



ICAO

SAFETY

ICAO provisions on the protection of accident/incident investigation records and of safety data, safety information and related sources

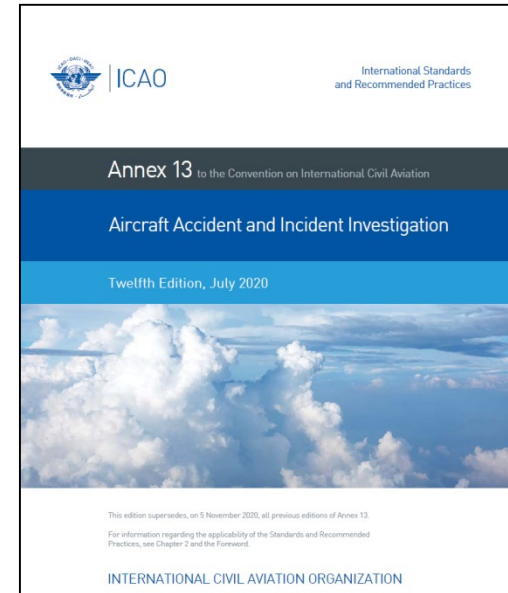


*Arnaud Desjardin - Regional Officer, Safety
ICAO, European and North Atlantic Office, Paris (EUR/NAT)*



Annex 13 – Aircraft Accident and Incident Investigation

- The sole objective of the investigation of an accident or incident shall be the **prevention of accidents and incidents**.
- It is not the purpose of this activity to apportion blame or liability.





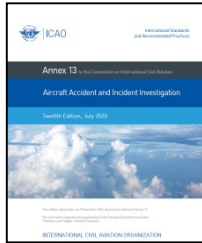
ICAO

SAFETY

NO COUNTRY LEFT BEHIND



Independence of Investigations in Annex 13



➔ 3.2 A State shall establish an accident investigation authority that is independent from State aviation authorities and other entities that could interfere with the conduct or objectivity of an investigation.

- Independence means credibility:
 - AIA separate from oversight authorities which issue, amend or revoke license/certificate/approvals
 - AIA separate from authorities responsible for rulemaking
 - AIA separate from industry to avoid actual or perceived conflict of interest
 - ➔ Safety Recommendations are recommendations (not compulsory).
- Continued availability of investigations records
 - Disciplinary, civil, administrative or criminal proceedings against operational personnel and/or organizations may **inhibit the future availability** of such records and have an adverse effect on investigation activities.



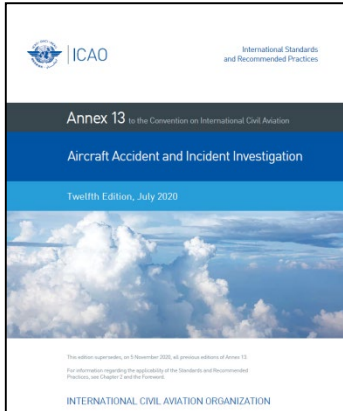
ICAO

SAFETY

NO COUNTRY LEFT BEHIND



Independence of Investigations in Annex 13



➤ 5.4.1 Any investigation conducted in accordance with the provisions of this Annex shall be separate from any judicial or administrative proceedings to apportion blame or liability.

➤ 5.4.4 **Recommendation** A State should ensure cooperation between its accident investigation authority and judicial authorities so that an investigation is not impeded by administrative or judicial investigations or proceedings.

Note. — Cooperation may be achieved by legislation, protocols, agreements or other arrangements, and may cover the following subjects: access to the site of the accident; preservation of and access to evidence; initial and ongoing debriefings of the status of each process; exchange of information; appropriate use of safety information; and resolution of conflicts.



