

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 September 2024

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

Decision (including any steps ordered)

1. The complainant has requested information about contributions to the Air Travel Trust Fund and any planned reimbursements. The Civil Aviation Authority ('the CAA') stated that it held the requested information but not for the purposes of FOIA. It also relied on section 14(1) of FOIA (vexatious request) to refuse the request.
2. The Commissioner's decision is that the CAA holds the requested information but not for the purposes of FOIA. The Commissioner also finds that the CAA was not correct to consider the request to be vexatious.
3. The Commissioner does not require further steps.

Request and response

4. On 21 June 2024, the complainant wrote to the CAA and requested information in the following terms:

"The Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007, regulation 10 states:

"Where the CAA is satisfied that an applicant for, holder of, or former holder of a licence has paid more than the sums properly payable under these Regulations or where the CAA considers in all the circumstances that it would be equitable so to do, the CAA may

reimburse any such persons, or credit any such persons with amounts paid by them by way of contributions.”

It seems that the taxpayer is owed £40.5 million, and Greybull has offered to defray the cost to the taxpayer.

Please provide any information held by the CAA regarding the sums properly received by Thomas Cook and Monarch, and any balance owed to the ATTF.

Please provide any information held by the CAA on any equitable circumstances that the CAA would consider in determining whether the ATTF fund is sufficiently remunerated that it might reimburse Greybull.

Please provide any information held by the CAA on the expected figure to be realised from the CAA subsidiary ATT RE MAEL.”

5. The CAA responded on 25 June 2024. It stated that it was relying on section 14 of FOIA to refuse the request.
6. Following an internal review, the CAA wrote to the complainant on 25 July 2024. It stated that its primary reason for refusing the request was that the information was not held for the purposes of FOIA. It also maintained its reliance on section 14 of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 25 July 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether the CAA holds the requested information for the purposes of FOIA, and whether it was correct to further refuse the request under section 14(1) of FOIA.

Reasons for decision

Section 3(2) of FOIA – information held for the purposes of FOIA

9. 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.
10. 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.

11. In this case, the requested information relates to contributions to the Air Travel Trust Fund. In its submission to the Commissioner, the CAA has explained that Air Travel Trust ('ATT') is a wholly separate legal entity from the CAA. The ATT is a discretionary trust, established by deed made by the Secretary of State for Transport in January 2004. Its purpose is to provide compensation to consumers who have suffered a loss as a result of the insolvency of their ATOL-licensed tour operator.
12. The CAA explained that although it is the UK regulator responsible for licensing entities in accordance with the ATOL Regulations¹, it has no statutory authority, responsibility or powers in respect of the activities undertaken by the ATT.
13. The CAA explained that, although the Trustees of the ATT are senior members of CAA staff, the ATT is nonetheless a separate legal entity from the CAA. Where the CAA undertakes any of the ATT's functions, it does so pursuant to its agreement with the ATT. Therefore, 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). 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.
14. The CAA explained that as it has no statutory locus in respect of any of the functions or activities undertaken by the ATT, any and all documentation, papers, emails, records or financial information pertaining to the ATT can only be held by the CAA for the purposes of fulfilling its contractual obligations as agent to the ATT, and for no other purpose.
15. It further explained that ATT information is not widely accessible by CAA staff. It stated that a limited number of CAA staff do have access to ATT information, these include those CAA employees who are Trustees of the ATT, CAA staff seconded to work exclusively for the ATT and a small number of CAA colleagues supporting the ATT (for example CAA lawyers providing legal support to the ATT Trustees). Access is limited to Trustees and those CAA staff providing support to the ATT pursuant to the CAA's agreement with the ATT.

¹ Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012, as amended

The Commissioner's position

16. The Commissioner has previously issued decisions concerning whether the CAA holds information about the ATT for the purposes of FOIA². The decision notices found that although the CAA held information about the ATT, it did not hold this information for the purposes of FOIA. The Commissioner considers that the same decision applies in this case.
17. The Commissioner notes that while the CAA is listed in Schedule 1 as a public authority, the ATT is not. The contractual relationship between the CAA and the ATT means that the CAA carries out some of the ATT's functions and is remunerated for these by the ATT.
18. If there is an appropriate connection between the information and the CAA's functions, it could be said to hold the requested information under FOIA. However, the Commissioner doesn't consider that this is the case. This is because the CAA's functions do not include compensating consumers who've suffered a loss as a result of their ATOL-licensed tour operator becoming insolvent. This function is carried out by the ATT.
19. The CAA holds the requested information on its IT systems because it's contracted by the ATT to do so. However, the CAA has no purpose for the information in its own functions of overseeing and regulating civil aviation in the United Kingdom.
20. 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 has been no breach of section 1(1) of FOIA.
21. As the main focus of the complainant's dissatisfaction was that the CAA considered their request to be vexatious, the Commissioner will also determine whether the CAA was also entitled to rely on section 14(1) of FOIA.

