

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

6th February 2020

Your Reference: F0004622

Dear Ms Chalk,

Many thanks for the CAA's reply of the 27th January 2020 to our FOI request of the 2nd January 2020. Please find below our appeal against the CAA's decision not to provide information in response to this request.

A. Our request for information

Aircraft Noise Action Group ('ANAG') submitted, over the name of the Chairman of the organisation, the following Freedom of Information requests:

1. *"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."*

and:

2. *"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."*

B. The CAA's response

The CAA refused to provide information or documentation in response to both these requests citing Section 31(1)g of the Freedom of Information Act. This section enables the exemption of information where its disclosure might prevent a public body from carrying out its duties in the public interest.

Specifically, in this instance, the CAA stated that the public interest would be best served in both cases by not providing information in response to ANAG's requests because its effectiveness as a regulator and overseer could be compromised if organisations it oversees thought that information they provide to the CAA might be made available publicly. The CAA indicated that, if there was a possibility such information might be made public, information providers might fear that its publication

could lead to exploitation by competitors or to financial or other loss. Organisations the CAA oversees would then be less likely to provide key information to support regulatory and safety oversight by the CAA.

In the case of **A1** above, the CAA confirmed that it does hold information that might have been provided in response to the request.

In the case of **A2**, the CAA neither confirmed nor denied that it holds relevant information.

C. ANAG's appeal against these decisions

For the avoidance of any doubt, although ANAG is challenging Newcastle International Airport ('NIAL') around issues of aircraft noise (this is public knowledge), these FOI requests were not vexatious attempts to continue this challenge. The requests were concerned with the public interest in terms of general safety of the airport and the safety of passengers flying to and from NIAL and of the communities surrounding the Airport.

The CAA is a public body, is subject to the FOIA and it has used the exemption provisions in this Act, on this occasion, to refuse to provide information around the safe operation of NIAL. The CAA's role in the assurance of airport safe operation is a core obligation of the its work in the public interest.

1. Appeal against the use of commercial confidentiality as a reason for refusing to provide information arising from a CAA inspection.

When the CAA audits an airport as part of its regulatory function, the information obtained during the inspection is not provided voluntarily by the airport, it is mandatory. The airport has no choice and the airport can not use commercial confidentiality as a reason for hiding or withholding information required by the CAA. Nor should an implied or explicit threat by an airport to withhold future voluntary co-operation with the industry regulator be allowed as a reason for the CAA to withhold information demanded by an FOI request.

ANAG asserts 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. Audit information is in the public domain by default.

2. Appeal against the refusal to provide information in response to question A1:

Question A1 above was based on information ANAG had received that indicated that the CAA had carried out an audit at NIAL in December 2019. In particular, ANAG also understood that the audit revealed that certification of more than one Air Traffic Control ('ATC') staff had lapsed, not been renewed, and that NIAL had been operating while staff were uncertified for their role.

ANAG asserts that, in this context, there would be an overriding public interest around:

- a. Public and passenger safety:** an ATC function operating sub optimally with uncertified ATC staff could present a risk to life. ATC staff are at the core of aircraft safety and therefore of the safety of the public and passengers. If an airport's ATC function is not up to standard the public should be informed so that they can make informed decisions about using the airport.

- b. NIAL negligence and management competence:** Failure to ensure that ATC staff were fully and currently certified at or around certification anniversaries is indicative of corporate management failure. Public trust and safety absolutely depend on NIAL, or any airport, being managed competently and with safety as an absolute priority. The public should be told so that they can make informed decisions.

The CAA has confirmed that it did carry out the audit as described and that it has information arising from that audit. The CAA has refused our FOI request on the grounds, allowed by the FOIA, that the CAA's capacity to carry out its role might be compromised were it to provide what it defines as commercially confidential information provided by airports in response to an FOI request.

ANAG contends that this reason is indefensible (see **C1** above). ANAG also contends that safety issues must override issues of commercial confidentiality in any event in the public interest. **The refusal by the CAA to publish information it has obtained which might clarify the situation is not, therefore, justified.**

- 3. Question A2** above was based on information ANAG had further received that, following the outcome of the CAA audit described above, a number of ATC staff had either left NIAL or were shortly due to leave. Our understanding was that this number could comprise around 20% to 25% of the full ATC establishment at NIAL. This is a major loss of resource by any standards and would compromise the NIAL ATC function's fitness for purpose.

ANAG again asserts that information on the current status of NIAL's ATC function, irrespective of any certification failure (or indeed of any airport's ATC function) especially where the ATC resource might not be fit for purpose for any reason, is in the public interest in terms of safety. **Publishing this information in response to an FOI request this should override issues of commercial confidentiality and the CAA's refusal is therefore not justified.**

We look forward to hearing from you

Your sincerely,

Chair, Aircraft Noise Action Group.