



LEGAL, INTERNATIONAL AND REGULATORY AFFAIRS

CASA Ref: F24/8772

Mr Andrew Terhorst

Via email: foi+request-11220-7617a93a@righttoknow.org.au

Dear Mr Terhorst,

Notice of Decision under the *Freedom of information Act 1982*

I refer to your email dated 10 March 2024 seeking access to documents under the *Freedom of Information Act 1982* (the Act). Your request was for:

I request information under the Freedom of Information Act about your approval process for the 2017 Runway 12/30 flight paths at Hobart Airport, designed by Airservices Australia.

This request is prompted by concerns raised during a 2018 legal action by Advanced Electro Dynamics Pty Ltd and Fulham Pty Ltd against Airservices Australia, which questioned the adequacy of safety considerations and procedural adherence in the flight path implementation.

Specifically, I seek:

- 1. Correspondence between CASA and Airservices Australia regarding the approval of these flight paths.*
- 2. Documentation on CASA's stance or actions related to the mentioned legal action. The objective is to understand CASA's due diligence and role in ensuring the safety of these flight paths.*

The date range of your access request is 1 January 2018 to 31 December 2018.

On 26 March 2024, CASA acknowledged your FOI request and notified you that a decision would be made by COB Wednesday 10 April 2024. The acknowledgement email also noted that the period for processing your request may be extended if CASA was required to consult with third parties or for other various reasons.

Extension of Time: s.15AA and Third-Party Consultation

On 8 April 2024, CASA informed you that in processing your FOI request, CASA has consulted with various business areas who may hold information or documents in relation to your request. In doing so, to complete thorough searches of our records, I asked you for an extension of time til COB Wednesday 17 April 2024, in order to provide you a decision on access to your request. On the same date you responded to my email, agreeing to the extension of time.

On 17 April 2024, I notified you that in having located and retrieved documents in relation to your request, under section 27 of the FOI Act, CASA is obligated to undergo a consultation process as the documents located contains information on a third party. In undertaking the consultation process, the processing time of your request is extended by 30 days, extending the deadline for the decision to be made to COB Friday 17 May 2024.

CASA has taken the submissions from the third-party consultation process into account in making its decision.

Charges

On 17 May 2024, CASA issued you with a s.29 Notice of Preliminary Charges, where I made the decision to impose charges in the amount of \$78.33 in relation to your application due to the work undertaken to process your request. Within the period of 30 days (COB Monday 17 June 2024), you were required to inform me whether you: agree to pay the charges, contend that the charges were wrongly assessed and therefore the charges should be reduced or not imposed; or to withdraw your request for access to the documents. On the same date, you responded to my email querying the calculation of the fees.

On 19 June 2024, you provided CASA a copy of your formal response to the charges imposed, requesting that the charges in relation to your request should be waived on the basis that they would cause financial hardship and that giving access to the document/s in question is in the interest of a substantial section of the public.

In my view, your contentions did not provide sufficient evidence to establish that payment of the proposed charge of \$78.33 would cause personal financial hardship, noting financial hardship means you would be unable to provide food, accommodation, clothing and other necessities for yourself and your family.

You did contend that the documents relate to a small community in which you reside and that your community is seeking access to the document/s to better inform them as to why or how a decision was made that has affected your community. While I understand the distress felt in your community, in my view, the community does not represent a substantial section of the public.

However, in order to maintain goodwill and to avoid further delay and correspondence regarding processing your request, I decided to waive charges on this occasion.

Summary of Decision

I am authorised under section 23 of the Act to make decisions in relation to FOI requests.

In relation to paragraph 1 of your request CASA holds four documents (totalling 13 pages). I have decided to grant access to the documents in full and in part. that relate to your request.

In relation to paragraph 2 of your request, I have decided to refuse access under section 24A of the FOI Act.

The reasons for my decision, including the relevant sections of the FOI Act, are set out in detail at **Attachment A**.

Please find below the schedule of documents for release:

No.	Pages	Description of document	Decision	Exemption	Comments
1	1	Letter from Corporate Air to CASA on Hobart Aerodrome Revalidation Report, dated 15 January 2016	Full Release with s.22 edits	N/A	<i>s.22: Irrelevant information – CASA and Corporate Air staff names redacted</i> <i>Note: While the letter from Corporate Air is dated 15 January 2016; I am satisfied that this is a typographical error and that the document does fall within the date range of your request given the context of the letter discusses the revalidation taking place on 11 January 2018.</i>
2	2 – 4	Correspondence between Airservices Australia, Corporate Air and CASA,	Partial Release	s47F	<i>s.22: Irrelevant information – CASA and Airservices Australia staff names and contact details redacted</i>

		dated 8 January 2018, 2.10PM			<i>s47F: Personal information of Airservices Australia staff redacted</i>
3	5 – 7	Correspondence between Airservices Australia, Corporate Air and CASA, dated 8 January 2018, 3.31PM	Partial Release	s47F	<i>s.22: Irrelevant information – CASA and Airservices Australia staff names and contact details redacted</i> <i>s47F: Personal information of Airservices Australia staff redacted</i>
4	8 – 13	Flight Revalidation Report of Hobart (YMHB), dated 11 January 2018	Full Release with s.22 edits	N/A	<i>s.22: Irrelevant information – Flight validation pilot and observer name and aircraft registration details redacted.</i>

Section 22 - Irrelevant information

Under section 22 of the Act, CASA can provide access to documents that would disclose information that would reasonably be regarded as irrelevant to the request for access. In doing so, an agency, in this case, CASA has prepared an edited copy of the documents for release. For this reason, we have removed the names of CASA, Airservices Australia and Corporate Air staff who were mentioned within this document, as well as the aircraft registration details.