Section 14(1) of FOIA – vexatious requests

22. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
23. The word "vexatious" is not defined in FOIA. However, as the Commissioner's updated guidance on section 14(1)³ states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to

² [ic-268851-x5c1.pdf \(ico.org.uk\)](#), [ic-282508-j2z5.pdf \(ico.org.uk\)](#)

³ <https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/>

cause a disproportionate or unjustified level of disruption, irritation or distress.

24. FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
25. However, the ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
26. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")⁴. Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
27. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
28. The four broad themes considered by the Upper Tribunal in Dransfield were:
 - the burden (on the public authority and its staff);
 - the motive (of the requester);
 - the value or serious purpose (of the request); and
 - any harassment or distress (of and to staff).
29. However, the UT emphasised that these four broad themes are not a checklist, and are not exhaustive. It stated:

"all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA" (paragraph 82).

⁴ <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

The CAA's position

30. The CAA explained that it has received seven requests for information, all in relation to very similar line of enquiry. The CAA conceded that in isolation it would not have refused the request itself as vexatious. However, as the complainant had already submitted a number of requests on the same subject and had previously been advised that the requested information was not held for the purposes of FOIA, the CAA took the pattern of the complainant's previous requests into account.
31. The CAA explained that it had provided responses to the complainant's previous requests and advised each time that the requested information was not held for the purposes of FOIA. The CAA stated that, despite the repeated explanation, the complainant continued to be of the opinion that the CAA does hold the requested information and should disclose it. The CAA explained that the complainant's unreasonable pattern of behaviour and the on-going resource associated with the repeated FOI requests, prompted it to engage section 14 of FOIA.
32. The CAA added that on two occasions in February 2023 it had issued a 'yellow card response' to the complainant about their requests concerning ATT and airline insolvency, and their reluctance to acknowledge that the CAA did not hold the requested information for the purposes of FOIA. Upon receiving another request from the complainant in June 2024, the CAA considered that this demonstrated the complainant would continue to submit requests about ATT.
33. The CAA added that it had become aware that the complainant's requests appeared to stem from a grievance with a former employer and it had tried to signpost the complainant to the Employment Tribunal. The CAA had also explained that regulatory oversight did not extend to the employment decisions of the complainant's former employer.
34. The CAA advised the Commissioner that the complainant has since made another FOI request relating to witness statements produced by the CAA. The CAA considered that request to be unique and unrelated to the former pattern of behaviour so it disclosed the requested information. The CAA considers that this demonstrates that in this instance it was the 'request stream' which had become vexatious and not the complainant themselves.

The complainant's position

35. In correspondence to the Commissioner the complainant has stated that their request has an extremely serious purpose. They stated:

"I know that I have requested quite a lot of information, but I am genuinely not vexatious. I am trying to highlight failures to adequately

economically regulate, that as a consequence, led to failures from a safety regulatory perspective.

Flight Safety critical maintenance requires money, if a company is insolvent and cannot afford to buy spares to operate safely it should not be performed aircraft maintenance, it is that simple. Adequate economic regulation would have prevented this happening, and I believe passengers safety was put at risk.”

The Commissioner's view

36. In cases where a public authority is relying on section 14(1), it is for the public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.
37. The Commissioner will first consider the burden of the request on the CAA. He agrees that, in isolation, the request does not appear particularly burdensome. The Commissioner acknowledges that when considered in context of the other requests from the complainant, there is a common theme to the requests, however he does not consider that the volume of requests in this case to sufficiently meet the level of burden alone.
38. When considering the motive of the complainant, the Commissioner acknowledges that the complainant appears to be requesting information about the ATT and airline insolvency in order to highlight their concerns about the way the ATT operates, and the impact on passenger safety. From supporting information provided by the complainant and references made by the CAA in its submission, the Commissioner also notes there is a personal motive to the request concerning the complainant's former employer. The Commissioner considers that the request has a value and serious purpose in terms of the public interest in transparency generally and for the complainant's own personal reasons.
39. The Commissioner notes that the language used in the request is not abusive in manner and he considers that it would not cause harassment or distress to CAA staff.
40. That said, the Commissioner is mindful that the CAA has advised the complainant a number of times that it does not hold the requested information about the ATT, and the complainant has continued to make requests on the subject. He considers that this reduces the value and purpose of the request in terms of FOIA as it is not an appropriate use of the legislation.

41. In considering the broad themes outlined in paragraph 30, the Commissioner is not convinced overall that the request meets the high threshold to be considered vexatious. He therefore finds that the CAA was not entitled to rely on section 14(1) of FOIA as one of the reasons to refuse the request.
42. However, the complainant should note the Commissioner's decision – that the CAA doesn't hold information associated with the ATT's functions for the purposes of FOIA. As such, further requests from the complainant to the CAA about the ATT's functions are more likely to meet the threshold of vexatiousness.

Right of appeal

43. 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

44. 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.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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