

28 January 2014  
FOIA reference: F0001769

Dear XXXX

I am writing in respect of your recent application of 31 December 2013 for the release of information held by the Civil Aviation Authority (CAA).

Your request:

*I would like to see the FCL ATPL(A)December 2013 Exam papers for Mass and Balance(A) and Performance (A) to determine if the papers complied with the Subject Learning Objectives. I believe SECTION III - THEORETICAL KNOWLEDGE EXAMINATIONS AMC1 ARA.FCL.300 Examination procedures paragraph (b) permits this.*

Our response:

In assessing your request in line with the provisions of the Freedom of Information Act 2000 (FOIA), we are unable to comply with your request.

The relevant legislation governing the conduct of examinations is Regulation (EU) 1178/2011 as amended by Regulation (EU) 290/2012, specifically ARA.FCL.300.

The CAA is designated as the competent authority in respect of pilot licenses in the UK, and conducts pilot licensing examinations on behalf of the European Aviation Safety Agency (EASA). Examination papers consist of questions drawn from EASA's European Central Question Bank (ECQB), to which a limited number of CAA staff are provided access for the purpose of conducting examinations, under the terms of a confidentiality agreement.

This agreement states *'the database consisting of the European Central Question Bank (ECQB) shall be afforded confidential treatment. All records, documents and other information contained within are considered to be confidential'* and *'the recipient shall, after receipt of such information, treat it as confidential and agrees not to appropriate such information for his own use and/or disclose or distribute such information to unauthorised parties, unless specifically authorised by the Agency in writing'*.

Also, EASA have published Frequently Asked Questions on their website, which includes the below related to the ECQB

**Civil Aviation Authority**

Aviation House GW Gatwick Airport South Crawley West Sussex England RH6 0YR [www.caa.co.uk](http://www.caa.co.uk)  
Telephone 01293 768512 [rick.chatfield@caa.co.uk](mailto:rick.chatfield@caa.co.uk)

**Could the European Central Question Bank be published?**

*The Agency is the administrator of the European Central Question Bank (ECQB).*

*Taking into account that:*

1. *Ownership of the copyright of the ECQB database is vested to the European Aviation Safety Agency; and*
2. *Ownership of the contents of the database remains vested to its respective owners; and*
3. *The possession, management and administration of the contents of the database have been fully vested in the hands of the Agency; and*
4. *The contents of the database are confidential and have been treated as such without interruption.*

*The Agency, acting in the capacity of copyright owner and administrator of the database, enjoys the exclusive right among others, to prevent temporary or permanent reproduction by any means and in any form, as well as to prevent any form of distribution to the public of the database or of copies thereof.*

*It is the opinion of the Agency that such reproduction and distribution would endanger the functionality and integrity of the applicable examination system and would invalidate the associated substantial investment in both intellectual and monetary terms.*

The CAA considers that a number of exemptions apply to the information requested.

**Section 44**

Section 44(1)(b) of the FOIA provides that information is exempt information if its disclosure is incompatible with any Community obligation.

Regulation (EU) 290/2012, ARA.FCL.300 (d), states that *'the competent authority shall establish appropriate procedures to ensure the integrity of the examinations'*.

The release of exam papers would place questions from the ECQB into the public domain and would, as EASA have stated, endanger the functionality and integrity of the examination system. As such, the release of the information would be incompatible with the requirement of ARA.FCL.300 (d) and is exempt from release under FOIA Section 44(1)(b).

**Section 31**

Section 31(1)(g) of the FOIA provides that information is exempt information if its disclosure 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). Among the purposes in subsection (2) is the purpose of ascertaining a person's fitness or competence.....in relation to any profession or other activity which he is, or seeks to become, authorised to carry on. The conduct of professional pilot examinations is such a purpose.

As Section 31 is a qualified exemption, the CAA has considered the public interest in the disclosure of the information. The public interest in disclosure includes the principles of transparency and open government and the public right of access to information held

However, there is a strong public interest in ensuring that the CAA, and the other National Aviation Authorities (NAAs) across Europe that also draw questions from the ECQB, are able to conduct pilot licensing exams effectively. The undermining of the examination system would have an adverse impact on the ability of NAAs to assess whether pilots meet the requirements for the grant of a licence, and ultimately an adverse impact on aviation safety.

Having considered the public interest in the release of the information, the CAA has concluded that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information and the information is also withheld under Section 31(1)(g).

## Section 27

Under Section 27(2) of the FOIA, information is exempt from release if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court, while Section 27(3) states that, 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.

EASA is such an international organisation and, as detailed above, the terms by which the CAA has access to the ECQB require the information to be held in confidence.

As Section 27 is a qualified exemption, the CAA has considered the public interest in the disclosure of the information. The public interest in disclosure includes the principles of transparency and open government and the public right of access to information held.

However, there is a strong public interest in maintaining the confidentiality of the ECQB and ensuring that European NAAs are able to conduct pilot licensing exams effectively. Having considered the public interest in the release of the information, the CAA has concluded that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information and the information is also withheld under Section 27(2).

I note your suggestion that AMC1 ARA.FCL.300 (b) permits exam papers to be released. The CAA does not believe this to be the case for the reasons outlined above and, equally, the suggestion would appear to be contradicted by paragraph (e) which states that '*All examination papers, associated documents and additional papers handed out to the applicants for the examination should be handed back to the invigilator at the end of the examination*'.

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](mailto: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](http://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

Mark Stevens  
External Response 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 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).

**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).