

Aircraft Noise Action Group
admin@aircraftnoiseaction.com

26 February 2020
Reference: F0004622

Dear

I have concluded my review of your appeal to the CAA's reply to your original request for information dated 2 January 2020. Your appeal is in relation to our response of 27 January 2020 following your requests below.

*'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.**'*

*'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.'*

The CAA's original decision

In our response we confirmed the CAA holds information within the scope of your first request but that it was exempt from disclosure under Section 31(1)(g) of the FOIA. We neither confirmed or denied holding information in respect of your second request and explained that if the information was held it too would be exempt from disclosure under Section 31(1)(g).

We outlined the reason why this information is or would be held as part of the CAA's regulatory function, as copied below, in accordance with 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:

Civil Aviation Authority

Aviation House, Beehive Ring Road, Crawley, West Sussex RH6 0YR. www.caa.co.uk
Email: foi.requests@caa.co.uk

- *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).'

As Section 31 is a qualified exemption we are required to consider the public interest test, and the factors considered were laid out in our response in accordance with the FOIA. These factors considered arguments for and against disclosure of information relevant to your first request and would also be applicable to your second request if information were held by the CAA.

Your request for an internal review

In your request for an internal review you appeal against the decisions taken by the CAA in respect of withholding the information. You specifically mention the use of commercial confidentiality as a reason for refusing to disclose information arising from a CAA inspection. You say that while the defence of commercial confidentiality might be applied where information is shared with the CAA on a voluntary basis, it should not be applied where CAA initiated mandatory audits are carried out. You say that audit information is in the public domain by default.

My internal review

I considered that 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. Access to current information and the opportunity to provide feedback on published data relating to Newcastle International Airport can be found on the CAA website <https://www.caa.co.uk/Commercial-industry/Airspace/Airspace-change/Reviews/Newcastle-International-Airport-SIDs-PIR/>.

I also considered your views on commercial confidentiality and that you say audit information is in the public domain by default. To respond to these two points, for completeness, I confirm that the essential reason for withholding the information was not to protect the commercial interests of Newcastle International Airport but to protect our safety regulatory oversight of it. Moreover, whether information is required to be supplied to the CAA or given on a voluntary basis is irrelevant in this context as the case for protecting our safety regulatory oversight is the same. I can also confirm that information relating to audits or inspections is not routinely published for the reasons set out in this and previous letters.

During its oversight of organisations, including audits, the CAA is often able to access information relating to the business of an organisation, information which when provided by third parties is clearly provided to the CAA on a 'commercial in confidence' basis. Access to this information allows the CAA to determine whether the organisation complies with the applicable regulations and requirements and is adhering to certain requirements, including their internal working procedures and processes.

For the CAA's oversight to be effective, the confidentiality of such investigations, 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 continuing willingness of organisations and their management to fully engage and support the process without the threat of public disclosure is of key importance and in the public interest.

My conclusion

I conclude that the information requested would not have been made available to you at the time of your request for the reasons given in our letter of 27 January. I agree that Section 31(1)(g) was engaged. To engage the section 31(1)(g) exemption a public authority must: i. demonstrate that it has been entrusted with a function to fulfil this regulatory purpose ii. confirm that the function has been specifically designed to fulfil that purpose; and iii. explain how the disclosure would or would be likely to prejudice that function. Whilst we recognise the public interest factors in favour of disclosure, I consider the factors against disclosure carry significantly more weight.

Rights of Appeal

Finally, I should advise you that, under the FOIA, you have further rights of appeal to the ICO. Should you have any reason to complain about any aspects of the processing of your request and of your subsequent appeal, you should contact the ICO at:

The Information Commissioner's Office

FOI/EIR Complaints Resolution

Wycliffe House

Water Kane

Wilmslow

SK9 5AF

<https://ico.org.uk/concerns/>

Should you wish to make further requests, please use the e-form at

<http://www.caa.co.uk/foi>.

Yours sincerely



Caroline Chalk

Head of External Information Services