

26 June 2015
EIR Reference: E0002367

Dear XXXX

I am writing in respect of your recent request of 1 June 2015, contained in your letter addressed to our Chief Executive, Andrew Haines, for the release of information held by the Civil Aviation Authority ("CAA").

Your request:

We request a copy of the final version of the NATS ACP submitted to you on 16 February 2015.

Our response:

It is the CAA's view that the information you have requested is environmental information (as defined) and accordingly the CAA has considered your request in line with the provisions of the Environmental Information Regulations 2004 ("EIR"). The CAA holds an Airspace Change Proposal ("ACP") entitled the 'LAMP South Coast Airspace Change Proposal' which was submitted to the CAA by NATS on 16 February 2015.

However, for the reasons set out below the CAA is withholding the information you have requested.

Background

It is the CAA's duty to develop, promulgate, monitor and enforce policy for the use of UK airspace. This duty derives from the Civil Aviation Authority Directions 2001 (as amended in 2004) given to the CAA by the Secretary of State under Section 66(1) of the Transport Act 2000 ("the Act"). When exercising this duty the CAA must do so in accordance with the general duty in Section 70 of the Act. These general duties include the duty to take account of the Secretary of State's Guidance to the CAA on Environmental Objectives Relating to the Exercise of its Air Navigation Functions (2014).

Civil Aviation Authority

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Changes to the use of UK airspace can be proposed by anyone. Decisions to permanently change the use of airspace (e.g. permanent changes to the dimensions or classification of regulated airspace) are made by the CAA.

The process by which a potential proposer formulates a proposal that is submitted to the CAA for a decision, and the CAA makes a decision, is the CAA's Airspace Change Process which is published in Civil Aviation Publication 725 ("CAP 725"). This can be found at www.caa.co.uk/cap725 and a summary of the process is available at <http://www.caa.co.uk/docs/7/Airspace%20Change%20Process.pdf>. The Airspace Change Process contains seven identified stages.

Prior to Stage 4 of the process the proposer is formulating options to address the issue it has identified, trialling and testing the options and deciding which options if any it will pursue.

At Stage 4 the proposer will consult on the option for change that it has decided to pursue, at that stage. Stage 4 is the consultation phase. It is when the proposer consults with interested parties on the change it is currently intending to request the CAA to decide to make. Consultees include airlines, other users of airspace, other airports, and bodies representing members of the public such as Parish Councils and airport consultative committees.

After the consultation has closed the proposer publishes a consultation report. In some cases the proposer does not pursue the proposal. In other cases the proposer will submit a formal application to the CAA to make the change on which it consulted. This is referred to as Stage 5 of the CAA's Airspace Change Process.

Once the CAA has received the ACP it will consider whether the ACP contains all the information it needs in order to make its decision. If not, the CAA will advise the proposer that further information is needed. This leads to a new version[s] of the proposal (i.e. the ACP) being sent to the CAA. The final version of the ACP will be the one in respect of which the final decision is made.

The Airspace Change Proposal that is the subject of your request

The CAA holds an ACP entitled the 'LAMP South Coast Airspace Change Proposal' which was submitted to the CAA by NATS on 16 February 2015. The proposal includes a number of different documents and appendices. The version submitted initially was Issue 1, Issue 2 has subsequently been received.

NATS' ACP has been submitted to the CAA at the end of Stage 4, the consultation stage, and is currently going through Stage 5 of the Airspace Change Process, that is, the proposal is being considered by the CAA to make a decision in accordance with its statutory duties set out above.

This ACP is one part of a wider programme co-ordinated by NATS to modernise the airspace structure over the South East of the UK known as the London Airspace Management Programme ("LAMP").

The LAMP South Coast ACP was initially part of the TAG Farnborough Airport airspace proposal, but has been progressed by NATS as it relates to changes required for the efficiency of the network as a whole and forms part of the wider LAMP initiative, rather than relating exclusively to Farnborough. TAG Farnborough Airport has not yet submitted a proposal to the CAA relating to the remainder of the proposed changes that they consulted on in 2014.

LAMP itself is a major enabler for the UK's Future Airspace Strategy ("FAS"), which aims to modernise the UK's airspace infrastructure out to 2030. FAS seeks to improve the efficiency and capacity of the airspace whilst reducing the environmental impact of the aviation industry by promoting Continual Climb and Continuous Descent operations and, by eliminating holding wherever possible, utilising improvements to the management of air traffic. The implementation of FAS, and its importance in delivering both economic and environmental benefits, has been recognised by the Government in its Aviation Policy Framework, which states:

The Government remains a strong supporter of the Single European Sky (SES) initiative, which has the potential to deliver real benefits by minimising air traffic delays, reducing aircraft fuel consumption and lowering the amount of emissions produced by the aviation sector. We also support the implementation of the CAA's Future Airspace Strategy (FAS), which sets out the long-term vision on how we should change our airspace within the overall aim of modernising the UK's airspace system in the context of the SES objectives. The implementation of the FAS can also play a significant role in delivering our economic and environmental objectives in relation to aviation. For example, by improving the overall efficiency of our airspace we can also at the same time provide significant opportunities to minimise aircraft emissions and air traffic delays

The information in scope includes information and modeling data prepared by NATS.

NATS operates under the terms of an Air Traffic Services Licence ("NATS Licence") issued by the CAA. As a condition of that licence, NATS are required to be capable of meeting on a continuing basis any reasonable level of overall demand for air traffic control services. That requirement drives airspace design changes, such as LAMP, to be proposed to the CAA.

Provisions of the EIR leading to CAA's decision to withhold the information which you have requested

Regulation 12(4)(d)

Material in the course of completion

As set out above, the information in scope of your request was provided to the CAA at the end of Stage 4 of the seven stage Airspace Change Process. As also set out above, the original ACP received by the CAA has been updated and amended (and may continue to be so amended and updated) while the proposal is being analysed by the CAA before a decision whether to approve the proposal is made by the CAA.

As well as being an evolving document, the proposal is also information held as part of a broader, ongoing and incomplete process, i.e. the Airspace Change Process as described above.

Regulation 12(4)(d) provides that a public authority may refuse to disclose information where a request relates to material which is still in the course of completion. As well as documents that are evolving, this includes the need for public authorities to have the necessary 'thinking space' to make a decision on a particular issue. In the CAA's view the information in scope of your request falls within this exception from disclosure.

Having reached the view that the exception is engaged, the CAA has considered whether the public interest in withholding the information is outweighed by the public interest in disclosing it.

There is a general public interest in the disclosure of environmental information because, as the ICO guidance states, “*it supports the right of everyone to live in an adequate environment and ultimately contributes to a better environment*”. The disclosure of environmental information promotes the transparency and accountability of public bodies and their decision making, and can allow the public to be informed and involved in such decisions. The structure of airspace and changes made to that structure can affect the location and amount of aircraft noise experienced on the ground. The issue of aircraft noise is an important one, and the CAA recognises the public interest in enabling and assisting campaign groups, community groups and individual members of the public to understand how potential changes to flight paths in the South of England will affect them, and for them to be able to participate in the decision making process. It is for this reason that the Airspace Change Process is designed so as to include a consultation stage, Stage 4.

In considering the public interest in withholding the information, the CAA has considered the prejudice that would be caused by the disclosure of the information at this stage. ACPs are developed and assessed under a published process reflecting the CAA’s statutory duties. The process is designed to ensure that any proposal is consulted upon by the proposer and that the consultation responses are taken into account by the CAA when it evaluates the proposal to consider whether the change proposed delivers the required benefits in terms of safety and airspace capacity and makes the decision whether or not to make the change to the airspace structure requested. However the purpose of Stage 5 is to bring together all the information, including consultation response information, in one place in order that the CAA can move into a decision making phase. During this phase the CAA needs the space to consider all the information and data that has been collected and presented to it. In the CAA’s view, disclosing the version of the ACP requested would compromise the ability of the CAA to make its decision if the CAA were at the same time dealing with further information from, or dialogue with, third parties on the proposal.

The CAA’s Airspace Change Process has been designed to ensure that the CAA takes account of all the views and information that are relevant to the issues that the CAA’s statutory duties enable, and require, the CAA to take into account. There is a strong public interest in ensuring that this process is followed and the CAA’s ability to fully consider the issues and come to a decision on a proposal is not undermined by the disclosure of information into the public domain at a stage that may undermine the integrity of the decision making process.

Finally, the CAA has carefully considered the issues of timing and the extent to which the information is already publicly available. First, in the CAA’s view, the public interest in enabling the public to be informed and involved in a proposed airspace change is recognised by the requirement for an informative and sufficient stakeholder consultation (Stage 4). This ACP has been through the consultation phase and is currently in the analysis phase, and the responses to that consultation are part of the information the CAA is currently taking into account when making a decision whether to make the airspace change proposed.

Secondly, after coming to a decision, the CAA will publish the ACP that is the subject of this request (with appropriate redaction of commercially confidential and personal information) alongside its decision letter on its website. It is currently expected that this decision will be promulgated later this year.

On balance, the CAA has formed the view that, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Regulation 12(5)(d)*Prohibition on disclosure under Section 102 (Schedule 9) of the Act:*

As set out above, NATS is required to pursue airspace design changes, such as LAMP, as a condition of its NATS Licence. The CAA considers that the information that is in scope of the request is information that NATS has provided to the CAA in accordance with the terms of its NATS licence issued by the CAA pursuant to the Act.

NATS' ACP is provided in accordance with the Airspace Change Process which, as set out above, is the process by which changes to UK airspace may be proposed, and if so, the CAA will consider them. Accordingly this information is obtained by the CAA 'under or by virtue' of provisions under Part 1 of the Act.

By virtue of Section 102 (Schedule 9) this information must not be disclosed by the CAA without the consent of the individual or the business to which it relates unless one of the exceptions contained in Section 102 Schedule 9 applies. In the CAA's view none of the Schedule 9 exceptions apply in this case and therefore under the provisions of the Act the information could not be disclosed without consent. NATS has not given its consent to disclose.

Regulation 5(6) of the EIRs provides that any law that prohibits disclosure of environmental information shall not apply if the effect would be to prevent disclosure otherwise in accordance with the EIRs. However, the terms of the Transport Act mean the information in scope of the request is confidential within the meaning of Regulation 12(5)(d).

Furthermore in the CAA's view, the circumstances in which NATS provided the information to the CAA clearly imply an obligation to hold the information confidential until the CAA's decision is made and published. This information is of important strategic and economic value to NATS and is not already in the public domain. For this reason the CAA considers that in addition to the statutory confidentiality provisions a common law duty of confidentiality also applies to this information.

Confidentiality of proceedings

Regulation 12(5)(d) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of proceedings where such confidentiality is provided by law. 'Proceedings' include formal meetings where attendees deliberate over matters within the CAA's jurisdiction and circumstances where the CAA exercises its legal decision-making powers. In our view, Stage 5 of the Airspace Change Process is a circumstance where the CAA exercises its legal decision-making powers, as envisaged by EIR Regulation 12(5)(d). The confidentiality of the information provided for the purpose of those deliberations is provided by Schedule 9 of the Act and/or by common law confidentiality as above. The Information Commissioner's guidance notes that for disclosure to affect the confidentiality of the proceedings the information must form part of whatever constitutes those proceedings such as the business of the meeting or a report submitted to a meeting. In this case, the information requested forms the whole of the information that is considered by the CAA when it makes its decision, and that decision making process is the proceeding that is relied on by the CAA under the exception.

Having reached the view that the exception is engaged, the CAA has considered whether the public interest in withholding the information is outweighed by the public interest in disclosing it.

The general public interest in the disclosure of environmental information, and the disclosure of information related to this airspace change proposal, is set out above.

However, the CAA notes its view that disclosure of the information within scope of this request, would be, absent Regulation 5(6), prohibited without the consent of NATS as applicable and considers that this factor gives significant weight in favour of maintaining the exception. Moreover disclosure of this information would in fact place the whole of the decision making process, or the proceedings, in the public domain and disclosure would therefore undermine the confidentiality of the decision making process and therefore the space within which the CAA can give consideration to the various factors it must take into account when making its decision.

On balance, the CAA has formed the view that, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Regulation 12(9) and Regulation 12(5)(d)

The CAA notes that under Regulation 12(9) the CAA is not entitled to refuse to disclose information on emissions (including noise) under Regulation 12(5)(d) and the CAA is not relying on this exception in relation to any information on emissions.

Regulation 12(5)(e)

Confidentiality of commercial or industrial information

The design of potential airspace changes is carried out in a competitive environment, and potential airspace change proposers are free to contract with any procedure designers to produce airspace procedures on their behalf. The CAA considers that some of the information contained in the proposal consists of commercially confidential information belonging to NATS. It provides an insight into how NATS undertakes its assessments of a potential airspace change - what software they use, how they make assumptions, and how they set up simulations. The methodology used for undertaking these assessments has a direct impact on the price that NATS, or their competitors, quote their potential customers. Disclosure of the information would provide a competitor with the ability and/or the opportunity to replicate at least part of NATS' processes for analysing and developing an airspace change proposal, and provide information that would potentially allow rival businesses to adjust their bids to be cheaper but nearly as good as NATS.

Regulation 12(5)(e) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest. In the CAA's view some of the information contained within the ACP falls within this exception from disclosure.

In reaching this conclusion the CAA has taken into account the four-stage test included in the ICO's guidance on this exception.

- **The information is commercial or industrial in nature.** This information relates to NATS' commercial activity in a competitive environment. This information is developed by NATS, and their services are sold to third parties that need information and expertise of this nature. There are a number of providers of these services that compete to provide these services in this environment.
- **Confidentiality is provided by law.** The confidentiality is provided by Section 102 (Schedule 9) of the Transport Act 2000 and under the common law duty of confidentiality as explained above.
- **The confidentiality is protecting a legitimate economic interest.** Disclosure would provide competitors with access to commercially valuable information developed by NATS' expertise and owned by NATS.
- **The confidentiality would be adversely affected by disclosure.** In the CAA's view, disclosure of the information would provide a competitor with the ability and/or the opportunity to replicate at least part of NATS' processes for analysing and

developing an airspace change proposal, and provide information that would potentially allow rival businesses to undercut NATS. As per the ICO's guidance, once the first three elements are established the Commissioner considers it is inevitable that this element will be satisfied.

