

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

Docket 49878

OST-96-1640

MOTION OF SOUTHWEST AIRLINES CO.
TO WITHHOLD INFORMATION FROM PUBLIC DISCLOSURE

COMES NOW, Southwest Airlines Co. (hereinafter "Southwest") and hereby files this Motion to Withhold from Public Disclosure information and data incorporated within a sealed envelope and captioned Form 41, Schedule B-7 Airframe and Aircraft Engine Acquisitions and Retirements. This document is provided to the Department of Transportation in accordance with 14 C.P.R. 241.

The information provided under Form 41, Schedule B-7 includes Southwest's acquisition costs concerning airframes, aircraft, and aircraft engines. This information may properly be withheld from public disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(4), which permits protection from disclosure for "trade secrets and commercial or financial information obtained from a person and privileged or confidential". See Gulf & Western Industries, Inc. v. United States, 615 F.2d 527 (D.C. Cir. 1979).

Three elements must be satisfied in order to protect information from public disclosure under 5 U.S.C. 552(b)(4). The information must be: (1) financial or commercial in nature, (2) obtained from a person outside of the government, and (3) confidential or privileged. Information will be deemed "confidential" where the information would not normally be made public by the person or entity reporting it.

The information which Southwest seeks to protect from public disclosure clearly satisfies these three elements. To begin, the acquisition cost data reported is the same as that negotiated between Southwest and other commercial entities. These negotiated prices are obviously financial or commercial in nature. Further, these prices are established through negotiations between Southwest and other commercial entities. At no time is this information obtained from any governmental agency or official. Finally, the release of such information would hinder Southwest's efforts to negotiate favorable costs and terms from commercial vendors of airframes, aircraft and aircraft engines. Confidential treatment of commercially sensitive information is particularly appropriate in light of Southwest's purchase agreements with sellers of commercial aircraft. Such agreements customarily contain language demanding that Southwest maintain the confidentiality of certain material terms, including acquisition costs.

WHEREFORE, PREMISES CONSIDERED, Southwest requests the confidential treatment of all Form 41, Schedule B-7 filings with the Department of Transportation commencing with the Form 41, Schedule B-7 filing for the fourth quarter of 1997.

Respectfully submitted,


Donald E. Hood, Attorney
Southwest Airlines Co.
2702 Love Field Drive, HDQ/4GC
P.O. Box 36611
Dallas, Texas 75235
214/792-4049

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