

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2022

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

Decision (including any steps ordered)

1. The complainant made a request for a list and data of all reportable MOR's involving unidentified flying objects in UK airspace since 2013 and reported by air traffic services. The Civil Aviation Authority (CAA) refused to confirm or deny whether it holds the requested information under section 44(2) by virtue of section 44(1)(a) FOIA.
2. The Commissioner considers that the CAA was incorrect to refuse to confirm or deny whether the requested information is held under section 44(2) by virtue of section 44(1)(a) FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - The CAA must confirm or deny whether it holds information within the scope of the request. If the CAA holds information it must either disclose it, or issue a refusal notice that complies with section 17 of the FOIA
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant made the following information request to the CAA on 29 July 2022:

"Please can you provide me with a list and data of all reportable MOR's involving unidentified flying objects in UK airspace since 2013 and reported by air traffic services."

6. On 2 August 2022 the CAA responded to the request. It refused to confirm or deny whether it holds the requested information under section 44(2) by virtue of section 44(1)(a) FOIA.
7. The complainant asked the CAA to carry out an internal review. On 12 September 2022 the CAA provided the complainant with the result of the review it had carried out, it upheld its position to neither confirm or deny whether the requested information is held under section 44(2) by virtue of section 44(1)(a) FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 20 September 2022 to complain about the way their request for information had been handled.
9. The Commissioner considers the scope of his investigation to be to determine if the CAA was correct to refuse to confirm or deny whether the requested information is held under section 44(2) by virtue of section 44(1)(a) FOIA.

Reasons for decision

Section 44

10. Section 44 of the FOIA states that:

(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section (1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).

11. Under section 1(1)(a) of FOIA a public authority is required to confirm whether the information that has been requested is held. However section 44(2) means that if another piece of legislation prohibits it from providing such a confirmation, the public authority is not required to do so.
12. The CAA explained that occurrence reports, if held, are held by the CAA in accordance with Regulation (EU) No. 376/2014 on the reporting, analysis and follow up of occurrences in civil aviation ("the Regulation"). At the end of the transition period on 31 December 2020 the Regulation, as amended by The Aviation Safety (Amendment etc.) (EU Exit) Regulations 2019, is retained in UK law in accordance with The European Union (Withdrawal) Act 2018.
13. It went on that an occurrence means any safety-related event which endangers or which, if not corrected or addressed, could endanger an aircraft, its occupants or any other person. The aim of the Regulation is to improve aviation safety by ensuring that relevant safety information relating to civil aviation is reported, collected, stored, protected, exchanged, disseminated and analysed. The civil aviation safety system is established on the basis of feedback and lessons learned from accidents and incidents. Occurrence reporting and the use of occurrence information for the improvement of safety depend on a relationship of trust between the reporter and the entity in charge of the collection and assessment of the information. The purpose of protecting safety information from inappropriate use, and of limiting access to occurrence information solely to interested parties participating in the improvement of civil aviation safety, is to ensure the continuing availability of safety information so that appropriate and timely preventive action can be taken and aviation safety improved. The Regulation requires that appropriate measures are put in place to ensure that information collected through occurrence reporting schemes is kept confidential, and that such information is not made available or used for any purpose other than for the maintenance or improvement of aviation safety.
14. The CAA stated that the European Regulation (EU) No. 376/2014 on the reporting, analysis and follow-up of occurrences in civil aviation prevented the confirmation or denial of whether the requested information is held under FOIA.

15. The CAA informed the complainant that there is a separate application process to access information for the purpose of maintaining or improving aviation safety (outside of FOIA).
16. The Commissioner acknowledges that Article 15(2) of the Regulation states:

"Member States, the Agency and organisation shall not make available or use the information on occurrences:

 - (a) In order to attribute blame or liability; or
 - (b) For any purpose other than the maintenance or improvement of aviation safety."
17. When determining whether a statutory bar requires a neither confirm nor deny response, the Commissioner is not required to consider what the hypothetical contents of any information that existed might be (if in fact the information existed). His role is to determine whether the mere act of issuing a confirmation or a denial that information is held would in itself result in the disclosure of information that would engage the statutory bar.
18. The task for the Commissioner is therefore to determine whether confirming if reportable MOR's involving unidentified flying objects in UK airspace since 2013 and reported by air traffic services exists would, in itself, be information on occurrences which the CAA would be making available in order to attribute blame or liability or for a purpose other than the maintenance or improvement of aviation safety.
19. In issuing a confirmation or a denial, the CAA is not being asked to disclose any information, if it exists. It is being asked to confirm if such information exists.
20. The Commissioner does not accept that by merely confirming or denying whether it holds this information, the CAA would be disclosing information on occurrence reports involving unidentified flying objects in UK airspace since 2013 and reported by air traffic services in order to attribute blame or liability or for a purpose other than the maintenance or improvement of aviation safety.
21. This is because it would not be disclosing any information on such occurrence reports, it would merely be confirming or denying whether any such information exists.
22. It would not provide the identity of who submitted the report or the details of a report and so in no way could breach the trust between the reporter and the CAA.

23. It would not be disclosing any information which attributes blame or liability and furthermore it would not be disclosing information for a purpose other than the maintenance or improvement of aviation safety because no detail of any reports (if held) would actually be disclosed.
24. The Commissioner therefore does not consider that the statutory bar is engaged and the CAA were incorrect to refuse to confirm or deny whether the requested information is held under section 44(2) by virtue of section 44(1)(a) FOIA.

Right of appeal

25. 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

26. 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.
27. 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.....

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF