ico. Information Commissioner's Office

Freedom of Information Act 2000 (FOIA)
Decision notice

Date: **7 September 2021**

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 the Civil Aviation Authority (CAA) to disclose information relating to Eshott Flying School Ltd. The CAA refused to comply with the requests citing section 14(1) of the FOIA (vexatious requests).

2. The Commissioner's decision is the CAA is entitled to refuse to comply with the requests in accordance with section 14(1) of the FOIA. She does not require any further action to be taken.

Request and response

3. On 4 and 16 November 2020, the complainant wrote to the CAA and requested information in the following terms:

   "A list of all DTO training aircraft by Eshott Flying School Ltd

   I would like a copy of the list of Trust group owners of aircraft G-BUL."

4. The CAA responded on 1 December 2020 refusing to comply with the request on the basis that they are vexatious (section 14(1) of the FOIA).

5. The complainant requested an internal review on 1 December 2020.

6. The CAA wrote to the complainant on 10 December 2020 refusing to carry out an internal review on this occasion. It explained that this was because it had previously refused three requests on the basis that they were vexatious (on 6 December 2019, 20 February 2020 and 1 December 2020) and carried out an internal review of one of those requests on 10 March 2020, which upheld the CAA's application of section 14(1) of the FOIA. The CAA therefore directed the complainant to the Commissioner.

Scope of the case

7. The complainant contacted the Commissioner on 15 December 2020 to complain about the way his request for information had been handled. He disputes the requests are vexatious and advised that he has legitimate concerns of law breaking, which he believes the CAA are trying to cover up. He is of the opinion that the CAA has consistently failed to enforce the law and as a result two people have died in an air crash including an 18 year old passenger. He confirmed that he requires this information to pass onto both the police and the Sunderland coroner as it is pertinent to their enquiries into these deaths.

8. The Commissioner considers the scope of her investigation to be to establish whether the CAA is entitled or not to rely on section 14(1) of the FOIA in this case.

Reasons for decision

Section 14(1) - vexatious

9. Section 14 of the FOIA states that:

   Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

10. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in Information Commissioner v Devon CC & Dransfield [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

11. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

12. Dransfield also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: "…adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests." (paragraph 45).

13. The Commissioner has published guidance on dealing with vexatious requests, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.

14. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains: "The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies".

15. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.

16. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: "In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."

17. The CAA advised that it is the UK's independent aviation regulator, established by Parliament in 1972, and its purpose is to protect the interests of aviation consumers and the public. It confirmed that the focus of the complainant's requests, and all his interactions with the CAA, is an aerodrome located at Eshott, Northumberland.

18. The CAA stated, in simple terms, an aerodrome requires a licence or certificate, issued by the CAA, if it is used for flights carrying fare-paying

passengers, or for flying training in aircraft above a specified weight. Many aerodromes do not need a licence to carry out flying activities and are not directly regulated by the CAA. It explained that such aerodromes are 'unlicensed', and ultimately the commander of any aircraft operating to or from any unlicensed aerodrome is responsible for ensuring that they can operate safely. The CAA provides guidance to operators of unlicensed aerodromes, but its contents are guidance, not regulation, and compliance is not mandatory.

19. It explained further that Eshott is an unlicensed aerodrome, and is therefore not directly regulated by the CAA. A Declaring Training Organisation (DTO), Eshott School of Flying Ltd, is located at the aerodrome. The CAA advised, as with all DTOs, it is subject to the CAA's regulatory oversight to check that it continues to be in compliance with the applicable regulations and an inspection of the DTO took place in September 2019.

20. The CAA said that the complainant first contacted it in relation to Eshott in June 2018. While some of his communications post-date the requests that are the subject of this case, to date it has received in the region of 100 pieces of correspondence and requests for information from the complainant relating to Eshott. It stated that this includes 17 separate FOIA requests. By the time it had issued its response to the requests the subject of this notice, on 1 December 2020, it had logged 83 pieces of correspondence relating to Eshott over a period of two and a half years, including 15 FOIA requests.

21. It advised that it has also been contacted by a number of other authorities and agencies about Eshott after they were contacted by the complainant. These incluse Northumberland County Council, the Northumberland Director of Public Health, Northumbria Police, Northumberland Trading Standards, the Department for Transport and the Sunderland Coroner's Office. The CAA explained that while the vast majority of the correspondence received by the CAA has originated from the complainant, it is also aware that there is, and continues to be, a wide-ranging dispute between a number of parties who own neighbouring land and the operators of the aerodrome.

22. The CAA confirmed that outside of responses to FOIA requests, it has also provided the complainant with a number of comprehensive responses to his other correspondence. It has explained its regulatory role in relation to Eshott, and that it has carefully reviewed his concerns in relation to aviation safety and it is satsifed that there is no clear evidence of a breach of aviation rules. It has also advised the complainant on a number of occasions that it has no duty to become

involved in the disputes between third parties. Nevertheless the complainant appears to disregard the role and functions of the CAA, and repeatedly insist that it takes enforcement action against the operators of the aerodrome.

