

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 9 October 2013

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

**Decision (including any steps ordered)**

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1. The complainant has requested information about the Civil Aviation Authority (CAA) work around the benefits of steeper approaches and landing thresholds at Heathrow. The CAA refused to provide the requested information under regulation 12(4)(d) of the Environmental Information Regulations 2004 (EIR).
2. The Commissioner's decision is that the CAA has correctly applied regulation 12(4)(d) EIR to the withheld information. However the Commissioner considers that the CAA did not provide the complainant with a time estimate for completion of the work and it therefore breached regulation 14(4) EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Inform the complainant of the time estimate for completion of the work.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 12 December 2012, the complainant wrote to the CAA and requested information in the following terms:

"Further to my request F0001432 ( A380 : Steep approach landing), I note that the released email chain included mention of an action for the CAA to do work on "the potential benefits of steeper approaches and displaced landing thresholds at Heathrow."

Under the Environmental Information Regulations, please can you supply information on the CAA work and its outcomes to show the benefits of steeper approaches and landing thresholds at Heathrow.

I am aware of the case study "Steeper approaches vs displaced landings" on page 32 of the CAA Insight note "Aviation Policy for the Environment"

[http://www.caa.co.uk/docs/589/CAA\\_Insigh...](http://www.caa.co.uk/docs/589/CAA_Insigh...)

but this only appears to report on the effects of displaced landings."

6. The CAA responded on 15 January 2013. It stated that
7. Following an internal review the CAA wrote to the complainant on 28 February 2013. It upheld its original position.

## Scope of the case

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8. The complainant contacted the Commissioner on 25 March 2013 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the CAA was correct to apply regulation 12(4)(d) EIR to the withheld information.

## Reasons for decision

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### Regulation 12(4)(d)

10. Regulation 12(4) of the EIR states that for the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that – (d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data.

11. The CAA explained that the withheld information is part of material which is still in the course of wider completion in conjunction with formulating and developing policy. It explained that the policy related to the concept of steeper approaches.
12. The CAA explained that the concept of steeper approaches has existed since the early 1970s. It said that initially there was a focus on fuel saving, whereas today it is primarily about noise reduction. It explained that despite showing much promise, the early work failed to live up to expectations and today the standard flight path angle is essentially unchanged from what it was 50 years ago. It went on to clarify that the introduction of new navigation and aircraft technologies, such as fly-by-wire control, offer an opportunity to revisit the concept and review the policies that have been established which preclude more widespread adoption of such procedures. It said that aircraft noise has increasingly become the key issue in the debate on airport expansion. A number of UK airports suffer from geographic circumstances that result in their dominant approach flight paths overflying densely populated areas. Therefore it explained that the benefits of successfully implementing steeper approaches are significant. It clarified that technology may offer the potential to overcome the historic perception that the concept will erode safety margins. It confirmed that since an initial assessment conducted in autumn 2012, which showed the concept has significant potential to mitigate airport approach noise, it has begun to examine the operational and safety issues that need to be addressed, and since April 2013 it has engaged with the aviation industry, which the CAA has said it is very much dependent on for support in taking this forward.
13. It has provided the Commissioner with a time estimate in which would expect to be in a position to determine its policy position and share it with a wider audience.
14. The Commissioner has issued guidance on this subject, which can be accessed at the following link:

[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Environmental\\_info\\_reg/Detailed\\_specialist\\_guides/eir\\_material\\_in\\_the\\_course\\_of\\_completion.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Detailed_specialist_guides/eir_material_in_the_course_of_completion.ashx)

This states that "The fact that the exception refers to both **material** in the course of completion and unfinished **documents** implies that these terms are not necessarily synonymous. While a particular document may itself be finished, it may be part of material which is still in the course of completion. An example of this could be where a public authority is formulating and developing policy."

15. After viewing the withheld information and taking into account the CAA's submissions as set out above, the Commissioner considers that it is part of material which is still in the course of completion. The material relates to the formulation and development of the CAA's policy position on the concept of steeper approaches.
16. The Commissioner therefore considers that regulation 12(4)(d) EIR was correctly engaged in this case.
17. As regulation 12(4)(d) EIR is subject to the public interest test, the Commissioner has gone on to consider the public interest factors in favour of disclosure and the public interest factors in favour of maintaining the exception.

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

18. The CAA appreciates that there is a general public interest in keeping people informed about aviation's environmental impact. It noted that of current public interest is:
  - The incidence of aircraft noise, which is a very important matter in the management of existing airports, particularly around London
  - The Airports Commission, established to examine the need for additional airport capacity, has only recently (5<sup>th</sup> July 2013) published its discussion paper on airport noise
  - Airport noise and its impacts are likely to have a major role to play in both the Airports Commission's deliberations and any final recommendations made, or decisions taken on airport capacity.

### **Public interest factors in favour of maintaining the exception**

19. The CAA argued that there are key factors with a stronger public interest in maintaining this exception until such time as the CAA has had the time and 'safe space' to develop its understanding of all the issues in relation to steeper approaches, at which point it will share the evidence it has collated to inform its policy position:
  - The ICO has acknowledged that there may be circumstances where publication of information would create a misleading or inaccurate impression that it would be difficult or disproportionate to seek to correct, for example the Environment Agency case concerning incinerator bottom ash (FER 0210838). Although the CAA has considered the theory of steeper approaches, it has not yet tested their flyability and established that they are safe. As such, if it publishes the existing material now it will not be able to put into the public domain any additional material that will correct

the impression that steeper approaches have been judged to be feasible. That material does not yet exist and it would struggle to correct any misleading or inaccurate impressions created by the existing and incomplete assessment at present.

- The request was made at a time when the CAA's work in considering steeper approaches was incomplete. In circumstances where additional work is required, and where that work requires the collaboration with others outside the CAA, premature publication might make the work more difficult to bring to a conclusion because the 'safe space' for policy development has been eroded. The ICO has recognised the value of safe space in appropriate cases, such as the Queen's College example cited in the ICO guidance note (FER 0322910).
- In circumstances where the issue of aircraft noise is highly contentious, there is also a risk that publication of information at this stage will make those with whom it must work to complete its policy development more reluctant to exchange views or otherwise assist it in collating the necessary evidence. For example, there may be a danger that it will be unable to test the "flyability" of steeper approaches if airlines are reluctant to make facilities available to avoid becoming involved in a controversial debate.
- In summary, it explained that the CAA is a trusted voice in the airport expansion debate. We believe that to release incomplete and unbalanced information now could significantly affect what it would wish to be a fully informed public debate. The lessons learned from the past are that all aspects need to be reviewed in order to build up the evidence to underpin its policy position. There are significant safety and operational issues that need to be addressed before some of the concepts could be considered viable. Were public debate to occur before these issues were properly considered it risks damaging public confidence in the UK's aviation safety regulation framework and halting development of a concept which could see significant environmental benefits. It therefore believes there is a compelling argument that to release information now would not be in the public interest.

### **Balance of the public interest arguments**

20. The Commissioner considers that there is a public interest in disclosing information relating to aviation's environmental impact. He considers that the issues covered by the withheld information affects a significant part of the population living in close proximity to airports. Furthermore

the issue of airport noise and expansion is the subject of ongoing debate and scrutiny.

21. However the Commissioner considers that in this case the CAA's research and deliberations are ongoing and it has not yet reached a final policy position. It has explained that its current theories have not yet undergone practical testing which is crucial before it can come to any meaningful conclusion on this issue. The Commissioner considers that there is a strong public interest in allowing the CAA the safe space to finalise its testing and therefore its policy position. The Commissioner also considers that it is in the public interest not to hinder the CAAs relationship with the external bodies it is working with to finalise its research. The Commissioner has given limited weight to the argument that disclosure of the withheld information would be misleading. The Commissioner is reluctant to accept public interest arguments of this nature however as the CAA has clearly explained that the theory of steeper approaches in light of new aviation technology has not been practically tested as yet, it may pose the CAA some difficulties when publicising its final policy position if incomplete theories or research were disclosed.
22. On balance, the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exception.

#### **Regulation 14(4)**

23. Regulation 14(4) states that, "If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed."
24. In this case the CAA did not provide the complainant with an estimate as to when the policy decision would be taken and therefore when the information requested would be completed.
25. Within its submissions to the Commissioner it has provided a time estimate but as far as the Commissioner is aware it has not provided this directly to the complainant. It therefore breached regulation 14(4) EIR in this case.

## Right of appeal

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26. 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)

27. 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.
28. 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  
Group Manager, Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**