

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 19 June 2007

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

Summary

Under the Freedom of Information Act 2000 (the "FOIA") the complainant requested copies of Airprox, or similar, reports in relation to three incidents involving aircraft. By way of background, the public authority defines an Airprox incident as a situation when, in the opinion of a pilot or a controller, the distance between aircraft as well as their relative positions and speed was such that the safety of the aircraft involved was or may have been compromised. The public authority provided some summary information on two of the incidents, and informed the complainant that it did not hold any information in relation to the third incident. The public authority refused to provide copies of the actual reports, citing section 44 of the FOIA, and stating that section 23 of the Civil Aviation Act 1982 provided a statutory bar to disclosure. After considering the case the Commissioner upheld the decision of the public authority to withhold the information in question under section 44. Therefore the Commissioner does not require the public authority to take any further steps in relation to the complainant's request.

The Commissioner's Role

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 FOIA. This Notice sets out his decision.

The Request

2. The complainant has advised that on 10 September 2006 the following information was requested from the public authority in accordance with section 1 of the FOIA:

"I am seeking copies of any AIRPROX or similar reports for the following incidents:

1. 11 April 2003 22:21Z
A Captain and a First Officer of a Civilian a/c flying into Stanstead airport reported a very bright ball of fire which passed very quickly down the left side of the a/c.
2. 13 August 2005 17:11Z
A pilot of a civilian a/c reported a cylindrical object, 1 to 2 metres in length, coloured yellow. Flying 10 miles West of Gatwick at FL300.
3. 17 September 2005 15:58Z
A pilot reported one dark brown, military shaped object, moving fast at approx 300 feet above his a/c when he was at FL210.

I have looked for the relevant information at your website, <http://www.caa.co.uk> but was unable to find it there.

Please can you a) confirm whether or not you have received reports of these incidents, and b) if you have received such reports, provide me with copies of them together with the results of any follow-up investigation, and communication about them with the MoD.”

3. By way of background, the public authority defines an Airprox incident as a situation when, in the opinion of a pilot or a controller, the distance between aircraft as well as their relative positions and speed was such that the safety of the aircraft involved was or may have been compromised.
4. The public authority responded to the complainant in a letter dated 9 October 2006. It confirmed that it had received reports regarding the incidents on 11 April 2003 and the 13 August 2005, but that it had not received any report relating to the incident on 17 September 2005. In relation to the first two incidents it provided a summary of each of the events. The public authority also confirmed that there was no record of any direct communication with the Ministry of Defence relating to any of the incidents. However, the public authority also informed the complainant that it was unable to provide him with copies of the actual reports and cited section 44 of the FOIA, as it believed that disclosure of this information was prohibited under enactment. In this instance the public authority believed that section 23 of the Civil Aviation Act 1982 prohibited the disclosure of this information.
5. On 13 October 2006 the complainant emailed the public authority and noted that he was satisfied with the public authority’s response to the first part of his request. However, he asked for a review of the public authority’s decision to withhold the details of the reports relating to the incidents on 11 April 2003 and 13 August 2005. The complainant argued it should be possible to redact certain sections of the documents so that they could be disclosed without “compromising confidentiality or contravening regulations,” and that the withholding of entire documents was unnecessary and restrictive. He also argued that the summaries provided by the public authority missed out some basic information:

“I am led to question what other materially relevant information that must have been included in the original documents has been omitted. The provided records are also ambiguous in places. Taking the 11 Apr 2003 event as an example:

- Did the radar track referred to in the pretitle section in fact intersect the track of the aircraft?
- Is the unknown radar target referred to in the précis section considered to have been related somehow to the event?
- What were the met conditions at the time?
- How many witnesses to the event were there?
- If more than one, were all the witnesses aircrew, or did passengers also notice the event?
- If more than one, do the witness accounts largely agree on the details?

The original documentation could probably resolve all of these ambiguities and questions.”

6. The Commissioner notes that the complainant did not question the public authority's response in relation to correspondence with the Ministry of Defence. Therefore this Notice does not address that aspect of the request any further.
7. The public authority conducted a review and informed the complainant, in an email dated 8 November 2006, that the decision to withhold the information under section 44 of the Act was upheld. The email also responded to the points the complainant had made in reference to the incident on the 11 April 2003:

“I can disclose the following additional information to you in respect of these clarifications:-

- The CAA [Civil Aviation Authority] did not receive a copy of the radar track, only a report which referred to the radar track of the unknown object. In fact, the CAA did not request a copy of the radar track and it is not normal procedure to do so unless the CAA determines that further investigation is warranted. The information in the summary report regarding the radar track was taken from the air traffic controller's account of events. It would appear that, on receiving the pilot's report of another aircraft passing close down their left hand side, the controller attempted to correlate the picture on the radar screen with the event that was reported by the pilot.
- The met conditions at the time were not reported to the CAA, nor were they required to do this.
- The number of witnesses was not reported to the CAA, and there is no requirement to report any details of witnesses.”

