

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

**Decision notice**

**Date:** 26 July 2018

**Public Authority:** Department for International Development  
**Address:** 22 Whitehall  
London  
SW1A 2EG

**Decision (including any steps ordered)**

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1. The complainant submitted two requests to the Department for International Development (DFID) seeking information about the St Helena airport project. In response to the first request DFID confirmed that it held information but sought to refuse to disclose it on the basis of following regulations of the EIR: 12(5)(a) (international relations), 12(5)(b) (course of justice), 12(5)(e) (commercial confidentiality) and regulation 12(3) (personal data). The Commissioner has concluded that the withheld information is exempt on the basis of regulation 12(5)(b) and the public interest favours maintaining the exception. In response to the second request DFID explained that it did not hold any information falling within the scope of this request. On the balance of probabilities the Commissioner is satisfied that DFID does not hold any information falling within the scope of this request.

**Background**

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2. St Helena is a small self-governing UK overseas territory in the South Atlantic, previously only accessible by sea. DFID provides financial and technical assistance to St Helena as one of three Overseas Territories which are eligible for official development assistance.
3. DFID's aims for the UK's financially dependent Overseas Territories are to ensure the provision of basic services and to help them become

economically self-sufficient, with the aim of reducing and eventually removing the need for subsidies from the UK government.

4. In 2004, DFID commissioned a feasibility study into building an airport on St Helena, with the rationale that improved access would help reverse economic decline by opening the island to increased revenues from tourism. In 2010, DFID commissioned a report from consultants looking at options for access to improve St Helena's economic and social sustainability. In 2011, the St Helena Government signed a design, build and operate fixed price contract with Basil Read, a South African construction company to build an airport on St Helena. The total budget for the project was set at £285.5 million.
5. The airport had planned to start operating in May 2016. However, test flights in April 2016 revealed dangerous wind conditions on the airport approach, an effect known as 'wind shear'. Although the airport subsequently handled a small number of flights, the wind conditions precluded the commencement of the operation of the planned commercial service. These began in October 2017.
6. The House of Commons Committee of Public Accounts published a report in December 2016 about the St Helena Airport project. The report was critical of DFID's management of the project, in particular its failure to foresee and address the impact of difficult wind conditions on landing commercial aircraft safely.<sup>1</sup>

## Request and response

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7. The complainant submitted the following request to DFID on 22 October 2017:

*'This is a request, under the Freedom of Information Act and the Environmental Information Regulations, for information about: [i.] test flights undertaken to measure turbulence and wind shear, as recommended by Atkins in Section 7.57 of their report on the St Helena airport and [ii.] about the decision to discontinue such flights after the first one had been completed.'*<sup>2</sup>

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<sup>1</sup> <https://publications.parliament.uk/pa/cm201617/cmselect/cmpubacc/767/767.pdf>

<sup>2</sup> St Helena Access Feasibility Study, Atkins, January 2005  
<http://www.sainthelena.gov.sh/wp-content/uploads/2017/08/Main-Report.pdf>

8. DFID responded on 20 November 2017. In relation to (i), DFID explained that it held information falling within the scope of this request but considered it to be exempt from disclosure on the basis of regulations 12(5)(b) and 12(5)(e) of the EIR. In relation to (ii), DFID explained that it did not hold any information falling within the scope of this request. This was on the basis that *'the original plan only intended for **one** test flight be undertaken. Therefore, no "decision" was ever made to "discontinue such flights after the first one had been completed".'*
9. The complainant contacted DFID on 1 December 2017 in order to ask it to undertake an internal review of its response. In doing so he raised the following points: firstly, he suggested that this response undermined DFID's reliance on section 12 of FOIA to refuse his previous request (F2017-060) on this subject; secondly, he argued that at least some of the information falling within the scope of request (i) could be disclosed in redacted form; thirdly, he argued that DFID had misinterpreted request (ii) and that it was likely that it would hold information falling within the scope of that request.
10. DFID informed him of the outcome of the internal review on 12 January 2018. It explained that it maintained its position that section 12(1) had been applied correctly to F2017-060. With regard to request (i), DFID explained that it remained of the view that the entirety of the information falling within the scope of this request, namely a document entitled 'Flight Trials Report' dated May 2007, was exempt from disclosure on the basis of regulations 12(5)(b) and 12(5)(e). Furthermore, DFID explained that it had concluded that this document was also exempt on the basis of regulations 12(5)(a) and 12(3) and 13(2)(a) of the EIR. Finally, DFID explained that it was of the view that request (ii) had not been misinterpreted. However, DFID explained that it had carried out additional searches, including ones to include the complainant's re-stated version of this request set out in his request for an internal review, namely *'Why was only one day of flight-trialling completed at the pre-design stage of developing the St Helena Air Access project'*, and no information had been located.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 19 January 2018 in order to complain about DFID's handling of his request. More specifically, he asked the Commissioner to consider the following grounds of complaint:

- In terms of request (i) he disagreed with DFID's reliance on the various exceptions it had cited to withhold the document entitled 'Flight Trials Report'. He argued that there was a compelling public interest in the disclosure of this report and at the very least a redacted version should be released.
  - In terms of request (ii), the complainant argued that without seeing the content of that report it was impossible to tell whether or not it supports the point made in the refusal notice that DFID does not hold any information relevant to this request because the original plan only intended for one test flight to be undertaken. That is to say, the complainant argued that DFID's claim that there was an original plan to conduct only one day of flight trialling in 2007, despite the recommendations from W S Atkins, needs to be supported by some textual evidence, which he presumed was contained in the document 'Flight Trials Report'.
12. The Commissioner has therefore considered (i) whether the exceptions cited provide a basis to withhold the Flight Trials Report and, (ii) whether DFID holds any recorded information falling within the scope of the second request.

## **Reasons for decision**

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### **Request (i)**

#### **Regulation 12(5)(b) – The course of justice**

13. Regulation 12(5)(b) states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature. The threshold for establishing adverse effect is a high one, since it is necessary to establish that disclosure would have an adverse effect. 'Would' means that it is more probable than not, ie a more than 50% chance that the adverse effect would occur if the information were disclosed. If there is a less than 50% chance of the adverse effect occurring, then the exception is not engaged.
14. The course of justice element of this exception is very wide in coverage, and can encompass, amongst other types of information, material covered by legal professional privilege (LPP).

### DFID's position

15. In its responses to the complainant DFID explained that the withheld information attracted LPP and was highly pertinent to a live and ongoing legal case. It argued that disclosure of the withheld information would provide an indication of arguments relevant to this case, the strength or weaknesses which DFID might have, thus unbalancing the level playing field under which adversarial proceedings are meant to be carried out. DFID therefore argued that disclosure of the withheld information would harm the course of justice.
16. DFID provided the Commissioner with more detailed submissions to support its reliance on regulation 12(5)(b) to withhold the 'Flight Trials Report'. As part of these submissions, and in response to further queries from the Commissioner, DFID conceded that LLP did not apply to the Flight Trials Report. The Commissioner has not included these submissions in this notice as they can contain detailed and extensive reference to the withheld information itself.

### The complainant's position

17. The complainant argued that if legal action is being taken by DFID against any individuals or organisations, or indeed if any individuals or organisations are taking legal action against DFID, then some information could surely be provided, with appropriate redactions if necessary. He also questioned why disclosure of technical information contained in a flight trialling report from over ten years ago would harm this ongoing legal case.

### The Commissioner's position

18. Having considered DFID's submissions carefully, the Commissioner is not persuaded that the Flight Trials Report attracts LPP. Nevertheless, the Commissioner is satisfied that disclosure of this information still risks undermining DFID's position in the ongoing legal case. Moreover, the Commissioner is satisfied that such a risk could be categorised as harming the course of justice given the broad way in which this concept is interpreted when applying this exception. Furthermore, the Commissioner is satisfied that the likelihood of harm occurring if the withheld information was disclosed is one that meets the threshold of more probable than not. She is therefore satisfied that regulation 12(5)(b) is engaged. The Commissioner has elaborated on her reasons for reaching this conclusion in a confidential annex, a copy of which will be provided to DFID only.

## **The public interest test**

19. Regulation 12(1)(b) requires that, where the exception under regulation 12(5)(b) is engaged, a public interest test should be carried out to ascertain whether the public interest in maintaining the exception outweighs the public interest in disclosing the information. In carrying out her assessment of the public interest test, the Commissioner is mindful of the provisions of regulation 12(2) which states that a public authority shall apply a presumption in favour of disclosure.

### *Public interest in favour of disclosing the withheld information*

20. The complainant argued that the highly critical report of the Public Accounts Committee into the planning by DFID for the St Helena Airport provided ample evidence in support of the strong public interest in disclosure of information concerning the decisions taken in respect of wind turbulence on the island and the problems this could present for the successful operation of the airport. The complainant emphasised the significant sums of money spent by DFID on the project which in his view increased the public interest in disclosure of information concerning the alleged failure to adequately take account of the impact of wind shear. He argued that there is a stronger public interest in a government department being held to account and justice being seen to be done than any public interest in avoiding embarrassment, financial or reputational damage to the government department.

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

21. DFID argued that there is clear public interest in protecting the course of justice and in the particular circumstances of this case there was a compelling public interest in maintaining the exception given that the information related to a live and ongoing issue.

### *Balance of the public interest arguments*

22. As the complainant suggests, the Public Accounts Committee's report into the planning of St Helena Airport project was damning and in respect of the particular focus of this request concluded that '*It is staggering that the Department commissioned and completed the St Helena airport before ascertaining the effect of prevailing wind conditions on landing commercial aircraft safely at St Helena.*' The Commissioner agrees with the complainant that the findings of this report clearly point towards the significant public interest in disclosure of information by DFID about the nature and extent of the pre-construction flight testing undertaken. Disclosure of the withheld information would provide the public with a direct insight in to the extent of the testing commissioned by DFID in 2006. Given the initial operational problems of

the airport, allied to the alleged failure of DFID to properly test the wind conditions on the island, and the amount of public money spent on the project, the Commissioner agrees that there is a very strong case for the public interest favouring disclosure of the information in order to increase the transparency around DFID's decision making in terms of the impact of wind conditions on the proposed airport plans.

23. Nevertheless, and by a very narrow margin, the Commissioner has concluded that the public interest favours maintaining the exception contained at regulation 12(5)(b). The Commissioner has reached this conclusion because in her view there is a very strong, and ultimately compelling, public interest in DFID being able to conclude the ongoing legal case without interference in this process. For reasons discussed in the confidential annex, the Commissioner is satisfied that the disclosure of the withheld information would interfere with the proceedings in that case, and thus on the course of justice, in a number of different ways. In reaching this conclusion the Commissioner would emphasise that she is clearly not underestimating or attempting to negate the public interest in disclosure of the information; there were, certainly according to the Public Accounts Committee report, a number of issues in respect of DFID's planning of this project. However, at the point that this request was submitted the Commissioner is persuaded that there is a stronger interest in protecting's DFID efforts to conclude the legal case in the best interests of taxpayers than in disclosing the withheld information despite the public interest in improving transparency in respect of DFID's decision making at the point of planning the airport.
24. In light of this finding the Commissioner has not considered whether the Flight Trials Report is also exempt from disclosure on the basis of the other exceptions cited by DFID.

## **Request (ii)**

### **Regulation 12(4)(a) – information not held by a public authority**

25. Regulation 12(4)(a) states that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
26. As noted above this request sought information '*about the decision to discontinue such flights after the first one had been completed*' and the complainant re-phrased this request at the internal review stage to the following '*Why was only one day of flight-trialling completed at the pre-design stage of developing the St Helena Air Access project*'.
27. DFID's explained that it did not hold any recorded information falling within the scope of these this request, in either of its formulations. The

complainant disputes this position and believes that DFID is likely to hold some information falling within its scope.

28. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
29. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
30. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, or as in the circumstances of this complaint, other explanations offered as to why the information is not held.
31. When it initially responded to this request DFID stated that did not hold any information falling within the scope of this request. By way of an explanation, DFID stated that 'However, DFID confirms that the reason it does not hold this information is because the original plan only intended for **one** test flight be undertaken. Therefore, no 'decision' was ever made to "discontinue such flights after the first one had been completed.'"
32. In his request for an internal review in relation to this request the complainant argued that DFID had misinterpreted his request. He explained that he was in effect asking '*Why was only one day of flight-trialling completed at the pre-design stage of developing the St Helena Air Access project?*' The complainant emphasised that it was already known that the Atkins report had suggested that flight trialling was needed for the Prosperous Bay Plain site, both before the design was finalised and after completion. To support this position he quoted the following section of the report:

*'7.57 The B737-600 and -700 operate successfully off similar length runways in a number of locations throughout the world. However, Boeing state that because of the nature of the approaches to an aerodrome on Prosperous Bay Plain and the possibility of crosswinds in excess of 13kts, the aircraft may be performance-limited for flights in-bound to St Helena. **To allow a robust assessment, flight trialling of the prosperous Bay Plain site is recommended, to occur before the design for the chosen runway is finalised.** Even then, further limitations might have to be imposed after reasonable experience had been gained operating into and out of St Helena. If this option was to be considered it should also include provision of flight trialling the approaches to the runway, upon completion, using a B737*

*a number of times over, say, two months.*<sup>3</sup> (emphasis added by complainant).

