

Civil Aviation Authority
Finance and Corporate Services
Information Management

24 September 2010
FOIA reference: F0001050

Dear XXXX

I am writing in respect of your recent application of 6 September 2010, for the release of information held by the Civil Aviation Authority (CAA).

Your request:

Now that MK has gone bust again can you send me the safety Audits.

I wish to understand the exact nature of their operations and why they were deemed to not be in accordance with the International safety standard under the Chicago Convention.

- 1. Exact details on what was uncovered at this airline.*
- 2. When the safety audit was undertaken*
- 3. Any subsequent checks in the past and up to the airlines demise.*

You subsequently clarified that this part of your request concerned *information relating to checks carried out after the safety audits carried out in relation to MK Airlines' application for the grant of an Air Operator Certificate (AOC) in 2006, up to the point MK Airlines ceased operations.*

Information relating to checks carried out on Meridian

I also wish to have the same details of Egypt Air.

Our response:

We have assessed your request in line with the provisions of the Freedom of Information Act 2000 (FOIA).

MK Airlines Ltd

As you are aware, it had previously been determined by the Information Tribunal that the safety audits carried out in relation to MK Airlines Ltd's application for the grant of an AOC were exempt from release under Section 44 of the FOIA, as the disclosure of this information is prohibited by Section 23 of the Civil Aviation Act.

Since that decision notice was issued on 10 January 2010, the AOC held by MK Airlines Ltd has been suspended.

Section 23 of the Civil Aviation Act prohibits the disclosure of information that relates to a particular person and has been furnished to the CAA in pursuance of an Air Navigation

Civil Aviation Authority

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Order. However, under Section 23(1)(c) information can be disclosed when that person is a body corporate that has ceased to exist.

At the time of your request, MK Airlines Ltd still existed as a body corporate and as such Section 23(1)(c) does not apply, and the release of this information is still prohibited by Section 23 of the Civil Aviation Act. This information therefore remains exempt from disclosure under Section 44 of the FOIA.

The Information Commissioner has previously confirmed that Section 44 applies to information furnished to the CAA by an organisation that, although no longer operating, still exists as a body corporate in a Decision notice dated 28 October 2009 (http://www.ico.gov.uk/upload/documents/decisionnotices/2009/fs_50261915.pdf).

You have also requested details of subsequent checks carried out on MK Airlines Ltd up to the point that they ceased operations. The provisions of Section 23 of the Civil Aviation Act, apply equally to these reports and therefore this information is also exempt from disclosure under Section 44 of the FOIA

A copy of this exemption, and Section 23 of the Civil Aviation Act, is enclosed.

Meridian Airways

The CAA does hold information concerning inspections carried out on aircraft operated by the Ghanaian operator Meridian Airways.

International civil aviation is governed by the Convention on International Civil Aviation (the Chicago Convention), to which the UK is a signatory. Individual States remain responsible for regulating their aviation industries, but have to take into account the requirements of the Convention and the minimum standards established by the International Civil Aviation Organisation (ICAO).

To maintain confidence in the system, and to protect the interests of European citizens who may be living in the vicinity of airports or travelling onboard a third-country aircraft, the European Union (EU) identified the need to effectively enforce international safety standards within the EU. This is done through the execution of ramp inspections on third-country aircraft landing at the airports located in the Member States (a 'third-country aircraft' is an aircraft which is not used or operated under the control of a competent authority of an EU Member State).

Ramp inspections are carried out through the Safety Assessment of Foreign Aircraft (SAFA) programme; in the UK the CAA carry out SAFA inspections on behalf of the Department for Transport (DfT).

The DfT have previously released details of four SAFA inspections carried out by the CAA on aircraft operated by Meridian Airways, which led to the withdrawal of their Operating Permit on 23 July 2010. This information can be found at <http://www.dft.gov.uk/foi-responses/2010/08/f0006742.pdf>.

The CAA also carried out one earlier inspection which took place at RAF Lyneham on 22 November 2009, and no findings resulted from this inspection.

Egyptair

The CAA does hold information concerning SAFA inspections carried out on aircraft operated by Egyptair, and has consulted the DfT, on whose behalf SAFA checks are carried out, in relation to the release of this information.

Section 27

Under the Chicago Convention, oversight responsibility for a foreign operator rests with the State in which the airline is based. During an inspection of a foreign registered aircraft, inspectors will necessarily have to make findings and judgements related to the airline's compliance with international safety standards, and by extension, that of its State of Registry.

