

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 March 2009

Public Authority: Civil Aviation Authority
Address: Aviation House, Gatwick Airport South
West Sussex
RH6 0YR

Summary

The complainant requested a copy of a safety audit conducted on MK Airlines by the public authority. The public authority identified the request as constituting two reports on a number of on-site inspections which were conducted prior and subsequent to granting MK Airlines an Air Operator Certificate in 2006. It however withheld both reports by virtue of the exemption at section 31(1)(g) and by extension sub section (2)(d) of the Act. The Commissioner finds that the exemption was not engaged and has ordered the disclosure of both reports. He also finds the public authority in breach of sections 1(1)(b) and 10(1) of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 04 January 2007, the complainant made the following request;
'Under EIR, I would like a copy of the safety audit on MK Airlines by the CAA.'
3. The public authority responded on 19 January 2007. It explained it had decided to address the request under the Act as in its view, the requested information falls within the scope of the Act rather than the Environmental Information Regulations 2004 (EIR).

4. The public authority however withheld the requested information by virtue of the exemption contained in section 31(1)(g) of the Act.
5. On 19 January 2007, the complainant requested a review of the public authority's decision.
6. The public authority completed its review on 19 February 2007. It explained that the information considered and withheld pursuant to the complainant's request are the '*reports for a number of on-site inspections which were conducted prior and subsequent to granting the Air Operator Certificate to (AOC) MK Airlines in 2006.*'
7. It upheld the original decision to withhold the requested information by virtue of the exemption at section 31(1)(g) and clarified that the relevant function was that described in section 31(2)(d). The public authority went on to conclude that on balance, the public interest in maintaining the exemption outweighed the public interest in disclosure.

The Investigation

Scope of the case

8. On 26 June 2007, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to review the public authority's decision to withhold the requested information.
9. The Commissioner's investigation covered the following:
 - The applicability or otherwise of the EIR to the withheld information, and
 - The applicability or otherwise of section 31(1)(g) and by extension sub section (2) (d) to the reports for the on-site inspections conducted prior and subsequent to granting an Air Operator Certificate to MK Airlines in 2006.

Chronology

10. On 25 July 2008, the Commissioner wrote to the complainant inviting his comments on the scope of the investigation. He specifically informed the complainant that the investigation would only cover the reports described by the public authority in its letter of 19 February 2007.
11. The complainant responded on 06 September 2008. He did not question the scope of the investigation but explained that he would like a number of points to be taken into account in the course of the investigation, these include;
 - The public's right to know if an airline is safe and whether its activities have an effect on those that live under its flight path, and

- Part of the safety audit was released to the public.
12. The Commissioner had in the meantime written to the public authority on 04 August 2008. He asked the public authority to provide him with copies of the withheld information, and also invited it to provide a full and detailed explanation as to why it considered the Act rather than the EIR was the appropriate information access framework to address the complainant's request.
 13. On 28 August 2008, the public authority provided a response explaining the reasons why it had addressed the request under the Act rather than the EIR. These reasons are considered in the Analysis section of this notice.
 14. On 23 September 2008, it provided the Commissioner with the copies of the withheld information, and explained the reasoning behind the application of section 31(1)(g) and by extension sub section (2) (d) of the Act.
 15. It also explained that a safety audit for MK Airlines was carried out in November 2004, and this was the subject of the complainant's request to the Department for Transport in 2005. Therefore, '*Given the lapse of time between that request to the CAA in January 2007, the CAA considered the complainant's request in relation to more recent safety audits.*'
 16. The public authority responded to further queries from the Commissioner in letters dated 29 October 2008 and 18 November 2008.

Analysis

Procedural matters

Applicable Information Access Regime

17. The Commissioner initially considered whether the public authority correctly addressed the request under the Act rather than the EIR.
18. Regulation 2(1) of the EIR defines environmental information as;
'any information in written, visual, aural, electronic or any other material form on –
 - (a) *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
 - (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*