The Investigation

Scope of the case

8. On 13 November 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the refusal was appropriate.
9. The complainant also raised concerns about the comments made by the public authority in the email of 8 November 2006 relating to his questions regarding the incident on 11 April 2003. He stated that these questions were not intended as clarification of his request, and were simply intended to illustrate the kind of details which may have been included in the withheld documents. Whilst the Commissioner acknowledges the complainant's concerns, he does not believe that the public authority's response to these questions in any way narrowed the way in which the authority was dealing with the overall request. The Commissioner believes that, whilst the complainant may not have been seeking a response to the questions he had listed, the public authority's actions in no way detracted from their overall response to his request, and as such the Commissioner has not gone on to address this point any further in this Notice.

Chronology

10. The Commissioner contacted the public authority on 10 January 2007 to notify it that he had received a complaint. In this letter he asked the public authority to provide him with copies of the withheld information, together with an explanation as to why the public authority believed that section 44 applied.
11. In a letter dated 13 February 2007 the public authority provided the information requested.
12. Following a telephone conversation on 19 February 2007 the Commissioner contacted the public authority again in order to seek further information.
13. The public authority provided this information by letter on 23 February 2007.
14. The Commissioner contacted the public authority again on 27 April 2007 to seek further information.
15. This information was provided by the public authority in a letter dated 10 May 2007.

Analysis

Exemptions

Section 44

16. Section 44(1)(a) of the FOIA provides an exemption from disclosure for information that is prohibited from disclosure by or under any enactment. In this case the public authority has claimed that section 23 of the Civil Aviation Act 1982 acts as a prohibition on disclosure.
17. Section 23(1) of the Civil Aviation Act 1982 prohibits the disclosure of certain information by the public authority or any of its employees, if that information, "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 any Air Navigation Order." This prohibition does not apply in certain circumstances, as set out in section 23(1)(a)-(d) and section 23(4).
18. The term 'person' may include companies as well as living individuals. Therefore this section would relate not just to the identity of the person reporting the occurrence but also to the company operating the aircraft.
19. The full text of section 23(1) and section 23(4) can be located in the Legal Annex at the end of this Notice.
20. The Commissioner has first considered whether the information in question falls under one of the categories of information to which this prohibition applies. In correspondence with the Commissioner the public authority has confirmed that in this instance it believes that the information in question was provided to it in pursuance with Article 142 of the Air Navigation Order 2005 (ANO 2005).
21. Article 142 of the ANO 2005 sets out obligations on certain people, including the operators or commanders of aircraft, to make a mandatory occurrence report in relation to, "occurrences which endanger or which, if not corrected, would endanger an aircraft, its occupants or any other person." The full text of Article 142 can be located in the Legal Annex at the end of this Notice.
22. After considering the information in question the Commissioner is satisfied that it was provided to the public authority in line with Article 142 of the ANO 2005. Therefore the Commissioner is satisfied that the information in question falls under one of the categories of information referred to in section 23(1) of the Civil Aviation Act 1982, and as such falls under the prohibition from disclosure.
23. The Commissioner has gone on to consider the particular circumstances set out in section 23(1)(a) to (d) and section 23(4), and whether any of these circumstances apply in this case.
24. Having considered the conditions laid out in section 23(1)(a)-(d) the Commissioner has noted that they do not impose a duty on the public authority to

