

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 April 2012

**Public Authority:** Department for Transport  
**Address:** 1/22 Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

#### Decision (including any steps ordered)

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1. The complainant has requested copies of all Safety Assessment of Foreign Aircraft (SAFA) inspection reports dated from 1 January 2010 to the present date where any Category 3 findings have been recorded. The Department for Transport (DfT) refused to provide the information requested under section 27(1)(a) and (c) and section 31(1)(g) with subsection 31(2)(j) of the Freedom of Information Act 2000 ("FOIA").
2. The Commissioner's decision is that the DfT has correctly applied section 27(1)(a) and (c) to withhold the requested information.
3. The Commissioner requires no steps to be taken.

#### Request and response

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4. On 4 November 2011, the complainant wrote to the DfT and requested information in the following terms:  

"copies of all Safety Assessment of Foreign Aircraft (SAFA) inspection reports we hold dated from 1 January 2010 to the present date where any Category 3 findings have been recorded."
5. The DfT responded on 30 November 2011. It stated that the requested information was being withheld under the exemptions contained at section 27(1) and section 31(1)(g) of the FOIA.
6. Following an internal review the DfT wrote to the complainant on 13 December 2011. It clarified that the exemptions applicable in this case

were section 27(1)(a) and (c) and section 31(1)(g) with subsection 31(2)(j). It continued therefore to withhold the requested information.

## Scope of the case

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7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner will consider whether the DfT was correct to withhold the requested information under sections 27(1)(a) and (c) and 31(1)(g) with subsection 31(2)(j).

## Background Information

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8. The DfT explained that in relation to a previous request made by the complainant, it disclosed information as to the number of SAFA inspection reports which the DfT held relating to foreign aircraft in 2011. For each report it also provided the State of the airline, make and model of the aircraft together with the airline and where the aircraft was inspected. The request to which this Notice relates, requires the DfT to disclose further detailed information contained within SAFA inspection reports.

## Reasons for decision

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9. Section 27(1)(a) and (c) of FOIA states that information is exempt if its disclosure under FOIA would, or would be likely to, prejudice:

- (a) relations between the United Kingdom and any other State,
- (b) [...]
- (c) the interests of the United Kingdom abroad, or

This is a qualified exemption and is therefore subject to a public interest test.

10. In relation to the application of section 27(1)(a) the DfT has explained that international civil aviation is governed by the Convention on International Civil Aviation (the Chicago Convention), to which the UK is a signatory. It clarified that under the Convention, oversight responsibility for a foreign airline rests with the state in which the airline is based. During a SAFA inspection of a foreign-registered aircraft, it explained that inspectors will need to make findings and judgements

about the airline's compliance (and therefore the State of Registry's compliance) with international safety standards. It argued that if the UK were to publicly disclose the findings of these inspections, this would be likely to inhibit the willingness of foreign airlines and their safety oversight authorities to engage in open and frank discussion with the UK either now or in the future on the question of the compliance of air carriers with international safety standards or on regulatory oversight of airlines.

11. It also explained that foreign states can be instrumental in assisting the DfT in obtaining satisfactory closure to findings raised during SAFA inspections. It said that the State of Registry is often called upon for assistance where there is a language barrier between the UK and the foreign airline, or where the UK is having difficulty in obtaining a satisfactory response from a foreign airline. Furthermore the DfT explained that under certain circumstances the State of Registry will verify on the DfT's behalf that an airline has taken the necessary actions to prevent reoccurrence of the finding.
12. The Commissioner considers that the DfT has demonstrated that when conducting SAFA inspections on foreign airlines the UK is reliant upon the co-operation of those foreign airlines and thereby the airline's State of Registry. The Commissioner also accepts that if the UK were to publicly disclose the findings of SAFA reports conducted on foreign airlines this would be likely to inhibit future co-operation of the states to which the information relates. The Commissioner therefore accepts that disclosure of the requested information would be likely to prejudice relations between the UK and other States and that section 27(1)(a) is engaged.
13. In relation to the application of section 27(1)(c), the DfT has argued that disclosure of the requested information could lead to retaliatory action by foreign Governments which would be likely to cause detriment to UK interests abroad, particularly UK airlines. It argued that UK airlines could be subjected to capricious safety findings, revocation of operating permits or landing rights, obstacles to carrying out business, including difficulties in remitting their earnings.
14. The DfT explained that the operation of international air services is a sensitive and nationalistic topic. It explained that many of its counterpart safety oversight authorities prefer to restrict UK carriers and apply protectionism for their own carriers. It said that there are often instances where UK airlines are presented with unjustified difficulties with carrying out their operations or business in another State. The DfT explained that the UK is able to resolve many problems through careful and sensitive negotiation. However disclosure of the requested

information may instigate retaliatory action on UK interests, particularly as other States own airlines are in competition with UK airlines.

15. The DfT provided the Commissioner with specific examples which demonstrates that the claimed prejudice would be likely to occur. However, given the sensitive nature of this information the Commissioner has not provided further details of this evidence in this Notice.
16. Upon the basis of the arguments provided by the DfT, the Commissioner considers that disclosure of the requested information would be likely to prejudice the interests of the UK abroad. This is because the negotiation of UK airlines operation abroad would be likely to be inhibited. He therefore considers that section 27(1)(c) is also engaged.
17. As the Commissioner considers that section 27(1)(a) and section 27(1)(c) are engaged in this case he has gone on to consider the public interest test in this case.

#### **Public interest arguments in favour of disclosure**

18. The DfT has acknowledged that disclosure of SAFA inspection reports would assist the public in making informed decisions about the safety of individual foreign air operators flying into and out of the UK.
19. The DfT has also said that disclosure of the information could promote accountability and transparency in the Government oversight of foreign air operators flying into and out of the UK.

#### **Public interest arguments in favour of maintaining the exemption**

20. The DfT said that the free flow of information and intelligence sharing between States is essential in ensuring aviation safety. It said that states often share information regarding operators and individual aircrafts which may pose a safety threat to the UK. It said that it is in the public interest that this is not inhibited.
21. The DfT argued that by disclosing individual SAFA inspection reports it is possible that the reputation of the state of registry of the inspected aircraft may be damaged by the release of this information. This in turn would be likely to prejudice working relations between the UK and the authorities of the state(s) in question, resulting in the affected state(s) becoming reluctant to voluntarily share information regarding safety concerns with the UK in the future. It said that this would not be in the public interest.

## **Balance of the public interest**

22. The Commissioner considers that there is a public interest in informing the public as to the safety of foreign airlines. He also considers that there is a public interest in the procedures for overseeing foreign aircrafts being open and accountable.
23. The Commissioner does however consider that there is a very strong public interest in information and intelligence being shared between the UK and other States for the purpose of monitoring foreign aircrafts. He considers that there is a very strong public interest in not disclosing information which may inhibit this.
24. The Commissioner also considers that there is a very strong public interest in not prejudicing relations between the UK and the authorities in other States which may inhibit the operation of UK airlines within foreign States.
25. The Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption.
26. As the Commissioner considers that section 27(1)(a) and (c) were correctly engaged in this case, he has not gone on to consider the DfT's application of section 31 any further.

## Right of appeal

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27. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

28. 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.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Pamela Clements  
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