

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 April 2012

Public Authority: Civil Aviation Authority
Address: Civil Aviation Authority House
45-59 Kingsway
London
WC2B 6TE

Decision (including any steps ordered)

1. The complainant requested information relating to commercial airline pilots convicted of drink driving.
2. The Commissioner's decision is that the public authority was correct to withhold the information on the basis of the exemption at section 40(2) of the Freedom of Information Act 2000 (the Act).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 24 August 2011 the complainant wrote to the public authority and requested information. The request was worded as follows:
*'1. In the 2010 calendar year how many times were you informed of a commercial pilot having been convicted of drink/driving?
2. How many of these pilots attended the CAA's [Civil Aviation Authority] Alcohol Misuse Clinic?
3. How many of these pilots in Q.1 were banned from flying?
4. Please provide a breakdown showing the airline that the pilots in A.1 were employed by at the time of their offence.'*

5. Please provide a complete breakdown of all the offences that were notified to you in 2010 of commercial pilots. If any of these individuals were banned from flying please state if the ban was permanent or temporary, what the offence was that was notified to you and what airline they were employed by at the time of the offence.'

5. The public authority responded on 24 August 2011. It provided information relevant to items 1, 2, and 3 of the request. It also explained that no information was held within the scope of item 5 of the request. It however withheld information within the scope of item 4 on the basis of the exemption at section 40(2) of the Act.
6. Following an internal review the public authority wrote to the complainant on 28 October 2011. It upheld the original decision to withhold information within the scope of item 4 on the basis of section 40(2).

Scope of the case

7. On 14 November 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to rule on the public authority's decision to withhold information within the scope of item 4 of the request on the basis of the exemption at section 40(2).
8. According to the complainant, it would be unlikely for a pilot to be identified if he worked for an airline with more than 10 pilots. He further submitted that there was a legitimate public interest in knowing that the airlines involved took the situation seriously and knowing that a pilot is fit for duty was in the public interest.
9. The scope of the investigation was therefore restricted to item 4 of the request of 24 August 2011.

Reasons for decision

Section 40(2)

10. The public authority submitted that there was a real risk that by identifying their employers, the five individual pilots concerned could be identified. This would amount to a disclosure of sensitive personal data relating to both criminal offences and medical treatment.
11. Information is exempt from disclosure on the basis of the exemption at section 40(2) of the Act if the information constitutes personal data and

either the first or second condition in sections 40(3) and 40(4) is satisfied.

12. Personal data is defined in section 1(1) of the Data Protection Act 1998 (the DPA) as:

'..data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual.'

13. Sensitive personal data includes personal data consisting of information as to *'the commission or alleged commission by [a data subject] of any offence.'*¹
14. The Commissioner first considered whether the pilots who were convicted of drink driving could be identified following the disclosure of the names of the airlines for which they worked.
15. To assist the Commissioner in reaching an informed decision, the public authority provided him with the names of the five relevant airline operators including the total number of pilots employed by each operator (except one). The exception was for a foreign registered airline operator not regulated by the public authority. However, the public authority pointed out that it was a relatively small operator with approximately 15 aircraft.
16. The five pilots concerned each worked for one of the five airline operators. The number of pilots employed by the four airline operators was in the range of less than 10 to less than 60.
17. The public authority explained that when a pilot is convicted of drink driving, it is informed by the Home Office under the Notifiable Occupations Scheme. The subsequent suspension of the pilot's aeromedical certification means that the individual concerned will be absent from work for a considerable period until such time as they can be assessed as fit to have their medical certification reinstated. It submitted that in any small group of co-workers, colleagues will be aware of such a period of absence and the knowledge that a pilot

¹ Section 2(g) of the DPA

employed by their company had been convicted of drink driving would be extremely likely to lead to the individual concerned to be identified.

18. It further explained that outside of the immediate pilot group, the pilots concerned will also have regular contact with other individuals who would also notice the prolonged absence from work of one pilot out of a small group. This would include, but would not be limited to, other (non pilot) colleagues, airport and handling agent employees and regular passengers or clients. The public authority also explained that smaller operators tend to operate smaller aircraft to a number of relatively small airports, each of which would only have a small number of individuals with which pilots might interact. Compared to larger airline companies, pilots are more likely to operate the same route regularly and interact with the same individuals.
19. According to the public authority, all the above factors increase the likelihood of a prolonged period of absence being noticed and, therefore, the knowledge that one of a particular airline's pilots had been convicted of drink driving could, on the balance of probabilities, lead to the identification of the individual concerned.
20. The Commissioner agrees that the small number of pilots employed by the four airline operators and relatively small size of the fifth airline operator, the nature and level of pilots' interaction with their colleagues as well as other employees, makes it more likely than not that disclosure would result in the identification of the five pilots convicted for drink driving. The Commissioner does accept that there is a range in the number of pilots employed by the various airlines, some of which exceed the figure referred to by the complainant in paragraph 8. However, in all the circumstances the Commissioner is satisfied that the various numbers of pilots employed are sufficiently small enough so that there is a sufficient likelihood of identification were the information to be disclosed.
21. In considering these factors, the Commissioner has strongly taken into account the circumstances of this particular request, namely that in respect of the information withheld it only relates to one calendar year and there is only one pilot for each of the relevant airlines. In the Commissioner's view this makes identification more likely than not were the withheld information to be disclosed. The ability to make a strong enough association between a prolonged absence and the reason for this absence (i.e. conviction for drink driving) would be even greater were the disclosed information to be used in conjunction with publicly available information about drink driving convictions, such as press reports.

22. The Commissioner is therefore satisfied that this disclosure could be used to identify the pilots in question with a reasonable degree of certainty that there is no other plausible reason for the absence from work. Consequently, the Commissioner is satisfied that the names of the five airline operators in the context of the request of 24 August constitute personal data within the meaning of the DPA for the reasons described above especially at paragraph 20. He additionally finds that the information constitutes sensitive personal data within the meaning of section 2(g) of the DPA.

Would the disclosure of the names of the five airline operators contravene any of the Data Protection Principles?

23. As mentioned, for section 40(2) to apply, either the first or second condition in sections 40(3) and 40(4) must be satisfied. The first condition in section 40(3) states that the disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.

24. The first data protection principle states:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

25. The public authority submitted that the five pilots convicted of drink driving would reasonably expect that such sensitive information or any information which could result in them been identified would not be made publicly available. It argued that disclosure would be unfair and therefore in contravention of the first data protection principle.
26. The Commissioner agrees with the public authority that disclosure of information which could reveal sensitive personal data about the five pilots would be unfair and in contravention of the first data protection principle.
27. As mentioned, the complainant argued that there was a legitimate public interest in knowing that airlines took drink driving seriously and that a pilot is fit for duty. The Commissioner understands this to mean that the complainant considers disclosure would satisfy the sixth condition in schedule 2 of the DPA. However, having found that disclosure would be unfair (and consequently in contravention of the first data protection principle), the Commissioner is not obliged to consider whether disclosure would also satisfy the sixth condition in schedule 2.

28. In any event, the Commissioner is not persuaded that revealing the names of the relevant airline operators would be necessary to demonstrate that those operators took the conviction of their pilots for drink driving seriously. In his opinion, it also would not satisfy the public interest in knowing that a pilot is fit for duty.

29. The Commissioner therefore finds that the names of the five airline operators were correctly withheld on the basis of the exemption at section 40(2) of the Act.

Right of appeal

30. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

31. 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.
32. 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

Alexander Ganotis
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