33. The complainant acknowledged his request only concerned information about pre-design flight trialling and the highlighted sentence did not indicate precisely how many flights would be advisable, the types of aircraft, the times of day or the forecast weather conditions for undertaking these trial flights. However, he suggested that from his research it was his understanding that only limited insight into the risks of wind-shear could be gained from a single day of flight trialling above Prosperous Bay Plain and moreover that the sentence in the Atkins report which he highlighted did not suggest that only one day of flight-trialling was needed. Furthermore, in terms of his request he explained that he has expected that this would include information DFID held about the Atkins recommendations and a report on the flight-trialling that did take place.
34. The complainant argued that other paragraphs in the Atkins report were also relevant, for example):

*'7.82 The designs of the aerodrome options on Prosperous Bay Plain have been undertaken in a rigorous manner and while there is high confidence in the designs and the associated cost estimates, they remain concepts. There are doubts concerning local weather conditions and, in particular, there are doubts about the amount of turbulence that could be expected on the approaches (due to the elevated location and the surrounding bluffs). **It is therefore recommended that, regardless of which aerodrome option is chosen and before the runway design is finalised, a charter aircraft should fly test the approaches to and departures from the intended runway. This would ensure confidence in the final design and may be regarded as part of the design process applicable to St Helena's circumstances.'***

35. And:

*'13.113 **A charter aircraft should fly test the approaches to and departures from the intended (long) runway as early in the contractor's design spiral as possible. This is to ensure that the orientation as represented by this Feasibility Study is indeed practicable, not only from a civil engineering point of view but***

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<sup>3</sup> <http://www.sainthelena.gov.sh/wp-content/uploads/2017/08/Main-Report.pdf>

*from an aviator's viewpoint also. This recommendation applies regardless of which aerodrome concept is selected.'* (Emphasis added by complainant)

36. The complainant argued that these recommendations show why it was valid to ask why there was only one day of pre-design flight-trialling; he argued that it was at best a very incomplete explanation to say 'the reason it [DFID] does not hold this information is because the original plan only intended for **one** test flight to be undertaken. Therefore, no 'decision' was ever made to '*discontinue such flights after the first one had been completed.*'
37. Rather, the complainant argued that the full, proper, helpful and transparent answer to his request was, therefore, to be found by providing information that is held by DFID - ie those sections of the 'original plan' that set out why there needed to be one and only one day of flight-trialling. In addition to that text from the 'original plan' he suggested that there may also be relevant material from contributions to drafting 'the original plan' and its approval by all those with any input to it, including the St Helena Government.
38. In its internal review DFID explained that it did not think that the request had been misinterpreted and explained that it had reviewed its searches and carried out additional ones to establish whether any information relevant information was held falling within the scope of the re-phrased request. DFID confirmed that no such information has been located as part of its searches.
39. In his initial grounds of complaint to the Commissioner in relation to this request, the complainant argued that without seeing the content of Flight Trials Report it was impossible to tell whether or not it supports the point made in the refusal notice that DFID does not hold any information relevant to this request because the original plan only intended for one test flight to be undertaken. That is to say, the complainant argued that DFID's claim that there was an original plan to conduct only one day of flight trialling in 2007, despite the recommendations from the Atkins report quoted above, needs to be supported by some textual evidence, which he presumed was contained in the document 'Flight Trials Report' itself.
40. The Commissioner initially asked DFID to clarify whether its reference to the 'original plan' in the refusal notice was intended to mean the document 'Flight Trials Report'. If so, the Commissioner asked DFID to confirm where in this report it states that the intention was that only one test flight would be undertaken. Alternatively, the Commissioner suggested that if DFID's reference to the 'original plan' in the refusal notice did not in fact mean the 'Flight Trials Report', she asked whether

DFID held any other recorded information detailing this 'original plan', recorded information which would confirm/support its position that the intention was always that only one test flight would be undertaken. If held, the Commissioner asked to be provided with a copy of this recorded information.

