

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 17 August 2015

**Public Authority:** Civil Aviation Authority  
**Address:** CAA House  
45-59 Kingsway  
London  
WC2B 6TE

#### **Decision (including any steps ordered)**

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1. The complainant has requested a copy of the National Air Traffic Services Ltd ("NATS") submission to the Civil Aviation Authority ("the CAA") on the NATS proposed departure route change at Stansted Airport.
2. The CAA identified information within the scope of the request but considered it exempt from disclosure on the basis of regulation 12(4)(d), 12(5)(c) and 12(5)(e) of the EIR.
3. The Commissioner's decision is that the regulation 12(4)(d) exception is engaged and the balance of the public interest favours withholding the information. He requires no steps to be taken.

#### **Request and response**

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4. On 9 February 2015, the complainant wrote to the Civil Aviation Authority ("CAA") and requested information in the following terms:  
*"Would it please be possible for us to have a copy of the NATS submission to the CAA concerning the NATS Departure Route Proposal at London Stansted Airport ("the Proposal")."*
5. The CAA responded on 17 February 2015. It explained that the request had been considered under the EIR and confirmed that it held an Airspace Change Proposal regarding departure routes at Stansted which was submitted by NATS and Stansted Airport Ltd ("STAL") as joint

sponsors. The CAA states this information was being withheld on the basis of regulation 12(4)(d) of the EIR – material in the course of completion, and regulations 12(5)(c) and 12(5)(e) – intellectual property rights and commercial confidentiality.

6. Following an internal review the CAA wrote to the complainant on 23 March 2015. As part of the review the CAA also considered that the regulation 12(5)(d) exception was engaged as disclosure of the requested information would adversely affect the confidentiality of proceedings. The CAA also maintained its position that the regulation 12(4)(d), 12(5)(c) and 12(5)(e) exceptions were engaged and the public interest favoured withholding the information.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 2 April 2015 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of his investigation to be to determine if any of the exceptions cited by the CAA are engaged and provide a basis for withholding the requested information.

### **Background**

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9. The CAA is responsible for monitoring and enforcing policy for the use of UK airspace as set out in the Civil Aviation Authority Direction 2001. Changes to the use of UK airspace can be proposed by anyone and decisions to permanently change the use of airspace are made by the CAA.
10. There is a formal process for proposals submitted to the CAA which is set out in the CAA's Airspace Change Process<sup>1</sup> and contains seven stages. Before stage four the proposer will be formulating options and at stage four will consult on the option for change it is pursuing.
11. Stage five follows the consultation phase and requires the proposer to publish a consultation report and can submit a formal application to the CAA about the change it has consulted on. When the CAA receives the Airspace Change Proposal ("ACP") it considers whether it has all the

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<sup>1</sup> [www.caa.co.uk/cap725](http://www.caa.co.uk/cap725)

information it needs in order to make its decision. The CAA can then ask for the further information it needs and a new version of the ACP will be sent to the CAA. The final version of the ACP is the one that the final decision is made on.

## **Reasons for decision**

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### **Regulation 12(4)(d) – material still in the course of completion**

12. Regulation 12(4)(d) states that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
13. Regulation 12(4)(d) is subject to the public interest. Therefore, in addition to demonstrating that the withheld information falls within the definition of the exception, the public authority must also demonstrate that, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
14. The CAA has applied this exception to all of the withheld information – the NATS submission to the CAA on proposed departure route changes at Stansted Airport and modelling data prepared by NATS as part of its submission. This information consists of the ACP Issue 2.0, appendices A and B, noise data diagrams, environmental benefits report and a spreadsheet of consultation responses received.
15. The CAA has confirmed it does hold an ACP from NATS and STAL as joint sponsors. The proposal includes a number of different documents and appendices. At the time of the request the version of the ACP the CAA had was Issue 2. Issue 1 had been received previously and Issue 2.1 was received after the date of the request.
16. The CAA considers that the ACP engaged the exception because it was submitted at the end of stage four of the process (the consultation stage) and at the time of the request was going through stage five in that it was being considered by the CAA to make a decision in accordance with its statutory duties.

