



Australian Government

Civil Aviation Safety Authority

LEGAL, INTERNATIONAL AND REGULATORY AFFAIRS
RMS Ref: F23/6839

28 April 2023

BS

Via email: foi+request-9950-25cb69ac@righttoknow.org.au

Dear BS,

ACCESS TO DOCUMENTS UNDER THE *FREEDOM OF INFORMATION ACT 1982*

I refer to your email dated 18 February 2023 seeking access to documents under the *Freedom of Information Act 1982* (Cth) (the Act). Your request was for:

I kindly request the following information relating to Airservices Australia activities that are regulated by CASA:

- Details of all surveillance activity for Sydney Tower and Sydney TCU between the dates 1st January 2022 and 17th February 2023, including any results (including safety observations, alerts, and findings).*
- Details of all enforcement activity related to the abovementioned surveillance.*
- A summary of any actions required by Airservices including whether they have been addressed or are outstanding.*

The date range of your access request is 1 January 2022 to 17 February 2023. You do not require the names of any CASA staff, or third parties contained in the documents.

On 15 March 2023, I made a decision to impose charges in the amount of \$707.29 in relation to your application.

On 15 March 2023, you emailed contending that the charge should be waived, as you contended there was a genuine public interest in these documents. You also sought clarification as to why such a high charge was applied. You requested I advise if a specific aspect of your request was attributing to such a high charge and that if that was the case you may consider limiting the request.

On 15 March 2023, I responded that as you were seeking documents that outline the status of any current findings as I previously explained this is not housed in any one document, I therefore included in scope all the emails between Airservices and CASA outlining the actions taken regarding each finding. This volume of documents is what attributed to such a high charge. I informed outside of these documents the surveillance report covers most of the scope of your request (safety observations, alerts, and findings).

On 16 March 2023, you emailed responding '*I would like to limit my FOI request to the single document you have referred to. I trust this would remove all charges.*'

On 16 March 2023, I responded to your email, advising that although this does not remove all charges the charges had been drastically reduced as a result of you revising the scope of your request. At this time, I also provided a revised preliminary charges notice to you which outlined the new amount of \$23.45.

On 16 March 2023, you responded '*I contend that these charges should be waved. There is clearly a genuine public interest in the release of these files. The document you refer to outlines*

safety issues in the Australian aviation industry and refers directly to safety findings of the regulator at Australia's busiest airport. The information contained in the document could have wide-ranging safety impacts on every single flight, and every single passenger in and out of Sydney Airport.'

On 23 March 2023, I made a decision to impose charges as I believed you had not satisfied the requirements of sections 29(5)(a) and (b) of the Act.

On 23 March 2023, you sought internal review of my decision to impose charges.

On 30 March 2023, CASA's Branch Manager, Advisory and Drafting notified you of his internal review decision, deciding that the charges should be waived.

Decision

I am the decision maker for your request. I have identified 1 document containing 22 pages as listed in the below schedule. I have decided not to release the document to you, for the reasons set out below.

Document No.	Date	Description	Decision
1	8 August 2022	Airservices Australia Surveillance Report	Exempt s37(1)(a) s47E(d)

Consultation with a third party

In accordance with and as required by sections 27 of the Act, consultation with a third-party took place regarding Document 1. The third-party objected to the release of the document under section 47E(d) and section 47C.

Regardless of third-party consultation, I am required to make an impartial decision regarding disclosure. I have decided to apply to Document 1 section 37(1)(a) and consistent with the third-party's objection, I have decided that the section 47E(d) exemption also applies, I have however decided section 47C does not apply.

Exemption – Documents affecting enforcement of law and protection of public safety

Section 37(1)(a) of the Act provides that a document is exempt if its disclosure would or could reasonably be expected to prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance.

Document 1 is relevant to a current CASA enforcement review that is still under consideration. Disclosure of the document whilst a current review is occurring has the potential to prejudice the conduct of the review by releasing information and evidence that has been obtained direct from the operator, prior to the conclusion of the review. Additionally, during a time of which new information is still coming to light disclosure of the existing information could adversely affect CASA's ability to obtain new information from the operator and therefore delay any subsequent actions.

I am therefore satisfied that the document is relevant to a current CASA enforcement review and release of the document would, or could reasonably be expected to, prejudice the enforcement or proper administration of the law in a particular instance.

For this reason, I have decided that the document is exempt under s.37(1)(a).

Conditional exemption – substantial adverse effect on CASA’s operations

Section 47E(d) of the Act provides that material 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.

CASA surveillance relies on the compliance and assistance of operators in disclosing the information contained in the surveillance report. If operators were made aware that the investigation findings could be disclosed to others whilst the investigation is still occurring this has the potential to diminish the cooperation and assistance operators may provide to CASA surveillance, and therefore the information obtained in compiling future reports of this nature may be compromised.

On this basis I consider that Document 1 is conditionally exempt under section 47E(d) on the grounds that disclosure would or could reasonably be expected to impede CASA’s ability to effectively obtain information and evidence from third parties.

The Public Interest

Even though I have decided that Document 1 is conditionally exempt under section 47E(d), I am also required to consider whether disclosing this information 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 section 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 impede the flow of information to CASA as a law enforcement and regulatory agency; and
- it could reasonably be expected to prejudice CASA’s ability to obtain confidential information; and
- it could reasonably be expected to prejudice CASA’s ability to obtain similar information in the future.

In weighing the public interest factors for the purposes of this exemption, I have determined that access to this information would not be characterised as a matter of public importance telling in favour of disclosure.

On balance, I consider that the public interest favours the protection of this information. I am satisfied that disclosure of the abovementioned document would be contrary to the public interest.

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
Advisory and Drafting Branch
Legal, International and Regulatory Affairs 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: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10
email: foidr@oaic.gov.au
post: Director of FOI Dispute Resolution, OAIC, GPO Box 5218, Sydney NSW 2001
phone: 02 9284 9666

Yours sincerely,



Keeley Phengrasmy
A/g Freedom of Information Officer
Advisory and Drafting Branch
Legal, International and Regulatory Affairs Division
Civil Aviation Safety Authority