ICAO

SAFETY

NO COUNTRY LEFT BEHIND



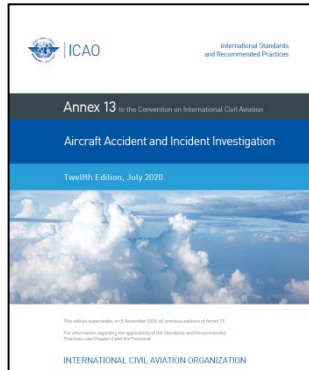
Examples of protocols/agreements between AIA and Judicial Authorities

The screenshot shows the ICAO SAFETY website interface. At the top, there is a search bar and a navigation menu with items like 'About ICAO', 'Global Priorities', 'Meetings and Events', 'Information Resources', 'Careers', 'UnitingAviation', and 'Subscribe'. The main content area is titled 'Protection of Investigation Records' and contains a table of protocols/agreements between AIA and Judicial Authorities. The table has columns for State, Judicial Authorities, Protocols/Agreements, and Official Site. Three entries are visible: France (Ministère de la justice), France (Ministry of Justice), and Romania (Prosecutors' Office). Each entry includes a brief description of the agreement and a link to the official site. There are also search filters for 'National Laws, Regulations and/or Policies', 'List of decisions of States Competent Authority', and 'Protocols/Agreements between AIAs and Judicial Authorities'. A search bar is located above the table, and the page indicates 'Showing 1 to 3 of 3 entries'.

<https://www.icao.int/safety/airnavigation/AIG/Pages/Database.aspx>



Protection of accident and incident investigations 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



ICAO

SAFETY

NO COUNTRY LEFT BEHIND



Protection of accident and incident investigations records

- Balancing test
 - Not aimed to prevent the administration of justice
 - Prevents privacy violation of persons involved and ensuring moral dignity
 - Ensures the availability of essential information
- Designation of a Competent authority
 - Governmental entity
 - Administers the balancing test





Examples of decisions of States Competent Authority

ICAO SAFETY

Search...

About AIG

Accident Investigation Authorities Addresses

Accident Reporting

e-Library of Final Reports

Protection of Investigation Records

Safety Recommendations addressed to ICAO

Safety Recommendations of Global Concern (SRGC)

Investigative Technologies and Techniques

AIG Panel

Flight Recorder Specific

Taxonomy for ADREP reporting

Documents

Related links

Upcoming AIG Events

Protection of Investigation Records

National Laws, Regulations and/or Policies
List of decisions of States Competent Authority
Protocols/Agreements between AIAs and Judicial Authorities

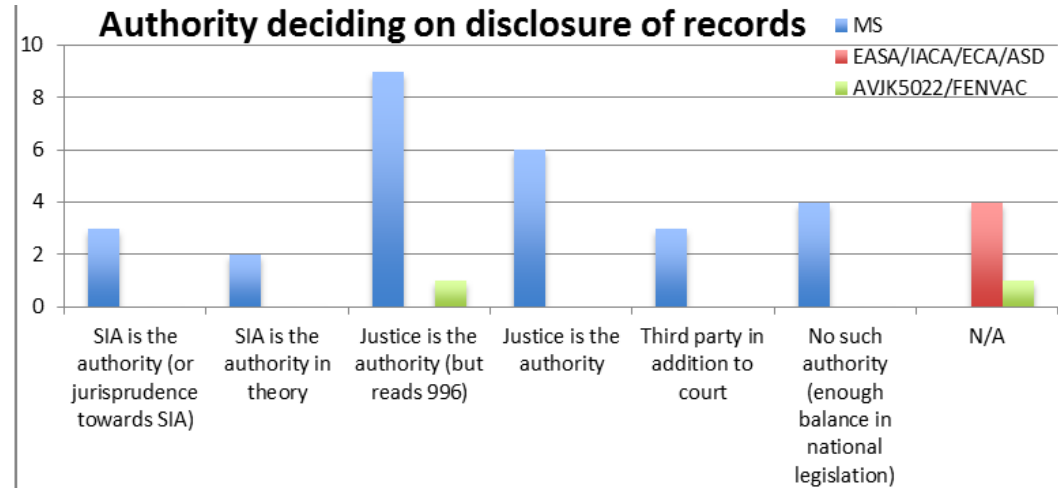
State	Competent Authority	Title of the Decision	Type of Record(s)
🇦🇺 Australia	High Court of Australia	Australian National Airlines Commission v. The Commonwealth [1975] HCA 33; (1975) 132 CLR 582	CVR recordings
🇦🇺 Australia	Western Australian Supreme Court	Cifuentes v. Fugro Spacial Solutions Pty Ltd [2009] WASC 318	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 CanLIJ 89321 (ON SC)	CVR recordings
🇨🇦 Canada	Ontario Superior Court of Justice	Jetport Inc. v. Global Aerospace Underwriting Managers 2014 ONSC 8880 (CanLIJ)	CVR and FDR recordings, statements and representations from the Transportation Safety Board ("TSB")
🇨🇦 Canada	Ontario Superior Court of Justice	Société Air France v. Greater Toronto Airports Authority et al 2010 ONSC 432 (CanLIJ)	Employee, training, and medical records of the flight crew and the internal investigation documents and report

🇨🇦 Canada	Federal Court of Appeal	Rubin v. Canada (Minister of Transport) (C.A.) [1998] 2 F.C. 430	Parts of the Safety Review Report prepared by the Minister of Transport following the 1991 Natsair DC-8 aircraft crash in Saudi Arabia
🇨🇦 Canada	Federal Court of Appeal	Canada (Information Commissioner) v. Canada (Transportation Accident Investigation and Safety Board) (F.C.A.) 2008 FCA 157	ATC communications recordings and transcripts
🇮🇪 Ireland	High Court of Ireland	Stokes v. Minister for Public Enterprise [2000] IEHC 191 (3rd July 2000)	All investigation records
🇪🇸 Spain	Spanish Court Provincial Court in Madrid	Resolución Nº 780/2011 Procedimiento: Apelacion Autos	Statements and all technical documentation of the investigation
🇬🇧 United Kingdom	Scottish Courts and Tribunals - Court of Session	Opinion of Lord Jones in the cause Frank Mulholland QC The Lord Advocate [2015] CSOH 80	CVFDR recordings
🇬🇧 United Kingdom	England and Wales Court of Appeal (Civil Division)	Hoyle v. Rogers & Anor [2014] EWCA Civ 257	Final Report
🇬🇧 United Kingdom	England and Wales High Court - Queen's Bench Division	Rogers & Anor v. Hoyle [2013] EWHC 1409 (QB)	Final Report
🇺🇸 United States	United States District Court, Eastern District of Kentucky	Air Crash at Lexington KY 545 F.Supp.2d 818 (2008)	Aviation Safety Action Program - ASAP documents
🇺🇸 United States	United States District Court, Southern District	Air Crash Near Cali Columbia 959 F. Supp 1529 (S.D. Cal. 1997)	Aviation Safety Action Program - ASAP Reports



Consultation on the implementation and functioning of Regulation (EU) No 996/2010 conducted in 2014

Ref: Regulation (EU) 996/2010, article 14.3





ICAO e-Library of Final Reports

- See: <https://www.icao.int/safety/airnavigation/AIG/Pages/E-library-of-Final-Reports.aspx>

