

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 09 September 2009

**Public Authority:** Civil Aviation Authority  
**Address:** Aviation House  
Gatwick Airport South  
West Sussex  
RH6 0YR

### Summary

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The complainant made a request to the Civil Aviation Authority (the "CAA") for "...copies of CAA/SRG Annual Reports on Rescue and Fire Service at [named airport] from 2001 to March 2008". The CAA applied the exemption contained at section 31(1)(g) in conjunction with section 31(2)(a), (b), (c) and (d) of the Freedom of Information Act 2000 (the "Act"). The CAA also applied the exemption contained at section 44 of the Act to withhold the information. The CAA cited section 23 of the Civil Aviation Act 1982 as the relevant statutory bar on disclosure. Upon considering the case the Commissioner considers that the CAA correctly engaged the section 44 exemption and therefore did not consider the CAA's application of section 31 any further. The Commissioner does however consider that the CAA breached section 17(1)(a), (b) and (c) in its handling of the complainant's request.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 20 March 2008 the complainant made a request to the CAA for "...copies of CAA/SRG Annual Reports on Rescue and Fire Service at [named airport] from 2001 to March 2008".
3. On 31 March 2008 the CAA responded to the complainant's request for information. The CAA stated that the success and effectiveness of the

UK's aviation regulation system relied upon free flow of information between the industry and the regulator. It considered that the release of audit and inspection reports would adversely affect this open relationship and the CAA's ability to regulate effectively. It explained that these concerns are recognised in the Act and it stated that information of this nature is subject to an exemption contained at section 31(1)(g). The CAA carried out a public interest test and concluded that on balance the public interest favoured non-disclosure of the information.

4. On 22 May 2008 the complainant wrote to the CAA to ask it to conduct an internal review of its decision to withhold the information.
5. On 6 June 2008 the CAA wrote to the complainant with the result of the internal review it had carried out. It upheld its decision to withhold the requested information under section 31(1)(g) as it stated that the public interest would not be best served by disclosure.

## The Investigation

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### Scope of the case

6. As the complainant was dissatisfied with the result of the internal review he made a formal complaint to the Information Commissioner's Office (ICO) on 18 June 2008.
7. The Commissioner has investigated whether the CAA was correct to withhold the requested information under the Act. The Commissioner has also investigated whether the CAA handled the complainant's request in accordance with all of its obligations under the Act.

### Chronology

8. On 9 July 2008 the Commissioner wrote to the CAA and asked it to provide him with a copy of the withheld information for the purposes of his investigation. The CAA was also asked to provide any further arguments in support of its application of the section 31(1)(g) exemption to withhold the requested information.
9. On 30 July 2008 the CAA responded to the Commissioner. The CAA provided the Commissioner with a copy of the withheld information. The CAA confirmed its application of the exemption contained at section 31(1)(g) of the Act and explained that it considered that the public interest in maintaining the exemption outweighed the public interest in disclosure.
10. The CAA explained that after reconsidering the case it also wished to rely upon the exemption contained at section 44 of the Act. It explained

that the information requested by the complainant were CAA audit reports. It explained that the audit reports comprised of information obtained by the CAA in the course of its regulatory oversight of an aerodrome licensed by the CAA. It explained that this included information furnished to the CAA in pursuance of Part 13 of the Air Navigation Order 2005 (ANO). It clarified that such information is subject to the statutory prohibition on disclosure of information contained in section 23(1) of the Civil Aviation Act 1982. It stated however that the prohibition is subject to a number of exemptions. These exemptions include, at section 23(1)(a), the case where the person supplying the information has consented in writing to its disclosure. It confirmed that in an email dated 29 July 2008 the airport director had refused consent to disclosure of the information. It stated therefore that the information requested fell within the scope of the exemption contained at section 44 of the Act.

11. On 11 February 2009 the Commissioner wrote to the CAA to ask it to provide any further arguments it wished to put forward in relation to its application of the section 31(1)(g) exemption.
12. On 20 February 2009 the Commissioner wrote to the CAA and asked it to provide further information in relation to its application of the exemption contained at section 44 of the Act. The Commissioner asked the CAA to provide further explanation as to why it considered the information contained within the audit reports was information which was 'furnished to' the CAA. The Commissioner also asked the CAA for further clarification as to whether the information had been furnished in pursuance of the Air Navigation Order. The CAA was asked to explain in detail, with reference to the relevant legislation, why and under what powers it conducted the audits.
13. On 12 March 2009 the CAA responded to the Commissioner in relation to its application of the section 31(1)(g) exemption. It provided further arguments in support of its application of this exemption.
14. On 27 March 2009 and 6 April 2009 the CAA responded to the Commissioner in relation to its application of the section 44 exemption. It provided further arguments in support of its application of this exemption. These arguments are detailed within the 'Analysis' section of this Notice.

## Analysis

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15. In this case the Commissioner recognises that the CAA applied the exemption contained at section 44 of the Act at a late stage in the process and after a formal complaint had been submitted to the Commissioner.

16. Factors which the Information Tribunal has accepted as being reasonable justifications for the application of exemptions before the Commissioner and/or the Tribunal for the first time include:

- Where some of the disputed information is discovered for the first time during the Commissioner's investigation, and therefore the public authority has not considered whether it is exempt from disclosure.
- Where the authority has correctly identified the harm likely to arise from disclosure however applies these facts and reasoning to the wrong exemption.
- Where the public authority had previously failed to identify that a statutory bar prohibited disclosure of the requested information, and therefore ordering disclosure would put the public authority at risk of criminal prosecution.
- Where the refusal notice was issued at an early stage of the implementation of the Act when experience was limited, although this factor is becoming less relevant as time passes.

17. The Commissioner decided to accept the late application of the section 44 exemption as this case falls into the criteria described at bullet point 3 above.

## **Procedural matters**

### **Section 17**

18. Section 17(1) states that –

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

19. In this case the CAA did not apply the exemption contained at section 44 of the Act until the formal complaint had been made to the Commissioner. It applied the exemption through correspondence with the Commissioner. Therefore it failed to notify the applicant that it was relying upon the section 44 exemption nor did it explain why it was relying upon this exemption within the statutory time for compliance.

20. Therefore the Commissioner considers that the CAA breached sections 17(1)(a), (b) and (c) in its handling of this request.

## Exemption

### Section 44

21. Section 44(1) provides that :

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.”

The full text of section 44 is set out within the Legal Annex at the end of this Notice.

22. In this case the Commissioner considers that the CAA were relying on section 44(1)(a) in that disclosure of the information is prohibited under any enactment.

23. The CAA has stated that disclosure of the information is prohibited by section 23(1) of the Civil Aviation Act 1982 which provides that:

“Subject to subsection (4) below, no information which relates to a particular person and has been furnished to the CAA in pursuance of any provision of this Act to which this section applies or of an Air Navigation Order shall be disclosed by the CAA, or a member or employee of the CAA unless-

- (a) the person aforesaid has consented in writing to disclosure of the information; or
- (b) the CAA, after affording that person an opportunity to make representations about the information and considering any representation then made by that person about it, determines that the information may be disclosed; or
- (c) that person is an individual who is dead, or is a body corporate that has ceased to exist or, whether an individual or a body corporate, cannot be found after all reasonable inquiries have been made, and the CAA determines that the information may be disclosed; or
- (d) the CAA determines that the information is of the same kind as other information as respects which it has made a determination in pursuance of paragraph (b) or (c) above.”

24. The full text of section 23(1) can be found in the Legal Annex at the end of this Notice.

### **Does the information relate to a particular person?**

25. The Commissioner considers that a particular person would include a particular company or organisation. Therefore as the requested audit reports relate to [named airport] the Commissioner considers that the criteria would be met.

### **Was the information furnished to the CAA?**

26. The Commissioner asked the CAA for evidence that the information contained within the audit reports was furnished to it. In particular the Commissioner noted that if the audit inspectors are employees of the CAA the Commissioner queried whether all of the information contained within the audit reports was furnished to it, in that some of the information may have been gleaned from the inspector's own observations.
27. The CAA explained to the Commissioner that it would be very difficult to separate out the information contained within the audit reports into information which was furnished to the CAA and information which an inspector may have gained through observations. It stated that this difficulty lay primarily in the fact that the CAA's oversight of safety at licensed aerodromes is based principally upon audits rather than inspections, albeit that the word 'inspection' is still used colloquially to describe the process. It explained that the process involved checking of compliance on a document sampling basis. Information and evidence of compliance is requested by the CAA and is furnished by the aerodrome licence holder (ALH). It explained that as a consequence of the information which is furnished to the CAA, an inspector may additionally choose to observe certain matters which may corroborate or contradict the information that the ALH has provided. It stated that all of this serves to paint a picture of the compliance or otherwise of the aerodrome with applicable standards. It explained that the withheld audit reports contain statements concerning the compliance status in relation to each particular item and actions that are agreed between the CAA and the ALH. It clarified that statements of compliance and agreed actions are based upon the information supplied to the inspector and in some circumstances, his own observations to support this. Therefore the CAA concluded that an inspector's own observations stem from and are inextricably linked to the information furnished by the ALH.
28. In reaching a decision in this case the Commissioner was mindful of the Tribunal's decision in Department of Health v the Information Commissioner (EA/2008/0018). In this case the statutory bar in question was contained at Regulation 30 of the Public Service Contract Regulations 1993 (this has now been superseded). The statutory bar was applied to information contained within a contract between the Department of Health and a commercial third party. In line with Derry City Council v the Information Commissioner

(EA/2006/0014), the Tribunal found that information which reflected the outcome of negotiations could not be deemed to have been provided by, or obtained from either party; it was jointly created. In this case the Tribunal acknowledged the problems in wading through a large volume of information to determine what if any information could be said to have been provided by a third party. The Tribunal concluded that it was not practical and that the Commissioner could not be expected to do so before taking the approach of deeming the whole contract to be jointly created.

29. In the above case the Commissioner considers that the majority of the information would have been jointly created with the potential that only small sections could be identified as belonging to one party or another after being subject to close scrutiny. In this case, however, after considering the CAA's arguments and the withheld audit reports the Commissioner considers that the majority of the information contained within the reports was based solely upon information furnished to the CAA. Some information contained within the audit reports is based upon an inspectors own observations however these stem from information which was furnished to the CAA. The information furnished to the CAA along with in some circumstances an inspector's observations, was then utilised to provide the statements relating to compliance and the agreed actions.
30. The Commissioner considers that the information contained with the withheld audit reports which may have been partly generated by the CAA (through the inspector's own observations), is so closely based on that furnished by [named airport], that it could not be disclosed without disclosing or conveying the content of the third party information. The statements relating to compliance and the agreed actions contained within the withheld audit reports were based upon information furnished to the CAA and in some circumstances additionally an inspector's own observations. However by disclosing the contents of the withheld audit reports, this would indicate the nature of the information which was furnished to the CAA given the inextricable link between this and an inspector's own observations. The Commissioner is therefore satisfied that the information contained within the withheld audit reports is information which was furnished to the CAA.

### **Was it in pursuance of an Air Navigation Order?**

31. The CAA has explained that aircraft conducting certain specified commercial activities must use a licensed aerodrome. This is specified at Article 126 of the ANO. It explained that in order to obtain a licence, an aerodrome operator must apply to the CAA and satisfy the CAA as to the matters set out in Article 128(1) of the ANO. This is set out in full in the Legal Annex to this Notice.
32. The CAA explained that Article 92 of the ANO gives the CAA the power to suspend or revoke any licence or other document issued under the

ANO, including an aerodrome licence. The CAA stated therefore that it has a discretionary power to suspend or revoke such licences. The CAA further stated that as with any discretionary power it must be exercised properly. Therefore the CAA's policy is that the holder of any licence it issues must maintain the standards it was required to achieve in order to be granted the licence. It explained that the CAA has established oversight policies and procedures designed to ensure that the CAA may remain satisfied that this is the case, and these policies and procedures are contained in the Safety Regulatory Management System (SRMS). The CAA provided the Commissioner with a copy of this document and referred him to paragraph 1.1 which explains why audits are carried out.

33. Furthermore the CAA explained that in support of its oversight activities, Article 145(1) of the ANO gives the CAA the right of access to any aerodrome for the purpose of inspecting the aerodrome. This is set out in full in the Legal Annex to this Notice.
34. The CAA stated that inspections and audits of an aerodrome are thus conducted for the purpose of establishing that the licence may remain in force. It clarified that information supplied to the CAA in the course of such an inspection or audit is information supplied in pursuance of the ANO. It concluded that the requested audit reports were subject to section 23(1) of the Civil Aviation Act 1982 and that this was the statutory bar on disclosure of the information. It therefore applied the exemption contained at section 44 of the Act to prevent disclosure.
35. Finally the CAA stated that its auditing methods had been developed in partnership with the industry and are defined and described in the Civil Aviation Publication CAP 168 'Licensing of Aerodromes' which can be accessed at [www.ca.co.uk/cap168](http://www.ca.co.uk/cap168).
36. Upon considering the CAA's explanation, the legislation it referred to and the contents of the requested audit reports, the Commissioner considers that the reports came into existence in pursuance of the ANO.