17. The Commissioner has issued guidance on this exception<sup>2</sup>. This states that:

*"The fact that the exception refers to both material in the course of completion and unfinished documents implies that these terms are not necessarily synonymous. While a particular document may itself be finished, it may be part of material which is still in the course of completion."*

18. The CAA has accepted that the ACP is a complete document but argues it is information held as part of a broader, ongoing and incomplete process. The Commissioner must therefore consider if the seven stage formal Airspace Change Process is an ongoing process and if so whether the ACP is covered by this process and engages regulation 12(4)(d).
19. The Commissioner has considered his guidance on this issue and the examples given but does not consider this fits squarely with this case as the Airspace Change Process is designed to be an iterative process. It is possible that an ACP could be submitted to the CAA and accepted as it stands with no modifications required but the Airspace Change Process is intended to be iterative in that if a proposal is not accepted on first submission the CAA can suggest changes. The Change Sponsor will then make these changes before resubmitting the ACP to the CAA and this process can be repeated several times.
20. It is clear in this case that the CAA's process of recommending changes was repeated on several occasions as the version of the ACP held at the time of the request was version 2.0 and a version 2.1 was created at a later date. This supports the CAA's view that the ACP, in particular the version held at the time of the request, was an evolving document in that it was the latest version of a document that had previously been modified and may require further revisions.
21. The Commissioner would accept that the document, albeit complete, does relate to an ongoing process. It is clear that although the CAA was not responsible for making revisions to the ACP the document was being actively worked on by the CAA in that it had a decisive say over how it should be revised and if its recommendations were not followed the proposal would not be accepted.

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[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Environmental\\_info\\_reg/Detailed\\_specialist\\_guides/eir\\_material\\_in\\_the\\_course\\_of\\_completion.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Detailed_specialist_guides/eir_material_in_the_course_of_completion.ashx)

22. The Commissioner therefore accepts that the version of the ACP held by the CAA at the time of the request does engage the regulation 12(4)(d) exception as it is material still in the course of completion in that it is part of an ongoing iterative process. The Commissioner has now gone on to consider the public interest test.

*Public interest arguments in favour of disclosure*

23. The complainant has argued that the ACP which is the subject of this request would have an adverse impact in terms of noise pollution on the communities living under the proposed new flight path. The complainant consider this proposed change of departure route from Stansted Airport impact significantly on the lives of affected residents and it is therefore in the public interest for information on the ACP to be disclosed.
24. The complainant has highlighted the emphasis on disclosure of environmental information in the EIR. The CAA has also recognised this and understands that environmental information carries a higher public interest in disclosure than other information. The CAA acknowledges that disclosure of environmental information promotes transparency and accountability in the decision making process of public authorities and can allow the public to be better informed and contribute to debates on issues.
25. With regard to the specific information that is being withheld in this case; the CAA has stated that it understands the structure of airspace and changes to this can impact on the location and amount of aircraft noise on the ground. Disclosure of information which relates to this issue can assist in allowing campaign groups and individual members of the public to understand how potential changes to departure routes will affect them and to be involved in the decision making process.

*Public interest arguments in favour of maintaining the exception*

26. The CAA has argued that disclosing versions of the ACP would not be in the public interest. The CAA has stated that ACPs are assessed under an established process which reflects the CAA's statutory duties. The process is designed to ensure that any proposal is consulted upon and that consultation responses are taken into account by the CAA when it evaluates the proposal and makes its decision as to whether changes to the airspace structure should be made. The CAA considers it needs space to consider all the information collected and presented to it and disclosure of the version of the ACP held at the time of the request would compromise the ability of the CAA to makes its decision.

