

Tim Henderson

[By Email]

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20 October 2010

Environmental Information Regulation (EIR) Request: Reference Number P0006915

Dear Mr Henderson

Thank you for your request of 26 September 2010 for minutes of meetings of the Aviation Environmental Programme Board (AEPB) since 17th March 2010. I confirm that we have handled your request under the Environmental Information Regulations 2004 ("the EIRs").

The AEPB has met three times from 17th March 2010 to 26th September 2010. These meetings were held on:

- 07 June 2010 (AEPB 12) ;
- 13 July 2010 (AEPB 13); and
- 15 September 2010 (AEPB 14).

I attach along with this letter redacted versions of minutes of AEPB 12 and 13 but I am withholding minutes of AEPB 14. As you may be aware, EIRs introduce a duty for public authorities to disclose environmental information, subject to certain limited exceptions. Even where these exceptions apply, information can only be withheld where the public interest in maintaining the exception outweighs the public interest in disclosing the information. Government guidance on the regulations and these exceptions can be found on the Defra website¹.

I am withholding minutes of AEPB 14 as the content of the minutes has yet to be agreed by the board's members. I am withholding this information under Regulation 12 (4) (d) of the EIR which states that information can be withheld if "the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data". In applying this exception, I have had to balance the public interest in withholding the information against the public interest in disclosure. The factors that I considered in weighing up where public interest lay were:

- For disclosure – To release the draft minutes of AEPB 14 could help promote accountability and transparency in Government decision making; to facilitate a better understanding of the decisions made by public authorities; and to further the understanding of, and participation in, the public debate of issue of the day.

¹<http://www.defra.gov.uk/corporate/policy/opengov/eir/guidance/full-guidance/index.htm>

- Against disclosure – To release the draft minutes of the AEPB before they have been formally agreed and signed off by the board’s members could compromise the Department’s working relationships with various stakeholders, and the Department’s ability to conduct its business effectively.

The minutes of AEPB 14 is likely to be agreed (or possibly amended) at the next Board meeting. Once the minutes have been agreed and signed off by the board’s members, I will publish a copy, subject to any redactions that may need to be made in line with relevant EIR exceptions, on the DfT website. We consider that the intended publication of the minutes in the near future will to a large extent address the public interest considerations in favour of disclosure highlighted above.

Having reviewed the contents of the AEPB 12 and 13 minutes, sections of text have been identified where the following exceptions apply:

- Regulation 12 (4) (e), the request involves disclosure of internal communications.
- Regulation 12 (5) (a), where disclosure would adversely affect international relations.
- Regulation 12 (5) (b), where disclosure would adversely affect the course of justice and/or the ability of a person to receive a fair trial.
- Regulation 13, where information requested includes personal data.

As mentioned above, the EIRs require a public authority to apply a presumption in favour of disclosure. Where exceptions apply, the public authority is expected to weigh up the benefits to the public of releasing the information against any harm or adverse effect that is likely to occur as a result of disclosure. A public interest test has therefore been applied to each section of text withheld. All relevant information is being released, except sections of text where the likely harm or adverse effect outweighs the benefits to the public of disclosure. Where text has been withheld, it is labelled with the exception applied. Further explanation of the reasons for applying these exceptions is provided below.

Regulations 12 (4) (e) – Internal communications

The majority of text withheld is internal communication, recording discussions between officials on emerging thinking and advice to Ministers on policy formulation.

The public interest issues weighed up are:

- For disclosure – Releasing information could help promote accountability and transparency in Government decision making. It would show the various options being discussed and how Government makes decisions. Releasing the information could help facilitate better understanding of, and participation in, the public debate about aviation environmental issues.
- Against disclosure – There needs to be a free space in which officials, can “think the unthinkable” and use imagination without the fear that potential policy options will be held up to public criticism without having ever been

sufficiently developed to justify informed debate. Such fear could close off discussion and the development of better options. As internal communications, the purpose of the documents was to capture discussions and initial thinking as part of works in progress. They were not intended to provide a complete account of initial thinking, issues raised, views and advice provided by public officials or external stakeholders. Disclosure would therefore misinform and confuse the public, as it would not reflect a fair and accurate summary of the issues.

Regulation 12 (5) (a) – International relations

Sections of text are withheld under this exception. Examples concern discussion around the UK position for the 2010 International Civil Aviation Organization (ICAO) Assembly. In addition to the public interest issues regarding disclosure of internal communications, further public interest issues weighed up are therefore:

- Against disclosure – As the information consists of internal discussion about the potential UK negotiating position, disclosure would confuse the public and relevant stakeholders over what is the UK's position. It would adversely affect the UK's ability to communicate its position once an agreed position is reached, and influence those negotiations.
- Against disclosure – As the information consists of speculation about the position of other national governments and international organisations, disclosure at this stage would confuse the public and relevant stakeholders over what is the position of other national governments and international organisations. It would adversely affect the UK's ability to influence negotiations within ICAO. Additionally, relations with those governments and organisations would be adversely affected or prejudiced by the disclosure of the information.

Regulation 12 (5) (b) – Legal advice

Sections of text are withheld because it records internal legal advice, or internal discussions about such advice. In addition to the public interest issues regarding disclosure of internal communication, a further public interest issue weighed up is therefore:

- Against disclosure – Disclosure of internal legal advice would undermine the ability of DfT legal advisers to provide fair and impartial legal advice, and could harm the ability of DfT to uphold its duties in legal proceedings. If legal advice obtained were to be routinely disclosed, public authorities would potentially be in a weakened position compared to other persons not bound by the EIR.

Regulation 13 – Personal data

Throughout all the documents, names of individual public officials below Senior Civil Servant grade have been withheld, where names are regarded as 'personal data', in

accordance with Regulation 13 of the EIR. Regulation 13 is not subject to a public interest test.

If you are unhappy with the way the Department has handled your request or with the decisions made in relation to your request you may complain within 40 working days of the date of this letter by writing to the Department's Information Rights Unit at:

Zone D/04
Ashdown House
Sedlescombe Road North
Hastings
East Sussex TN37 7GA
E-mail: FOI-Advice-Team-Dxx@xxx.xxx.xxx.xx

Please see attached details of DfT's complaints procedure and your right to complain to the Information Commissioner.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Aviation Environment Division

Your right to complain to DfT and the Information Commissioner

You have the right to complain within 40 working days of the date of this letter about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested. In addition a complaint can be made that DfT has not complied with its publication scheme.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF