

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 November 2019

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

Decision (including any steps ordered)

1. The complainant has requested information about the Rochester airfield development. The Civil Aviation Authority (CAA) refused to provide the requested information, relying on section 44(1)(a) of FOIA (prohibitions on disclosure) in order to do so. In particular the CAA cited the statutory prohibition on disclosure created by section 23 of the Civil Aviation Act 1982.
2. The Commissioner's decision is that the CAA has correctly applied section 44(1)(a) and the Commissioner does not require the public authority to take any steps.

Request and response

3. On 9 April 2019 the complainant made a request for information under the FOIA:

'Rochester Airfield Kent.

Please provide a copy of the audit report or relevant part of, that confirms the date the two helipad constructions are reported and approved by the safety regulator the CAA. This would be sometime around 2005 onwards.'

4. On 9 May 2019 the CAA responded with some information:

'Background

The grant of an aerodrome licence is governed by Article 212 of the Air Navigation Order 2016 (ANO), which requires the CAA to grant a licence in respect of any aerodrome in the United Kingdom if it is satisfied that

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

The purpose of audits carried out by the CAA is to check that the holder of the licence continues to meet the requirements to hold that licence. The current process for CAA approval of changes to infrastructure at an aerodrome is described in CAP791 (www.caa.co.uk/cap791). Such an approval would not be granted as part of the audit process.

Audit reports

As audits are carried out to check that the holder of the licence continues to meet the requirements of Article 212 of the ANO, audit reports consist of information provided to the CAA during the audit process which is, therefore, provided to the CAA pursuant to Article 212 of the ANO.

Under Section 23 of the Civil Aviation Act 1982, information which relates to a particular individual or organisation, and has been supplied to the CAA pursuant to an Air Navigation Order, is prohibited from disclosure. Section 44(1)(a) of the FOIA provides that information is exempt if its disclosure is prohibited by, or under, any enactment, and Section 23 of the Civil Aviation Act 1982 is such a statutory prohibition. Audit reports are therefore exempt from disclosure under FOIA.'

5. On 13 May 2019 the complainant requested a review of the decision, which is summarised here:

'the CAA were not aware of infrastructure change by unauthorised construction of two helipads so did not manage this to ensure public safety was not compromised...

infrastructure changes must be approved by the regulator and relevant LPA prior to implementing any alterations that potentially could affect risk to public safety...

*The CAA had no prior knowledge of this situation and only discovered these by visual inspection **not information** supplied by any individual or the organization who committed this offense.*

Therefore Section 23 of the Civil Aviation Act 1982 is not applicable...'

6. On 7 June 2019 the CAA provided the outcome of the internal review upholding the original position to cite section 44(1)(a) of the FOIA.

Scope of the case

7. On 25 June 2019 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He argued that:

'The information requested is in no way sensitive or any treat [sic] to security, in fact is required in the public interest there is no plausible reason to not release this. This information is important to protection and safeguarding against the increased risk to public safety from further ambitious aviation expansion plans. The airfield operator before constructing two helipads, did not comply with the terms of CAA license or statutory law. The CAA were not asked to approve major airfield infrastructure changes complaint with the conditions of licensing.'

8. He provided further supporting arguments: *'the LPA must investigate and authorise any development that may adversely affect noise or public safety. The CAA are not empowered or qualified to assume this role...approving the unlawfully constructed helipads the CAA did incorrectly do this and authorised helicopter services that if any planning application had correctly been submitted may have for any failure to meet the requirements have been refused. This could possibly compromise public safety and resident amenities.'*
9. The Commissioner considers that the issue which has to be determined is whether, in the circumstances of this case, the CAA is entitled to rely on section 44(1)(a) to refuse to provide the requested information.

Reasons for decision

Section 44

10. Section 44 of the FOIA states that:
 - (1) 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.
11. The CAA cited section 44(1)(a) of the FOIA. It explained to the complainant (in its response of 9 May 2019, see above paragraph 4) and to the Commissioner that *'a change to infrastructure at an aerodrome would not be granted as part of the audit process.'*
12. The complainant also contacted the Commissioner by telephone on 23 September to clarify that he wanted the date of the audit as the helipads had been constructed without prior planning permission.
13. Nevertheless, even though the Commissioner understands from the CAA that the requested audit reports would not contain the specific

information sought by the complainant (*'that confirms the date the two helipad constructions are reported and approved'*) the Commissioner must consider whether the audit reports can be withheld under section 44.

14. The CAA cited section 23 of the Civil Aviation Act 1982 as the relevant statutory bar on disclosure:

'23 Disclosure of information.

(1) Subject to subsections (4) and (4A) 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 ...

(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; ...'

(see <https://www.legislation.gov.uk/ukpga/1982/16/section/23>)

15. The CAA stated that the *'grant of an aerodrome licence is governed by Article 212 of the Air Navigation Order 2016 (ANO)...'* and the purpose of the audits carried out by CAA *'is to check that the holder of the licence continues to meet the requirements to hold that licence'* (see above paragraph 4).
16. Therefore, the information in the audit reports consist of information provided to the CAA during the audit process pursuant to Article 212 of the ANO:

'Licensing of aerodromes

212.—(1) The CAA must grant a licence ("a national aerodrome licence") for any non-EASA aerodrome in the United Kingdom if it is satisfied that—

(a)the applicant is competent, having regard to its previous conduct and experience, and its 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;...'

(see <http://www.legislation.gov.uk/uksi/2016/765/article/212/made>)

17. In this case, it is clear to the Commissioner that information provided as part of the audit process is covered by section 23 of the Civil Aviation Act 1982 and the only 'information gateway' is to the Secretary of State. Following her guidance (<https://ico.org.uk/media/for-organisations/documents/1186/section-44-prohibitions-on-disclosure.pdf> paragraph 30) the Commissioner is satisfied that this gateway allows disclosure to the Secretary of State and does not allow disclosure of the confidential information under FOIA.
18. In view of the above, the Commissioner is satisfied that the withheld information provided to the CAA by the holders of the licences at the aerodrome during the audit process is confidential information for the purposes of Article 212 of the ANO and such information is subject to the statutory prohibition on disclosure of information contained in section 23(1) of the Civil Aviation Act 1982.
19. This is in line with the Commissioner's previous decision notice FS50205237 (see https://ico.org.uk/media/482286/FS_50205237.pdf) where she upheld the CAA's decision to cite section 23 of the Civil Aviation Act 1982 as the relevant statutory bar on disclosure of audit reports.
20. In conclusion, the Commissioner's decision is that the CAA has correctly applied section 44(1)(a) to withhold all the requested information in this case, through the provisions of section 23 of the Civil Aviation Act 1982. As section 44 is an absolute exemption there is no need to consider the public interest test.

Right of appeal

21. 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: 0116 249 4253

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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
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Wycliffe House
Water Lane
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