



Australian Government
Civil Aviation Safety Authority

Legal Services Division
TRIM Ref: F15/4107

3 September 2015

Mr Jim Bradley

By email: foi+request-1137-942154c9@righttoknow.org.au

Dear Mr Bradley,

ACCESS TO DOCUMENTS UNDER THE *FREEDOM OF INFORMATION ACT*

I refer to your email dated 13 July 2015 seeking access to documents under the *Freedom of Information Act 1982* (Cth) (the Act). You sought access to:

1. A copy of the investigator's report of the unauthorised landing of a silver Eurocopter EC120 registration VH-WII on Kiama Council land on 21.2.14; and
2. A document which contains the street address of the property on which the helicopter was reported to have been landed.

I am the decision maker for your request. I have identified a one page document dated 19 September 2014 which is relevant to your request.

I did not locate any documents relevant to item 1 of your request as there was no investigators report.

Document exempted

I have decided to refuse your request for access for the reasons set out below.

Consultation with third parties

In accordance with and as required by the Act, I consulted with a third party. By an email dated 4 August 2015, this party objected to the release (and partial release) of the document relating to them, and made submissions in support of that objection. I have taken into account those submissions in making my decision.

Conditional exemption - personal information

Section 47F of the Act provides that a document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person.

The document dated 19 September 2014 contains personal information relating to two individuals, a residential address and information they provided to CASA as a part of its enquiries into the incident. I consider that it would be unreasonable to disclose information about these persons to you as the information they provided is not publicly available.

I consider this is information which is conditionally exempt under s.47F of the Act, on the grounds that any disclosure of it would involve the unreasonable disclosure of personal information as it would intrude on the right to privacy of the individuals concerned.

The Public Interest

Even though I have decided that the part of the documents are conditionally exempt under s.47F, I am also required to consider whether disclosing it would on balance be contrary to the public interest. If I am not satisfied of that, access must be given.

Section 31B of the Act provides that a document is exempt if it is conditionally exempt under Division 3, and access to the document would also, on balance, be contrary to the public interest for the purposes of s.11A(5) of the Act.

In applying this test, I have weighed the factors in favour of disclosure against those against it.

I have identified the following factor for disclosure:

- it would promote the objects of the Act, as described in s.3.

I have identified the following factors against disclosure:

- could reasonably be expected to prejudice an agency's ability to obtain confidential information;
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future;
- could reasonably be expected to prejudice the management function of an agency; and
- it could reasonably be expected to prejudice the protection of an individual's right to privacy.

In weighing the public interest factors for the purposes of this exemption, I have determined that the granting of access to the individuals' information would not further the objects of the Act, nor could access to this information be characterised as a matter of public importance telling in favour of disclosure.

On the other hand, disclosure of the personal information would intrude on the right to privacy of the individuals concerned by providing information which may disclose their identity as persons who provided confidential information to CASA, as well as their personal information.

On balance, I consider that the public interest favours the protection of this personal information. I consider it would be contrary to the public interest to release this personal information to you.

I am satisfied that disclosure would be contrary to the public interest.

Conditional exemption – substantial adverse effect on CASA's operations

Section 47E(d) of the Act provides that a document is conditionally exempt if its disclosure under the Act would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The document dated 19 September 2014 contains information provided to CASA in confidence, to assist CASA in its' enquiries concerning the incident.

Persons who provide information in relation to enquiries made by CASA have the right to expect that their identity and the information they provide will be handled on a confidential basis. I consider that if persons became aware that information they provided to CASA could be disclosed to a third party, then those persons may not cooperate with a CASA or be as open and frank with CASA as they otherwise would.

On this basis I consider that disclosure of the above documents would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of CASA in responding to incidents.

The Public Interest

Even though I have decided that the documents are conditionally exempt under s.47E(d), I am also required to consider whether disclosing them would on balance be contrary to the public interest. If I am not satisfied of that, access must be given.

Section 31B of the Act provides that a document is exempt if it is conditionally exempt under Division 3, and access to the document would also, on balance, be contrary to the public interest for the purposes of s.11A(5) of the Act.

In applying this test, I have weighed the factors in favour of disclosure against those against it.

I have identified the following factors for disclosure:

- it would promote the objects of the Act, as described in section 3.

I have identified the following factors against disclosure:

- it could reasonably be expected to prejudice CASA's ability to obtain confidential information;
- it could reasonably be expected to prejudice CASA's ability to obtain similar information in the future; and
- could reasonably be expected to prejudice the management function of an agency.

Whilst disclosure of this information may support the public interest in ensuring complete and effective investigation of incidents, I consider that this interest is outweighed by the need for CASA to retain access to confidential sources of information which assist it in performing its regulatory functions.

As indicated above, I consider that if members of the public became aware that information and intelligence provided by them to CASA on a confidential basis is routinely released under the Act, then they will be less inclined to deal with CASA in a frank and open manner. If this were to occur then it would have a substantial impact of the broader public interest in the maintenance of air safety which goes beyond the circumstances of this particular case.

For these reasons I am satisfied that disclosure would be contrary to the public interest.

Document exempted

I have decided to exempt the document dated 19 September 2014 in full for the reasons set out above. You will not be given access to it.

Application for internal review of decision

Section 54 of the Act gives you the right to apply for an internal review of my decision. An application for internal review of my decision must be made in writing within 30 days of receipt of this letter.

No particular form is required, but it is desirable to set out in the application the grounds on which you consider that the decision should be reviewed. An application for review should be addressed to Freedom of Information at the address below:

Freedom of Information
Legal Services Division
Civil Aviation Safety Authority
GPO Box 2005, Canberra ACT 2601

Review by the Australian Information Commissioner

Alternatively, under section 54L of the Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <http://www.oaic.gov.au/freedom-of-information/requesting-a-review>
email: enquiries@oaic.gov.au
post: GPO Box 2999, Canberra ACT 2601
in person: Level 3, 175 Pitt Street, Sydney NSW
phone: 1300 363 992

Please do not hesitate to contact me on (02) 6217 1445 if you have any questions in relation to your request.

Yours sincerely,



Jennifer Smith-Roberts
Freedom of Information and Finance Officer
Legal Services Division