



Mr Matthias Lawson  
request-579671-36d008d4@whatdotheyknow.com

2 July 2019  
Ref: F0004275

Dear Mr Lawson

I have concluded my review of your appeal to the CAA's reply to your original request for information dated 30 May 2019.

Your appeal is in relation to our response of 6 June 2019 to your request:

- *'How many Pilots were reported to the CAA for infringing controlled airspace in the period 1 Jan - 1 May 2019.*
- *How many of the reported pilots were offered the online exam, and how many passed / failed it.*
- *How many of the reported pilots were offered the GASCo infringement course - broken down into those offered the course without being offered the online exam, and how many were offered it post failing the online course.'*

### **The CAA's original decision**

In our response to bullet point one we provided a link to information. For points two and three we said occurrence reports are held by the CAA in accordance with [Regulation \(EU\) No. 376/2014](#) on the reporting, analysis and follow up of occurrences in civil aviation ("the Regulation"). Under the Regulation, information collected through occurrence reporting schemes and generated by analysis and follow up is held confidential, and not made available or used for any purpose other than the maintenance or improvement of aviation safety.

We said that the civil aviation safety system was established on the basis of feedback and lessons learned from accidents and incidents. Occurrence reporting depended on trust between the reporter and the entity that collected and assessed the information. To ensure the continuing availability of safety information, access to occurrence information is limited solely to interested parties participating in the improvement of aviation safety.

We stated that under section 44(1)(b) of the Freedom of Information Act 2000 (FOIA) that information is exempt if its disclosure is incompatible with any EU obligation. As the disclosure of occurrence report information is not permitted under the Regulation, it is exempt from disclosure under the FOIA. Furthermore, under section 44(2) of the FOIA, if information is exempt according to section 44(1) the duty to confirm or deny whether we hold the information does not arise.

We said that if you considered that you required the information for the purpose of maintaining or improving aviation safety, you could apply to us for the information using the form at <http://publicapps.caa.co.uk/docs/33/SRG1605Issue03.pdf>.

### **Your request for an internal review**

In your request for an internal review you said that the reasons we gave for withholding the information 'to protect confidentiality of the original reporters and pilots involved' was not reasonable or justifiable grounds. You said you had asked for 'overall headline figures and nothing in the answers could identify individual incidents, pilots or could even relate actions to individual pilots'. You also pointed out that the CAA publishes details of prosecutions.

Your second email referenced EU 376/2014 (32) "the general public should be provided with general aggregated information" "in particular, trends and analysis" and also quote from CAP1404 which states 'The CAA will publish data on the Airspace and Safety Initiative website ([airspaceand.safety.com](http://airspaceand.safety.com)) showing the following:

Online tests taken, passed and failed  
Awareness Courses successfully completed and not completed  
Refresher training completed at a pilot training organisation  
Provisional suspensions of licences  
Other enforcement activity, e.g. prosecutions  
Type of airspace infringed.'

### **My internal review**

It is my view that you have made some valid points.

Article 15(2) of the Regulation states:

*Member States, the Agency and organisations shall not make available or use the information on occurrences:*

*In order to attribute blame or liability: or  
For any other purpose other than the maintenance or improvement of aviation safety.*

The Regulation, therefore, requires that appropriate measures are put in place to ensure that information collected or generated through occurrence reporting schemes is kept confidential, and that such information is not made available or used for any purpose other than for the maintenance or improvement of aviation safety.

I am not aware of your intended use of the information or whether you have applied using the appropriate form as linked above. On this basis, this would suggest that the information could not be disclosed and the use of Section 44(1)(b) of the FOIA was correct.

I could, therefore, on that basis, conclude that our original response to withhold the information was correct. However, I have also considered the full text of EU 376/2014 (32) which states:

*The general public should be provided with general aggregated information on the level of aviation safety in Member States and in the Union. That information should cover, in particular, trends and analysis deriving from the implementation of this Regulation by the member States, as well as information in an aggregated form on the content of the European Central Repository, and may be provided by publishing safety performance indicators (SPI).*

The above suggests that it is for the CAA to decide what information can be provided, without compromising Article 15(2). As you have pointed out, the CAA committed to publishing further data in CAP1404. I note there were no given timescales or deadlines involved. However, the CAA released a Skywise notification on 25 June alerting subscribers to further information from the Infringement Coordination Group's review of infringement MORs under CAP1404. The additional information begins with the month of May. This information will now be published monthly and can be found [here](#).

### **My conclusion**

According to CAP 1404, which was last published Dec 2018, the CAA had made a decision about the type of information it would be publishing. On this basis, I conclude that the CAA should have at least informed you that it intended to publish the information at some point in future. This is in line with Section 22 of the FOIA which provides an exemption for information that is intended to be published in the future. The CAA could have considered this exemption, rather than Section 44. Part of this consideration would have been to decide whether in all the circumstances it would have been reasonable to withhold the information until its planned publication. However, I then went on to consider the cost of complying with your request and concluded that based on the time taken to publish the information for May, it would likely have exceeded the appropriate limit.

Given that May's data has now been published, I have spoken with the relevant business area to discuss an estimate on how long it would take to prepare and publish the information for January to April, in order to complete your request. This discussion has led to an agreement that we will be publishing this information by mid-July. The information will be made available through the same link provided above.

I conclude that the information requested would not have been made available to you at the time of your request for the reasons explained above, but that the use of Section 44 of the FOIA in this case, where we had already committed to publishing information, was incorrect. For this reason, I am partially overturning our original decision.

### **Rights of Appeal**

Finally, I should advise you that, under the FOIA, you have further rights of appeal to the ICO. Should you have any reason to complain about any aspects of the processing of your request and of your subsequent appeal, you should contact the ICO at:  
The Information Commissioner's Office

FOI/EIR Complaints Resolution  
Wycliffe House  
Water Kane  
Wilmslow  
SK9 5AF  
<https://ico.org.uk/concerns/>

Should you wish to make further requests, please use the e-form at <http://www.caa.co.uk/foi>.

Yours sincerely



Caroline Chalk  
Head of External Information Services