41. In response, DFID confirmed that that its reference to the 'original plan' did not mean the Flight Trials Report. It explained despite its searches it had been unable to locate further information on this point but emphasised that its advice was genuinely given in the hope of clarifying the situation and explaining why 'we did not hold information about any decision to 'discontinue' flight tests'.
42. As this stage the Commissioner informed the complainant of her provisional view that DFID did not hold any recorded information falling within the scope of this request. The Commissioner explained that her basis for reaching this conclusion was as follows:
43. She explained that she had sought clarification from DFID to explain what it meant by the reference to the 'original plan' and in particular whether this was intended to refer to the Flight Trials Report itself. She noted that in response, DFID explained that it did not intend the reference to the 'original plan' to mean the Flight Trials Report. Rather, the Commissioner explained that it was her understanding that DFID's reference to the original plan in its correspondence with him intended to refer, in general and overarching terms, to the whole design and planning process associated with the airport project. In other words, the Commissioner explained that it was her understanding that there was no actual 'original plan' which contained, or could potentially contain, some recorded information that would fall within the scope of this request. The Commissioner noted that DFID had explained to her that its advice to the complainant on this point, ie the reference to the original plan, was genuinely intended to hopefully clarify the situation in response to this aspect of his complaint. Furthermore, DFID had explained that it had undertaken a number of searches of the recorded information it did hold about the project in order to identify any information on this point, ie the decision to discontinue test flights after only one day of flight trialling, and no such information was located.
44. The Commissioner noted that DFID's suggestion that its reference to the 'original plan' in its refusal notice was intended to help clarify the position, although with the benefit of hindsight the Commissioner suggested that the use of such a term perhaps only confused matters further. However, she explained that with the benefit of further submissions from DFID it was her understanding that no 'original plan', as a specific or stand-alone document exists. There was therefore no specific document, ie no original plan as such, DFID could go to and

identify information falling within the scope of this request. Instead, DFID would have to search its general records of this project to locate any relevant information; it had conducted these searches and had not located any information. Finally, in terms of the content of the Flight Trials Report, the Commissioner explained to the complainant that she obviously could not share any of its contents with him, and this extended to confirming whether or not any part of the Flight Trials Report contained information about a decision to only undertake one day of flight trialling. However, the Commissioner did explain to the complainant that there is nothing in this document which suggests or would support the position that DFID held recorded information falling within the scope of this request, beyond information that may (or indeed may not) be included in the Flight Trials Report itself.

45. In response the complainant explained that he was concerned with the Commissioner's acceptance that DFID did not hold any recorded information falling within the scope of this request. In particular, he explained that he was concerned that DFID had not revealed to the Commissioner all the relevant papers relating to the need for flight-trialling. He suggested that such papers might include the terms of the contracts to conduct the flight-trialling that did take place on one day, including when the trial flights were to take place and under what conditions - eg type of aircraft, date(s) and times of day and any evaluations of the Flight Trials Report and who it was shared with are also relevant besides the Flight Trials Report itself. The complainant explained that he remained unconvinced in the way in which DFID had conducted and reported to the Commissioner its own documentary searches (including emails) that it could move so easily from 'not in the original plan' to 'there never was a plan'. The complainant emphasised that the pre-design flight trialling did not take place accidentally; it was authorised and allowed for in the budget for the pre-design phase of the project.
46. Furthermore, the complainant argued that he simply could not understand how DFID could argue that there was 'no original plan' when available on the St Helena Government's official website is the St Helena Government, Department for International Development St Helena Access Feasibility Study Final Report January 2005, produced by Atkins Management. See the full text at <http://www.sainthelena.gov.sh/wp-content/uploads/2017/08/Main-Report.pdf>
47. He drew particular attention to the following extracts:

'1.3 The Study examines the costs and benefits associated with each of three access options: continuation of sea access ('Replacement RMS'), an aerodrome with a runway providing safe operation of 19-seater business jets<sup>1</sup> (the 'Medium Length Runway'), and an aerodrome with a

runway providing safe operation of Boeing jets of the B737 design or equivalent Airbus design (the 'Long Runway'). These three were selected from among a long list of possible solutions against three key criteria: technical feasibility, potential to enable economic growth and potential to reduce reliance on UK Government subsidy. The three criteria represent the principal objectives of the Study.'