INTERNATIONAL CIVIL AVIATION ORGANIZATION A United Nations Specialized Agency										e-Library of Final Reports				ECCAIRS 5		
View	Local date	State/area of occ	Location name	Responsible entity	Occurrence class	UTC date	Manufacture/model	Aircraft registration	Operator	Injury level	Fatal, passengers	Fatal, crew total	Total fatalities	Aircraft damage	Flight phase	File number
	11/16/2011	France	AD Paris Charles de Gaulle(95)	France - BEA	Serious incident	11/16/2011	BOEING - 777 - 200	F-GSPF	Air France	None					Approach	BEA f-pp111116
	3/10/2011	France	AD Marseille (13)	France - BEA	Serious incident	3/10/2011	AIRBUS - A321	F-GTAE	Air France	None					Approach	BEA f-ae110310
	2/10/2000	France	AP Courchevel (73)	France - BEA	Accident	2/10/2000	DE HAVILLAND - DHC6	F-GUTH	Unknown	None					Take-off	00000590
	5/2/2000	France	AD Lyon Saint-Exupéry (69)	France - BEA	Accident	5/2/2000	LEARJET - 35	G-MURI	Northern Executive Aviation Ltd.	Fatal	2		2		Landing	00000790
	5/25/2000	France	AD Paris CDG (95)	France - BEA	Accident	5/25/2000	MCDONNELL DOUGLAS	F-GHED	Air Liberté	Fatal			1		Take-off	00000971
	7/25/2000	France	Gonesse, lieu Patte d'Oie(95)	France - BEA	Accident	7/25/2000	AEROSPATIALE - CONCORDE	F-BTSC	Air France	Fatal	9		113		Take-off	00002570
	11/5/2000	France	AD Paris Charles de Gaulle(95)	France - BEA	Accident	11/5/2000	BOEING - 747	TJ-CAB	Cameroon Airlines	None					Landing	00004460
	12/23/2000	French Polynesia	AD Tahiti, FAAA (POL)	France - BEA	Accident	12/24/2000	MCDONNELL DOUGLAS - DC10 - 10	N132AA	Hawaiian Airlines	None					Landing	00005790
	11/13/2000	France	AD REIMS PRUNAY (51)	France - BEA	Accident	11/13/2000	BEECH - 90	F-GIML	Unknown	Fatal	2		2		Approach	00006040
	4/5/2000	France	AD Paris Orly (94)	France - BEA	Serious incident	4/5/2000	FOKKER - F27 - 100	F-GNLI	Air Liberté	None					Take-off	00007070
	1/24/2000	France	AD MARSEILLE (13)	France - BEA	Serious incident	1/24/2000	AIRBUS - A320	F-GFKK	Air France	None					Landing	00007560
	1/17/2001	France	Quetigny (21)	France - BEA	Accident	1/17/2001	BEECH - 55	F-BUTZ	Air Bor	Fatal	1		4		Approach	01001250
	11/24/2001	France	CHEZY(03)	France - BEA	Accident	11/24/2001	BEECH - 200	F-GDLE	Unknown	Fatal	2		4		Approach	01005070
	7/22/2001	Tunisia	Monastir	France - BEA	Accident	7/22/2001	BOEING - 737	F-GRNZ	Euralair Horizons	None					Landing	01007860
	12/25/2002	France	AD Lyon Saint-Exupéry (69)	France - BEA	Accident		ATR - ATR72 - 200	F-GKPE	Air Corsica	None					Standing	02006350
	2/19/2002	France	Flaine (74)	France - BEA	Accident	2/19/2002	OTHER	F-GRDM	Unknown	Fatal	2		4		Take-off	02006580
	2/10/2002	France	Airbus-Blagnac (31)	France - BEA	Accident	2/10/2002	CESSNA - 441	F-CHIV	Unknown	Fatal	2		2		Take-off	02006600



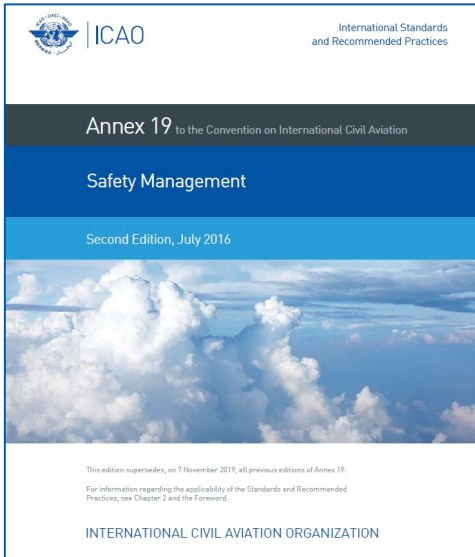
ICAO

SAFETY

NO COUNTRY LEFT BEHIND



Annex 19 – Safety Management



➔ States shall establish and maintain an **SSP** (State safety programme).

➔ States shall require that service providers implement an **SMS**.

