

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 18th October 2005

Name of Public Authority: Civil Aviation Authority

Address of Public Authority: CAA House
45-59 Kingsway
London
WC2B 6TE

Nature of Complaint

On the 10th January 2005 the Information Commissioner (the “Commissioner”) received a complaint from an individual who had requested the following information from the Civil Aviation Authority (the “CAA”) under section 1 of the Freedom of Information Act 2000 (the “Act”).

“the name/s of the person or persons who telephoned you and then wrote to you advising you of my recent medical condition ...”

“copies of the letter/s together with the information given to you over the telephone”.

“copies of any other letters, e-mails or any information you have received from ... “ his employers.

The CAA refused to disclose the information. In a letter dated 19th January 2005, they explained that the information had been provided in confidence. When the complainant asked the CAA to clarify which exemption they were relying on to withhold the information, they specified that the information was exempt under section 40 of the Act which relates to personal information. An internal review of the decision was subsequently carried out and the complainant was advised by letter dated 22nd February 2005 that the original decision to refuse the request under section 40 had been upheld.

During the course of the investigation the CAA advised the Commissioner that they also considered the information was exempt under the exemption provided by section 31(2). Section 31(2) concerns disclosures that would prejudice a range of public authority functions, including ascertaining whether circumstances exist which would justify regulatory action or in ascertaining a person’s fitness or competence in relation to any profession or other activity which he is authorised to carry on.

It is alleged that:

The CAA misapplied section 40 of the Act and therefore failed to provide the complainant with the information he had requested in accordance with section 1(1) of the Act.

The Commissioner's Decision

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the Act) and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner's decision is as follows:

Under section 40(1) of the Act information that constitutes personal data of which the applicant is the data subject is exempt from disclosure. The majority of the information requested by the complainant is personal data relating to him and is therefore exempt. This is an absolute exemption and the public authority is not required to consider the public interest test. Although access to personal data about the about the applicant falls outside the scope of the Freedom of Information Act, requests for such information should be dealt with in accordance with the provisions of the Data Protection Act 1998.

Under sections 40(2) and 40(3)(a)(i) of the Act information is exempt if it constitutes personal data about someone other than the applicant where disclosure of that data would contravene any of the data protection principles. This is an absolute exemption which means there is no requirement to consider the public interest rest.

The Commissioner is satisfied that the information which identifies the person who informed the CAA about the complainant's health is personal data about that person. The Commissioner is also satisfied that disclosing that information to the complainant would contravene the Data Protection Act 1998, in particular the First Data Protection Principle. Sections 40(2) and 40(3)(a)(i) of the Freedom of Information Act provides an absolute exemption where disclosure of personal data about some one other than the applicant would contravene any of the data protection principles provided by the Data Protection Act 1998. The First Data Protection Principle requires that personal data are processed fairly and lawfully and only where one of the conditions listed in Part I of Schedule 2 of that Act is satisfied. When considering compliance with the First Data Protection Principle it is necessary to consider what the legitimate expectations of the data subject, in this case the informant, would be in relation to how the information he or she imparted will be used or disclosed.

From the information held by the CAA there is nothing to suggest that the informant was acting in anything other than a purely private capacity. Therefore it is necessary to consider what the reasonable expectations of a private individual would be in relation to how the information they provided would be used and to whom it may be disclosed.

The Commissioner accepts that where a private individual informs the CAA of their concerns about a pilot they would not normally expect that their identity would be disclosed to that pilot. Therefore to release personal data about the informant would contravene the fairness element of the first data protection principle.

In light of this the information is exempt under sections 40(2) and 40(3)(a)(i) of the Freedom of Information Act 2000. This exemption is not subject to the public interest test.

Action Required

In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by the Civil Aviation Authority

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 18th day of October 2005

Signed:

Graham Smith
Deputy Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire, SK9 5AF