48. And

'1.8 We conclude and recommend that the most cost-effective option for HMG, when considered over the period of discounted cash flow, is to build an aerodrome with **a runway that supports the safe operation of the Boeing 737-800 or equivalent Airbus design. This is the long runway access option.** The B737-800 was chosen for a variety of reasons but mainly because it is large enough to support the development of the projected demand for tourism over the 40-year term considered by the Study.' (Emphasis added by complainant)

49. And:

'Operational Limitations (1400m Landing/1675m take off Runway)

7.57 The B737-600 and -700 operate successfully off similar length runways in a number of locations throughout the world. However, Boeing state that because of the nature of the approaches to an aerodrome on Prosperous Bay Plain and the possibility of crosswinds in excess of 13kts, the aircraft may be performance-limited for flights in-bound to St Helena. **To allow a robust assessment, flight trialling of the prosperous Bay Plain site is recommended, to occur before the design for the chosen runway is finalised.** Even then, further limitations might have to be imposed after reasonable experience had been gained operating into and out of St Helena. If this option was to be considered it should also include provision of flight trialling the approaches to the runway, upon completion, using a B737 a number of times over, say, two months. A budget cost of £500,000 would need to be added to cover the costs of this (we have allowed for this in our financial / economic computations).' (Emphasis added by complainant)

50. The complainant argued that he did not see how any rational interpretation of these recommendations can support the claims that DFID were now making a) that there was no plan and b) that if there was it certainly did not envisage the possibility of more than one day of pre-design flight-trialling.

51. The complainant explained that he therefore remained unconvinced by the argument that there was 'no decision' to limit flight trialling to one day.
52. The Commissioner subsequently sought further clarification from DFID as to the exact nature of the searches it has undertaken for information falling within the scope of this request. In response DFID explained that:
- As with all FOI/EIR requests, it had arranged for searches of all its records for the period whether electronic or paper based. In this case, all relevant information was held on its electronic system.
  - It also asked the lead department to make sure that individuals in the particular area of work searched for any relevant information held locally, eg on laptops or teamsites or in hard copy.
  - For the original request searches were carried out using the terms 'Test Flights + St Helena' and 'Atkins Flight Trials' up to December 2010. At internal review DFID looked again at the documents identified by these searches and carried out additional searches using the term 'Flight trialling' but could not identify any information relevant to the complainant's revised request. DFID explained that it had considered more general information which had been identified for other requests on the St Helena project at the same time, but could not find any relevant information.
  - Given the size, scope and sensitivity of this project it is not likely that its records will have been deleted or destroyed.
  - DFID argued that these searches cover all the areas, terms and the team where any relevant information is likely to be held and so would be sufficient to locate any relevant information. It also explained that on receiving the Commissioner's further enquiry it took another opportunity to revisit its searches and discuss with relevant staff working on the St Helena project and again concluded that it did not hold the information requested.
53. Having re-considered these further representations from both parties the Commissioner's position remains that on the balance of probabilities DFID does not hold any recorded information falling within the scope of this request. In reaching this conclusion she wishes to clarify one point of additional confusion that appears to have occurred during her exchanges of correspondence with the complainant on this point. That is to say, the Commissioner's statement that there was no original plan. What the Commissioner meant by this was not that there was no original plan at all in terms of the project – as the complainant suggests there clearly was, ie the Atkins report cited above. Rather, what the

Commissioner meant was that in terms of searching for recorded information falling within the scope of this request it was her understanding that there was no standalone document which compromised the original plan – beyond the aforementioned Atkins report – which the DFID could go to, or search through to locate any relevant information. Rather, decisions concerning the flight trials concerning the project were recorded in a series of documents. The Commissioner is satisfied that the searches undertaken by DFID of these documents were sufficiently detailed and logical to ensure that if any recorded information was held then it would have been located. Furthermore, she notes that these searches have been undertaken on a number of occasions, ie when DFID first refused the request, at the internal review stage and during the course of the Commissioner's investigation. The Commissioner also notes that DFID's searches take account of both the complainant's initial wording of his request and its re-wording at the point he submitted his request for an internal review. Finally, the Commissioner would also re-iterate the point she previously made to the complainant that in terms of the content of the Flight Trials Report there is nothing in this document which suggests or would support the position that DFID holds recorded information about this request, beyond information that may (or indeed may not) be included in the Flight Trials Report itself.

54. DFID is therefore entitled to refuse to comply with this request on the basis of regulation 12(4)(a) of the EIR.

## Right of appeal

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55. 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: 0870 739 5836

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

56. 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.
57. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**