

AERONAUTICAL CIRCULAR CIVIL AVIATION AUTHORITY – MACAO, CHINA

SUBJECT:

Safety Information Protection

EFFECTIVE DATE:

21 May 2013

CANCELLATION:

Nil.

GENERAL:

The President of Civil Aviation Authority (AACM), in exercise of his power under article 35 of the Statutes of Civil Aviation Authority approved by the Decree-Law 10/91/M and paragraph 89 of the Air Navigation Regulation of Macao (ANRM) establishes this AC.

1 Introduction

The AACM is the entity responsible for civil aviation accident and incident investigation in Macao. As stated in Law No. 2/2013, the sole objective of such investigation is prevention of accidents and incidents, and not the apportioning of blame or liability. The Investigator-in-charge (IIC) of an investigation is also empowered by the Law with the privileges of collecting and analyzing evidence, records and any other information pertinent to the investigation.

On the other hand, experience has shown that often before an accident occurs, a number of incidents and numerous other deficiencies have shown the existence of safety hazards. The improvement of the safety of civil aviation requires a better knowledge of these occurrences to facilitate analysis and trend monitoring in order to initiate corrective action. In order to broaden the collection of aviation safety data, various safety data collection and processing systems (SDCPS) have been setup targeting for safety data of specific nature.

This, in turn, requires the continuous development and maintenance of a trust-based “reporting culture” in which all reporting entities can be assured that the provided data is

processed strictly according to the legal framework and is not used in any arbitrary or abusive way by those entrusted to hold, process, access and use the data.

The Law No. 2/2013 has defined the requirements and basic principles of the processing and protection of aviation safety information. It is stated in Article 30 of Law No. 2/2013 that the sole purpose of collecting and processing aviation safety data is to enhance aviation safety and to prevent the occurrence of aircraft accident and incident. Use of safety data for purpose other than safety will inhibit future availability of such data.

It is also stated in the Law that the entity responsible for analyzing and processing aviation safety information contained in a SDCPS shall ensure the internal and external confidentiality of relevant data and the source of such data, in order to avoid inappropriate use and ensure its continued availability. To achieve this, it is required for every SDCPS to have a designated custodian responsible for taking the necessary measures. A formal procedure should be established to provide protection to qualified safety information, in accordance with specified conditions. The protection should be specific for each SDCPS, based upon the nature of the safety information it contains.

Exceptions to the protection of safety information should only be granted when:

1. There is evidence that the occurrence was caused by intentional conduct or gross negligence;
2. An appropriate judicial authority determines that:
 - The release of the safety information is necessary for the proper administration of justice; and
 - Its release outweighs the adverse domestic and international impact such release may have on the future availability of safety information.

The purpose of this AC is to notify aviation industry on guidance information regarding the measures to protect safety information contained in various SDCPS.

2 Definitions

Safety Data Collection and Processing System (SDCPS) means processing and reporting systems, databases, schemes for exchange of information, and recorded information and includes:

- records pertaining to accident and incident investigations;
- mandatory occurrence reporting systems;
- voluntary occurrence reporting systems; and

- self-disclosure reporting systems, including automatic data capture systems and manual data capture systems.

Safety information means information contained in the safety data collection and processing system;

Occurrence means an operational interruption, defect, fault or other irregular circumstance that has or may have influenced flight safety;

De-identified information means removing from submitted reports all personal details pertaining to the reporter and technical details which might lead to the identity of the reporter, or of third parties, being inferred from the information.

3 Records Pertaining to Accident and Incident Investigations

3.1 Scope

All records pertaining to accident and incident investigations, including relevant investigation reports, are classified as safety information.

3.2 Custodian

The investigator-in-charge (IIC) of each investigation is the custodian of relevant safety information as required under Article 31 of Law No. 2/2013.

3.3 Protective Measures

While empowered by the Law with necessary rights to collect and analyze evidence, records and any other information pertinent to the investigation, the IIC also has the responsibility to ensure proper usage and confidentiality of such information.

All participants of investigation and other entities involved shall undertake to observe the confidentiality and secrecy of documents, information and other data received. It is also defined in the Annex 13 by the International Civil Aviation Organization (ICAO) that any participating states shall not circulate, publish or give access to a draft report or any part thereof, or any documents obtained during an investigation of an accident or incident, without the express consent of the State which conducted the investigation, unless such reports or documents have already been published or released by the latter State.

As stated in Article 20 of the Law, in the case when judiciary investigation is running in parallel to the investigation conducted by the IIC, close cooperation shall be maintained between investigators, judiciary and police authorities in order for effective conduct of investigations. Actions taken by the investigation authorities should not impede each other. All technical evidence and factual information, except where there are specific legislative bars, can be disclosed between the IIC and the Judiciary and

police authorities. However, the IIC will not share its opinions or analysis. Regarding the data contained in self-disclosed recording systems, such as FDR and CVR, the IIC will release these data only if an appropriate judicial authority determines that the release of the safety information is necessary for the proper administration of justice and its release outweighs the adverse domestic and international impact such release may have on the future availability of safety information.

Considering that aviation accident and serious incident may draw significant attention of the public, in order to minimize speculation and rumors about the accident, the AACM or the IIC will provide the media, on a regular basis, with all those facts which can be released without prejudice to the investigation. For this reason, AACM will establish a single point of contact for media inquiries and provide from time to time non-prejudicial facts, circumstances and progress of investigations. Nevertheless, it is necessary to ensure that the needs of the media do not interfere with the proper conduct of the investigation.

