

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 June 2021

Public Authority: Civil Aviation Authority
Address: Fifth Floor
Westferry House
11 Westferry Circus
London
E14 4HD

Complainant:
Address:

Decision (including any steps ordered)

1. The complainant has requested details of applications made to the Civil Aviation Authority (CAA) to fly unmanned aerial vehicles (UAV) beyond the visual line of sight. These are known as BVLOS applications. The complainant specifically requested the BVLOS applications from January 2019 to the date of the request.
2. The CAA refused to provide the requested information, citing section 44(1)(a) (prohibitions on disclosure) of the FOIA.
3. 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 to ensure compliance with the legislation.

Request and response

4. On 6 August 2020, the complainant wrote to the CAA and requested information in the following terms:

'...details of all applications to the CAA to fly UAVs beyond visual line of sight since 1 January 2019.'

5. The CAA responded on 4 September 2020 and confirmed that 29 UAV operators had been granted permission to fly beyond the visual line of sight since January 2019. The CAA clarified that not all of these 29 permissions remained current or active.
6. However the CAA refused to provide the details of the aforementioned applications to the complainant, citing section 44(1)(a) of the FOIA.
7. Following an internal review the CAA wrote to the complainant on 20 October 2020. It upheld its original position and continued to apply section 44(1)(a) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 25 November 2020 to complain about the way their request for information had been handled.
9. The Commissioner considers the scope of her investigation to be to determine whether the CAA has correctly withheld the requested information, citing section 44(1)(a) as its basis for doing so.

Reasons for decision

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 retained EU obligation, or
- c) would constitute or be punishable as a contempt of court.”

Is disclosure of the requested information prohibited by or under any enactment?

11. Information is exempt under section 44(1)(a) if its disclosure would breach any of the following:

- i. primary legislation (an Act of Parliament); or
- ii. secondary legislation (a Statutory Instrument).

12. By way of background, if an individual wishes to fly an UAV in UK airspace, including beyond the visual line of sight, they must make an

application to the CAA through an Air Navigation Order. Further details of this application are outlined within Articles 94 and 95 of the Air Navigation Order 2016 (ANO 2016).¹

13. Also by way of background the Civil Aviation Act 1982² governs air flight in the UK. The CAA have explained to the Commissioner that section 23(1) (Disclosure of information) of the Civil Aviation Act 1982 outlines the specific circumstances in which information provided to the CAA and pursuant to Articles 94 and 95 of the ANO 2016 may be disclosed:

“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.”
14. The CAA has explained that the information that the complainant has requested in this instance is provided to it as part of an ANO, in line with Articles 94 and 95 of the ANO 2016. The CAA has therefore determined that the enactment engaged in this instance is section 23(1) of the Civil Aviation Act 1982 and therefore the information requested is exempt from disclosure in accordance with section 44(1)(a) of the FOIA.

¹ [The Air Navigation Order 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

² [Civil Aviation Act 1982 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

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

15. The Commissioner concurs with the CAA's explanation that the requested information is exempt from disclosure in accordance with section 23(1) of the Civil Aviation Act 1982. The Commissioner must therefore consider whether any of the exemptions referred to within section 23(1) of the Civil Aviation Act 1982 apply in relation to the requested information.
16. The CAA has explained that BVLOS applications frequently contain information which relate to multiple individuals; this may include the applicant and several UAV operators to whom the application relates. Therefore it is likely that the consent of more than 29 individuals would be required in order for section 23(1)(a) to apply.
17. In line with the decision reached in *Allison v MHRC (EA/2007/0089)*³, whilst the exemption section 23(1)(a) of the Civil Aviation Act 1982 exists there is no obligation on the CAA to seek such consent and it has not done so in this instance. The Commissioner considers that the CAA is not obliged to seek consent from all named individuals within the 29 applications.
18. The further exemptions contained within section 23(1) of the Civil Aviation Act 1982: (b) which relies on the aforementioned consent being sought which has not occurred in this instance, (c) and (d) have not been engaged in this instance.