**Are any of the exceptions contained in section 23(1) of the Civil Aviation Act 1982 applicable?**

37. Under section 23(1)(a) there is an exemption to the bar on disclosure if the particular person (or in this case [named airport]) consents in writing to disclosure. The Commissioner is mindful that in the case of *Allison v MHRC* (EA/2007/0089), the Tribunal clarified that although a gateway out of the statutory bar existed if the third party's consent was sought, this did not impose an obligation on a public authority to seek such consent. The Commissioner does not therefore consider that the CAA was obliged to seek consent of [named airport] in this case. However the CAA has confirmed that consent to disclosure had been sought and was refused by the director of [named airport]. The



Commissioner therefore does not consider that this exception would apply.

38. Under section 23(1)(b) the CAA are also afforded a discretionary power to release information which is subject to the statutory bar once it has heard any representations put forward by the particular person (in this case [named airport]). The airport refused consent but did not make any further representations. The CAA decided not to exercise its discretion to release the information in this case. There is nothing more said in this section to clarify how the CAA should exercise its discretion or how it should make a determination whether to disclose the information without the consent of the persons (within the meaning of persons in that section). However the Commissioner has considered the comments of the Information Tribunal in the case of *Hoyte v ICO & CAA ea/2007/0101*. At paragraph 67 it stated that:

“The question for us therefore is to consider whether the CAA exercised its discretion not to disclose the disputed information unlawfully in the sense of *Wednesbury* unreasonableness, irrationality or perversity. That is, did the CAA exercise its discretion in a way so unreasonable that no reasonable public authority could have exercised it that way, did it take into account irrelevant considerations or fail to take into account relevant considerations, or was the decision otherwise unlawful or irrational.”

It added at paragraph 72 of its decision that:

“ The test for us is not whether we would exercise discretion in the same way nor whether we approve of the way the CAA exercised its discretion, but whether the discretion was properly exercised: was the decision a reasonable one which the CAA was entitled to make. We are satisfied that the CAA exercised its discretion in a way it was entitled to, taking into account all relevant considerations and weighing up competing interests as far as confidentiality and the safety of civil aviation are concerned.”

39. The Commissioner has therefore gone on to consider whether the CAA's decision not to exercise its discretion in this case was 'Wednesbury unreasonable'. That is whether the decision was so unreasonable that no reasonable person or authority would have come to that conclusion.

40. The CAA explained that in choosing not to exercise its discretion in this case it took the following into account:

- When an aerodrome licence is issued it is published on the CAA's website. It stated that the currency of the licence indicates that safety standards have been met and therefore transparency is provided.

- The free flow of essential safety information depends upon the licence holder'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 the free flow of such information to discover illegal or improper conduct, to assess the need for regulatory action and to judge the fitness and competence of licensees.
  - A vital ingredient in the relationship between the aviation industry and the CAA as regulator is the trust and openness that underpins that relationship and the knowledge that information which passes between a licensee or certificate holder and the regulator is used solely for the purpose of improving flight safety. This relationship is one that the CAA has worked hard to develop and maintain and wishes to continue to do so in the future.
  - Disclosure of the information would erode the relationship which has been built up between the CAA and licence holders and that the UK's public transport safety record would suffer as a result of this.
  - Discussion of safety matters must be full and uninhibited. This would not be the case if licence holders feared that aspects with a potential to lead to criticism might be made public, public confidence would be undermined and information would be provided to competitors.
  - The CAA's established safety regulatory oversight regime is based upon the free flow of safety information. This regime has enabled the CAA, in partnership with the industry, to establish and maintain a safety record 'that is among the best in the world' and also enables the CAA to action its oversight effectively and efficiently. The CAA cannot undertake a constant vigil at every regulated aerodrome and therefore relies on licence holders feeling able to raise safety concerns without prejudice.
41. The Commissioner considers that the CAA relies upon openness and transparency from licence holders in order to carry out its regulatory duties. The CAA has come to the conclusion that if the audit reports were released this would undermine future free and frank exchanges between itself and licence holders in relation to potential safety concerns. In turn it believes that this would have a negative impact upon airport safety. The Commissioner considers that the CAA endeavoured to make a well reasoned decision and looked at whether transparency of the safety of aerodromes could be achieved without disclosure of the requested information.
42. Upon considering the reasoning behind the CAA's decision not to exercise its discretion under section 23(1)(b) of the Civil Aviation Act

1982 and upon consideration of the contents of the requested audit reports the Commissioner does not consider that this decision could be classed as 'Wednesbury unreasonable'.

43. Upon considering all of the circumstances of the case the Commissioner does not consider that the exemptions contained at sections 23(1)(c) or (d) of the Civil Aviation Act 1982 are applicable to this case.
44. The Commissioner therefore considers that the information contained within the audit reports relate to a particular person and has been furnished to the CAA in pursuance of an Air Navigation Order, the section 23(1) statutory bar is therefore applicable and section 44 of the Act was correctly engaged.

### **The Decision**

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45. The Commissioner's decision is that the CAA correctly applied the section 44(1) exemption in this case in order to withhold the requested information.
46. The Commissioner does however consider that the CAA breached section 17(1)(a), (b) and (c) in its handling of this request.

### **Steps Required**

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47. The Commissioner requires no steps to be taken.

## Right of Appeal

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48. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 9th day of September 2009**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Refusal of Request

**Section 17(1)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

**Section 17(2)** states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

**Section 17(3)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest

in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

**Section 17(4)** provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

**Section 17(5)** provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

**Section 17(6)** provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

**Section 17(7)** provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”

## **Prohibitions on disclosure.**

**Section 44(1)** provides that –

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.”

**Section 44(2)** provides that –

“The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).”

## **Section 23 Civil Aviation Act 1982**

(1) Subject to subsection (4) below, no information which relates to a particular person and has been furnished to the CAA in pursuance of any provision of this Act to which this section applies or of an Air Navigation Order shall be disclosed by the CAA, or a member or employee of the CAA unless—

- (a) the person aforesaid has consented in writing to disclosure of the information; or
- (b) the CAA, after affording that person an opportunity to make representations about the information and considering any representation then made by that person about it, determines that the information may be disclosed; or
- (c) that person is an individual who is dead, or is a body corporate that has ceased to exist or, whether an individual or a body corporate, cannot be found after all reasonable inquiries have been made, and the CAA determines that the information may be disclosed; or
- (d) the CAA determines that the information is of the same kind as other information as respects which it has made a determination in pursuance of paragraph (b) or (c) above.

(4) Nothing in subsection (1) above prohibits the disclosure of any information—

- (a) by the CAA or a member or employee of the CAA to the Secretary of State or an officer of his or, with the consent of the Secretary of State, to an international organisation of which the United Kingdom is a member;
- (b) by an officer of the Secretary of State to the CAA or a member or employee of the CAA or to such an organisation or, in accordance with directions given by the Secretary of State—

- (i) to an officer of any government department; or
- (ii) in connection with negotiations conducted by officers of the Secretary of State with representatives of the government of any country or territory outside the United Kingdom; or
- (iii) in connection with the discharge of any obligation of the United Kingdom under international arrangements;
- (c) to a person to whom the information in question is required to be disclosed by regulations made in pursuance of section 7(2) above;
- (d) in pursuance of section 67(2) or (4) below;
- (f) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings arising out of any enactment relating to civil aviation or for the purposes of any investigation undertaken in pursuance of regulations made by virtue of section 75 below.

### **Air Navigation Order 2005**

92. —(1) Subject to paragraphs (5) and (6), the CAA may, if it thinks fit, provisionally suspend or vary any certificate, licence, approval, permission, exemption, authorisation or other document issued, granted or having effect under this Order, pending inquiry into or consideration of the case.

(2) The CAA may, on sufficient ground being shown to its satisfaction after due inquiry, revoke, suspend or vary any such certificate, licence, approval, permission, exemption, authorisation or other document.

(3) The holder or any person having the possession or custody of any certificate, licence, approval, permission, exemption or other document which has been revoked, suspended or varied under this Order shall surrender it to the CAA within a reasonable time after being required to do so by the CAA.

(4) The breach of any condition subject to which any certificate, licence, approval, permission, exemption or other document, other than a licence issued in respect of an aerodrome, has been granted or issued or which has effect under this Order shall, in the absence of provision to the contrary in the document, render the document invalid during the continuance of the breach.

(5) The provisions of article 93 shall have effect, in place of the provisions of this article, in relation to permits to which that article applies.

(6) Notwithstanding paragraph (1), a flight manual, performance schedule or other document incorporated by reference in a certificate of airworthiness may be varied on sufficient ground being shown to the satisfaction of the CAA, whether or not after due inquiry.



