

29 May 2015
EIR Reference: E0002315

Dear XXXX

I am writing in respect of your request of 16 April 2015 for the release of information held by the Civil Aviation Authority (CAA), which we have considered in line with the provisions of the Environmental Information Regulations 2004 (EIR). I acknowledge that we have not been able to respond to your request within the required 20 working days, and for that I apologise. The CAA is receiving a lot of correspondence on similar issues, including requests for information under the EIRs, and we are dealing with these requests in the order in which they are received. It is of course a matter of regret that the CAA has not been able to reply to your request within the time frame set out in the EIRs. However the CAA Board constantly monitors CAA's adherence to these time frames and keeps under consideration how it can meet its obligations under the EIRs whilst at the same time performing its other regulatory functions.

Background

The CAA is responsible for deciding (after due process) whether to change the notified (or published) airspace structure in accordance with its statutory duties.

Air Navigation Service Providers (ANSPs), the organisations that employ air traffic controllers, are responsible for devising procedures for their air traffic controllers to direct aircraft within the framework of the notified or published airspace structure. As a safety regulator, the CAA certifies and designates ANSPs to provide air traffic services in a particular block of airspace. As part of that role the CAA will have continual discussions with ANSPs about the safety of their operations and procedures. Aircraft using Heathrow airport will receive air traffic services both from NATS Services Ltd (NSL) as the ANSP for Heathrow airport, and from NATS (En-route) PLC (NERL) as the UK's en-route ANSP.

Each ANSP is required to document their procedures in a manual of air traffic services (known as MATS Part II). Temporary Operating Instructions (TOIs) are procedures published by NSL and NERL (or other ANSPs) for its air traffic controllers as temporary amendments to its manual of air traffic services. TOIs, and the associated safety assurance (where appropriate), are reviewed by the CAA before the procedures within them are put into use. This is in the CAA's role as a safety regulator; there is no airspace

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regulation function for the CAA to perform. Procedures published in TOIs that are permanently adopted are incorporated into MATS Part II.

Your specific request

You have requested *the following information in relation to Heathrow Airport operations between 2009 to today:*

- 1 . Any directions, correspondence and memoranda concerning the alteration of any departure procedures that aims to reduce aircraft fuel consumption for any aircraft model or airlines fleet.*
- 2. Any directions, correspondence and memoranda concerning the use of flexible acceleration up to 4000ft by departing aircraft.*
- 3. Any directions, correspondence and memoranda concerning TOGA take-off/go around [full] thrust for maximum climb procedures or any revised procedures using the 'Flex' flexible lower thrust take-off setting.*
- 4. Any directions, correspondence and memoranda concerning changes to Heathrow's noise abatement procedure requirements that define altitude constraints and a minimum climb gradient up to 4,000ft.*
- 5. Any directions, correspondence and memoranda referencing "green-dot speed"? Green-dot speed, being typically around 230kt, is indicated as a green dot on an aircraft's airspeed indicator and gives the optimum climb gradient. Any earlier acceleration allows the crew to retract the flaps, thereby reducing drag, fuel burn and emissions.*

CAA Decision with respect to the information disclosure request under the EIRs

Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable and the CAA considers that this exception applies in this case (a copy of this exception can be found below).

I have outlined the factors that the CAA has taken into account in reaching this conclusion below.

- Several hundred different TOIs relating to Heathrow (NSL) and London Terminal Control (NERL) have been submitted to the CAA since 2009. To identify and collate just the relevant TOIs would require the consumption of considerable CAA resources to collate, assess and prepare for disclosure.
- The interactions between the CAA and other parties, largely NSL, NERL and Heathrow Airport Ltd (HAL), are wide ranging and involve a number of CAA departments - these are obviously among the biggest organisations regulated by the CAA. Relevant correspondence may be held in relation not only to the CAA's role in regulating ANSPs, but also to the safety regulation of Heathrow airport itself, the CAA's airspace regulation functions, the development of policy on air traffic issues and the work of the CAA's Environmental Research and Consultancy Department (ERCD) which carries out research and analysis in relation to aviation noise.

Retrieving the information

- An initial assessment has identified a considerable number of people (in excess of 100) that would have to search their records to see what relevant information they hold, if any.
- While under the EIR there is no appropriate cost limit above which public authorities are not required to deal with requests for information, the ICO's guidance on Regulation 12(4)(b) states '*In assessing whether the cost, or the amount of staff time involved in responding to a request, is sufficient to render a request manifestly unreasonable the FOIA fees regulations may be a useful starting point*'.
- Given the number of TOIs that have been submitted to the CAA, and the number of people that may hold other relevant information, it is estimated that the time it would take to complete the activities that can be taken into account in determining whether the appropriate limit is exceeded in relation to a Freedom of Information (FOIA) request (i.e. locating, retrieving or extracting the information) would considerably exceed the appropriate limit for a FOIA request of £450, or 18 hours.

Assessing/redacting the information

- Some of the information, including the TOIs themselves, is likely to need to be assessed as to whether an exception to disclosure applies and whether the public interest favoured disclosure or maintaining the exception. In particular:
- Some of the information, including the TOIs in scope of your request, will be commercially sensitive or confidential information relating to HAL, NSL or NERL. The TOIs themselves are internal documents not intended for public disclosure.
- Consultation with third parties on their view on disclosure would be necessary and need to be taken into account by the CAA when reaching its decision.
- Some information contained in TOIs, such as any frequencies, telephone numbers and operational unit names/control positions, could, if disclosed, provide information that would make it possible for members of the public to interfere with the proper operation of Air Traffic Services.
- All of the emails contain personal information.

As well as the considerable time that would be required to collate the information, consult third parties, consider whether any exceptions apply and redact information, the CAA has also considered the overall effect that this would have on the organisation.

The information requested is complex, and much of the assessment of the information and consultation with third parties would have to be carried out by specialist subject matter experts. Complying with your request would require a significant diversion of resources away from ongoing work and would result in a significant and disproportionate impact on our core operations.

Taking all of the above factors into account, the CAA considers that the exception contained in Regulation 12(4)(b) of the EIR, which provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable, is engaged.

The public interest

We have also considered whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

There is a general public interest in the disclosure of environmental information to promote the transparency and accountability of public bodies and their decision making, greater public understanding and awareness of environmental issues, a free exchange of views and more effective public participation in environmental decision making.

The public interest in maintaining the exception lies in protecting public authorities such as the CAA from exposure to a disproportionate burden in handling requests for information and its impact on core operations and, as has been explained above, the burden of responding to this request would be significant and disproportionate.

Having considered the public interest factors on both sides the CAA has concluded that, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Information that we may not hold

Your requests 3 and 5 relate to procedures that may be adopted by operators, while noise abatement procedures as mentioned in your question 4 are the responsibility of the Department for Transport.

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:-

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 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

A handwritten signature in black ink, appearing to read 'M Stevens'.

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.