- (c) *measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;*
- (d) *reports on the implementation of environmental legislation;*
- (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and*
- (f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c)...'*
19. A full text of Regulation 2 is available in the legal annex at the end of this Notice.
20. The public authority provided the Commissioner with copies of two reports dated 15-16 August 2005, and 31 July/ 01 August 2006. The reports were produced by the public authority's 'Flight Operations Department'. They are, broadly speaking, divided into three sections which contain the summary of checks made, findings, comments and closure action respectively.
21. According to the public authority, the inspections were carried out to assess the operational standards of MK Airlines to determine compliance or otherwise with appropriate safety regulations. The checks would therefore include an assessment of the operator's management structure and function, the staffing, facilities, aircraft and equipment, and written procedures.
22. It explained that the inspections in question did not cover any of the factors referred to in section 2(1)(b) above, and added; '*(t)he exact scope of the checks required will vary with the kind of operation applied for. Generally, several reports will be required in the course of an AOC application.....'*
23. It went on to explain that the inspections conducted on MK Airlines in 2006 did not either directly or indirectly take into account any factors likely to affect the elements referred to in section 2(1)(a). According to the public authority, checks on aircraft and equipment would only cover aircraft safety equipment such as radios, navigational equipment, lifejackets, fire extinguishers, megaphones, and personnel breathing equipment.
24. In making a determination on this point, the Commissioner took into consideration the context in which the reports were produced as well as the actual contents of the reports.
25. As noted above, the inspections were specifically conducted to assess the operational capabilities and standards of MK Airlines rather than the airworthiness of its carriers.

26. The Commissioner notes that the summary of the checks conducted by each inspection include checks on the airline's loading, mass and balance systems, procedures in the loading manual, training records, flight documentation (an audit of the process of capturing, recording, analysing, and retention of returned flight documentation etc). They do not include checks on the airworthiness of its aircrafts in relation to factors such as emissions, noise, and other such discharges into the environment. The findings and comments do not reflect any information other than those in relation to the checks conducted.
27. To summarise, the information in the reports do not fall within the scope of information referred to in regulation 2(1)..The Commissioner is therefore persuaded that inspection reports are subject to the FOIA rather than the EIR as they do not contain any information which fall within the description of regulation 2(1) (a-f)

Exemption

Section 31(1)(g)

28. Information may be withheld under the above section if its disclosure under the Act would, or would be likely to prejudice the exercise by a public authority of its functions for any of the purposes specified in sub section (2).
29. As noted above, the public authority considered the purpose in sub section (2) (d) as the relevant purpose in this case.
30. The purpose referred to in sub section (2) (d), is the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to the profession or other activity which he is, or seeks to become, authorised to carry on.
31. A full text of section 31 is available in the legal annex at the end of this Notice.

What is the relevant purpose in relation to section 31(2)(d)?

32. According to the public authority, its functions in relation to airline safety are derived from section 3 of the Civil Aviation Act 1982 and the Air Navigation Order 2005. These functions are, the registration of aircraft, the safety or air navigation and aircraft (including airworthiness), the certification of operators of aircraft, and the licensing of aircrews and aerodromes. It also sets safety standards and publishes requirements and compliance guidance which support them, and if satisfied that specific criteria have been met, grants licences, certificates, authorisations, and approvals as the case may be to the air operator. To summarise, the public authority has regulatory oversight over the aviation industry.
33. Part III of the CAA Act which describes the regulatory powers of the public authority also confers on it the power to grant, refuse, vary, suspend, and revoke air transport licences.

34. The relevant parts of the CAA Act and the Air Navigation Order 2005 are included in the legal annex attached to this notice.
35. The Commissioner has considered the powers provided to the public authority by this legislation. He notes that the public authority is the body charged with the responsibility for granting licences to individuals to operate airlines in the UK. It ensures that only suitable applicants are granted air operator licences by investigating and ascertaining that they are competent enough to operate such airlines. The Commissioner however also notes that sub section (2) (d) specifically refers to a 'person'. However, because the definition of person under the Act covers any legal entity as well as individuals, the Commissioner is satisfied that airline operators fall within section 31(2)(d).
36. The Commissioner is also satisfied that the public authority's regulatory functions described above are for the purpose of ascertaining a person's competence in relation to '*other activity(ies)* ', in this case, the operation of airlines.
37. As already noted, the withheld reports were produced from inspections conducted by the public authority on MK Airlines prior and subsequent to granting it an AOC.
38. The Commissioner is therefore persuaded that section 31(2) (d) of the Act is relevant in this case.

Would the disclosure of the withheld information prejudice or likely to prejudice the ability of the public authority to exercise its functions for the purpose described in section 31(2) (d)?

