

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 May 2023

Public Authority: Civil Aviation Authority
Address: Aviation House
Beehive Ring Road
Crawley
West Sussex
RH6 0YR

Decision (including any steps ordered)

1. The complainant has requested communications between the Civil Aviation Authority ('CAA') and the Air Travel Trust ('ATT'). The CAA refused to comply with the request, citing section 12(1) (cost of compliance exceeds appropriate limit).
2. The Commissioner's decision is that section 12(1) is engaged.
3. The Commissioner doesn't require the CAA to take any steps.

Request and response

4. In September 2022, the complainant requested from the CAA:
"Please provide all communication sent and received by the Air Travel Trust between October 2018 to January 2019."
5. The CAA refused to comply with the request, citing section 12(1) (cost of compliance exceeds appropriate limit) of FOIA. It advised the complainant to submit a refined request.

6. For clarity, the above request was not brought before the Commissioner and isn't the subject of this investigation.
7. On 24 February 2023, the complainant wrote to the CAA and submitted what they considered to be a refined request:
 - "1. Please provide all communication sent and received by the Air Travel Trust between October 2018 to January 2019.
 2. I am most interested in communication with The Boeing Company, Boeing Ireland Ltd and Morson Projects Ltd between, and determining whether the ATT agreed to accept liability for the incorrect transfer of employees without consultation."
8. Both requests relate to the collapse of Monarch Aircraft Engineering Limited ('MAEL') but the second request is the one which is the subject of this investigation.
9. The CAA responded on 6 March 2023, confirming that no information was held in scope of the request.
10. The complainant requested an internal review on 7 March 2023.
11. The CAA provided the outcome to its internal review on 22 March 2023. It upheld its original position.

Scope of the case

12. During this investigation, it became clear to the Commissioner that the CAA has focused its searches on the information requested in part 2 of the request. Part 2 of the request explains what the complainant is **most** interested in receiving and what they hope the requested information will contain. The CAA has repeatedly confirmed to the complainant that its regulatory duties don't extend to the transfer of any employees after a company failure, therefore no information that would fall within the second part of the request would be held.
13. However, the request is, first and foremost, repeating the request for all communication sent and received by the ATT between October 2018 to January 2019. The complainant has confirmed to the Commissioner that this is the case. The CAA will certainly hold this information.
14. The CAA explained that it didn't focus on part 1 of the request because it was substantially similar to the request outlined in paragraph 4 which had been refused under section 12(1). However, recognising that it had failed to address this matter, the CAA confirmed that part 1 of the request should have been refused under section 14(2) (repeat requests).

15. Section 14(2) can only be engaged when a public authority has previously either provided the same information or confirmed that the information is not held. However, recognising that a request identical to the wording of part 1 had already been refused under section 12(1), the Commissioner suggested that the complainant should submit a more targeted request so as to avoid another refusal. They declined to do so and asked for the investigation to proceed.
16. Therefore, the CAA confirmed its new position to be to apply section 12(1) to the entirety of the request of 24 February 2023 and the scope of this investigation is to determine whether the CAA is entitled to do so. If part 1 of the request engages section 12(1), then the whole request can be refused under section 12(1).

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

17. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
18. When considering whether section 12(1) applies, the public authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are set out at Regulation 4(3) and are:
 - “(a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.”

If the public authority estimates that compliance with the request would exceed the appropriate limit, it is not obliged to comply with the request. There is no public interest to consider. The limit for a public authority such as the CAA is 18 hours.

19. The CAA has explained that, as the request asks for all communication sent and received by the ATT for a specific time period, it would require searching the mailboxes (both sent and received) of the four ATT members of staff as well as any shared ATT inboxes. Furthermore, the CAA has explained that there are approximately 30-50 staff who also

have ATT responsibilities, alongside their business-as-usual role. Again, their sent and received inboxes would need to be searched.

