB is required to do so in a way designed to preserve its confidentiality. 49 U.S.C. § 1114 (b)(2).
- How the NTSB exercises this authority is governed by NTSB regulations at 49 C.F.R. § 831.6.
 - First, the NTSB provides an opportunity to the submitter to explain why the information we plan to disclose would be considered a trade secret or confidential commercial information under the test for Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4). If the information does not meet this test, it may be disclosed.
 - If the information meets the FOIA Exemption 4 threshold, the NTSB next determines whether it is still necessary to disclose the information under the NTSB’s statutory authority described above.
 - Once the NTSB makes a final determination that disclosure is necessary, regulations require that the NTSB give the submitter 10 calendar days’ notice prior to the actual disclosure. 49 C.F.R. § 831.6(a)(2).
- In practice, the process is carried out in consultation with submitters of the information. Consistent with our statutory obligation to minimize disclosures and provide submitters an opportunity to comment, the NTSB endeavors to reach a consensus with submitters regarding public disclosures. 49 U.S.C. § 1114(b)(1)-(2). For example, if the NTSB receives design specifications as part of an investigation, only those pages of the specifications that support an important investigative fact or conclusion are usually made public.

- To summarize, proprietary information can be disclosed in NTSB reports and hearings to protect the public. NTSB statute and regulations, however, require it to follow a process, with each submitter whose information may be disclosed, that includes a comment period followed by a 10-day notice from the NTSB if agreement cannot be reached.