128. —(1) The CAA shall grant a licence in respect of any aerodrome in the United Kingdom if it is satisfied that—

(a) the applicant is competent, having regard to his previous conduct and experience, his equipment, organisation, staffing, maintenance and other arrangements, to secure that the aerodrome and the airspace within which its visual traffic pattern is normally contained are safe for use by aircraft;

(b) the aerodrome is safe for use by aircraft, having regard in particular to the physical characteristics of the aerodrome and of its surroundings; and

(c) the aerodrome manual submitted under paragraph (6) is adequate.

(2) If the applicant so requests or if the CAA considers that an aerodrome should be available for the take-off or landing of aircraft to all persons on equal terms and conditions, it may grant a licence (in this Order referred to as "a licence for public use") which in addition to any other conditions which it may impose shall be subject to the condition that the aerodrome shall at all times when it is available for the take-off or landing of aircraft be so available to all persons on equal terms and conditions.

(3) The holder of an aerodrome licence granted under this Order (in this article called "an aerodrome licence holder") shall—

(a) furnish to any person on request information concerning the terms of the licence; and

(b) in the case of a licence for public use, cause to be notified the times during which the aerodrome will be available for the take-off or landing of aircraft engaged on flights for the purpose of the public transport of passengers or instruction in flying.

(4) An aerodrome licence holder shall not contravene or cause or permit to be contravened any condition of the aerodrome licence at any time in relation to an aircraft flying on a flight specified in article 126(2), but the licence shall not cease to be valid by reason only of such a contravention.

(5) An aerodrome licence holder shall take all reasonable steps to secure that the aerodrome and the airspace within which its visual traffic pattern is normally contained are safe at all times for use by aircraft.

(6) Upon making an application for an aerodrome licence the applicant shall submit to the CAA an aerodrome manual for that aerodrome.

(7) An aerodrome manual required under this article shall contain all

such information and instructions as may be necessary to enable the aerodrome operating staff to perform their duties as such including, in particular, information and instructions relating to the matters specified in Schedule 13.

(8) Every aerodrome licence holder shall—

(a) furnish to the CAA any amendments or additions to the aerodrome manual before or immediately after they come into effect;

(b) without prejudice to sub-paragraph (a), make such amendments or additions to the aerodrome manual as the CAA may require for the purpose of ensuring the safe operation of aircraft at the aerodrome or the safety of air navigation; and

(c) maintain the aerodrome manual and make such amendments as may be necessary for the purposes of keeping its contents up to date.

(9) Every aerodrome licence holder shall make available to each member of the aerodrome operating staff a copy of the aerodrome manual, or a copy of every part of the aerodrome manual which is relevant to his duties and shall ensure that each such copy is kept up to date.

(10) Every aerodrome licence holder shall take all reasonable steps to secure that each member of the aerodrome operating staff—

(a) is aware of the contents of every part of the aerodrome manual which is relevant to his duties as such; and

(b) undertakes his duties as such in conformity with the relevant provisions of the manual.

(11) For the purposes of this article—

(a) "aerodrome operating staff" means all persons, whether or not the aerodrome licence holder and whether or not employed by the aerodrome licence holder, whose duties are concerned either with ensuring that the aerodrome and airspace within which its visual traffic pattern is normally contained are safe for use by aircraft, or whose duties require them to have access to the aerodrome manoeuvring area or apron;

(b) "visual traffic pattern" means the aerodrome traffic zone of the aerodrome, or, in the case of an aerodrome which is not notified for the purposes of rule 39 of the

Rules of the Air Regulations 1996[18], the airspace which would comprise the aerodrome traffic zone of the aerodrome if it were so notified.

145. —(1) Subject to paragraph (2), the CAA and any authorised person shall have the right of access at all reasonable times—

(a) to any aerodrome for the purpose of inspecting the aerodrome;

(b) to any aerodrome for the purpose of inspecting any aircraft on the aerodrome or any document which it or he has power to demand under this Order, or for the purpose of detaining any aircraft under the provisions of this Order;

(c) to any place where an aircraft has landed, for the purpose of inspecting the aircraft or any document which it or he has power to demand under this Order and for the purpose of detaining the aircraft under the provisions of this Order; and

(d) to any building or place from which an air traffic control service is being provided or where any air traffic service equipment requiring approval under article 124 is situated for the purpose of inspecting—

(i) any equipment used or intended to be used in connection with the provision of a service to an aircraft in flight or on the ground; or

(ii) any document or record which it or he has power to demand under this Order.

(2) Access to a Government aerodrome shall only be obtained with the permission of the person in charge of the aerodrome.