If the UK were to make public details of the findings of inspection reports relating to a specific carrier, which would also mean identification of its regulatory authority, such a disclosure could seriously inhibit the willingness of foreign operators and their safety oversight authorities to engage in open and frank discussion with the UK, either now or in the future, on the question of the compliance of air carriers with international safety standards or on regulatory oversight of airlines.

There are close ties between States, civil aviation authorities and the airlines of those States. Given these close ties, disclosure of any safety findings resulting from SAFA inspections would be likely to be seen as a public criticism by the UK of another State's competence in maintaining civil aviation safety and/or a public criticism of its airlines. If inspections carried out on Egyptair aircraft have resulted in any findings, the release of this information would be likely to damage relations between the UK and Egypt, and would also contribute to a diminishing readiness by that State to engage constructively with the UK on aviation safety matters.

Disclosure of the results of SAFA inspections could also lead to retaliatory action by other States against UK interests abroad, especially UK airlines. This retaliatory action would be 'spurious' in safety terms and would, in turn, be likely to prejudice relations between the UK and that State. The DfT have advised the CAA that they have evidence of retaliatory measures, both actual and threatened, against UK airlines following the implementation of EU bans on foreign carriers by the UK.

The CAA considers that the release of the findings of SAFA inspections is therefore likely to prejudice the UK's relations with the States and operators concerned, and that this information falls under Sections 27(1)(a) and 27(1)(c) of the FOIA.

Section 27 is a qualified exemption and is subject to the Public Interest Test.

The public interest in disclosing the results of safety inspections on foreign registered aircraft in the UK includes enabling the wider public to make informed decisions about the safety of air operators flying into and out of the UK; transparency and open government; the public right of access to information held, and improving public confidence in the safety of airlines.

However, there is a strong public interest in ensuring that UK airlines are able to operate throughout the world without being subject to unjustified retaliatory action by other States. There is also an inherent public interest in avoiding the prejudice set out in Sections 27(1)(a) and (c), to the UK's international relations, and to the UK's interests abroad.

The CAA recognises the public interest factors in relation to the disclosure of this information, particularly in enabling the public to make informed decisions about the safety of foreign operators flying into the UK and having confidence in the systems which are in place to ensure compliance with the safety standards enshrined in the Chicago Convention.

Where concerns are identified from the results of SAFA checks, both in the UK and throughout the EU, Operating Permits can be removed on safety grounds and such decisions are co-ordinated at a European level under EC Regulation 211/2005. Details of those airlines that are subject to EU wide restrictions are published on the European Commission website at http://ec.europa.eu/transport/air-ban/list_en.htm and the CAA

believes that the publication of this information goes some way to satisfying the public interest factors in this case.

The CAA has concluded that, in relation to this information, the public interest in disclosure is outweighed by the public interest in maintaining the exemption and disclosure is therefore withheld as being exempt under Sections 27(1)(a) and (c).

Section 31

It is a condition of the Operating Permit issued by the Secretary of State to foreign airlines under Article 223 of the Air Navigation Order 2009 that "*The airline shall ensure that all aircraft used by it comply with all relevant international standards and recommended practices relating to airworthiness and operating standards adopted from time to time by the Council of the International Civil Aviation Organisation under the provisions of the Chicago Convention.*" This is a legal requirement and the purpose of a SAFA inspection is to ensure that aircraft are operated in accordance with this requirement. In conducting inspections, the CAA is exercising a function for the purpose of ascertaining whether the operator has complied with the law and for the purpose of protecting persons other than persons at work against risks to health or safety arising out of or in connection with the actions of persons at work.

Although the CAA has a legal power to carry out inspections under Article 232 of the Air Navigation Order 2009, there is only a limited time period to carry out such inspections whilst aircraft are on the ground at UK airports between flights. To conduct such inspections effectively and within the limited time available, the co-operation of foreign airlines and their crews is essential. Publication of the results of SAFA checks on a particular operator would be likely to provoke suspicion of CAA inspectors and prejudice this co-operation in the future.

The CAA considers that the release of the findings of SAFA inspections is therefore likely to prejudice the CAA's ability to exercise its functions in relation to SAFA inspections, and that this information falls under Section 31(1)(g) of the FOIA. Specifically, the release of the information would prejudice the CAA's functions in relation to the purpose of ascertaining whether any person has failed to comply with the law (Section 31(2)(a)), and for the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work (Section 31(2)(j)).

Section 31 is a qualified exemption and is subject to the Public Interest Test.

As above, the public interest in disclosing the results of safety inspections on foreign registered aircraft in the UK includes enabling the wider public to make informed decisions about the safety of air operators flying into and out of the UK; transparency and open government; the public right of access to information held, and improving public confidence in the safety of airlines.

However, there is a strong public interest in maintaining the SAFA programme and ensuring that the CAA's ability to carry out SAFA inspections, and therefore the UK's ability to ensure that foreign operators operating into the UK are complying with the required safety standards, is not compromised by a lack of co-operation from foreign operators and their crews. This requires a degree of caution in disclosing information regarded as sensitive by foreign authorities and governments.

The CAA recognises the public interest factors in relation to the disclosure of this information but, as detailed above, believes that the publication of those airlines that are subject to EU wide restrictions goes some way to satisfying the public interest factors in this case.

The CAA has concluded that, in relation to this information, the public interest in disclosure is outweighed by the public interest in maintaining the exemption and disclosure is therefore withheld as also being exempt under Section 31(1)(g), in relation to the CAA's functions under Sections 31(2)(a) and 31(2)(j)).

The CAA has considered the release of this information on its own merits, but you may wish to be aware that the Information Commissioner has previously upheld a decision to withhold information relating to SAFA inspections, which can be found at http://www.ico.gov.uk/upload/documents/decisionnotices/2009/fs_50152941.pdf

In relation to the information that has been released concerning the results of inspections on aircraft operated by Meridian Airways, this operator was subsequently banned from the EU as a result of the findings of those inspections. The CAA has concluded that no further harm could be caused to international relations from the release of the information, and therefore the Section 27 exemption did not apply in that case. Similarly, there could be no prejudice to the CAA's ability to carry out SAFA inspections on Meridian Airways aircraft, and therefore the Section 31 exemption also did not apply in that case.

If you are not satisfied with how we have dealt with your request in the first instance you should approach the CAA in writing at:-

Mark Stevens
External Response Manager
Civil Aviation Authority
Aviation House
Gatwick Airport South
West Sussex
RH6 0YR

mark.stevens@caa.co.uk

The CAA has a formal internal review process for dealing with appeals or complaints in connection with Freedom of Information requests. The key steps in this process are set in the attachment.

Should you remain dissatisfied with the outcome you have a right under Section 50 of the Freedom of Information Act to appeal against the decision by contacting the Information Commissioner at:-

Information Commissioner's Office
FOI/EIR Complaints Resolution
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
www.ico.gov.uk/complaints.aspx

Should you wish to make further Freedom of Information requests, please use the e-form at <http://www.caa.co.uk/foi>.

Yours sincerely

Rick Chatfield
FoIA & EIR Case Manager

CAA INTERNAL REVIEW & COMPLAINTS PROCEDURE

- The original case to which the appeal or complaint relates is identified and the case file is made available;
- The appeal or complaint is allocated to an Appeal Manager, the appeal is acknowledged and the details of the Appeal Manager are provided to the applicant;
- The Appeal Manager reviews the case to understand the nature of the appeal or complaint, reviews the actions and decisions taken in connection with the original case and takes account of any new information that may have been received. This will typically require contact with those persons involved in the original case and consultation with the CAA Legal Department;
- The Appeal Manager concludes the review and, after consultation with those involved with the case, and with the CAA Legal Department, agrees on the course of action to be taken;
- The Appeal Manager prepares the necessary response and collates any information to be provided to the applicant;
- The response and any necessary information is sent to the applicant, together with information about further rights of appeal to the Information Commissioners Office, including full contact details.

Freedom of Information Act: 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).

Section 23 of the Civil Aviation Act is such a statutory prohibition. Accordingly, the obligations of the CAA to comply with Section 23 are unaffected by the Freedom of Information Act.

Civil Aviation Act: Section 23 Disclosure of information

(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.

Freedom of Information Act : Section 27

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.

(2) Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.

(3) For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.

(4) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)—

- (a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or
- (b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.

(5) In this section—

- “international court” means any international court which is not an international organisation and which is established-
 - (a) by a resolution of an international organisation of which the United Kingdom is a member, or
 - (b) by an international agreement to which the United Kingdom is a party;
- “international organisation” means any international organisation whose members include any two or more States, or any organ of such an organisation;
- “State” includes the government of any State and any organ of its government, and references to a State other than the United Kingdom include references to any territory outside the United Kingdom.

Freedom of Information Act : Section 31

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths enquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

(2) The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).