*Balance of the public interest arguments*

27. In considering the balance of the public interest arguments the Commissioner has focused on two main issues: the timing of the request and the content of the information itself. The timing of the request is particularly important when considering the argument that disclosure would invade the 'safe space' needed for the CAA to consider all the information and make a decision.
28. The Commissioner accepts the merit of such an argument when it relates to an ongoing process which has not yet reached its conclusions. However, he considers the need for a safe space only remains strong when the decision making process is ongoing or prior to implementation of any policy process. This is because once a process has reached its conclusion there is little or no need to protect the deliberation of 'live' issues. In this case the CAA has explained that at the time of the request it was at stage five of the seven stage Airspace Change Process.
29. This stage is intended to bring all the information together, including consultation responses which would have been gathered during the public consultation on the ACP as part of stage four. At stage five the CAA are at the decision making phase and have argued that it is important it has the time to consider all the information and data that has been collected and presented to it. The CAA argues that disclosure of the ACP at this stage would compromise its ability to make its decision if it were also dealing with further information and dialogue from third parties on the proposal.
30. The Commissioner accepts that at the time the request was made the CAA was at an important stage in the Airspace Change Process and was in the process of making a decision on the ACP. As such he recognises this was still a 'live' issue and there was still a need for a safe space to allow the CAA to consider all the information that had been collected away from the pressures of public scrutiny it would no doubt have been under if the information were to be disclosed at this stage.
31. To add weight to this argument the Commissioner has also taken into account the fact that the Airspace Change Process involves a consultation stage (stage four) to allow a proposer to gather information from campaign groups and individuals on the ACP. This stage is in place as recognition of the importance of keeping these interested parties informed and to allow them to contribute to the process. The Commissioner therefore considers there is a willingness to engage with and keep the public informed about ACPs it receives within the boundaries of the Airspace Change Process. The CAA has also stressed its intentions to publish the ACP alongside its decision letter on its website when the decision has been promulgated.

32. Taking this into account the Commissioner accepts the safe space argument due to the importance of stage five of the process and the need for the CAA to be able to conduct this stage without undue influence from third parties. The timing of the request is therefore of significant importance in this case and the Commissioner considers there is considerable weight to the safe space arguments.
33. Balanced against this the Commissioner recognises the central arguments in favour of disclosing the information relate to transparency and accountability and the importance of being able to understand the process by which a decision is made and be able to contribute to this process.
34. The ACP in this case if it were to be agreed would impact on some local communities and has generated interest from campaign groups and residents. For this reason, there is an argument that any information on this subject matter that would assist in understanding how decisions are made and allow for increased contribution to the process would be in the public interest.
35. However, the Commissioner notes that there is a clearly defined consultation stage to keep the public informed and gather their opinions and there is a willingness to publish the ACP once the decision has been finalised. During the decision making stage of the Airspace Change Process it is clear that no full version of the ACP has been published for public scrutiny and the Commissioner has to consider whether the full disclosure of this document, when it is still possible it will be subject to revisions, would allow for greater contributions from the public.
36. The Commissioner has considered the content of the ACP and accepts the general point that there is value in understanding how a final decision is arrived at and there may be some merit in seeing the various iterations of the ACP to see how the process works. However, the ACP is a technical document at a late stage of the review process. There have been some revisions of the document prior to version 2 which is the version held at the time of this request but it is not clear that disclosing versions other than the final one (which the CAA has stated a willingness to publish) would assist the public in scrutinising the evidence base and providing a narrative of how any why revisions were made, particularly at such a late and crucial stage in the process.
37. The Commissioner does not consider there are persuasive arguments for disclosure as the ACP will be unlikely to inform debate beyond the consultation that has already taken place. The detail of the document is unlikely to add anything further as the public consultation has already provided details of the main points of the proposal. Disclosing the details of the proposal at such a late stage in the process when it is likely

further revisions will be made before a final version is published would allow for greater scrutiny of the process but would be likely to have a significant impact on the safe space due to the timing of the request and the stage of the Airspace Change Process the proposal was at.

38. The Commissioner is aware there is a presumption in favour of disclosure in the EIR but the arguments for disclosing the information have not been afforded much weight in this case, conversely the arguments for withholding the information are compelling and as such he considers they outweigh those in favour of disclosure.
39. The Commissioner has therefore concluded that the CAA has correctly withheld the information and he requires no steps to be taken.



## Right of appeal

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40. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed** .....

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**Cheshire**  
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