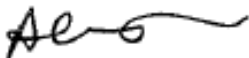
Rights of review

If you disagree or are not satisfied with any part of the decision you are entitled to seek review. There are two ways you can do this. You can ask for an internal review from within the agency, or an external review by the Office of the Australian Information Commissioner (the OAIC). Further information on how to proceed with a review can be found in **Attachment B** to this notice.

Further assistance

If you have any questions, please email freedomofinformation@casa.gov.au

Yours sincerely,



Amy George
 Freedom of Information Officer
 Advisory and Drafting Branch
 Legal, International and Regulatory Affairs Division
 Civil Aviation Safety Authority

26 June 2024

REASONS FOR DECISION

The reasons for my decision are discussed below.

Information considered

In reaching my decision, I took into consideration:

- Your request dated 10 March 2024 and further details provided via email dated 26 March 2024;
- The documents that fall within the scope of your request;
- Consultations with CASA officers about:
 - The nature of the documents
 - CASA's operating environment and functions;
- Consultations with relevant third parties;
- Guidelines issued by the OAIC under section 93A of the FOI Act (Guidelines); and
- The *Freedom of Information Act 1982* (the Act).

Reasons for my decision

I am authorised to make decisions under section 23(1) of the Act. My findings and reasons for deciding that the exemptions apply to the documents are discussed below.

Section 24A – Documents do not exist/cannot be located

Under section 24A of the FOI Act:

(1) An agency or Minister may refuse a request for access to a document if:

(a) All reasonable steps have been taken to find the document; and

(b) The agency or Minister is satisfied that the document:

(i) Is in the Agency or Minister's possession but cannot be found; or

(ii) does not exist.

I have undertaken searches within CASA's internal database for records, Records Management System (RMS) and have not located any documents that fall within the scope of your above request. Searches were conducted by using search terms such as, "Advanced Electro Dynamics," "Advanced Electro," "Fulham," "Fulham Pty Ltd" and "Advanced Electro Dynamics and Fulham Pty Ltd." In conducting these searches, we did not locate or find any documents that relate to yourself and to the scope of your request.

Additionally, I have contacted the relevant business areas who would be responsible for holding and obtaining any information in relation to the scope of your request – specifically the Litigation, Investigations and Enforcement Branch who manage and conduct all litigation in which CASA is a party before the Federal Court, the Administrative Appeal Tribunal and in other legal matters brought before the Court(s). The Litigation Branch has looked through all their records to locate any documents that fall within the scope of your request and have confirmed CASA does not hold any documents relevant to the hearing. For this

reason, . I am satisfied that after consultations with the relevant business area(s) identified that the agency does not hold and cannot locate the documents that you are seeking.

Given the above, I am satisfied that CASA has undertaken the relevant searches required and consulted with all relevant business areas in order to locate any documents relating to the incident and yourself and confirm that the documents you have requested do not exist nor in CASA's possession in accordance with section 24A(1)(a)(ii) of the FOI Act.

Section 47F – Personal information

I have determined that section 47F applies to documents No. 2 and 3 in part.

Relevant Law and Guidelines

Section 47F of the Act provides:

- (1) *A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*
- (2) *In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
 - (a) *the extent to which the information is well known;*
 - (b) *whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;*
 - (c) *the availability of the information from publicly accessible sources;*
 - (d) *any other matters that the agency or Minister considers relevant.*

The Act shares the same definition of 'personal information,' as the Privacy Act. Paragraphs 6.123 – 6.125 of the Guidelines provides:

[6.123] Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and*
- (b) whether the information or opinion is recorded in a material form or not.*

[6.124] In other words, personal information:

- is information about an identified individual or an individual who is reasonably identifiable*
- says something about a person*
- may be opinion*
- may be true or untrue*
- may be recorded in material form or not.*

[6.125] Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

I find that the exempt parts of the document falling within the scope of your request contains the personal information of third parties, including their name's, address, telephone numbers and signature. I consider disclosure of the information could reasonably identify an individual where their information is not well known or been disclosed or available from publicly accessible sources.

Unreasonable disclosure

To be conditionally exempt, disclosure of the personal information must be unreasonable.

In deciding whether disclosure of the personal information would be unreasonable, I am required under section 47F(2) of the Act to take into account:

- the extent to which the information is well known
- whether the person that the information is about is known to be associated with the matters dealt with in the documents
- the availability of the information from publicly available sources, and
- any other relevant matter.

I am satisfied that the release of this personal information to you would be unreasonable as:

- the information is not known to you and not related to you in any way.
- the information is not well known or in the public domain.
- you have not provided consent from any third party for the release of their personal information; and
- no public purposes would be achieved through the release of personal information.

Additionally, paragraph 6.149 discusses the position of Deputy President Forgie in Warren; Chief Executive Officer, Services Australia and (Freedom of Information) notes that section 47F should be the starting point for any consideration in disclosing the full names of staff, and should not be based on a presumption that disclosing the full names of staff in documents increases transparency and promotes the objects of the FOI Act.

Given the above, I have found that the disclosure of personal information would be unreasonable, and documents No. 2 and 3 as identified, are partially exempt pursuant to section 47F of the Act.

The public interest test

As I have identified information to be exempt under section 47F, there is a requirement to consider the application of the public interest test.

Section 11A(5) of the Act provides:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Conditionally exempt material must be released unless, in the circumstances, access to that document at this time would, on balance, be contrary to the public interest as noted in section 11A(5). The Guidelines state:

[6.9] For a document that is found to be conditionally exempt, the balancing test requires the decision maker to determine that release of the information would be contrary to the public interest. In circumstances where the decision maker is not satisfied that release would be contrary to the public interest, the information must be released. The use of the word contrary sets a high threshold, in summary, demonstrating that the factors against disclosure are oppositional to the public interest.

....

[6.238] To conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. The decision maker must analyse, in each case, where on balance the public interest lies based on the particular facts of the matter at the time the decision is made.

Application of the public interest test

When weighing up the public interest for and against disclosure under subsection 11A(5) of the Act, I have taken into account relevant factors in favour of disclosure. I have considered the extent to which disclosure would:

- promote the objects of the Act generally; and
- allow a person to access his or her personal information.

Factors against disclosure

I consider that disclosing personal information contained in the documents would not promote the objects of the Act and would interfere with the rights of the individuals concerned who have a right to having their personal information protected. Given the nature of the information sought in the request, is limited and is outweighed by the rights of the individuals concerned to have their personal information protected.

On balance, I have decided that disclosure of the personal information contained in documents No.2 and 3 would be contrary to the public interest and could reasonably be expected to interfere with the privacy of the third parties concerned. I consider that there is an overwhelming public interest in ensuring that third parties are protected from unreasonable interference with their privacy.

Given the above, I am satisfied that documents No. 2 and 3 are partially exempt under section 47F of the Act.

In summary, I have decided to:

- grant full access to documents No. 1 and No. 4
- grant partial access to documents No. 2 and No. 3 under section 47F of the Act
- refuse access to paragraph 2 of your request under section 24A of the Act.

INFORMATION ON RIGHTS OF REVIEW***FREEDOM OF INFORMATION ACT 1982*****Application for review of decision**

The *Freedom of Information Act 1982* (the Act) gives you the right to apply for a review of this decision. Under sections 54 and 54L of the Act, you can apply for a review of this decision by:

- (i) an internal review officer within CASA;
- (ii) the Office of the Australian Information Commissioner (the OAIC).

Internal Review

If you apply for internal review, it will be carried out by a different decision-maker who will make a fresh decision on your application. An application for review must be:

- made in writing;
- made within 30 days of receiving this letter; and
- sent to the email address shown in the letter.

No particular form is required, but it is suggested to set out in the application the grounds upon which you consider the decision should be reviewed.

If the internal review officer decides not to grant you access to all of the documents which you have requested access, you have the right to seek a review of that decision by the Information commissioner. You will be further notified of your rights of review if and at the time you are notified of the internal review decision.

Please note that if you apply for an internal review and a decision is not made by an internal review officer within 30 days of receiving the application, you have the right to seek review by the Information Commissioner for a review of the original FOI decision on the basis of a 'deemed refusal;' decision. An application for Information Commissioner review in this situation must be made within 60 days of the date when the internal review decision should be made (provided an extension of time has not been applied).

OAIC Review

If you wish to apply to the OAIC for a review of the decision, you must do so within 60 days of the receiving the decision letter. You can lodge your application in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 5288, SYDNEY NSW 2001

E-mail: enquiries@oaic.gov.au

An application form is available on the website at www.oaic.gov.au . Your application should include a copy of the notice of the decision that you are objecting to, and your contact details. You should also set out why you are objecting to the decision.

Complaints to the OAIC or the Commonwealth Ombudsman

If you are unsatisfied with the action taken by CASA in relation to your FOI request, you can make a complaint to the OAIC (the Information Commissioner) or to the Commonwealth Ombudsman. The Ombudsman will consult with the Information Commissioner before investigating a complaint about the handling of an FOI request.

Your enquiries to the Information Commissioner can be directed to:

Phone: 1300 363 992 (local call charge)

Email: enquiries@oaic.gov.au

Your enquiries to the Ombudsman can be directed to:

Phone: 1300 362 072

Email: ombudsman@ombudsman.gov.au

No particular form is required to make a complaint to the Ombudsman or to the Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify CASA as the relevant agency.