

[REDACTED]

1 June 2018
EIR Reference: E0003690

Dear [REDACTED]

I am writing in respect of your request, of 22 April 2018, for the release of information held by the Civil Aviation Authority (CAA).

Your request, which we have considered your request in line with the provisions of the Environmental Information Regulations 2004 (EIR), was:

Copies of all correspondence between the CAA and Edinburgh Airport Limited regarding their Airspace Change Programme with particular reference to the proposed route E and any impact on the residents in the areas of Cramond, Aberdour, Dalgety Bay and North Queensferry.

Transition to new airspace change process

The Department for Transport (DfT) and CAA worked closely to introduce a new airspace policy framework ([UK air navigation guidance 2017 and directions](#)) and airspace change process ([CAP1616](#)) for those wanting to change the design of UK airspace. This came into force on 2 January 2018.

As part of the [transition to the new process](#), we have agreed with the DfT that anyone wishing to change the design of UK airspace who had not launched their public consultation on their proposal before 2 January 2018 will be assessed against the new policy framework and change process (CAP 1616). As Edinburgh Airport Ltd (EAL) initially consulted on their proposal in 2016 and 2017, our response reflects the previous policy framework and change process ([CAP 725](#)), against which their proposal is being assessed.

Policy framework and change process against which this proposal is being assessed

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

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of the Secretary of State's [Guidance to the CAA on Environmental Objectives Relating to the Exercise of its Air Navigation Functions \(2014\)](#).

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 an airspace change proposal (ACP) 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.

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.

EAL's airspace change proposal

EAL submitted its formal airspace change proposal to the CAA on 4 August 2017. We informed EAL on 21 September 2017 that we would not be continuing with Stage 5 and we requested that the airport address a number of technical and coordination issues.

EAL has addressed the Runway 06 design issue referred to in our letter of 21 September 2017 and, as a consequence, EAL has initiated a further round of consultation to provide communities affected by the design changes an opportunity to provide feedback to the sponsor.

Information about the proposal and its current status is available at [http://www.caa.co.uk/Commercial-industry/Airspace/Airspace-change/Decisions/FASI\(N\)/](http://www.caa.co.uk/Commercial-industry/Airspace/Airspace-change/Decisions/FASI(N)/)

The information that is the subject of your request

The CAA does hold information within the scope of your request, which entirely consists of, or relates to, information submitted to us for consideration under that proposal. However, for the reasons set out below, the CAA is withholding the information you have requested.

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 formal proposal is provided to the CAA at the end of Stage 4 of the seven stage Airspace Change Process. As also set out above, new versions of an ACP may be submitted 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 potentially 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 stakeholders and 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, and the operations of other airspace users. The CAA recognises the public interest in enabling and assisting other airspace users and the wider public to understand how potential changes to the structure of airspace will affect them, and for them 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 all or part of the ACP 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 stakeholders to be informed and involved in a proposed airspace change is recognised by the requirement for an informative and sufficient stakeholder consultation.

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.

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)

EAL's 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. In the CAA's view, the circumstances in which the ACP was provided 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 EAL and is not already in the public domain. For this reason the CAA considers that a common law duty of confidentiality 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 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 part 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, as are the prejudice that would be caused by premature disclosure. In addition, the disclosure of this information would place part 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.

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
<https://ico.org.uk/concerns/>

If you wish to request further information from the CAA, please use the form on the CAA website at <http://publicapps.caa.co.uk/modalapplication.aspx?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.