

17 February 2015  
EIR Reference: E0002228

Dear XXXX

I am writing in respect of your recent request of 9 February 2015 for the release of information held by the Civil Aviation Authority (CAA).

**Your request:**

*Would it please be possible for us to have a copy of the NATS submission to the CAA concerning the NATS Departure Route Proposal at London Stansted Airport ('the Proposal').*

**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). We can confirm that we do hold an Airspace Change Proposal regarding departure routes at Stansted, which was submitted by NATS and Stansted Airport Ltd (STAL) as joint sponsors.

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**

Aviation House Gatwick Airport South Gatwick RH6 0YR [www.caa.co.uk](http://www.caa.co.uk)

Telephone 01293 768512 [foi.requests@caa.co.uk](mailto:foi.requests@caa.co.uk)

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"). The Airspace Change Process contains seven identified stages.

### **The Airspace Change Proposal that is the subject of your request**

NATS and STAL's joint Airspace Change Proposal 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 Airspace Change Proposal 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).

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 proposal 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. While it is a completed document, it is information held as part of a broader, ongoing and incomplete process.

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. 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.

Although the information requested falls within the scope of this exception, the information must still be disclosed if the public interest in disclosing the information outweighs the public interest in maintaining the exception.

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.

Airspace Change Proposals 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 and then evaluated by the CAA to ensure that it delivers the required benefits in terms of safety and airspace capacity, and the environmental impact of the proposal is fully understood. 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.

In addition, as explained above, this particular airspace change is part of LAMP, a major enabler for FAS which, as the government has stated, brings significant opportunities to minimise aircraft emissions and air traffic delays. In the CAA's view it would not be in the public interest to reduce the likelihood of the ambitions and objectives of FAS being realised.

Finally, when considering the public interest in disclosing or withholding the information the CAA has also considered the extent to which you and the general public already have access to the information. 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). The response to that consultation will form part of the information the CAA will take into account when making a decision whether to make the airspace change proposed.

Secondly, after coming to a decision, the CAA publishes its decision letter on its website. The decision letter sets out the information which it took into account when making that decision which includes the information contained in the Airspace Change Proposal submitted to it.

Having considered the factors on both sides the CAA considers that, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure and the information is therefore withheld under Regulation 12(4)(d). A copy of this exception can be found below.

Regulation 14(4) states that “If the exception in Regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed”. The CAA expects to make a decision on this proposal in June 2015.

#### 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 some of the information that is in scope of the request, that is the data and modelling provided by NATS as part of the proposal, is information that NATS has provided to the CAA (jointly with STAL) in accordance with the terms of its NATS licence issued by the CAA pursuant to the Act.

NATS and STAL's joint Airspace Change Proposal 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.

Although the information is covered by the confidentiality provisions of Schedule 9, 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. The CAA must therefore consider the effect of the provisions of the EIRs in relation to Schedule 9.

##### *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 as above.

Although the information requested falls within the scope of this exception to disclosure in the EIRs, the CAA notes that the information should still be disclosed if the public interest in disclosing the information outweighs the public interest in maintaining the exception.

There is a general public interest in the disclosure of environmental information as set out above.

However, the CAA notes its view that disclosure of the information within scope of this request is prohibited without the consent of NATS or STAL as applicable.

Having considered the factors on both sides the CAA considers that, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure and the information is therefore withheld under Regulation 12(5)(d). A copy of this exception can be found below.

### Regulations 12(5)(c) and 12(5)(e)

*Intellectual property rights & confidentiality of commercial information where confidentiality is protected by law to protect a legitimate economic interest.*

The design of potential airspace changes is carried out in a competitive environment, and potential airspace change sponsors are free to contract with any procedure designers (in this case NATS) to produce airspace procedures on their behalf.

The airspace designs and procedures included in the Airspace Change Proposal is commercially confidential information belonging to NATS and some information is subject to NATS intellectual property rights (IPR). Disclosure of the information could provide a competitor with the ability and/or the opportunity to replicate at least part of their processes for analysing and developing an airspace change proposal.

Regulation 12(5)(c) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect IPR, while 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 the information in scope of your request should be withheld for both these reasons. However, although the information requested falls within the scope of these exceptions, the CAA notes information must still be disclosed if the public interest in disclosing the information outweighs the public interest in maintaining the exceptions.

For both exceptions, the general public interest in the disclosure of environmental information is set out above.

In relation to Regulation 12(5)(c), the public interest in maintaining the exception concerns the ability of NATS to maintain control over its intellectual property by not making it available to commercial competitors. As well as having an adverse affect on NATS' ability to exploit its IPR, in the CAA's view it is also likely to make NATS more reluctant to share its intellectual property 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 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 their ability to exploit their IPR.

In relation to Regulation 12(5)(e), 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. As with Regulation 12(5)(c), it is not in the public interest to make NATS, or other organisations involved in airspace changes, more reluctant to share information with the CAA or to undermine the implementation of FAS. There is also an inherent public interest in maintaining the common law principle of confidentiality.

In relation to both exceptions, the public interest in any Airspace Change Proposal 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 CAA's decision letter once a decision has been made.

Having considered the factors on both sides the CAA considers that, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure in relation to both Regulation 12(5)(c) and Regulation 12(5)(e). A copy of these exceptions can be found below.

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](mailto: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](http://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.