

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 June 2023

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

Decision (including any steps ordered)

1. The complainant has requested information relating to Swansea Airport. The Civil Aviation Authority refused to provide the requested information, citing section 31(1)(g) (law enforcement) of FOIA.
2. The Commissioner's decision is that the CAA was correct to withhold the requested information under section 31(1)(g).
3. The Commissioner does not require further steps.

Background information

4. In February 2023 the CAA suspended the operating license of Swansea Airport ('the airport'), meaning that it can't go ahead with its planned scheduled passenger flights to Exeter Airport, which were scheduled to start at the end of March 2023.

5. The CAA cited ineffective safety management, inadequate safeguarding of the aerodrome, and an absence of an accountable manager as reasons for the licence suspension¹.
6. Swansea Airport Ltd was required to submit a corrective action plan by 28 February 2023. There is potential for the CAA to take enforcement action if the airport's performance doesn't improve.

Request and response

7. On 28 March 2023, the complainant wrote to the CAA and requested:

"I would like to enquire under the Freedom of Information Act for any reports relating to the condition and failings at Swansea Airport leading to the revocation of the Licence to operate in February 2023."
8. The CAA responded on 31 March 2023, stating that the requested information was exempt under section 31(1)(g).
9. The complainant requested an internal review on 3 April 2023, expressing concern that it was within the public interest to disclose the requested information.
10. Following an internal review the CAA wrote to the complainant on 12 April 2023, it upheld its previous position.

Reasons for decision

11. Section 31(1)(g) of FOIA exempts information from disclosure if to do so would, or would be likely to, prejudice specific activities that a public authority carries out. These specific activities are listed in section 31(2) and include:
 - (a) Ascertaining whether any person has failed to comply with the law,
 - (b) Ascertaining whether any person is responsible for any conduct which is improper,
 - (c) Ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

¹ [Swansea Airport: Licence suspended over safety concerns - BBC News](#)

12. The CAA believes that disclosure of the withheld information would prejudice its ability to carry out the above activities. Therefore, the CAA is applying section 31(1)(g) by virtue of section 31(2)(a), (b) and (c).
13. The Commissioner acknowledges that the CAA is formally tasked with certain regulatory functions, including the regulating the safety of the aviation industry, including airports, under the Civil Aviation Act 1982² amongst others.
14. In its refusal notice, the CAA explained:

“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 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.”
15. It also explained:

“Our 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 outlined above”
16. The Commissioner has viewed the withheld information as part of this investigation and he notes that it doesn’t contain just financial information but detailed summaries of the airport’s performance and failings.
17. The Commissioner agrees with the CAA that section 31(1)(g) is engaged. Disclosure of the withheld information would be likely to deter individuals and organisations from providing information to the CAA. It would also be likely to erode the safe space it needs to reach decisions away from public scrutiny. Finally, it would undermine the CAA’s ability to collect accurate information from complainants and organisations, if it were known how the CAA assesses risk and acts upon it.
18. Section 31(1)(g) is a qualified exemption and therefore the information can only be withheld if it’s within the public interest to do so. Therefore,

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

the Commissioner will go onto consider where the balance of the public interest lies.

The public interest test

Public interest arguments in favour of disclosure

19. The Commissioner considers that there are general public interest arguments in favour of disclosure, for example, upholding the general principles of transparency that FOIA underpins; the public right of access to official recorded information and reinforcing public confidence in aviation safety and the way the CAA regulates.
20. There is also a specific public interest in the airport. At the time of raising their complaint with the Commissioner, the complainant raised:

“it is in the public interest that [the CAA] publish or allow access to the reports they hold on the reasons and discussions they have held with Swansea Airport Ltd and Swansea City Council over the Airport’s Licence suspension. The Airport has lost its licence twice in recent years for safety failings, the Company holding the else (sic) are massively in the red.”
21. They also cited the public interest in understanding why the performance of the airport has declined whereas other similar airports have prospered.

Public interest arguments in favour of maintaining the exemption

22. The CAA has argued that:

“The primary factor against disclosure which, in the CAA’s view carries considerable weight, is the public interest in aviation being as safe as possible as a result of the CAA being able to carry out its functions as effectively and efficiently as possible...The potential consequences of a less open, more guarded relationship are a less effective safety culture, a less effective regulator, and ultimately, a potential reduction in safety standards. That is clearly not in the public interest and carries significant weight in the public interest balance exercise undertaken.”

The balance of the public interest

23. The Commissioner believes the balance of the public interest lies in maintaining the exemption. He notes that the request was made in March 2023, shortly after the airport was due to submit its corrective action plan. During this time the CAA will have been considering the action plan, and potentially approaching the airport for further information, to ascertain whether enforcement action was appropriate.

24. The CAA has argued that whilst the requested information is 'of interest to the public', this doesn't mean that there is a public interest in this information.
25. The Commissioner disagrees. The CAA has itself acknowledged that there is limited information in the public domain about the revocation of the airport's license and the decision to suspend flights to Exeter will have an impact – even if it's to a small number of individuals. There is always a public interest in creating a 'full picture' of regulatory activity, both in general terms and in specific examples.
26. Whilst the Commissioner accepts there is a public interest in this information, he doesn't consider it outweighs the public interest in allowing the CAA's monitoring of the airport to be carried out as robustly as possible, with a view to making the airport as safe as possible.
27. Therefore, he finds that the CAA was entitled to withhold the information requested, under section 31(1)(g) by virtue of section 31(2)(a), (b) and (c).

Right of appeal

28. 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

29. 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.

30. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF