



## Australian Government

### Civil Aviation Safety Authority

LEGAL AFFAIRS, REGULATORY POLICY  
AND INTERNATIONAL STRATEGY

TRIM Ref: F16/4935

16 November 2016

Mr Rob Cumming

By email: Rob Cumming [foi+request-2253-5e7e56a6@righttoknow.org.au](mailto:foi+request-2253-5e7e56a6@righttoknow.org.au)

Dear Mr Cumming,

#### INTERNAL REVIEW – FREEDOM OF INFORMATION ACT

I refer to the decision made on 2 November 2016 by David Gobbitt, an officer of CASA pursuant to the *Freedom of Information Act 1982* (**the Act**) (**the decision**). By an email of 10 November 2016, you sought internal review of that decision. I am the decision-maker in relation to your request for internal review.

#### Background

By email dated 17 September 2016, you sought access to documents related to evidence for the Cessna SIDs being placed on Cessna aircraft in Australia and the Regulatory Impact Statement (RIS) in support for the SIDs program. The scope of your request was as follows:

1. Documents relating to the basis for the SID's requirement;
2. Documents relating to the RIS for private aircraft in Australia in the implementation of SID's and the basis for the mandatory requirement in Australia compared to the US, when and where the SID's requirements for Australia is based on the FAA requirements; and
3. Documents that refer to private operations vs. commercial operations and
4. Any direct communications with the FAA from/to CASA Australia on this issue.

Your request for internal review stated:

I am writing to request an internal review of Civil Aviation Safety Authority's handling of my FOI request 'Evidence for the Cessna SID's being placed on Cessna aircraft in Australia and the Regulatory Impact Statement [RIS] related to the SID's programme'.

1. The link given to the location of alleged information was unresponsive;
2. The information received only gives information for 2015, not from, as requested, the earliest consideration of the SID's programme;
3. Information regarding the decision that an AR be raised and
4. Information as to why a RIS was not made (excepting as in 3 above).

I have conducted a search of documents. In relation to point 4 above, there are no documents, as a RIS is not required for the making of an aviation ruling, as that is not a regulation and an expression of CASA's view about how the regulations operate. I located other documents relevant to your request, namely:

1. Emails between CASA officers and a CASA legal officer on 28, 29 February 2008, which attached a legal advice from a CASA legal officer to a CASA officer dated 27 November 2007;
2. Emails between CASA officers and a CASA legal officer on 14 February 2013 (attaching draft *Temporary Management Instruction TMI – Airworthiness xxxxxxxx CAR 42 and Aircraft Manufacturers Supplementary Instructions for Continuing Airworthiness*) and 14, 27 June 2013.

### **Decision - Exemption - legal professional privilege**

Section 42 of the Act provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

Relevantly, the privilege protects confidential communications between a client and his or her lawyer that are made for the purposes of seeking or being provided with legal advice.

In the above emails, CASA officers are either seeking legal advice or providing legal advice. Accordingly, I have made a decision that these documents (and any attachments) are exempt documents and on this basis you will not be given access to them.

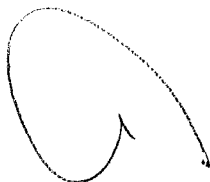
I have also made a decision that those parts of documents disclosing the names of the two FAA officers and a third party in the emails referred to in Mr Gobbitt's letter are exempt documents for the same reasons given by him.

### **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](mailto:enquiries@oaic.gov.au)  
post: GPO Box 2999, Canberra ACT 2601  
in person: Level 3, 175 Pitt Street, Sydney NSW  
phone: 1300 363 992

Yours sincerely,



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