

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 December 2023

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

#### Decision (including any steps ordered)

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1. The Commissioner's decision is that under section 3(2) of FOIA the Civil Aviation Authority (CAA) doesn't hold particular written assurances that the Secretary of State gave, which the complainant has requested. This is because the CAA holds the information on behalf of the Air Travel Trust (ATT) and the ATT isn't a public authority under FOIA. The CAA breached section 10(1) of FOIA however as it didn't confirm it doesn't hold the information within 20 working days of the request.
2. It's not necessary for the CAA to take any corrective steps.

#### Request and response

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3. The complainant requested the following information from the CAA on 20 July 2023:  
  
"The recent written assurance provided by the Secretary of State for Transport, mentioned on pages 9 and 19 of the Annual Report & Accounts (published 12 July 2023) of the Air Travel Trust, which is part of the basis for the Trustees' expectation that HMG will provide additional support to the ATT."

4. The CAA initially advised the complainant that it needed additional time to consider the public interest test associated with two FOIA exemptions it was considering applying to the information. This suggested that the CAA considered the information was caught by FOIA.
5. However, the CAA's final position was that, while it held the information on its IT systems, it was held on behalf of the ATT. Because the ATT isn't a public body listed under Schedule 1 of FOIA, the CAA didn't hold the information itself for the purpose of FOIA.

### **Reasons for decision**

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6. This reasoning covers whether the CAA holds the information the complainant has requested for the purposes of FOIA, and the timeliness of the CAA's response.
7. Section 1 of FOIA places an obligation on a public authority to confirm whether it holds information an applicant has requested and to communicate the information if it's held and isn't exempt information.
8. Section 3(2) states that a public authority can be said to hold information if (a) the authority holds it otherwise than on behalf of another person or (b) if another person holds it on the authority's behalf.
9. The written assurances the complainant's request refers to are mentioned in the ATT's annual report for the period to 31 March 2022. They are assurances that the Secretary of State (SoS) gave that the Government would provide additional financial support to the ATT (and so to consumers) should a large Air Travel Organisers' Licencing (ATOL) holder or multiple smaller ATOL holders fail – as the Government has done in previous years.
10. The complainant has noted that the Trustees of the ATT are all employees of the CAA and are appointed through the CAA. In turn the SoS is responsible for the CAA. Because the SoS and CAA are both public authorities for the purpose of "public law," the complainant considers that this means that they must both act compatibly with "general public law obligations." For example, by acting reasonably and rationally, and they must act compatibly with the European Convention on Human Rights. The complainant considers that the SoS and CAA are acting as a public authority and so should be subject to the same public law obligations as any other public authority.
11. However, the CAA's position in this case is that, in line with section 3(2)(a), it holds the information on behalf of another person, the ATT,

and because the ATT isn't a public authority under FOIA, the CAA can't be said to hold the information itself.

12. In its submission to the Commissioner, the CAA has explained that the ATT is a wholly separate legal entity from the CAA. In its current form, it's a discretionary trust, established by deed made by the Secretary of State for Transport in January 2004. The purpose of the ATT is to provide compensation to consumers who've suffered a loss as a result of the insolvency of their ATOL-licensed tour operator.
13. The ATT is principally funded by ATOL Protection Contributions (APC). The Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 enable the ATT to collect APCs from ATOL holders for each person who books air travel covered by an ATOL.
14. While the CAA is the UK regulator responsible for licensing entities in accordance with the ATOL Regulations, it has no statutory authority, responsibility or powers in respect of the activities undertaken by the ATT.
15. The CAA has acknowledged that the Trustees of the ATT are four individuals who happen to be senior members of CAA staff. However, those four individuals, as CAA employees, have no capacity to undertake the activities of the ATT themselves, and so there exists a contractual agreement between the ATT and the CAA. The CAA carries out the ATT's administrative functions and acts as the ATT's agent in exercising its powers (including repatriating and refunding consumers following the failure of their tour operator). The ATT doesn't have its own premises, staff or systems, and relies on the CAA to provide all necessary facilities in accordance with that contract.
16. For example, documents such as the ATT's annual reports and financial statements, and the Trustees' Payment Policy, are published on the CAA's website to enable access by consumers. The CAA's publication of such material serves only as 'hosting' and in no way represents a statement of CAA policy or views. Similarly, while the CEO and Chair of the CAA may appoint trustees to the ATT, the ATT Trustees nonetheless operate independently of the CAA (in accordance with the Trust Deed and the Trustee Act 1925). All activities undertaken by the CAA as agent for the ATT are fully paid for by the ATT, and the CAA incurs no costs in doing so.
17. Moreover, the CAA has no statutory locus in respect of any of the functions or activities undertaken by the ATT. As such, the CAA can only hold any and all documents, papers, emails, records or financial information pertaining to the ATT for the purposes of fulfilling its contractual obligations as agent to the ATT, and for no other purpose.

18. CAA has confirmed that, for the sake of completeness, the ATT isn't a public authority within the definition of section 3 and Schedule 1 of FOIA.
19. In this case, therefore, the CAA says it only holds the information the complainant is seeking on behalf of the ATT ie it's held by the CAA "on behalf of another person" within the meaning of section 3(2)(a) of FOIA. Consequently, the request is for information outside the scope of FOIA.

### **The Commissioner's conclusion**

20. As the complainant has noted, the CAA is listed in Schedule 1 of FOIA as a public authority; however, the ATT isn't. The CAA carries out administrative functions for the ATT and acts as its agent, for which the ATT pays the CAA. The ATT doesn't have its own premises, staff or IT systems and the CAA provides all the facilities the ATT needs in line with the contract that exists between them.
21. The CAA could nevertheless be said to hold the information under FOIA if there's an appropriate connection between the information and the CAA's functions.
22. The information – in the ATT's annual report - concerns financial support to the ATT. The CAA's functions meanwhile are to oversee and regulate all aspects of civil aviation in the United Kingdom. That doesn't include compensating consumers who've suffered a loss as a result of their ATOL-licensed tour operator becoming insolvent; that's the ATT's purpose.
23. The Commissioner doesn't consider there's a clear connection between the requested information and the CAA's functions. The CAA holds the information on its IT system because it's contracted by the ATT to do so, and the ATT doesn't have its own IT systems. But the information was held there for the ATT's purposes, and not for any of the CAA's purposes.
24. The Commissioner's decision is therefore that, under section 3(2) of FOIA, the CAA can't be said to hold the information the complainant has requested and there's been no breach of section 1(1) of FOIA.

## **Procedural matters**

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25. Under section 10(1) of FOIA, a public authority must comply with section 1(1) within 20 working days following the date of receipt of the request.
26. In this case, the complainant submitted their request on 20 July 2023 and the CAA didn't confirm that it doesn't hold the requested information until 13 September 2023. This was outside the statutory requirement.

## 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

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

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