➔ States shall accord **protection** to **safety data** captured by, and **safety information** derived from voluntary safety reporting systems in accordance with *Appendix 3*

– *Recommendation: States should extend the same protection to mandatory safety reporting system*





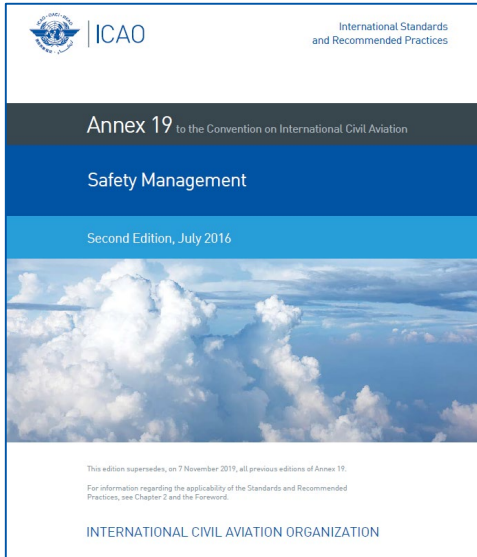
ICAO

SAFETY

NO COUNTRY LEFT BEHIND



General Principles



➔ App.3, 1.1 - States shall, through national laws, regulations and policies protecting safety data, safety information and related sources, ensure that:

- a) a **balance** is struck between the need for the **protection of safety data**, safety information and related sources to maintain or improve aviation safety, and the need for the **proper administration of justice**;
- b) safety data, safety information and related sources are protected in accordance with Appendix 3 to Annex 19;
- c) the conditions under which safety data, safety information and related sources qualify for protection are specified; and;
- d) safety data and safety information remain available for the purpose of maintaining or improving aviation safety



ICAO

SAFETY

NO COUNTRY LEFT BEHIND

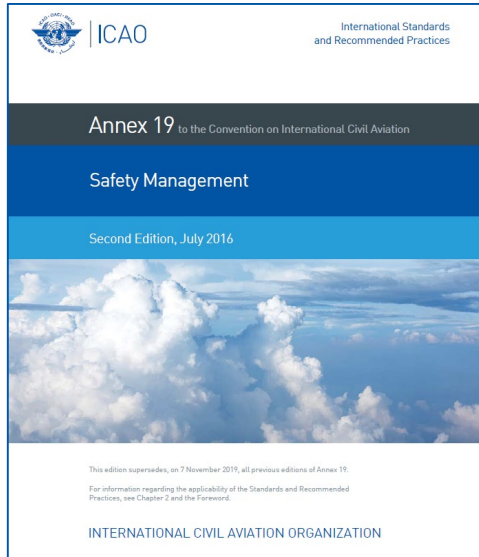


Principles of protection

➔ App.3, 2.1 - States shall ensure that safety data or safety information is not used for:

- a) disciplinary, civil, administrative and criminal proceedings against employees, operational personnel or organizations;
- b) disclosure to the public; or
- c) any purposes other than maintaining or improving safety data and safety information remain available for the purpose of maintaining or improving aviation safety

unless a principle of exception applies.





3. Principles of exception

Exceptions to the protection of safety data, safety information and related sources shall only be granted when the competent authority:

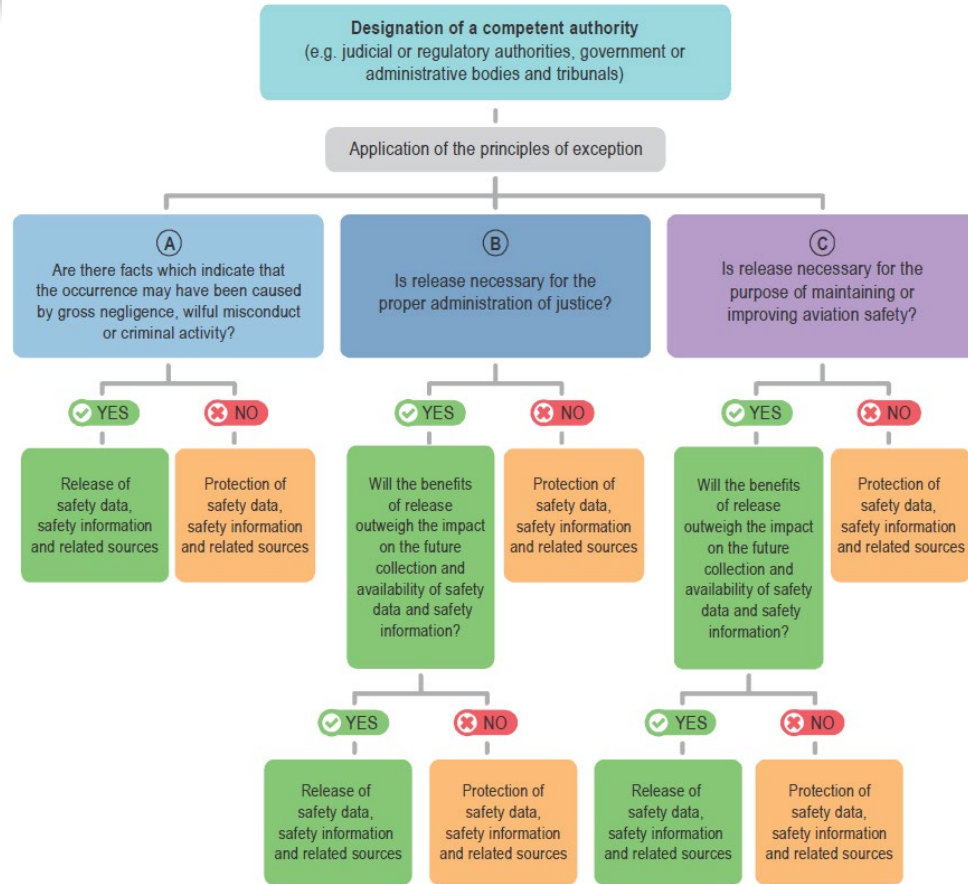
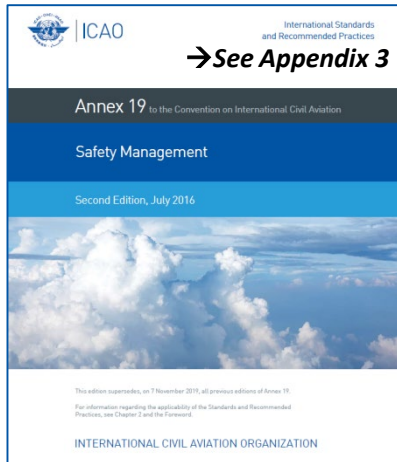
- a) determines that there are facts and circumstances reasonably indicating that the occurrence may have been caused by an act or omission considered, in accordance with national laws, to be conduct constituting gross negligence, wilful misconduct or criminal activity;
- b) after reviewing the safety data or safety information, determines that its release is necessary for the proper administration of justice, and that the benefits of its release outweigh the adverse domestic and international impact such release is likely to have on the future collection and availability of safety data and safety information; or
- c) after reviewing the safety data or safety information, determines that its release is necessary for maintaining or improving safety, and that the benefits of its release outweigh the adverse domestic and international impact such release is likely to have on the future collection and availability of safety data and safety information.

Note 1.— In administering the decision, the competent authority takes into account the consent of the source of the safety data and safety information.

Note 2.— Different competent authorities may be designated for different circumstances. The competent authority could include, but is not limited to, judicial authorities or those otherwise entrusted with aviation responsibilities designated in accordance with national law.