Does section 23(1) of the Civil Aviation Act 1982 apply to the requested information in its entirety?

19. The Commissioner concurs with the CAA's explanation above that none of the exemptions contained within section 23(1) of the Civil Aviation Act 1982 apply to the requested information. The Commissioner must therefore consider whether the entirety of the information requested by the complainant is captured by section 23(1) of the Civil Aviation Act 1982 (and by extension section 44 of the FOIA) or if redactions can be made so that information may be disclosed.
20. The CAA has explained to the Commissioner that BVLOS applications are made up of the following information: a SRG1320 application form, operating safety case which is split into 3 volumes, proof of pilot

³ [Information Tribunal \(tribunals.gov.uk\)](http://tribunals.gov.uk)

competency for all named UAV operators, confirmation of pilot currency, insurance details and supporting evidence for any additional permissions.

21. The CAA considers that all of the information referred to within paragraph 19 constitutes the BVLOS application. Each individual part of the BVLOS application represents a submission to the CAA, provided in line with Articles 94 and 95 of the ANO 2016, and is therefore encompassed within section 23(1) of the Civil Aviation Act 1982.
22. The Commissioner has reviewed a reasonable sample of the withheld information and concurs that the information is captured by section 23(1) of the Civil Aviation Act 1982 (and by extension section 44 of the FOIA) in its entirety.

The Commissioner's view

23. In conclusion, the Commissioner's view is that the CAA has correctly applied section 44(1)(a) to withhold the requested information in its entirety and the enactment prohibiting the CAA from doing so in this instance is the Civil Aviation Act 1982.
24. The complainant put forward several arguments in support of disclosure. Firstly, the complainant is concerned that similar information had been disclosed by the CAA in response to a previous request made under the FOIA. Secondly, the complainant is concerned that consent should be sought from the 29 operators in question, or personal information redacted, so that the requested information may be disclosed. Finally, the complainant is concerned that the CAA itself regularly discloses information relating to approved BVLOS applications on its website⁴ and social media⁵ and therefore should do so under the FOIA.
25. The complainant is concerned that disclosure of the requested information would help to inform public opinion as to the effectiveness of the CAA as a regulator. Whilst the Commissioner acknowledges the complainant's view, she needs only to consider if disclosure of the requested information is prohibited by section 23 of the Civil Aviation

⁴ [Step forward for the drone industry as Civil Aviation Authority authorises trial of a concept for routine BVLOS operations | UK Civil Aviation Authority \(caa.co.uk\)](#)

⁵ [UK Civil Aviation Authority on Twitter: "The @UK_CAA has provided authorisation for @sees_ai to trial a concept for routine Beyond Visual Line of Sight \(BVLOS\) operations. Find out more about this significant step for the industry on our website at: https://t.co/mSyIADHOfS https://t.co/kBzCXAzHdF" / Twitter](#)

Act 1982. If it is, section 44 of the FOIA will apply. Section 44 of the FOIA is an absolute exemption and therefore no public interest test is conducted.

26. With respect to the previous request made under the FOIA referred to within paragraph 24, the CAA confirmed that in line with its retention periods it no longer holds any information relating to this previous request and could not therefore comment on its handling. The CAA confirmed that the handling of any previous request did not alter the handling, or decision reached, in relation to the request which is the subject of this notice.
27. The Commissioner notes that the footnotes referred to within paragraph 24 relate to trials and operational changes that the CAA is undertaking in relation to UAVs flying beyond the visual line of sight. However, these footnotes do not relate to the disclosure of specific BVLOS applications.
28. The Commissioner is therefore satisfied that section 23 of the Civil Aviation Act 1982 would prohibit disclosure and therefore the CAA was entitled to rely on section 44 of the FOIA to withhold the information.

Right of appeal

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

30. 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.
31. 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
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