

# International Council of Aircraft Owner and Pilot Associations



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27 November 2006

Márcio Thomaz Bastos  
Ministro da Justiça  
Ministério da Justiça  
Esplanada dos Ministérios, Bloco T  
Ed. sede  
Brazilia CEP 70064-900, Brazil

Dear Minister Bastos:

I am President of the International Council of Aircraft Owner and Pilot Associations, representing the interests of more than 470,000 pilots and aircraft owners in 64 countries. Formed in 1962, IAOPA is dedicated to promoting the peaceful uses of general aviation and aerial work worldwide. Our Brazilian affiliate is the Associação de Pilotos e Proprietários de Aeronaves.

I am writing to request that you facilitate the release of the two Excelair pilots involved in the 29 September 2006 mid-air collision between a GOL Airlines Boeing 737 and an Embraer Legacy business jet. This tragic accident saddened the civil aviation community worldwide and has galvanized us to discover and correct its causes. But, detaining the two pilots will only hinder the investigation.

It is my understanding that the two Legacy pilots have had to surrender their passports to prevent their leaving Brazil, pending a criminal investigation of their involvement in this accident. Since no criminal charges have been brought against the pilots after the accident, there is apparently little evidence that would indicate a criminal act has been committed, therefore they should be released.

From a world view the conduct of an aviation accident investigation simultaneously with a related criminal investigation will inevitably lead to a flawed accident investigation, at the expense of a safer civil aviation system. Effective 23 November 2006, Attachment E, *Legal Guidance for the Protection of Information from Safety Data Collection and Processing Systems*, has been added to ICAO Annex 13, *Aircraft Accident and Incident Investigation*, providing guidance to States on this important issue:

*1.1 The protection of safety information from inappropriate use is essential to ensure its continued availability, the use of safety information for other than safety-related purposes may inhibit the future availability of such information, with an adverse effect on safety. This fact was recognized by the 35th Assembly of ICAO, which noted that existing national laws and*

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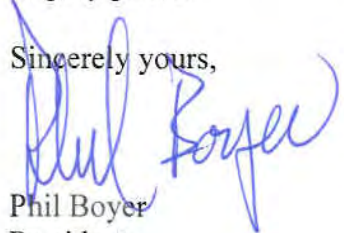
*regulations in many States may not adequately address the manner in which safety information is protected from inappropriate use.*

“Inappropriate use” is defined in this attachment as “...disciplinary, civil, administrative, and criminal proceedings against operational personnel, and/or disclosure of the information to the public.” Therefore, presumption of criminal intent in conjunction with an aircraft accident investigation will stifle and thwart the objective of the investigation. Moreover, presumption of guilt during an accident investigation will undoubtedly restrict air commerce among States.

While our constituency does not conduct commercial air transport, the principles involved in aircraft accident investigations apply to all types of civil aviation. Therefore, the protection of operator and pilot rights is important to us as well as those involved in commercial air transport.

I urge you to separate the aircraft accident investigation and criminal prosecution aspects of this case. Importantly, this will also facilitate the release of the detained Legacy pilots.

Sincerely yours,

  
Phil Boyer  
President

Copy:

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