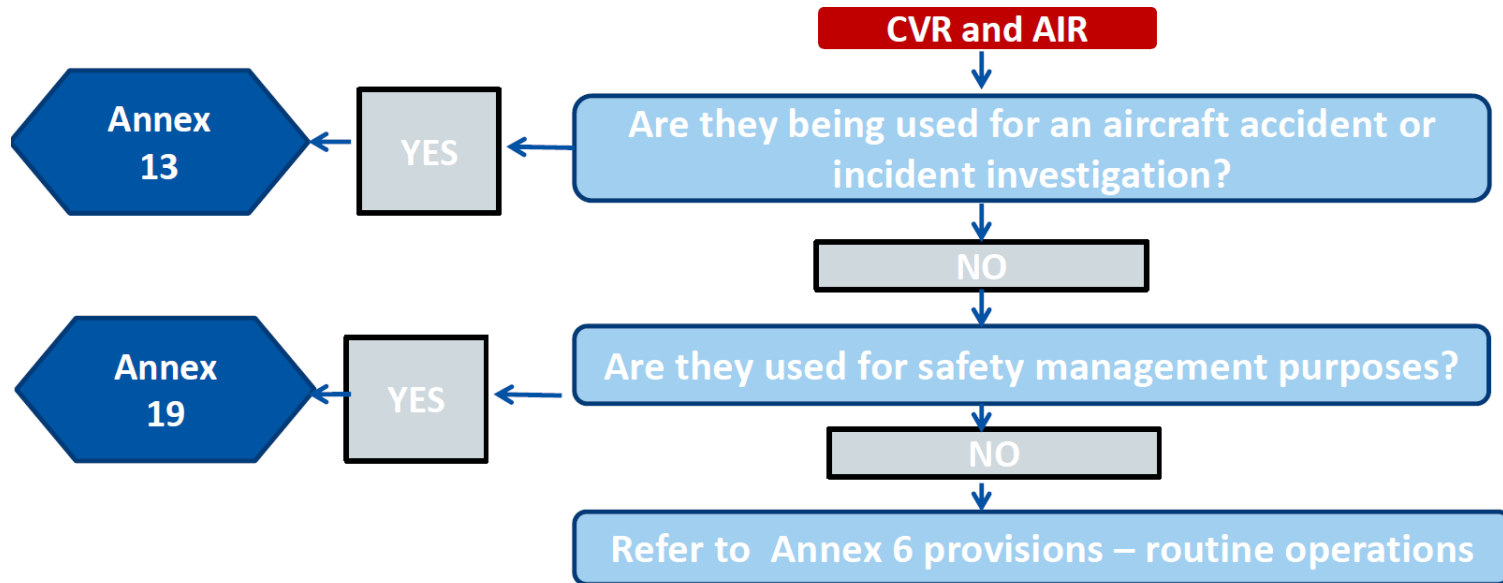
Guidelines for the application of the principles of exception





Hierarchy of protection

Interaction between Annexes 6, 13, and 19





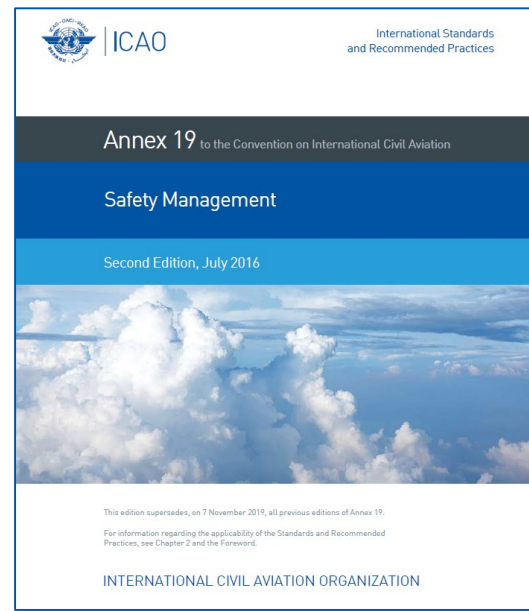
More on Protection of Investigation records, Safety Data and Safety Information

Annex 13, chapter 5.12 and Appendix 2 + ICAO Doc 10053



The image shows two overlapping document covers. The top cover is for Annex 13, titled 'Annex 13 to the Convention on International Civil Aviation Aircraft Accident Investigation', Twelfth Edition, July 2016. The bottom cover is for ICAO Doc 10053, 'Manual on Protection of Safety Information', Part I - Protection of Accident and Incident Investigation Records, First Edition, 2016. Both covers feature the ICAO logo and the text 'International Standards and Recommended Practices'.

Annex 19, chapter 5.3 and Appendix 3



The image shows the cover of Annex 19, titled 'Annex 19 to the Convention on International Civil Aviation Safety Management', Second Edition, July 2016. The cover features the ICAO logo, the text 'International Standards and Recommended Practices', and a background image of a cloudy sky. At the bottom, it states 'INTERNATIONAL CIVIL AVIATION ORGANIZATION'.

Safety Management Manual (Doc 9859), chapter 7



The image shows the cover of Doc 9859, titled 'Safety Management Manual', Fourth Edition, 2018. The cover features the ICAO logo, the text 'International Standards and Recommended Practices', and a background image of a globe with a flight path and an airplane. At the bottom, it states 'INTERNATIONAL CIVIL AVIATION ORGANIZATION'.