The release of information is also governed by Article 22 of the Law, the following records shall not be disclosed for purposes other than accident or incident investigation, unless the appropriate judicial authorities determines that their disclosure outweighs the adverse domestic and international impact such action may have on that or any future investigation:

- all statements taken from persons by the investigators in the course of their investigation;
- all communications between persons having been involved in the operation of the aircraft;
- Medical or private information regarding persons involved in the accident or incident;
- Cockpit voice recordings and transcripts from such recordings;
- Air traffic control recordings and transcripts from such recordings;
- Cockpit airborne image recordings and any part or transcripts from such recordings; and
- Opinions expressed in the analysis of information, including flight recorder information.

The above mentioned records shall be included in the final report or its appendices only when pertinent to the analysis of the accident or incident. Parts of the records not relevant to the analysis shall not be disclosed.

The final report must not contain any personal information in regard to persons involved in the accident or incident. The Civil Aviation Authority or any person or entity shall not disclose to the public the names of persons involved in the accident or incident under any circumstances.

4 Mandatory Occurrence Reporting System

4.1 Scope

Mandatory occurrence reporting system means the mandatory occurrence reporting system required under Article 88 of the Air Navigation Regulation of Macao and described in Aeronautical Circular no. AC/GEN/003. The occurrence report and any associated records, materials and subsequent investigation reports are considered as safety information. As the AACM encourages submission of reports via an organization's internal occurrence reporting systems (IORS), IORS constitutes an important part of the whole SDCPS. Therefore, any reports and the associated records and materials collected through the IORS are also considered as safety information and subject to protection.

4.2 Custodian

A member of the Accident Prevention and Investigation Group (APIG) of the AACM will be appointed by AACM President as the custodian as required under Article 31 of Law No. 2/2013.

Organizations with reporting responsibility shall designate a custodian responsible for the implementation of protective measures for safety data collected through the IORS.

4.3 Protective Measures

Within AACM, access to MOR related information is limited to the President and relevant technical staff. When authorized specifically, limited access to MOR information by Public Relations staff may be allowed. All AACM staff must also strictly adhere to the confidentiality clauses as set forth in Article 34 of Decree Law 10/91/M.

Normally, the AACM will not disclose any information received through the MOR system to the public. However, when there is major incident or an occurrence drawing significant attention of the public, in order to minimize speculation and rumors about the occurrence, appropriate release of information might be necessary for the purpose of clarification and explanation of follow up action. In this case, the information to be released will be formulated by a special committee, consisting of the President, Public Relations and relevant directorates under coordination with relevant aviation organizations. In all cases, release of occurrence information should meet the following criteria:

- Speculation must not be included in the released information.
- Release of information is made in a de-identified, summarized or aggregate form.
- Release of information complies with Law No. 2/2013 and applicable personal data protection.

The AACM will assess and analyse the information reported to it in order to detect significant or potential hazards, and make available the information derived from occurrence reports to those who will use it for the benefit of aviation safety. Where appropriate, AACM may issue specific advice or instructions to particular sections of the industry including the authority itself.

5 Voluntary Incident Reporting Systems

5.1 Scope

Any reporting systems which encourage reporting of aviation related incidents and occurrences in voluntary and confidential basis either by organizations or by AACM are considered as Voluntary Incident Reporting System (VIRS). The Macao Confidential Aviation Reporting System (MACCARES) promulgated under Aeronautical Circular no. AC/GEN/009 is the VIRS administered by the AACM.

5.2 Custodian

A member of the APIG of the AACM will be appointed by AACM President as custodian as required under Article 31 of Law No. 2/2013 for MACCARES.

Organizations managing a VIRS shall designate a person responsible for the implementation of measures for the protection of safety data collected through the VIRS.

5.3 Protective Measures

MACCARES intends to capture information on actual or potential safety deficiencies that may not be captured by the MOR system. Confidentiality and non-punitive principle are fundamental to the successful implementation of the system.

Within AACM, received MACCARES report will be handled by only one particular APIG officer. All APIG staff handling MACCARES report must strictly adhere to the confidentiality clauses as set forth in Article 34 of Decree Law 10/91/M. Only de-identified information will be entered into the MACCARES database which could only be accessed by authorized APIG staff. After processing, the original report will be stamped "PROCESSED" and return to the reporter by registered mail. No copy in any format of the original report will be kept by the AACM.

The APIG will analyze the safety data contain in the MACCARES database from time to time. When considered necessary, the APIG will issue safety alert to relevant aviation entities.

The APIG will publish statistic report and newsletter annually with de-identified information only.

Organizations managing a VIRS shall have formal written procedure to define protective measures on safety data received through its VIRS.

6 Self-disclosure Reporting Systems

6.1 Scope

Self-disclosure Reporting Systems means any automatic or manual data capture systems which record sounds, images or behavior of person(s) in the control area of an aircraft or any other workplace for the purpose of improving aviation safety. Examples of self-disclosure reporting systems include cockpit voice recorder, flight data recorder, quick access recorder, airborne image recording system, ATC recording and line operations safety audit, etc.

6.2 Custodian

Organizations with self-disclosure reporting systems shall designate a custodian responsible for the implementation of measures for the protection of safety data collected through the systems.

6.3 Protective Measures

Considering that data captured by self-disclosure reporting systems may be perceived as constituting an invasion of privacy for operational personnel that other professions are not exposed to, such recording deserves enhanced protection.

Strict measures should be taken in order to ensure that data captured will be used for safety purpose only. An employer shall not take any disciplinary action against an employee using information received through the self-disclosure reporting systems. Disclosure of data for purpose other than safety is strictly prohibited.

An appropriate judicial authority may order such disclosure if it determines that the release of the safety information is necessary for the proper administration of justice and its release outweighs the adverse domestic and international impact such release may have on the future availability of safety information.

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