23. Due to the volume of correspondence it was receiving, the CAA's Chief Executive, Richard Moriarty, wrote to the complainant on 25 April 2019 advising that a complete review had been undertaken and confirming that no credible evidence had been identified that would properly result in regulatory intervention by the CAA. The CAA also advised the complainant that it could no longer justify allocating any further time responding to his messages. The CAA however confirmed that it has continued to review the complainant's messages to check whether there is any evidence of a breach of aviation rules.

24. Despite this letter the complainant continued to contact the CAA, sending a further 25 emails and requests for information between 13 May and 19 November 2019, including a Letter before Action in advance of applying for a Judicial Review on 11 October 2019. The CAA stated that it disputed the claim and responded to the complainant on 1 November 2019. The complainant did not proceed with his claim following an exchange of correspondence with the CAA's legal department.

25. The CAA went on further to say that on 8 November 2019 the complainant made a FOIA request for information relating to the DTO and its operations at Eshott. This was the complainant's 11th request made in 13 months, and the CAA concluded that the request was vexatious based on the history and context to the request. It stated that the complainant did not request an internal review of this decision but made a further FOIA request on 20 February 2020. The CAA also concluded that this request was vexatious, for the same reasons, which was also upheld by an internal review.

26. It argued that the complainant did not contact the CAA again until 2 October 2020 where he made another FOIA request in relation to the Permit to Fly for aircraft G-BUDW. As it felt that the complainant had reduced his contact with the CAA, and had not made an FOIA request for seven months, the CAA provided a response to this request on 3 November 2020. However, the CAA confirmed that the previous pattern immediately resumed with the complainant making further FOIA requests on 4 and 16 November 2020 along with sending four other emails to the CAA before the CAA had responded to these two requests on 1 December 2020. It advised that it concluded that these requests were vexatious, again based on the history and context of the requests.

The complainant requested an internal review. The CAA confirmed that it wrote to the complainant on 10 December 2020 advising him that it would not carry out an internal review on this occasion because it had carried out an internal review in relation to his previous request (reference F0004706), which upheld the original decision that the request was vexatious. It felt that as the reasoning for the decision remained the same, it did not see a reason to review it again.

27. The CAA commented that it understood that the Commissioner can only consider the circumstances at the time of the requests, but since writing to the complainant on 1 December 2020 it has to date received a further 14 pieces of correspondence from him, including two further FOIA requests. On 16 February 2021 it wrote to the complainant again, after he had written to the Chair of the CAA, reiterating that the CAA had not been able to identify any credible evidence that would properly result in regulatory intervention and that the CAA cannot justify allocating any further time responding to his messages. Despite this, the complainant continues to contact the CAA in relation to Eshott.

28. Additionally, the CAA argued that the complainant regularly included unfounded accusations and criticisms of the competence of the CAA, and individual colleagues, in his correspondence and request. Some examples are:

"I hope you are more astute than your colleagues appear to be. The CAA are currently digging themselves a very large hole and do not appear to recognise it". (19 December 2018)

"The legislation and documentation is all very clear, it appears only the CAA are having difficulty understanding it. We do find it ironic, that the organisation set up to protect the public, is in this case, providing an umbrella for unsafe practice, by refusing to act". (19 December 2018)

"The CAA are aware of these facts and will be guilty of a dereliction of their duty" (19 December 2018)

"You all risk becoming a laughing stock if you all continue to put your heads in the sand on this one". (9 March 2019)

"As I have formally made you aware of the this issue at Eshott, when the inevitable accident occurs with these old home built aircraft, you will all have to take the legal consequences". (10 April 2019)

"Unless of course it was not dry leased and someone told lies to the CAA, or the CAA lied to me". (16 August 2019)

"the CAA, a supposedly independent regulator openly admits it is now looking to follow the aims and goals of the APPG on GA, a private lobby group fully funded by the aviation industry". (11 October 2019)

"Yet again the CAA has proved itself to be an inadequate organisation, failing in its primary duty of care to protect the public and consumers. It has become obvious that the government and the GA lobbyists such as [redacted] have turned it into an organisation no longer fit for purpose". (1 December 2020)

29. In conclusion the CAA confirmed that Eshott aerodrome is not directly regulated by the CAA, and the CAA, as the UK's aviation regulator, is satisfied that there is no clear evidence of a breach of aviation rules. It has advised the complainant of this on a number of occasions but he does not accept the CAA's position. It appreciates that the complainant disagrees, but it considers that this does not mean that the CAA has failed to discharge its regulatory responsibilities sensibly and effectively. In light of this it considers the volume of correspondence and FOIA requests being received from the complainant, and the considerable amount of CAA resource that has been required as a result, is disproportionate and unjustified. The CAA believes, based on the previous history, that responding to the requests that are the subject of this complaint (or indeed any other request from the complainant relating to Eshott) is unlikely to bring about any form of resolution and is only going to lead to further correspondence.