Having reached the view that the exception is engaged, the CAA has considered whether the public interest in withholding the information is outweighed by the public interest in disclosing it.

The general public interest in the disclosure of environmental information, and the disclosure of information related to this airspace change proposal, is set out above.

The public interest in maintaining the exception is in preventing harm to NATS' economic interests by disclosing commercially confidential information provided to the CAA that would provide competitors an insight into NATS' 'know how' and processes, and provide them with the ability to undercut NATS' pricing. In the CAA's view a competitive market (in terms of both process and innovative ideas) is in the public interest. As well as having an adverse affect on the confidentiality of NATS' commercial information, disclosure before the CAA makes its decision is, in the CAA's view, also likely to make NATS more reluctant to share its commercial information with the CAA and fully engage in potential airspace changes designed to modernise the UK's airspace structure, increase the efficient use of airspace and reduce the environmental impact of air traffic. As noted above, the government has recognised that the implementation of FAS brings significant opportunities to minimise aircraft emissions and air traffic delays, and it would not be in the public interest to undermine its implementation. NATS has previously advised the CAA it is reluctant to share information with the CAA (where to do so would be in the interests of enabling the CAA better to perform its regulatory duties referred to above) due to concerns about the effect of doing so on the confidentiality of their commercial information.

The public interest in any ACP and its environmental impact, and in allowing the public to be informed and involved in the process, is recognised by the requirement for consultation and the publication of the requested information once a decision has been made.

On balance, the CAA has formed the view that, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Regulation 12(9) and Regulation 12(5)(e)

The CAA notes that under Regulation 12(9) the CAA is not entitled to refuse to disclose information on emissions under Regulation 12(5)(e). The CAA considers that the information it considers should be withheld under Regulation 12(5)(e) is not information on emissions as it concerns the methodology for conducting modelling and analysis.

Regulation 13

Some of the documents contain personal data and, in the CAA's view, disclosure of such personal information would be unfair. The individuals concerned would not have had an expectation that their personal data would be disclosed and the CAA can identify no legitimate interest that would be served by disclosing this personal information. Disclosure would therefore be a breach of the first data protection principle and Regulation 13(1) provides an exception from the duty to disclose this information.

Information already in the public domain

The ACP documentation includes the following information which is already publicly available:

TAG Farnborough's consultation documents and feedback report Part A:
<http://www.consultation.tagfarnborough.com/consultation-document/>

NATS' consultation feedback report Part B:
<http://www.nats.aero/wp-content/uploads/2015/02/LAMP-SouthCoast-FeedbackReport-Issue1.0.pdf>.

For all the reasons set out above the CAA has determined to withhold the information in scope of your request.

If you are not satisfied with how the CAA has dealt with your request you should write to the CAA as follows:-

Caroline Chalk
Head of External Information Services
Civil Aviation Authority
Aviation House
Gatwick Airport South
Gatwick
RH6 0YR

caroline.chalk@caa.co.uk

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

Should you remain dissatisfied with the outcome of the formal internal review you have a right to appeal against the decision by contacting the Information Commissioner at:-

Information Commissioner's Office
FOI/EIR Complaints Resolution
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

www.ico.gov.uk/complaints.aspx

If you wish to request further information from the CAA, please use the form on the CAA website at <http://www.caa.co.uk/application.aspx?catid=286&pagetype=65&appid=24>.

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.

Regulation 12 of the Environmental Information Regulations 2004

- (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—
- (a) an exception to disclosure applies under paragraphs (4) or (5); and
 - (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
- (2) A public authority shall apply a presumption in favour of disclosure.
- (3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.
- (4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—
- (a) it does not hold that information when an applicant's request is received;
 - (b) the request for information is manifestly unreasonable;
 - (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
 - (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
 - (e) the request involves the disclosure of internal communications
- 5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—
- (a) international relations, defence, national security or public safety;
 - (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
 - (c) intellectual property rights;
 - (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
 - (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
 - (f) the interests of the person who provided the information where that person—
 - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
 - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure; or

(g) the protection of the environment to which the information relates.

Environmental Information Regulations – Regulations 13

(1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

(2) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene—

(i) any of the data protection principles; or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998(1) (which relate to manual data held by public authorities) were disregarded.

(3) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of that Act and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

(4) In determining whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

(5) For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that—

(a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded; or

(b) by virtue of any provision of Part IV of the Data Protection Act 1998, the information is exempt from section 7(1)(a) of that Act.