



Australian Government

Civil Aviation Safety Authority

LEGAL AFFAIRS, REGULATORY POLICY
AND INTERNATIONAL STRATEGY

TRIM Ref: F16/5139

12 December 2016

Mr Rob Cumming

By email: Rob Cumming foi+request-2253-5e7e56a6@righttoknow.org.au

Dear Mr Cumming,

INTERNAL REVIEW – FREEDOM OF INFORMATION ACT

I refer to the decision made on 29 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 29 November 2016, you sought internal review of that decision. I am the decision-maker in relation to your request for internal review. On 12 December, you objected to my involvement in the internal review process on the basis I was formerly the General Counsel of CASA, but you provided no reasons why that gave rise to any apprehension of bias or anything else. Nonetheless, the terms of your request only sought access to documents on and from 1 July 2016, when I was no longer the General Counsel.

Background

By email dated 18 October 2016, you sought access to documents. After CASA engaged in a practical refusal process, on 25 November 2016, you clarified the scope of your request to be:

It is clear what is required.

At the beginning of July 2016, Jonathon Aleck made a statement to the press in the terms previously outlined. [where he was cited as saying: "***Our concerns were real and demonstrable and not the result of an exclusively CASA assessment, with the Air Traffic Safety Bureau corroborating as well***".]

I require the documents supporting that statement from the time of the revocation of the Jabiru AD in June 2016

Mr Gobbitt's decision letter stated the only documents within the scope of your request were publicly available.

Internal review

By email of 29 November 2016, you sought internal review of Mr Gobbitt's decision. You stated:

Dear Civil Aviation Safety Authority,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Civil Aviation Safety Authority's handling of my FOI request 'Removal of restrictions on Jabiru Aircraft'.

This does not at all answer my FOI request, which seeks the information actually used by Jonathon Aleck in making the statement to The Australian as reported.

I require the:

documents including but not limited to:

- Correspondence;
- File Notes;
- Meeting Notes;
- Internal Memo's;
- Diary/ calendar entries;
- Telephone records;
- All data electronically collected, being by mobile phone, Dictaphone, tape recorder or mp3/4 recorder or other means · E-mails; · All database entries including entries into Sky Sentinel, TRIM and AIRS; · Images; · Individual FOI [Flight Operation Inspector], AWI comments and resulting documentation; · All supervisory staff records relating to the matter; · If referred to the CASA Board, all related Board minutes, discussions and recommendations made to advise CASA as to direction for the Board in relation to this

A full history of my FOI request and all correspondence is available on the Internet at this address: https://www.righttoknow.org.au/request/removal_of_restrictions_on_jabir

It appears you have again sought to change the terms of your request. Your email of 29 November seeking internal review seeks: *the information actually used by Jonathon Aleck in making the statement to The Australian as reported*. This request, in terms of timeframe, seeks access to *all documents* that would have been created. The *Australian* article you refer to was published on 29 July 2016, see:

<http://www.theaustralian.com.au/business/aviation/casa-lifts-limits-on-jabiru-with-a-warning/news-story/3828a92ac10dfa69bdb7361782c14d1c?nk=ebdcc95911bfb0448a868d87e2178d59-1481504386>

Instrument CASA 102/15 titled *Conditions and direction concerning certain aircraft fitted with engines manufactured by Jabiru Aircraft Pty Ltd*, expired on 30 June 2016. It was never revoked. In any event, your 25 November email clarified your request for access as seeking access to documents **produced after 30 June 2016** relating to the alleged statement by Dr Aleck cited above, as it is only seeking *documents supporting that statement from the time of the revocation of the Jabiru AD in June 2016*. I note CASA instrument 65/16 was made on 28 June 2016, but expressed to commence on 1 July.

I have conducted a further search of documents, and located the following documents potentially within the scope of your request:

1. 3 pages of emails between a CASA legal officer and CASA officers, produced on 1 July 2016.

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 are exempt documents and on this basis you will not be given access to them.

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

Yours sincerely,

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