30. For completeness the CAA also responded to some of the points the complainant raised in his request for internal review as directed to by the Commissioner. It stated that the CAA has informed the complainant that its Investigation and Enforcement Team is not (and was not) conducting an investigation. Northumberland Police has informed the complainant that it would only be taking action at the direction of the Sunderland Coroner, and no such concerns had been raised. It stated that the inquest referred to by the complainant took place on 21 April 2021 and the conclusion recorded 'accidential death'. It stated further that both Northumberland Police and the Sunderland Coroner's Officer were in contact with the CAA directly. The CAA responded to those enquiries but did not carry out any separate regulatory investigations arising from those enquiries in relation to operations at Eshott aerodrome, or at all. Concerning the court cases he referred to, the CAA confirmed that it has informed the complainant that the CAA cannot become involved in civil disputes between third parties.

31. The Commissioner can only consider the circumstances at the time of the requests; she cannot consider or indeed take into account events or

correspondence or requests that post date them. The CAA has referred to matters which post date these requests and the Commissioner understands why for completeness and to demonstrate the continuation of the complainant's behaviour despite a couple of section 14(1) notices and correspondence from the Chief Executive. But the Commissioner would like to make it clear from the outset that she has only taken account of the history leading up to the requests the subject of this notice and the circumstances at that time.

32. The Commissioner notes that the complainant has been in correspondence and dispute with the CAA over Eshott since June 2018. Since June 2018 (up to the date of the requests) the CAA has received 83 pieces of correspondence, including 15 FOIA requests all relating to Eshott and his concerns about aviation safety. Via the FOIA process and correspondence outside of this formal process, the CAA has explained several times its regulatory role, that in its opinion there is no clear evidence of a breach of aviation rules and that it cannot become involved in civil disputes between third parties. Despite this, the complainant continues to pursue the matter and use the FOIA process in order to do that.

33. She notes that in April 2019 the CAA had reached a point where it considered the volume of correspondence was excessive and placing an unreasonable burden upon it in terms of time and resources. The Chief Executive wrote to the complainant to advise him that a complete review had been undertaken and there was no credible evidence that would properly result in regulatory intervention. The complainant was also advised that the CAA could no longer justify allocating any further time to responding to his messages.

34. Despite this the complainant continued to contact the CAA, sending a further 25 emails and requests for information between 13 May and 19 November 2019, including a Letter before Action in advance of applying for a Judicial Review. The CAA confirmed that it disputed the claim and following exhanges between its legal department and the complainant this did not proceed.

35. Two of the complainant's earlier requests dated 8 November 2019 and 20 February 2020 were deemed vexatious by the CAA, following its prior warning from the Chief Executive in the April. The complainant did not request an internal review for the first section 14(1) notice (the notice issued in response to 8 November 2019 request) or indeed, then, refer the matter to the Commissioner for determination. He made a further request on 20 February 2020 which resulted in the same decision. Considering the CAA's clear and firm position by this point, the

correspondence with its legal department and the letter issued by the Chief Executive, the Commisisoner considers the most appropriate recourse following the first notice would have been to first request an internal review, then challenge the CAA's section 14(1) application via the Commissioner and First-tier Tribunal.

36. There was then a gap of seven months before the complainant made a further request. The CAA understandably felt that the correspondence and requests had eased sufficiently to warrant the processing of the complainant's request of 2 October 2020. It responded on 3 November 2020. But then its response was immediately followed by a further request on 4 November 2020 and before this one could be addressed it was followed by another on 16 November 2020. The CAA also received 4 other emails from the complainant before it had responded to these requests. Understandably, the CAA felt the previous pattern of correspondence and requests was resuming despite the prior warning from the Chief Executive and the previous section 14 notices.

37. The Commissioner considers there is clear evidence of unreasonable persistence and an unwillingness to accept the CAA's position. It is also reasonable to say that regardless of the information and explanations the CAA provides the complainant will continue to send similar levels of correspondence and requests relating to the same matter. Often responses are followed by more correspondence and requests, and correspondence and requests are submitted before the CAA has had a chance to respond to former communications. Also, despite the prior warning of the time and resources the complainant's continuing correspondence and requests was taking up, this pattern of behaviour continues.

38. The Commissioner does not consider the requests are without serious purpose and value. The complainant clearly has strong views and concerns over Eshott and aviation safety and such concerns are clearly not to be dismissed. However, in this case considering the level of correspondence and requests (up to the date of the requests the subject of this notice), repeated communications from the CAA outlining its position clearly, she considers any serious purpose and value is outweighed by the burden the complainant's continuing correspondence and requests is placing on the CAA. Particularly as there appears to be no willingness to accept anything the CAA says and a clear pattern of responses just resulting in further correspondence of debate and information requests.

39. In conclusion the Commissioner is satisfied that the requests will cause a disproportionate or unjustified level of disruption, irritation or distress

to the CAA, considering the context and history to them. She is therefore satisfied that the CAA is entitled to refuse to comply with them in accordance with section 14(1) of the FOIA.

Right of appeal

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

41. 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.

42. 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

Samantha Coward
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