

17 July 2019  
Reference: F0004247

Dear [redacted]

I have concluded my review of your appeal to the CAA's reply to your original request for information dated 12 May 2019.

Your appeal is in relation to our response of 5 June 2019 for part of your request:

*'For each of the above two periods [Jan-Mar 2018 and Jan-Mar 2019], please supply the numbers of each type of infringement which resulted in*

- the pilot being sent a warning letter
- the pilot being sent to the online tutorial and exam
- the pilot being sent to the GASCO seminar
- the pilot being sent for further action

*Please could you also supply the total number of pilots who were sent to the GASCO seminar during the whole year 2018 and a breakdown of the reasons.'*

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

In our response 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 were *'irrelevant because no data is being sought which may identify any individual.'*

### **My internal review**

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 on that basis conclude that our original response to withhold the information was correct. However, I have also considered the 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). 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 2019 alerting subscribers to further information from the Infringement Coordination Group's review of infringement MORs under CAP1404. 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 some of the information you had asked for at some point in future (the Jan to Mar 2019 figures only). 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 one month, it would have exceeded the appropriate limit.

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 some of the information requested, was only partly 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