39. The public authority argued that there is a real and significant risk that disclosing the requested information, would be likely to prejudice its ability to exercise its functions for the purpose set out in section 31(2) (d)
40. The purpose described in sub section (2) (d) is indicative of the type of functions exercised by the public authority, part of which is to ascertain the competence of airlines purporting to operate and/or operating in the UK.
41. In the Commissioner's view, "Likely to prejudice" means that the possibility of prejudice should be real and significant, and certainly more than hypothetical or remote. In the case of *John Connor Press Associates Ltd v Information Commissioner (EA/2005/0005)*, the Information Tribunal confirmed that; '*the chance of prejudice being suffered should be more than a hypothetical possibility, there must be real and significant risk.*' (See paragraph 15).
42. The public authority argued that the effectiveness of its regulatory framework is demonstrated by the UK's airline safety record which is better than EU and worldwide operators. The effectiveness of its regulatory framework is in turn largely based on the trust and openness that underpins the relationship between the aviation industry and the public authority as regulator.
43. According to the public authority therefore, if it were to be placed in a position in which the information it has gathered for the purpose of ascertaining a person's

fitness or competence in relation to the regulatory activities of licensing, certificating, authorising or approving individuals or other legal persons is to be placed in the public domain, then the trust and openness which is a vital ingredient in exercising its functions would be gradually eroded. This, according to the public authority, would, over time, result in a serious degradation of the relationship between itself and the aviation industry to the detriment of the UK's air transport system. Specifically, it explained that in its view, disclosure in this case could inhibit the openness of the regulatory relationship between itself and MK airlines, and that the latter had confirmed it did not wish the information disclosed because it *'would strain the confidence we have in developing the Safety Management Systems we are mandated to.'*

44. In response to a query from the Commissioner as to why the public authority did not consider disclosing the safety reports in light of the fact that the request was made after the AOC had been granted, the public authority argued that it did not consider the timing of the request was relevant to the likelihood of prejudice that would flow from the release of information that exists between an active member of the aviation community and the public authority as the UK's aviation safety regulator.
45. The Commissioner notes that most of the public authority's arguments in support of the likelihood of prejudice are generic in the sense that are based on the likely wider effect of disclosing information of the class requested rather than on the effect of disclosing the withheld information.
46. The Commissioner recognises that assessing the likelihood of prejudice in this case would inevitably lead to a consideration of the likely wider effect of disclosure. However, although the reasons for the Commissioner's decision could be interpreted in a wider context, he would like to point out that his determination is based solely on the merits of this particular case.
47. Sub section (1) (g) explicitly refers to the likelihood of prejudice to the exercise by a public authority of its functions. In other words, the harm must relate to the ability of a public authority to carry out its functions.
48. As already noted above, the statutory framework for the public authority's powers and functions are set out in the CAA Act and ANO. A combination of section 3, Part III of the CAA Act, and Article 6 of the ANO impliedly impose a duty on persons purporting to be airline operators as well as airline operators to cooperate with the public authority by providing it with necessary information to enable the grant or renewal of an air operator licence.
49. Part 5 of the ANO contains provisions in relation to the operation of aircraft and specifically requires an aircraft being operated under an AOC to have and provide the public authority with an operations manual.¹ According to the public authority, *'(t)he operations manual is the primary method by which an operator seeking to hold, or continue to hold, an Air Operator Certificate satisfies the CAA as to his competence as required under Article 6.'*

¹ Article 38(4) of the Air Navigation Order 2005

49. An EC Regulation² now provides the statutory requirements for the certification of air operators for commercial transportation although the framework above was applicable at the time of the request. Subpart C of Annex III to the Regulation covers operator certification and supervision. Specifically in relation to AOCs, the Regulation states that an operator will not be granted an AOC, or a variation to an AOC, and one already granted will not remain valid unless the relevant regulator is satisfied that the operator has met specific requirements and has the ability to maintain certain standards.
50. The ability of the public authority to ascertain the competence of persons purporting to be airline operators or investigate and subsequently confirm the competence of current airline operators is embodied in the regulatory powers described above. It follows therefore that it is in the best interests of persons intending to become, or continue as airline operators to comply with specific requirements, and meet or maintain set standards. The trust and openness between the public authority and the aviation industry in this respect is one which is beneficial to both parties, and more so to airline operators or they risk losing their licence.
51. The reports do not contain any information which in the Commissioner's view, would or would be likely to affect the willingness of MK Airlines to comply with the regulatory requirements set out in the statutory framework referred to above.
52. In the face of the suggestion that disclosure could result in a lack of openness, the Commissioner is still not persuaded that this would be likely to prejudice the public authority's ability to exercise its functions for the purpose set out in sub section (2) (d). As noted above, the public authority could compel MK Airlines to provide it with the necessary information to enable it ascertain its suitability as an air operator or risk losing its air operator licence.
53. The Commissioner therefore finds that the exemption at section 31(1)(g) is not engaged as disclosing the withheld information would not be likely to prejudice the public authority's ability to exercise its functions for the purpose described in sub section (2) (d). As highlighted above, the Information Tribunal case of EA/2005/0005 stated that a public authority has to demonstrate a real and significant risk of prejudice. He does not consider that the public authority has demonstrated that in this case. In view of his decision, the Commissioner has therefore not gone on to consider the public interest test.