- seek consent to disclose, or to release the information without consent. The conditions leave it within the discretion of the public authority as to whether to disclose the information which falls under this section. From the information provided to the Commissioner it is clear that the public authority has decided not to use its discretion in this case.
25. Section 23(1)(b) and (c) allows the public authority to disclose the information without the consent of the persons (within the meaning of persons in that section) involved, if the authority, “determines that the information may be disclosed.” There is nothing more in this section to say how the authority should make such a determination, nor is the authority required, by this section, to consider the public interest when making the determination. Therefore, the Commissioner has not sought to question the public authority’s use of its discretion in this regard.
 26. The Commissioner has also considered the conditions listed in section 23(4), and whether any of these conditions apply to the complainant.
 27. After considering section 23(4) (a)-(b), (d)-(f), the Commissioner believes that none of these conditions apply in this case.
 28. Section 23(4)(c) provides that information may be disclosed “to a person to whom the information in question is required to be disclosed by Regulations made in pursuance of section 7(2).”
 29. One such Regulation is Regulation 9 of the Civil Aviation Authority Regulations 1991. This requires the public authority to make available reports of reportable occurrences or a summary of such reports to an individual who is:
 - the operator or member of the flight crew of any aircraft;
 - engaged in the design, manufacture, repair, maintenance or overhaul of aircraft, or of parts or equipment therefor;
 - the aeronautical authority of a country other than the United Kingdom, or the representative in the United Kingdom of such an authority;
 - engaged in writing about civil aviation for publication in any newspaper, periodical, book or pamphlet;
 - engaged in preparing a programme about civil aviation for television or radio;
 - engaged in the study of civil aviation for any academic purpose; or
 - any other person whose functions include the furthering of the safety of civil aviation:
 30. However, the Commissioner notes that this Regulation also gives the public authority discretion: “the Authority shall not be required to make available any report or summary thereof to any person if it is satisfied that to do so will not further the safety of civil aviation.”
 31. As he has noted above, from the information provided to the Commissioner it is clear that the public authority has decided not to use its discretion in this case. In reaching a decision on this case the Commissioner has not sought to question the public authority’s use of its discretion.

32. Finally, the Commissioner also notes that Regulation 9 does not require the public authority to provide copies of the original reports, even if the requestor fulfils all of the necessary conditions.
33. The full text of Regulation 9 can be found in the Legal Annex attached at the end of this Notice.
34. Therefore, after considering the conditions laid out in section 23(1)(a)-(d) and section 23(4) the Commissioner is satisfied that none of them apply in this case, and as such, he is satisfied that section 23 of the Civil Aviation Act 1982 does provide a statutory bar on the disclosure of this information.
35. The Commissioner upholds the public authority's decision to apply the exemption listed at section 44 of the FOIA.
36. Section 44 is an absolute exemption, and is therefore not subject to a public interest test.
37. The full text of section 44 can be found in the Legal Annex at the end of this Notice.

The Decision

38. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the FOIA.

Steps Required

39. The Commissioner requires no steps to be taken.

Right of Appeal

40. 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@dca.gsi.gov.uk

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 19th day of June 2007

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Freedom of Information Act 2000 – Section 44

- (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.”
- (2) 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).

Civil Aviation Act 1982 – Section 23(1)

- (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.

Civil Aviation Act 1982 – Section 23(4)

- (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;
- (e) by the CAA for the purpose of complying with any duty imposed on it by section 85(1) 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 – Article 142

- (1) The objective of this article is to contribute to the improvement of air safety by ensuring that relevant information on safety is reported, collected, stored, protected and disseminated.
- (2) The sole objective of occurrence reporting is the prevention of accidents and incidents and not to attribute blame or liability.
- (3) This article shall apply to occurrences which endanger or which, if not corrected, would endanger an aircraft, its occupants or any other person.
- (4) Without prejudice to the generality of paragraph (3), a list of examples of these occurrences is set out in Annexes I and II (and their Appendices) of Directive 2003/42 of the European Parliament and of the Council of 13th June 2003 on occurrence reporting in civil aviation.
- (5) Every person listed below shall report to the CAA any event which constitutes an occurrence for the purposes of paragraph (3) and which comes to his attention in the exercise of his functions—
 - (a) the operator and the commander of a turbine-powered aircraft which has a certificate of airworthiness issued by the CAA;
 - (b) the operator and the commander of an aircraft operated under an air operator's certificate granted by the CAA;

- (c) a person who carries on the business of manufacturing a turbine-powered or a public transport aircraft, or any equipment or part thereof, in the United Kingdom;
- (d) a person who carries on the business of maintaining or modifying a turbine-powered aircraft, which has a certificate of airworthiness issued by the CAA, and a person who carries on the business of maintaining or modifying any equipment or part of such an aircraft;
- (e) a person who carries on the business of maintaining or modifying an aircraft, operated under an air operator's certificate granted by the CAA, and a person who carries on the business of maintaining or modifying any equipment or part of such an aircraft;
- (f) a person who signs an airworthiness review certificate, or a certificate of release to service in respect of a turbine-powered aircraft, which has a certificate of airworthiness issued by the CAA, and a person who signs an airworthiness review certificate or a certificate of release to service in respect of any equipment or part of such an aircraft;
- (g) a person who signs an airworthiness review certificate, or a certificate of release to service in respect of an aircraft, operated under an air operator's certificate granted by the CAA, and a person who signs an airworthiness review certificate or a certificate of release to service in respect of any equipment or part of such an aircraft;
- (h) a person who performs a function which requires him to be authorised by the CAA as an air traffic controller or as a flight information service officer;
- (i) a licensee and a manager of a licensed aerodrome or a manager of an airport to which Council Regulation (EEC) No. 2408/92 of 23rd July 1992 on access for Community air carriers to intra-Community air routes applies;
- (j) a person who performs a function in respect of the installation, modification, maintenance, repair, overhaul, flight-checking or inspection of air navigation facilities which are utilized by a person who provides an air traffic control service under an approval issued by the CAA;
- (k) a person who performs a function in respect of the ground-handling of aircraft, including fuelling, servicing, loadsheet preparation, loading, de-icing and towing at an airport to which Council Regulation (EEC) No. 2408/92 of 23rd July 1992 on access for Community air carriers to intra-Community air routes applies.

