

Aircraft Noise Action Group admin@aircraftnoiseaction.com

27 January 2020 Reference: F0004622

Dear

Thank you for your request of 2 January 2020, for the release of information held by the Civil Aviation Authority (CAA). Your request has been considered in line with the provisions of the Freedom of Information Act 2000 (FOIA).

Your request and our response:

I understand that the CAA carried out an inspection of air traffic services at Newcastle International Airport in Nov and Dec 2019. Please could you provide any documentation arising from that inspection.

The CAA conducted a routine annual audit at Newcastle International Airport on 10 and 11 December 2019, and therefore does hold information within the scope of your request. However, in the CAA's view it is exempt from disclosure under Section 31(1)(g) of the FOIA.

Section 31(1)(g) of the FOIA states that information is exempt if its disclosure under this Act would, or would likely to, prejudice the exercise by any public authority of its functions for the purposes specified in subsection (2).

Audits and oversight activities form part of the CAA's regulatory functions for the purpose of:

- Ascertaining whether any person has failed to comply with the law,
- Ascertaining whether any person is responsible for any conduct which is improper,
- Ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise

These are all functions listed under subsection (2).

In order for the CAA's oversight to be effective, the confidentiality of such investigations and audits, and any findings, between the CAA and the organisation concerned is a key element. Assessments benefit from exchanges with organisations which are unrestrained, frank and candid. Therefore, to maintain an effective safety oversight regime, the

Civil Aviation Authority

Aviation House, Beehive Ring Road, Crawley, West Sussex RH6 0YR. www.caa.co.uk

Email: foi.requests@caa.co.uk

continuing willingness of organisations and their management to fully engage and support the process without the threat of public recrimination is of key importance.

Organisations must be confident that the CAA's oversight of them will not lead to disclosure of information that could be exploited by competitors if made public and would be likely to lead to financial or other loss. The release of such information into the public domain is likely to cause the organisation concerned to be less open with the CAA, thus compromising the CAA's ability to carry out our safety oversight role and prejudicing our ability to regulate effectively.

Section 31 is a qualified exemption and is subject to the public interest test. We have considered whether, in all the circumstances of the case, the public interest in withholding the information outweighs the public interest in disclosing the information.

The public interest in disclosing the information include the general principles of transparency and open government; the public right of access to information held; and reinforcing public confidence in aviation safety and the way the CAA regulates.

However, it is vital that the CAA is able to engage with the aviation industry so that there is full and open discussion between the CAA and those we regulate on safety matters. The free flow of essential safety information depends upon the industry's complete confidence that any matter can be discussed without fear that the pressures of the public arena might delay action or distort the safety focus. The CAA relies on such information to discover illegal or improper conduct, assess the need for regulatory action and judge the fitness and competence of the organisation concerned.

As mentioned above, our oversight can include the provision of, and discussions relating to, commercially sensitive information and audits are conducted on the understanding that what is discussed is confidential. Should such information be placed in the public domain, against that understanding, it would make organisations reluctant to cooperate and hinder the CAA's regulatory functions outlined above.

Having considered the arguments on both sides the CAA has concluded that the public interest in disclosure is outweighed by the public interest in maintaining the exemption and disclosure is therefore withheld as being exempt under Section 31(1)(g). A copy of this exemption is provided below.

I also understand that, since that inspection, a number of Air Traffic controllers may have left Newcastle Airport and that others may be about to leave. I also understand that Newcastle Airport is bound to report to the CAA any issues that might affect the safety and integrity of air traffic services and that, in this context, they should have told you that they are losing ATC staff. Please can you provide the report that Newcastle Airport should have made to you and of any response that you have made to them. If you have not yet received a report from Newcastle Airport on its ATS status and/or you have not responded, please could you send these items of information as soon as they become available.

Providers of air traffic control services are not required to tell the CAA specifically about loss of staff. However, this is the sort of information which is valued by the CAA and may be voluntarily shared with the CAA as part of the kind of full and open communication between the CAA and an organisation we regulate explained above. The CAA considers that, if held, this information would be held as part of the CAA's regulatory functions for the purposes stated above and therefore the disclosure of this information into the public domain in response to a FOIA request would be exempt from disclosure under Section 31(1)(g) of the FOIA subject to the public interest test.

Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request. This is known as 'the duty to confirm or deny'. However, there may be occasions when the Act allows a public authority to respond by

refusing to confirm or deny whether it holds the information where doing so would, in itself, reveal exempt information. In this case, we can neither confirm nor deny we hold relevant information to the above part of your request.

As stated above the success and effectiveness of the UK's aviation regulation system relies upon a free flow of information between the industry and the regulator. The CAA's view is that, if held, the release of information in scope of your request would be likely to adversely affect this open relationship, make organisations in the aviation industry less likely to voluntarily share information with the CAA, and ultimately adversely affect the CAA's ability to regulate effectively.

The public interest factors in favour of confirming whether such information is held, and in favour of neither confirming nor denying whether the information is held, are the same as set out above. In the CAA's view, the public interest in disclosure is outweighed by the public interest in maintaining the exemption (i.e. in favour of giving a neither confirm nor deny response).

If you are not satisfied with how we have dealt with your request in the first instance you should approach the CAA in writing at:-

Caroline Chalk
Head of External Information Services
Civil Aviation Authority
Aviation House
Beehive Ring Road
Crawley
RH6 0YR

caroline.chalk@caa.co.uk

The CAA has a formal internal review process for dealing with appeals or complaints in connection with Freedom of Information requests. The key steps in this process are set in the attachment.

Should you remain dissatisfied with the outcome you have a right under Section 50 of the FOIA to appeal against the decision by contacting the Information Commissioner at:-

Information Commissioner's Office
FOI/EIR Complaints Resolution
Wycliffe House
Water Lane
Wilmslow
SK9 5AF
<https://ico.org.uk/concerns/>

If you wish to request further information from the CAA, please use the form on the CAA website at <http://publicapps.caa.co.uk/modalapplication.aspx?appid=24>.

Yours sincerely



Jade Fitzgerald
Information Rights Officer

CAA INTERNAL REVIEW & COMPLAINTS PROCEDURE

- The original case to which the appeal or complaint relates is identified and the case file is made available;
- The appeal or complaint is allocated to an Appeal Manager, the appeal is acknowledged and the details of the Appeal Manager are provided to the applicant;
- The Appeal Manager reviews the case to understand the nature of the appeal or complaint, reviews the actions and decisions taken in connection with the original case and takes account of any new information that may have been received. This will typically require contact with those persons involved in the original case and consultation with the CAA Legal Department;
- The Appeal Manager concludes the review and, after consultation with those involved with the case, and with the CAA Legal Department, agrees on the course of action to be taken;
- The Appeal Manager prepares the necessary response and collates any information to be provided to the applicant;
- The response and any necessary information is sent to the applicant, together with information about further rights of appeal to the Information Commissioners Office, including full contact details.

Freedom of Information Act: Section 31

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths enquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

(2) The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).