

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 November 2016

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

Decision

1. The complainant has requested information from the Civil Aviation Authority (CAA) about pilot incidents and detailed reasons for failed medical checks. The CAA refused to provide the requested information, relying on sections 44 (prohibitions on disclosure) and 12 (exceeding the appropriate cost limit) of the FOIA to do so. In particular the CAA cited the statutory prohibition on disclosure created by European Regulation (EU) No. 376/2014.
2. The Commissioner's decision is that the CAA has correctly applied sections 44 and 12 and the Commissioner does not require the public authority to take any steps.

Background

3. The CAA provided a summary on UK occurrence reporting: all aircraft accidents and serious incidents in the UK or involving a UK registered aircraft should be reported to the CAA through the Mandatory Occurrence Reporting (MOR) system.
4. Occurrence reporting in the UK and the rest of the European Union is governed by European Regulation (EU) No. 376/2014, published in April 2014 and applicable from 15 November 2015. It replaces previous European and UK legislation and applies retrospectively to reports made before this date.

5. The civil aviation safety system is established on the basis of feedback and lessons learned from accidents and incidents. Occurrence reporting and the use of occurrence information for the improvement of safety depend on a relationship of trust between reporter and the entity in charge of the collection and assessment of the information. This requires strict application of rules on confidentiality.
6. The Regulation requires that occurrence reporting information should strictly be used for the purpose of maintaining or improving aviation safety and should not be used to attribute blame or liability.

Request and response

7. On 6 April 2016 the complainant made a request for information under the FOIA:

'a) the number of instances pilots have been recorded as having fallen asleep during a flight for each of the last 5 years

b) the number of medical checks pilots failed for each of the last 5 years, with a breakdown per reason (physical or mental/psychological reasons)'

8. The CAA refused to confirm or deny whether it held part (a) of this request, citing the exemption provided by section 44 of the FOIA.
9. In response to part (b) of the request, the CAA provided a table of results from the medical records for each of the last 5 years, broken down into 'all reasons' and 'mental health'.
10. On 24 May, the complainant requested a review of the decision:

'Part a

The use of this exemption is a flagrant misuse of the FOIA. Providing public awareness of the scale of this problem (pilots falling asleep) is a matter of huge public interest ...is to ignore complaints aired by many pilots that they are overworked and that official figures are not representative of the true nature of the problem.

Making these figures available would allow the public to judge the true nature of this problem, because more than half of pilots have fallen asleep while in charge of a plane according the pilots' union.

Part b

I clearly requested a breakdown of reasons for failures e.g. disorders and treatment. You must have compiled these figures from information that provides these reasons as you have provided a mental breakdown. Why have you omitted this information? Please provide the full breakdown available and requested.'

11. On review, the CAA upheld its decision to cite section 44 for part (a) and cited section 12(exceeding the appropriate cost limit) to provide a further breakdown of medical reasons for part (b).
12. On 14 June the complainant wrote to the Commissioner and after providing further documents the case was accepted on 22 July 2016.
13. The Commissioner invited the complainant to withdraw his case on 15 September 2016 as it was her initial view that the CAA was correct in its refusal to disclose this information. However, the complainant declined to withdraw his case.

Scope of the case

14. The Commissioner considers that the issue to be determined is whether, in the circumstances of this case, the CAA is entitled to rely on section 44 for part (a) of the request and section 12 to provide a further breakdown for part (b) of the request.

Reasons for decision

Section 44 (part a of the request)

15. Section 44 of the FOIA states that:
 - (1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –
 - (a) is prohibited by or under any enactment,
 - (b) is incompatible with any Community obligation, or
 - (c) would constitute or be punishable as a contempt of court.
 - (2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section (1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).

16. Under section 1(1)(a) of FOIA a public authority is required to confirm whether the information that has been requested is held. However, as far as is relevant to this case, section 44(2) means that if another piece of legislation prohibits it from providing such a confirmation, the public authority is not required to do so.
17. The CAA stated that the European Regulation (EU) No. 376/2014 on the reporting, analysis and follow-up of occurrences in civil aviation prevented the disclosure of the requested information to the complainant under FOIA.
18. The EU Regulation aims to improve aviation safety by ensuring that relevant safety information relating to civil aviation is reported, collected, stored, protected, exchanged, disseminated and analysed. The information collected should be adequately protected from unauthorised use or disclosure.
19. Recital (33) of the Regulation states:

The purpose of ... limiting access to the European Central Repository solely to interested parties participating in the improvement of civil aviation safety, is to ensure the continuing availability of safety information so that appropriate and timely preventative action can be taken and aviation safety improved... information should be used strictly for the purpose of maintaining or improving aviation safety and should not be used to attribute blame or liability.
20. Article 15(2) of the Regulation states:

Member States, the Agency and organisation shall not make available or use the information on occurrences: (a) In order to attribute blame or liability; or (b) For any purpose other than the maintenance or improvement of aviation safety.
21. The CAA informed the complainant in May and June 2016 that there is a separate application process to information for the purpose of maintaining or improving aviation safety. However, to date the complainant has not initiated this separate process.
22. The Commissioner has already referred the complainant to a previous decision notice on a request for copies of the Mandatory Occurrence Reports (MOR) by XL Airways in the 12 months before they went out of business. ([FS50261915](#)) The CAA relied on section 44 of the FOIA to withhold the information and the Commissioner upheld the decision. The Commissioner considers that, even though the regulations have been updated, similar arguments would apply in this case.

23. In view of the above, the Commissioner is satisfied that the information is prohibited from disclosure under FOIA. The CAA has correctly applied section 44(1)(b) through the statutory prohibition on disclosure created by European Regulation (EU) No. 376/2014. As section 44 is an absolute exemption there is no need to consider the public interest test.

Section 12 – The cost of compliance (part b of the request)

24. Section 12(1) of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

25. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
26. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
- determining whether it holds the information;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.

Would the cost of compliance exceed the appropriate limit?

27. In May 2016, the CAA provided the complainant with a response to part b of the request. A data chart was provided, consisting of 5 years of data broken down by year, medical class and reason for class 1 and class 2 pilots. The following table is a summary produced by the Commissioner:

| | Total declared unfit | 2011 | 2012 | 2013 | 2014 | 2015 |
|--------------|-----------------------------|-------------|-------------|-------------|-------------|-------------|
| Total | All reasons | 1431 | 1388 | 1318 | 902 | 1556 |

| | | | | | |
|---------------|-----|-----|-----|----|-----|
| Mental health | 128 | 119 | 111 | 89 | 160 |
|---------------|-----|-----|-----|----|-----|

28. The CAA stated that 'this work took us beyond the appropriate limit to comply but, rather than exempting the information under Section 12, we provided the data we had retrieved to date, albeit not validated.'
29. In the complainant's request for an appeal he expressed that the CAA had misunderstood his request that he then clarified as 'a breakdown of reasons for failures e.g. disorders and treatment'. The CAA disagreed that the original request was misinterpreted.
30. During the review, the CAA explained to the complainant that in order to provide the revised information it would need to manually assess several thousand reports as the data retrieval method used to obtain the more basic data from the CAA medical database could not be used to obtain the specific data requested – due to system functionality.
31. A breakdown of each failure by a pilot to pass a medical check would run to many hundreds of possibilities. Accessing this information would require the review of each individual report into the specific reasons why the pilot was declared unfit. With over five thousand reports related to the request times the lowest possible time estimation of 1 minute per report this is equal to approximately 85 hours.
32. The CAA stated that the duty to provide advice and assistance to refine the request was inappropriate given that 'we had provided the more basic information according to his initial request i.e. we would have advised him to request the more basic information requested in his initial request.'
33. In her assessment of whether the CAA has correctly relied upon section 12 of the FOIA, the Commissioner has considered the submission provided by the CAA to her as well as the refusal notice and subsequent internal review provided by the CAA to the complainant.
34. Given the CAA's explanation in retrieving the more detailed breakdown of medical reasons and the above estimated times that would be involved in responding to the complainant's clarified request, the Commissioner is satisfied that the cost of compliance would far exceed the appropriate limit. The CAA was therefore correct to apply section 12 of the FOIA to the complainant's request. As the CAA has already provided a more basic breakdown of the medical reasons, consideration of section 16 (the duty to provide advice and assistance) was not appropriate in this case.

Conclusion

35. The Commissioner is satisfied that the CAA correctly applied section 44 for part (a) of the request and section 12 to provide a further breakdown for part (b) of the request.

Right of appeal

36. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.
38. 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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