

# Decision Notice 160/2021

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## Staff views on the Remote Tower Centre, Sweden

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**Applicant: The Applicant**

**Public authority: Highlands and Islands Airports Ltd**

**Case Ref: 202001515**



Scottish Information  
Commissioner

## Summary

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HIAL was asked for the views submitted by its staff following a visit to the Remote Tower Centre in Sweden. HIAL withheld this information because it believed, amongst other things, that disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views. The Commissioner investigated and found that HIAL complied with FOISA in responding to the request.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 30(b)(ii) (Prejudice to effective conduct of public affairs)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 1 October 2020, the Applicant made a request for information to Highlands and Islands Airports Ltd (HIAL). The information requested was as follows.  
  
*As part of the HIAL ATMS programme, a number of ATCOs, ATSAs and ATSOA's were sent to visit the Remote Tower Centre in Sweden. Upon their return they were asked to submit their views of what they saw to Corporate Management.*  
  
*Would you please submit copies of their views to me by email. I accept that you will have to redact their names and locations for Data Protection purposes.*
2. In terms of background, the visit was to the Remote Tower Centre (RTC) in Sundsvall, Sweden. The Remote Digital Tower Centre in Sundsvall was the first fully certified and operational Digital Tower in the world<sup>1</sup>. ATMS is the HIAL Air Traffic Management Strategy; ATCOs are Air Traffic Controllers; ATSAs are Air Traffic Services Assistant; and ATSOA means Air Traffic Services Operational Assistant.
3. HIAL responded on 2 November 2020. It withheld information under section 38(1)(b) of FOISA because it believed the information was personal data and disclosure would, in this case, breach one or more of the data protection principles. HIAL also refused the request in terms of section 30(b)(ii) of FOISA, on the basis that disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. HIAL decided that disclosure would be highly likely to deter people from providing this type of information in the future, which would significantly and detrimentally affect HIAL's ability to manage this project.
4. On 4 November 2020, the Applicant wrote to HIAL requesting a review of its decision on the basis that, having studied the relevant sections of FOISA, he could see no grounds to support HIAL's decision.
5. HIAL notified the Applicant of the outcome of its review on 1 December 2020. HIAL considered whether information could have been provided with the names redacted, but

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<sup>1</sup> <https://www.hial.co.uk/downloads/file/335/air-traffic-management-2030-strategy-scoping-study-december-2017>

decided that the information - views, feedback and opinions of individuals – was personal data and that HIAL must balance the need to publish personal data with the data subjects' rights to privacy. While there was a significant public interest in the ATMS project, HIAL said that it could:

*...confirm that the vast majority of information relates to issues that have already been debated in the public domain. These include safety, IT connectivity, job security, technological advancements and a sustainable air traffic management service. Furthermore, while [HIAL has] established that there was no explicit agreement that the responses would not be published, there was also no expectation the submissions would be put in the public domain and [HIAL is] not persuaded that in this case it would be reasonable to do so.*

6. HIAL concluded that there was no lawful basis of legitimate interests and the personal data could not lawfully be disclosed. HIAL decided that the information could not be disclosed with the names of those commenting redacted as the information could not be anonymised. In this context, HIAL referred to having reviewed the Code of Practice on Anonymisation issued by the UK Information Commissioner ("the ICO"). Given the way in which the views have been provided, together with the style and content of the submissions (for example, including references to people's current role, location and more general experience), HIAL did not think it could anonymise the information.
7. HIAL also upheld its reliance on section 30(b)(ii) of FOISA. Given the likely consequences of the project, HIAL stated that it was highly likely that attributed project-related views will be considered sensitive, not only by those that wrote them, but by others affected in some way. While many of the views were voicing opinions that were already in the public domain, to attribute those comments was unjustified and would have a significant and detrimental effect on HIAL's relationship with those affected by the project. Although there was a significant public interest in the project, HIAL believed that the public interest favoured withholding the information.
8. On 15 December 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of HIAL's review because he did not agree with the reasons provided for refusing the information. He did not agree with either exemption cited by HIAL and believed that the public interest favoured disclosure of the information.

