

The CAA's policy on disclosing information received from external parties in the context of its market power assessments of Heathrow, Gatwick and Stansted airports

This note sets out the CAA's policy on the confidentiality of information provided by external parties to the CAA in the context of its ongoing market power assessments of Heathrow, Gatwick and Stansted airports. As the primary purpose of the market power assessments is to inform the next price control review of the aforementioned airports, any information provided to the CAA for these assessments falls under the provisions of Part IV of the Airports Act 1986. The CAA will keep this policy under review.

The CAA intends to conduct an open and transparent process based on the widest possible public disclosure of relevant information. To the greatest extent possible, the CAA will wish to be fully transparent in explaining the reasons for the positions it adopts, including laying out the evidence which it has taken into account. However, there is likely to be information that airports or other parties provide to the CAA that they will wish to remain confidential. There are in place a number of statutory constraints on the disclosure of external information in relation to the assessment of market power of Heathrow, Gatwick and Stansted insofar as these assessments support the CAA's functions under Part IV of the Airports Act 1986. These are found in

- section 74 of the Airports Act 1986, which describes the circumstances in which the CAA may disclose information without the agreement of the person who supplied it; and
- the general provisions of the Freedom of Information Act 2000.

The CAA is bound by section 74 of the Airports Act and by the Freedom of Information Act and will consider any requests to treat information as confidential against the statutory tests. Subject to this, the CAA may ask the provider of the information if it is possible to re-submit it in an alternative form that would allow publication. The CAA is not entitled to disclose information which comes within section 74 unless one of the exceptions set out in the section applies. The principal exception is that the CAA may disclose information if to do so would facilitate the performance of its statutory functions. However, even where it is entitled to disclose for this purpose, the CAA will normally be minded to agree mutually acceptable redactions for sensitive information which comes within section 74, and would not normally disclose it, where both of the following conditions apply:

- the information relates to commercial transactions; and
- disclosure of the information would present a significant risk of harm to the legitimate business interests of the person or organisation providing the information.

Parties should be aware that it is possible that some time may elapse between the provision of information and its publication. This may tend to lessen its commercial sensitivity. The CAA will apply the two criteria above to the circumstances that exist at the time of disclosure. Parties can make representations about any relevant changes of circumstances since information was originally provided that they think the CAA should consider in making a decision on disclosure.

If the CAA receives a formal request under the Freedom of Information Act for the disclosure of particular information, it has a duty to disclose unless that information falls within a class of information that is exempt from disclosure. Even where an exemption applies it may sometimes be necessary to consider whether it is nonetheless in the public interest to disclose. However, it is important to note that the statutory prohibition under section 74 of the Airports Act represents an absolute exemption under s.44 of the Freedom of Information Act from the general duty to disclose, so the CAA would not expect to disclose information under the Freedom of Information Act that it could not legally disclose under section 74 of the Airports Act. The CAA has published on its website how it will handle requests for information under the Freedom of Information Act.

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