20. The Commissioner recognises that on the surface compliance with this request seems straightforward but, upon further consideration, is not. The CAA has explained that information that falls within the scope of the request is likely to have been shared wider than the four members of the ATT, so realistically the request transcends these incoming and outgoing mailboxes.
21. As previously discussed, whilst the second part of the request indicates what the complainant is most interested in receiving, the scope of the request, whose broad terms the complainant has confirmed and refused to narrow, does not provide the CAA with a specific search term to utilise. So it is left, in essence, with a manual trawl of potentially all of its inboxes and systems in order to identify all relevant information.
22. The CAA has also explained that the timeframe of the request would require not only a search of digital records but also paper records of approximately 4-6 level arch files.
23. When citing section 12, the Commissioner expects a public authority to provide a reasonable estimate as to how long compliance with the request would take. This estimate should be based on cogent evidence, on the quickest method of gathering the requested information and usually will involve the public authority conducting a sampling exercise.
24. The CAA has confirmed to the Commissioner 'we did consider a sampling exercise, but it was quickly apparent that this alone would require disproportionate effort owing to the number of different possible storage locations, followed then by locating information in scope due to the broad nature of the request.'
25. The Commissioner recognises that there will be occasions (such as this one) where a request is so broad that it would be impossible to quantify the total cost of compliance – but that doesn't mean that the public authority should simply dispense with this part of the process. In such circumstances the CAA could simply have picked one inbox or system and tried to estimate the cost of searching for any information that would fall within scope. If a public authority can demonstrate that even a relatively focussed search both would incur a significant cost and would not come close to locating all relevant information (because the public authority would need to carry out similar searches across multiple or all of its business areas), that will usually be sufficient to demonstrate that the overall cost will exceed the limit. It will not usually be sufficient to simply assert that the limit will be exceeded.
26. However, looking at the scope of the request, the volume of records that might potentially need searching for relevant information and the all-

encompassing nature of the request, the Commissioner doesn't believe it would be possible to distil search terms from the request, which could be used to narrow the searches that the CAA would need to carry out.

27. The Commissioner accepts that this request, though superficially narrow, is in fact exceptionally broad. The Commissioner accepts that due to the broad nature of this request and the volume of potentially relevant information that the CAA holds, the quickest method of retrieval appears to be a manual search of records held across all inboxes and systems. Whilst the CAA has not put forward a figure, the Commissioner is under no doubt that compliance with the request would exceed 18 hours. Therefore section 12 is engaged and the CAA is entitled to refuse to comply with the request.

Section 16 – advice and assistance

28. When refusing a request under section 12, a public authority needs to offer reasonable advice and assistance to the requester. The aim of this advice and assistance is to help the complainant refine their request to one that might be able to be dealt with within the appropriate limit.
29. Even though the request outlined in paragraph 4 is not the subject of this notice – the Commissioner can see that the CAA provided the complainant with suggestions as to how that request could have been narrowed to potentially bring it within the cost limit:

“The following may help in your decisions as to the nature of any reframed information request you may wish to re-submit:

- Limit the request to information held by the Air Travel Trust directly relating to MAEL
 - Limit the request to emails or board meeting minutes that directly relate to MAEL”.
30. Looking at this advice and assistance, the Commissioner is satisfied that there is no section 16 breach in this instance. The complainant has already received advice and assistance to help them to narrow down part 1 of the request. It is not clear what additional advice and assistance the CAA could reasonably have been expected to provide.
31. It is for the complainant to now decide what use they wish to make of the advice and assistance they have received. Given the matters identified above, the Commissioner considers that any further request would need to be narrowed considerably in order to bring it within the appropriate limit.

Other matters

32. The Commissioner notes that the CAA's refusal notice of 24 February 2023 warns the complainant that their recent requests could be considered vexatious and he notes the complainant's reticence to submit a refined request (upon the Commissioner's advice) was, in part, an attempt to avoid a further request being refused as vexatious.
33. It's not the scope of this notice to consider whether this, or any of the complainant's previous requests, were vexatious or not. Should a future request be refused as vexatious, the Commissioner will deal with any associated complaint on its own merits. However, he will take into account the context and history in which the request was made, including the CAA's previous handling of requests and the advice that has been provided to the complainant.

Right of appeal

34. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

35. 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.
36. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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