

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 17 November 2022

Public Authority: Civil Aviation Authority (CAA)
Address: Aviation House
Beehive Ring Road
Crawley
West Sussex
RH6 0YR

Decision (including any steps ordered)

1. The complainant has requested information regarding whistleblowing concerns. The above public authority ("the CAA") relied on section 31(1)(g) of FOIA to withhold the requested information.
2. The Commissioner's decision is that the CAA has correctly applied section 31(1)(g) of FOIA to the information it is withholding as disclosure would be likely to prejudice the exercise of its functions under sections 31(2)(a), (b), (c), (f) and (g). The public interest favours maintaining this exemption.
3. No steps are required as a result of this decision notice.

Request and response

4. On 9 May 2022, the complainant wrote to the public authority and requested information in the following terms:

"I am therefore requesting a copy of the investigation report carried out by yourselves under the FOIA."
5. On 16 May 2022 the CAA responded and refused to provide the requested information citing section 31(1)(g) of FOIA as its basis for doing so.
6. The complainant argued that:

"As far as I am aware the aviation valeting industry is unregulated by the CAA but one of the considered factors for withholding the information is "It is vital that the CAA is able to engage with the aviation industry so that there is full and open discussion between the CAA and those we regulate on safety matters".

The other factors considered are "The free flow of essential safety information depends upon the industry's complete confidence that any matter can be discussed without fear that the pressures of the public arena might delay action or distort the safety focus" and this relates to, "The CAA relies on such information to discover illegal or improper conduct, assess the need for regulatory action and judge the fitness and competence of the organisation concerned"."
7. The CAA upheld its original position at internal review.

Reasons for decision

Section 31 – Law enforcement

8. The following analysis sets out why the Commissioner has concluded that the CAA was entitled to rely on section 31(1)(g) of FOIA in this particular case.
9. Section 31(1)(g) of FOIA allows a public authority to withhold information if its disclosure under the Act would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2).

10. The Commissioner accepts that the CAA is formally tasked with certain regulatory functions under the Civil Aviation Act 1982 amongst others.
11. The Commissioner agrees that disclosing the correspondence it has received during its investigations, would be likely to prejudice the CAA's functions, for the reasons it has given. First, disclosure would be likely to deter individuals and organisations from providing information to the CAA. Second, it would be likely to erode the safe space it needs to reach decisions and to erode public trust in its ability to handle information confidentially. And third, it would undermine the CAA's ability to collect accurate information from complainants and organisations, if it were known how the CAA assesses risk.
12. Having considered all the circumstances in this case, the Commissioner has therefore decided that section 31(1)(g), with subsections 31(2)(a), (b), (c), (f) and (g), is engaged. He has gone on to consider the public interest.

Public Interest Test

13. The CAA has recognised that there will always be some public interest in disclosure of information to promote transparency and accountability of public authorities, the public right of access to information held; and reinforcing public confidence in aviation safety and the way the CAA regulates. However, they argue that it is vital that the CAA is able to engage with the aviation industry so that there is full and open discussion between the CAA and those we regulate on safety matters.
14. The CAA also states that the free flow of essential safety information depends upon the industry's complete confidence that any matter can be discussed without fear that the pressures of the public arena might delay action or distort the safety focus. The CAA relies on such information to discover illegal or improper conduct, assess the need for regulatory action and judge the fitness and competence of the organisation concerned. Oversight can include the provision of, and discussions relating to, commercially sensitive information and audits are conducted on the understanding that what is discussed is confidential. Should such information be placed in the public domain, against that understanding, it would make organisations reluctant to cooperate and hinder the CAA's regulatory functions.
15. The complainant argues that given the nature of allegations made there is a matter of public interest regarding the investigation, and queried why staff were not interviewed or asked any questions regarding the

report. They disagreed that the public interest favours non-disclosure and argue that is in the public interest for the CAA to be accountable.

The Commissioner's conclusion

16. The Commissioner has reviewed both the complainant's requests and the public authorities' responses. The Commissioner is satisfied that there is greater, wider public interest in the CAA being a robust and efficient regulator of the Civil Aviation sector through withholding certain information in this case. Whilst the Commissioner notes the complainants concerns and allegations made relating to the specific investigation, he does not consider that these outweigh the public interest in ensuring the CAA can fulfil its regulatory functions effectively.
17. Therefore, the Commissioner's view is that the balance of the public interests favours the maintenance of the exemption, rather than being equally balanced. This means that the Commissioner's decision, is that the exemption provided by section 31(1)(g) was applied correctly.

Right of appeal

18. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

19. 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.
20. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF