

[REDACTED]

29 June 2018
Reference: F0003738

Dear [REDACTED]

Thank you for your request of 24 May 2018 for the release of information held by the Civil Aviation Authority (CAA).

Your request:

Please could you provide copies of:

Any reports, documents or Power Point presentations you have produced regarding the potential impact of Brexit.

Copies of any correspondence that you have had with the government regarding the potential impact of Brexit.

Our response:

Having considered your request in line with the provisions of the Freedom of Information Act 2000 (FOIA), we are able to disclose the following information –

- the text of a speech made by Andrew Haines at a Global Airport Development conference on 1 December 2016 is available on the CAA website at http://www.caa.co.uk/uploadedFiles/CAA/Content/News/Speeches_files/GADspeech_AndrewHaines_011216.pdf
- the text of a speech made by Andrew Haines at a UK Transport in Europe event on 5 September 2017 is available on the CAA website at https://www.caa.co.uk/uploadedFiles/CAA/Content/News/Speeches_files/UKTiE%20-%20Andrew%20Haines.pdf
- A recent letter sent to an external stakeholder on the subject of Brexit contingency planning (attached). We have redacted personal information where disclosure of such personal information would be unfair and disclosure would be a breach of one of the data protection principles contained in Article 5 of the General Data Protection Regulation, specifically Article 5(1)(a), which states that personal data shall be 'processed lawfully, fairly and in a transparent manner in relation to the data subject ...' Section 40(2) of the FOIA provides an exemption from the duty to disclose information that would contravene any of the data protection principles.

Civil Aviation Authority

Aviation House Gatwick Airport South Gatwick RH6 0YR. www.caa.co.uk

Telephone: 01293 768512. foi.requests@caa.co.uk

The remainder of the information we hold, both internal documents and correspondence with the government, forms part of the process of formulating and developing policy that is not yet complete, specifically consideration of the range of possible outcomes, their impacts on the aviation and aerospace industries and the ability of the CAA to perform new or repatriated functions. That consideration requires the CAA to address matters fully and with complete frankness, both internally and between the CAA and the government, and to be entirely realistic about what is possible, when it can be achieved and with what degree of certainty and sustainability.

Disclosure of the material would likely demand significant engagement with external stakeholders and in responding to enquiries. That engagement and those responses would have to be provided by CAA officials who should be spending their time on planning for the post-Brexit future. Thus, the most likely form of prejudice is the unhelpful dilution of effort and focus. Time and expertise that would be best targeted at completing contingency planning would necessarily be diverted to explaining the various scenarios that we think might happen, explaining our assessment of the impacts of those scenarios and setting out how we have calculated our responses.

Additionally, in view of the strategic importance of the material, it is vital to ensure that the relationship between the CAA, the Secretary of State and the Department of Transport remains strong and based on mutual trust. That relationship would be likely to be damaged by disclosure of the material.

Such information is covered by Section 36(2)(c) of the FOIA, which provides that information is exempt information if, in the reasonable opinion of a qualified person, disclosure would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

As the qualified person for the CAA, the opinion of Kate Staples, General Counsel and Secretary to the CAA, is that such prejudice would be likely to be caused by disclosure and therefore Section 36(2)(c) applies to the information requested.

Public interest test

Section 36 of the FOIA only allows a public authority to withhold information where, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest factors in favour of disclosure

The CAA recognises that negotiations in relation to leaving the EU, and consideration of the range of possible outcomes and their impacts, are a serious undertaking and there is public interest in being aware of the material available for consideration by the government, policy options that may be under consideration and their potential impacts on the aviation and aerospace industries. Having an informed public debate is supported by making as much information available as possible.

There is also a general public interest in the disclosure of information held by public authorities and in greater understanding of decision making by the government and other public bodies.

Public interest factors in favour of maintaining the exemption

The issue of Brexit and the terms on which the UK will leave the EU are matters of considerable public interest. It is also the most important policy matter with which the

government is currently grappling, where it is vital to ensure that the best options are identified and then taken forward. The UK's departure from the EU is a matter for negotiation with the other member states, which raises particular requirements in terms of domestic scrutiny and freedom to negotiate.

It is also widely recognised that good decision making depends on the ability to freely consider all possible options. It is important that the government is able to seek specialist expert advice from the CAA and to discuss issues freely and frankly with stakeholders, in the knowledge that such information will not be disclosed to the public unless appropriate, and to be able to consider that advice in confidence before reaching any decision on the UK's negotiating position. Similarly, it is important that the CAA is able to consider all possible scenarios, options and impacts without premature public or media involvement impacting on the decision-making process.

Effective decision making requires a safe space in which both the government and the CAA can formulate policy and reach decisions, and disclosure of the information feeding into such decision making would harm that safe space and would be likely to have a 'chilling effect' on the quality of ongoing and future policy making. This is particularly the case while this remains a 'live' issue.

Disclosure of the material would, as mentioned above, also be likely to divert the time and expertise of CAA staff away from important contingency planning to explaining various scenarios and their potential impacts to stakeholders.

Conclusion

The CAA recognises the factors in favour of disclosure, but considers that the strategic nature of the material, the importance of the government being able to achieve the best possible outcome for the UK, and the potential impact disclosure would have on the CAA's ability to continue contingency planning are factors that carry significant weight, especially while negotiations over the terms of the UK's exit from the EU are ongoing.

The CAA has therefore concluded that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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 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 FOIA 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.

Freedom of Information Act: Section 36

(1) This section applies to—

- (a) information which is held by a government department or by [F1the Welsh Assembly Government] and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

- (a) would, or would be likely to, prejudice—
 - (b)
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
 - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
 - (iii) the work of the Cabinet of the Welsh Assembly Government.
- (b) would, or would be likely to, inhibit—
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

(3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).

(4) In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words “in the reasonable opinion of a qualified person”.



[REDACTED]

4 June 2018

Dear [REDACTED]

Brexit contingency planning

Thank you for your letter of 15th May 2018. I am responding on Andrew's behalf as he has now left the CAA.

Shortly after the June 2016 Brexit referendum, the CAA set out four key outcomes that, in its view, would best serve the interests of the UK and passengers. As well as continuing to allow the UK aviation and aerospace sectors to flourish, we said there should be more not less competition, and that hard-won consumer and environmental protections should be retained. On the core issue of safety and security, we argued that the UK should continue to be influential beyond its boundaries and remain part of the EASA system of safety regulation.

This position on EASA membership is shared by the vast majority of the stakeholders we have spoken to in the aviation and aerospace sectors, and the Department for Transport. Further, the Prime Minister said in her recent Mansion House speech that the UK Government also wants the UK to remain a member of EASA. Achieving this outcome, however, is not within the CAA's gift. It is a matter of negotiation between the UK Government and the European Commission and the other 27 EU Member States. The Commission's notice to stakeholders published on 13th April 2018 presents a stark and legalistic description of a scenario in March 2019 in which there is no Implementation Period agreement or longer-term deal. At the March European Council, the UK and the EU agreed the terms of an Implementation Period to follow the UK's exit from the EU in March 2019. This would see all EU law continue to apply in the UK for a time-limited period, including all the regulations that make up the EASA system, through to December 2020. The Implementation Period is expected to be ratified by the UK and European Parliaments sometime after October this year.

However, because the outcome of that ratification process is not yet guaranteed, and because we have had some requests from industry, we are preparing contingency plans for a scenario in which there is no Implementation Period or a longer term deal. This scenario would involve the UK adopting the existing EASA ruleset but without membership of EASA. The CAA would fulfil regulatory functions without access to EASA and EU level capabilities

Civil Aviation Authority

CAA House 45-59 Kingsway London WC2B 6TE www.caa.co.uk

Telephone [REDACTED] tim.johnson@caa.co.uk

or existing mutual recognition arrangements. Our contingency planning involves preparing the CAA to take over certain EASA defined regulatory processes, newly fulfil functions currently delivered collectively by the EU (such as the ACC3 inbound security regime) and to create the capability to take on functions where EASA currently acts as UK's technical agent (such as meeting ICAO State of Design responsibilities). To maximise ongoing recognition of the outputs of our regulatory system we are also working with USA, Canada and Brazil to put in place Bilateral Aviation Safety Agreements for when UK leaves EU. Some of these arrangements would take some time to put in place as we establish the necessary processes and new capabilities. They would also require some cooperation from industry, particularly transparency of their pipeline of future regulatory approvals and flexibility on timing of those regulatory requests. The plans also require us to have access to EASA for technical transfer discussions at an early opportunity and for us to be in a position to communicate openly about any new arrangements to overseas regulators later in the year.

While there are some steps the CAA can take, some aspects of the scenario in which the UK leaves the EU in March 2019 without an Implementation Period or a longer term deal would also be for individual businesses to consider and take forward themselves, for example if they would require EU/EASA third country approvals as part of their on-going business activity. We are strongly encouraging all companies in the aviation and aerospace sectors to consider their own contingency plan arrangements for a full range of different Brexit scenarios against their own risk appetite, and decide for themselves whether and when to implement these plans.

I should stress that given the express intention and statements of the UK Government, we judge the risk of this contingency planning scenario occurring is unlikely. However, at this time, it cannot at present be reduced to zero and therefore contingency planning is a prudent course of action for all parties.

As our approach develops, we will continue to work towards the four Brexit outcomes described above and work closely both with the Government and the aviation and aerospace sectors.

Please contact [REDACTED] or [REDACTED] at the CAA should you require additional information.

Yours sincerely



Tim Johnson
Policy Director