## Investigation

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9. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
10. On 15 January 2021, HIAL was notified in writing that the Applicant had made a valid application. HIAL was asked to send the Commissioner the information withheld from the Applicant. HIAL provided the information and the case was allocated to an investigating officer.
11. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. HIAL was invited to comment on this application and to answer specific questions. These related to why the information was exempt in terms of the cited sections (sections 30(b)(ii) and 38(1)(b) of FOISA).
12. The Applicant was also invited to comment, which he did.

## Commissioner's analysis and findings

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13. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and HIAL. He is satisfied that no matter of relevance has been overlooked.

### **Section 30(b)(ii) - Prejudice to the effective conduct of public affairs**

14. HIAL relied on the exemption in section 30(b)(ii) to withhold the information. Section 30(b)(ii) of FOISA provides that information is exempt information if its disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
15. In applying the exemption in section 30(b)(ii), the chief consideration is not whether the information constitutes opinion or views, but whether disclosure of that information would, or would be likely to, inhibit substantially the free and frank exchange of views. The inhibition must be substantial and therefore of real and demonstrable significance.
16. Each request must be considered on a case-by-case basis, considering the effect (or likely effect) of disclosure of that particular information on the future exchange of views. The content of the withheld information will require to be considered, taking into account factors such as its nature, subject matter, manner of expression, and also whether the timing of disclosure should have any bearing. As with other exemptions involving a similar test, the Commissioner expects authorities to demonstrate a real risk or likelihood that actual inhibition will occur at some time in the near future, not simply a remote or hypothetical possibility.

### *HIAL's submissions*

17. HIAL confirmed that it believed section 30(b)(ii) applied for the reasons given in its review to the Applicant.
18. It explained that the ATMS project was essential to allow HIAL to maintain the necessary standards of resilience and safety as well as required levels of operation. The project would also have a potentially substantial impact on affected members of staff, on their families and other dependents, and on their local communities as teams and team members. The project was ongoing and would not be concluded for a number of years.
19. HIAL stated that it has always taken the view that it must be as open and transparent as possible about the project and has proactively published all the major reports relating to the project. In each case, HIAL had protected information relating to individuals in a personal context to ensure they felt they could continue to contribute fully to discussions and negotiations. HIAL commented that:  
  
*[it] could not contemplate a situation where team members were open and candid in their views only to find very private comments in the public domain.*
20. HIAL noted that the project is perceived by some to be highly contentious, and also stated that it is currently the subject of industrial action.
21. HIAL believed that in light of this context, it was essential that it maintained trusted communication channels with staff and that those affected feel that they are able to express their views and opinions to HIAL. This is required to enable HIAL to continue to support their staff in the best way possible, as well as effectively making use of highly specialised staff expertise during a significant programme of change. HIAL believed that it was highly likely

that staff would express views in a different way in an environment they knew to be an open forum. HIAL commented:

*There is no doubt that publishing these views will put some staff in a very difficult position and substantially inhibit and deter staff from expressing views in a similar situation at any time in the future.*

22. HIAL was asked by the Commissioner if any guidance had been given to the contributors whose views were recorded about what they could expect HIAL to do in terms of processing or publishing the information. HIAL replied that there was no guidance for that specific collection of data, although there has been a policy from the outset to ensure that no personal information relating to staff would be published unless it was clearly required for professional and work-based reasons. For example, HIAL said that it had redacted names from those attending workshops and ensured any findings could not be attributed, as well as anonymising information about pay published for the islands impact assessments.
23. HIAL was asked if the content of the withheld information was ever collated, or summarised, or otherwise circulated or published such that any of the content was made available. HIAL replied that this had not been done: access to the views had been strictly controlled and was only accessible to the project team and those dealing with this application to the Commissioner.
24. HIAL reiterated the conclusion it had come to at review, i.e. that simply redacting names from would not stop people from being identified from the information: persons with experience in this field and a good working knowledge of some of those that contributed viewpoints could identify who gave each view. Similarly, current employees could use their knowledge to deduce or surmise the majority, if not all, of who the views and opinions belong to. There were other factors that would allow identities to be deduced such as the way in which people form and communicate their written opinion.

#### *The Applicant's submissions*

25. The Applicant was invited to put forward arguments for his case.
26. The Applicant said that HIAL have been able to exercise control over what its staff say publicly regarding the proposed use of RTC Towers at HIAL airports. He said that "company policy forbids staff from commenting via the press or social media unless permission is given by management" and that requests by Local and Community councils to talk to Air Traffic staff directly have been refused by HIAL. (This point was not put to HIAL for its comment).
27. The Applicant suggested that staff professional assessment as to whether these systems would be suitable for use at HIAL's airports were dismissed as mere opinion by HIAL management. He also suggested that while HIAL management publicly state that its plans will result in a method of Air Traffic Control that is no less safe or reliable than current methods, the assessments on safety and reliability given to HIAL by its qualified, professional Air Traffic staff are not available publicly. In order for interested parties to form a balanced opinion, both sides of an argument should be available. At present that is not the case. The requested information would enable interested parties to gain information that is relevant to forming a balanced opinion.
28. The Applicant commented that if the requested information were suitably redacted regarding names and locations of staff, then he did not believe it would be possible to identify any individual. He did not, however, accept HIAL's argument that publication would discourage

HIAL's staff from making their opinions known within the company as HIAL was on public record saying that there have been robust conversations with staff internally.

*The Commissioner's views on section 30(b)(ii)*

29. The Commissioner has considered all the submissions made by HIAL and the Applicant, along with the withheld information under consideration. He has also considered whether the information could be redacted to avoid identifying the person who gave each opinion.
30. First, the Commissioner accepts HIAL's arguments that the individual comments are likely to be linked to the person who gave these comments. As stated in many previous decisions, in considering the effects of disclosure, it is relevant to be aware that disclosing information under FOISA has the effect of putting the information in the public domain. The information contains many factors – for example, specific references to sites or views and so on – that would allow some persons to identify who was making each comment. HIAL is correct to point out that those aware of working practices in HIAL, or employed by HIAL, may have sufficient background knowledge to identify those commenting, and linking person to comment.
31. Second, the Commissioner accepts that there will have been a reasonable expectation among some (if not all) of those commenting that the comments were supplied only to HIAL, and not for public disclosure. The Commissioner bases this view on the content of the comments; that other published information by HIAL does redact personal identities; and that the circumstances and the fact that there are differing views in the public domain on the project, suggesting a degree of sensitivity about the project.
32. The Commissioner also accepts that there is real scope for harm as a result of disclosure of the information. He is satisfied that disclosure (at the time of the Applicant's request or review) of the views expressed would have substantially inhibited HIAL's ability to obtain a fully informed view. This would clearly have had a negative impact on the ability of the HIAL to ensure that the views were represented. The Commissioner accepts that it is likely that there are those commenting who may not have expressed themselves in the way they did had they thought the view would be publicly disclosed, and also linked to them. This is not to say that all those commenting would have such a view, but in the circumstances the Commissioner is satisfied that disclosure would make it significantly less likely that individual employees would be willing to express their views freely and frankly in future projects of this kind. In other words, it is likely that the free and frank exchange of views (for the purposes of deliberation) would be inhibited substantially by disclosure.
33. As such, he is satisfied that the information under consideration here was exempt from disclosure in terms of section 30(b)(ii) of FOISA. He will now go on to consider the application of the public interest test in section 2(1)(b) of FOISA.

*Public interest test*

34. The "public interest" is not defined in FOISA, but has been described as "something which is of serious concern and benefit to the public", not merely something of individual interest. The public interest does not mean "of interest to the public" but "in the interest of the public", i.e. disclosure must serve the interests of the public.

*HIAL's view on the public interest*

35. HIAL commented that there is a significant public interest in the ATMS project. When considering where the balance of public interest lies in relation to disclosure of this specific information, HIAL considered information already in the public domain and to what extent the views would further inform and contribute to that debate.
36. While accepting that there is a significant public interest in the project, and that within the relevant staff communities the views would be of interest (rather than in the public interest), the review concluded that the public interest in this specific case is in withholding the information as the information would add very little to the public debate.
37. For HIAL to disclose comments that were in any way attributable to an individual would be extremely detrimental to HIAL's ability to appropriately manage the project or maintain trust and confidence of its teams in an industry where safety is the foundation stone and trust in reporting confidentially is absolute.