- (6) Reports of occurrences shall be made within such time, by such means and containing such information as may be prescribed and shall be presented in such form as the CAA may in any particular case approve.
- (7) A person listed in paragraph (5) shall make a report to the CAA within such time, by such means, and containing such information as the CAA may specify in a notice in writing served upon him, being information which is in his possession or control and which relates to an occurrence which has been reported by him or another person to the CAA in accordance with this article.
- (8) A person shall not make any report under this article if he knows or has reason to believe that the report is false in any particular.
- (9) The CAA shall put in place a mechanism to collect, evaluate, process and store occurrences reported in accordance with paragraphs (5) to (7).
- (10) The CAA shall store in its databases the reports which it has collected of occurrences, accidents and serious incidents.
- (11) The CAA shall make all relevant safety-related information stored in the databases mentioned in paragraph (10) available to the competent authorities of the other Member States and the Commission.
- (12) The CAA shall ensure that the databases referred to in paragraph (10) are compatible with the software developed by the European Commission for the purpose of implementing Directive 2003/42 of the European Parliament and of the Council of 13th June 2003 on occurrence reporting in civil aviation.
- (13) The CAA, having received an occurrence report, shall enter it into its databases and notify, whenever necessary: the competent authority of the Member State where the occurrence took place; where the aircraft is registered; where the aircraft was manufactured, and where the operator's air operator's certificate was granted.
- (14) The CAA shall provide any entity entrusted with regulating civil aviation safety or with investigating civil aviation accidents and incidents within the Community with access to information on occurrences collected and exchanged in accordance with paragraphs (9) to (13) to enable it to draw the safety lessons from the reported occurrences.
- (15) The CAA and the Chief Inspector of Air Accidents shall use any information received in accordance with the terms of this article solely for the purposes set out in this article.
- (16) The names or addresses of individual persons shall not be recorded on the databases referred to in paragraph (10).
- (17) Without prejudice to the rules of criminal law, no proceedings shall be instituted in respect of unpremeditated or inadvertent infringements of the law which come to the attention of the relevant authorities only because they have been reported

under this article as required by Article 4 of Directive 2003/42 of the European Parliament and of the Council of 13th June 2003 on occurrence reporting in civil aviation, except in cases of gross negligence.

- (18) The provisions in paragraphs (15) to (17) shall apply without prejudice to the right of access to information by judicial authorities.
- (19) The CAA shall put in place a system of voluntary reporting to collect and analyse information on observed deficiencies in aviation which are not required to be reported under the system of mandatory reporting, but which are perceived by the reporter as an actual or potential hazard.
- (20) Voluntary reports presented to the CAA under paragraph (19) shall be subjected to a process of disidentification by it where the person making the report requests that his identity is not recorded on the databases.
- (21) The CAA shall ensure that relevant safety information deriving from the analysis of reports, which have been subjected to disidentification, are stored and made available to all parties so that they can be used for improving safety in aviation.

Civil Aviation Authority Regulations 1991 – Regulation 9

- (9) The Authority shall make available, upon payment to it of any applicable charge under section 11 of the Act, reports of reportable occurrences or a summary of such reports, to any person who is:
 - (a) the operator or member of the flight crew of any aircraft;
 - (b) engaged in the design, manufacture, repair, maintenance or overhaul of aircraft, or of parts or equipment therefor;
 - (c) the aeronautical authority of a country other than the United Kingdom, or the representative in the United Kingdom of such an authority;
 - (d) engaged in writing about civil aviation for publication in any newspaper, periodical, book or pamphlet;
 - (e) engaged in preparing a programme about civil aviation for television or radio;
 - (f) engaged in the study of civil aviation for any academic purpose; or
 - (g) any other person whose functions include the furthering of the safety of civil aviation:

Provided that the Authority shall not be required to make available any report or summary thereof to any person if it is satisfied that to do so will not further the safety of civil aviation.