The Decision

54. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

² Commission Regulation (EC) No 859/2008 (August 2008), amending (EEC) No 3922/91 as regards Common Technical Requirements and Administrative Procedures applicable to Commercial Transportation by Aeroplane.

55. The public incorrectly withheld the reports dated 15-16 August 2005 and July/01 August 2006 by virtue of the exemption at section 31(1)(g) and by extension sub section (2) (d).
56. The Commissioner therefore finds the public authority in breach of sections 1(1)(b) and 10(1) of the Act for failing to disclose the above reports within 20 working days.
57. A full text of sections 1 and 10 are available in the Legal Annex at the end of this Notice.

Steps Required

58. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - disclose the reports dated 15-16 August 2005 and July/01 August 2006
59. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

60. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court

Right of Appeal

61. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 30th day of March 2009

Signed

**Steve Wood
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on

–

- (g) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (h) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (i) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (j) reports on the implementation of environmental legislation;
- (k) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- (l) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

“historical record” has the same meaning as in section 62(1) of the Act;

“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

“responsible authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“Scottish public authority” means –

- (a) a body referred to in section 80(2) of the Act; and
- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

“transferred public record” has the same meaning as in section 15(4) of the Act; and
“working day” has the same meaning as in section 10(6) of the Act.

Regulation 2(2) Subject to paragraph (3), “public authority” means –

- (a) government departments;
- (b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding –
 - (i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or
 - (ii) any person designated by Order under section 5 of the Act;
- (c) any other body or other person, that carries out functions of public administration; or
- (d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment.

Regulation 2(3) Except as provided by regulation 12(10) a Scottish public authority is not a “public authority” for the purpose of these Regulations.

Regulation 2(4) The following expressions have the same meaning in these Regulations as they have in the Data Protection Act 1998(b), namely –

- (a) “data” except that for the purposes of regulation 12(3) and regulation 13 a public authority referred to in the definition of data in paragraph (e) of section 1(1) of that Act means a public authority within the meaning of these Regulations;
- (b) “the data protection principles”;
- (c) “data subject”; and

(d) "personal data".

Regulation 2(5) Except as provided by this regulation, expressions in these Regulations which appear in the Directive have the same meaning in these Regulations as they have in the Directive.

Law enforcement.

Section 31(1) provides that –

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment."

Section 31(2) provides that –

"The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,

- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work."

Section 31(3) provides that –

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1)."

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

Section 1(2) provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

Section 1(3) provides that –

"Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."

Section 1(4) provides that –

"The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –
“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –
“In this section –
“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Section 3 of the Civil Aviation Act 1982

‘The functions of the CAA shall be-

- (a) the functions conferred on it by the following provisions of this part of this Act;*
- (b) the functions conferred on it by or under this Act with respect to the licensing of air transport, the licensing of the provision of accommodation in aircraft, the provision of air navigation services, the operation of aerodromes and the provision of assistance and information;*
- (c) such functions as are for the time being conferred on it by or under Air Navigational Orders with respect to the registration of aircraft, the safety of air navigation and aircraft (including airworthiness), the control of air traffic, the certification of operators of aircraft and the licensing of air crews and aerodromes;*
- (d) such other functions as are for the time being conferred on it by virtue of this Act or any other enactment;*

and nothing in this Act relating to the CAA shall be construed as derogating from any power exercisable by virtue of any enactment whatsoever (including an enactment contained in this Act) to make an Order in Council or other instrument conferring a function on the CAA.’

Article 6 of the Air Navigation Order 2005

*'Subject to article 7, an aircraft registered in the United Kingdom shall not fly on any flight for the purpose of public transport, otherwise than under and in accordance with the terms of an air operator's certificate granted to the operator of the aircraft under paragraph (2), certifying that the holder of the certificate is competent to secure that aircraft operated by him on such flights as that in question are operated safely.'*³

'The CAA shall grant an air operator's certificate if it is satisfied that the applicant is competent, having regard in particular to:

(a) his previous conduct and experience; and

(b) his equipment, organisation, staffing, maintenance and other arrangements to secure the safe operation of aircraft for the types specified in the certificate on flights of the description and for the purposes so specified

³ Article 7 relates specifically to the grant of Police Air Operator Certificates