*The Applicant's view on the public interest*

38. The Applicant was invited to put forward arguments for his case. He referred to Petition PE1804 to the Scottish Parliament Public Petitions Committee<sup>2</sup>. The aim of the Petition is to halt the HIAL Air Traffic Management Strategy. Remote ATC Towers are a part of that strategy. The Applicant said that there has been widespread interest throughout the Highlands & Islands regarding the HIAL strategy. He stated that "Cross party opposition from MPs, MSPs, Local and Community councils has been reported in local and national media".
39. The Applicant suggested that staff professional assessment as to whether these systems would be suitable for use at HIAL's airports were dismissed as mere opinion by HIAL management. He also suggested that while HIAL management publicly state that its plans will result in a method of ATC that is no less safe or reliable than current methods, the assessments on safety and reliability given to HIAL by its qualified, professional Air Traffic staff are not available publicly.
40. In order for interested parties to form a balanced opinion both sides of an argument should be available. At present that is not the case. The requested information would enable interested parties to gain information that is relevant to forming a balanced opinion.

*The Commissioner's conclusions on the public interest*

41. The Commissioner has considered the public interest test arguments put forward by both HIAL and the Applicant. He accepts that both HIAL and the Applicant put forward arguments justifying a weighty public interest.
42. The Commissioner recognises the substantial public interest that exists in this project, both for the communities involved in the area but also in terms of establishing of a safe and efficient system of ATC. The Commissioner also accepts that disclosure of the information would promote accountability and transparency in relation to HIAL's actions.
43. The Commissioner does not agree with HIAL that the information would add very little to the public debate. He can appreciate why HIAL states this, given that there is other information currently in the public domain about the project. However, he thinks that such information -

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<sup>2</sup> [Halt Highlands & Islands Airports Ltd's Air Traffic Management Strategy - Petitions \(parliament.scot\)](https://www.parliament.scot/pe1804)



whatever the actual content - will be of interest as it reflects the views of those involved and with considerable expertise.

44. However, the Commissioner accepts that there is a greater public interest in ensuring that the views of staff about such an important project can be made fully and frankly, in circumstances where both parties have confidence that the content of these would not be disclosed, particularly regarding matters of sensitivity and while a project is ongoing. The Commissioner accepts that disclosure of this information, in light of the public scrutiny of the project and clear sensitivities, would have a detrimental impact on HIAL's ability to obtain the views of its staff. The Commissioner accepts that it is in the public interest that HIAL obtain the frank views of their professional staff on aspects of this project and, indeed, that HIAL staff are not inhibited from giving their free and frank views in the future.
45. The Commissioner notes that HIAL has published information about the project. Similarly, the Scottish Parliament's Citizen Participation and Public Petitions Committee is currently considering a petition related to the project. The petition was lodged in May 2020, before the date of this request. The written submissions (available in the public domain, some anonymous) indicate the public's interest. The information already in the public domain goes some way to fulfilling the public interest in this case.
46. On balance, therefore, the Commissioner finds that the public interest in disclosing the withheld information is outweighed by that in maintaining the exemption in section 30(b)(ii) of FOISA. Consequently, he is satisfied that HIAL was entitled to maintain the exemption.
47. Given that the Commissioner has accepted that all the information is exempt in terms of section 30(b), he will not go on to (and is not required to) consider whether section 38(1)(b) was correctly applied.

## **Decision**

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The Commissioner finds Highlands and Islands Airports Ltd complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

## **Appeal**

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Should either the Applicant or HIAL wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

**Margaret Keyse**  
**Head of Enforcement**

**8 October 2021**



## Appendix 1: Relevant statutory provisions

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### Freedom of Information (Scotland) Act 2002

#### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

#### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

#### 30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

- (b) would, or would be likely to, inhibit substantially-

...

- (ii) the free and frank exchange of views for the purposes of deliberation; or

...

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