

## **AAIA Circular 03/2021**

# **HANDLING AND PROTECTION OF EVIDENCES AND RECORDS OF AN INVESTIGATION**

## **1 Introduction**

- 1.1 When an aircraft accident or a serious incident is being investigated by the Air Accident Investigation Authority (AAIA) in accordance with the Hong Kong Civil Aviation (Investigation of Accidents) Regulations (CAP. 448B), Inspectors are empowered by Regulation 9 of the CAP. 448B to act as necessary for the conduct of the investigation.
- 1.2 Pursuant to Regulation 7, and subject to Regulation 9, of the CAP. 448B, no person other than an authorised person shall have access to the aircraft involved in an accident or a serious incident and neither the aircraft nor its contents shall be removed or otherwise interfered with without the authority of the Chief Inspector<sup>1</sup>.
- 1.3 Regulation 10 of the CAP. 448B specifies that an Inspector's investigation shall be held in private.
- 1.4 The purpose of this Circular is to make the AAIA policies and procedures on the handling of records and evidences public when it institutes and conducts an investigation.

## **2 Protection and Custody of Evidence**

- 2.1 AAIA shall take all reasonable measures to protect the evidence and to maintain safe custody of the aircraft and its contents for such a period as may be necessary for the purposes of an investigation. Protection of evidence shall include the preservation<sup>2</sup>, by photographic or other means of any evidence which might be removed, effaced, lost or destroyed. Safe custody shall include protection against further damage, access by unauthorized persons, pilfering and deterioration.

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<sup>1</sup> i.e. the post of Chief Accident and Safety Investigator, which includes his or her deputy.

<sup>2</sup> See also the Security Bureau Contingency Plan for the Salvage of Crashed Aircraft:  
<https://www.sb.gov.hk/eng/emergency/salvage/CrashedAircraft.pdf>

- 2.2 Subject to above, AAIA shall release custody of the aircraft, its contents or any parts thereof as soon as they are no longer required in the investigation, to any person or persons duly designated by the State of Registry or the State of the Operator, as applicable. For this purpose AAIA shall facilitate access to the aircraft, its contents or any parts thereof, provided that, if the aircraft, its contents, or any parts thereof lie in an area within which the State finds it impracticable to grant such access, it shall itself effect removal to a point where access can be given.

### **3 Protection of Accident and Incident Investigation Records**

- 3.1 AAIA shall not make the following records available for purposes other than accident or incident investigation, unless the competent authority in Hong Kong determines, in accordance with the Laws of Hong Kong and subject to Appendix 2, 5.12.3 and 5.12.5 of ICAO Annex 13, 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;
- b) records in the custody or control of the Chief Inspector being:
  - (i) all statements taken from persons by AAIA in the course of their investigation;
  - (ii) all communications between persons having been involved in the operation of the aircraft;
  - (iii) medical or private information regarding persons involved in the accident or incident;
  - (iv) recordings and transcripts of recordings from air traffic control units;
  - (v) analysis of and opinions about information, including flight recorder information, made by AAIA, accredited representatives, and persons appointed under CAP. 448B Regulation 8(7)<sup>3</sup> in relation to the accident or incident;
  - (vi) the draft Final Report of an accident or incident investigation; and
  - (vii) any other records obtained or generated by AAIA, accredited representatives, and persons appointed under CAP. 448B Regulation 8(7) as a part of an accident or incident investigation.

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<sup>3</sup> See AAIA Circular 02/2021 – Inspectors and Persons Participating in an Investigation under CAP. 448B [https://www.tlb.gov.hk/aaia/doc/AAIA\\_Circular\\_02-2021\\_-\\_Inspectors\\_and\\_Persons\\_Participating\\_\(Final\).pdf](https://www.tlb.gov.hk/aaia/doc/AAIA_Circular_02-2021_-_Inspectors_and_Persons_Participating_(Final).pdf).

3.2 The protections in 3.1 are accorded to:

- a) 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.
- b) the records listed in 3.1b. These protections shall apply from the time they come into the custody or control of the Chief Inspector and continue after the publication of the Final Report.

3.3 Under no circumstances shall AAIA, accredited representatives, or persons appointed under CAP. 448B Regulation 8(7) disclose to the public the names of the persons involved in the accident or incident.

3.4 Pursuant to Appendix 2 of the ICAO Annex 13, AAIA will take measures to ensure that audio content of cockpit voice recordings as well as image and audio content of airborne image recordings are not disclosed to the public, which may include:

- a) invoking the applicable Laws of Hong Kong;
- b) seeking such authoritative safeguard as protective orders, closed proceedings or in-camera review; or
- c) applying such technical means as encrypting or overwriting, before returning the cockpit voice recorders or airborne image recorders to the owners.

3.5 The records listed in 3.1 shall be included in the Final Report or its appendices only when pertinent to the analysis of the accident or incident. AAIA shall not disclose any part of the records not relevant to the analysis.

3.6 In the course of an investigation, AAIA will retain, where possible, only copies of records. Requests for records in the custody or control of the Chief Inspector shall be directed to the original source of the information, where available.

**K C MAN**  
**Chief Inspector**