

Matthew Davis

Via email: [matt@datanews.co.uk](mailto:matt@datanews.co.uk)

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13 December 2011

Dear Mr Davis,

**Freedom of Information Act Request: F0008293**

I am writing following your request for an internal review of the Department's decision not to release to you copies of SAFA inspection reports where category 3 findings have been reported. As a member of the Department's Senior Civil Service who was not in any way involved in the original decision-making process. I have carried out this review. In doing so, I have considered whether the Department correctly followed the procedure as laid out in the Freedom of Information Act 2000 (the Act), and whether the exemptions quoted have been properly applied.

Fol procedure

I have found that the Department has not properly complied with the procedure as set out under the Act. Section 17(1)(b) of the Act requires a public authority to set out the exemptions that are being relied upon when the requested information is not disclosed. While the Department's letter of 30 November quoted sections 27 and 31 of the Act, it did not specify the particular sub-sections that we believed were engaged. To clarify this point, I can confirm that the original response relied on sections 27(1)(a) (relations between the United Kingdom and another State), 27(1)(c) (UK interests abroad) and 31(1)(g) with reference to section 31(2)(j). Section 31(2)(j) is engaged where release of information would or would be likely to prejudice the exercise by the public authority of its functions for the purpose of protecting persons other than persons at work against risk to health and safety arising out of or in connection with the actions of persons at work.

Sections 27(1)(a) and (c)

The responsibility for regulating the safety of aircraft lies with the state of registration. Consequently, the way any safety deficiencies identified in the UK are followed up becomes a matter of intergovernmental relations. I have considered whether the release of detailed information about safety failings would be in the public interest. While I accept that there is value for members of the public in being aware of the safety record of airlines, there is also evidence that such disclosure would be likely to lead to a deterioration of UK relationships with the country concerned, and to possible retaliation against UK airlines. I also note that the European Union safety blacklist already provides high-level information to the public on airlines considered to be unsafe, which goes some way to addressing the public interest arguments in favour of release.

In 2009, the Information Commissioner's Office (ICO) considered a similar complaint relating to this Department's decision to withhold the identities of foreign airlines which

had been subject to targeted SAFA inspections by the Civil Aviation Authority. After examining the case, ICO found that the requested information was indeed exempt from disclosure under Sections 27(1)(a) and 27(1)(c) of the Act, and that the public interest in maintaining these exemptions outweighed the public interest in disclosing the information.

The ICO's Decision Notice can be viewed at the following link:  
[http://www.ico.gov.uk/tools\\_and\\_resources/decision\\_notices.aspx](http://www.ico.gov.uk/tools_and_resources/decision_notices.aspx)  
You will need to enter the case reference number: FS50152941.

I am satisfied that the same considerations as set out in the ICO's Decision apply also in relation to your request. I am also satisfied that there have been no material changes in circumstances over the last two years (since the issuing of the Decision Notice) that alter the balance of the public interest such that it would now favour disclosure.

For the reasons set out above, I am satisfied that sections 27(1)(a) and (c) were correctly engaged and that the public interest arguments in favour of withholding the information outweigh the public interest arguments in favour of release.

Sections 31(1)(g) and 31(2)(j)

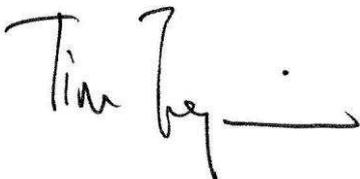
I have also looked at the position in relation to these exemptions. On this point, I am not entirely persuaded that the arguments made by DfT are sufficiently strong to outweigh the presumption in favour of disclosure. While I accept that the CAA do rely on the goodwill of airline crews to undertake inspections in the time available, those aircraft are subject to international and domestic safety legislation, including the possibility that they will be selected for investigation. There should therefore be a reasonable legal presumption that crews should co-operate, notwithstanding the goodwill basis on which the CAA understandably prefers to operate.

Nevertheless, given my conclusion above that Section 27(1)(a) and (c) have been correctly applied, my findings in respect of Section 31 do not alter my view that the information you have requested should continue to be withheld.

If you are not content with the way in which this internal review has been conducted, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tim Figures', with a horizontal line extending to the right.

**Tim Figures**