

Alison Porte
request-652564-7bfe207b@whatdotheyknow.com

19 March 2020
Reference: F0004762

Dear Ms Porte

Thank you for your request of 5 March 2020, for the release of information held by the Civil Aviation Authority (CAA). We have considered your request in line with the provisions of the Freedom of Information Act 2000 (FOIA).

Your request:

- 1) Any documentation or policy and any medical or Psychiatric processes or requirements in relation to granting EASA Class 1/2 medicals to applicants with a history of gender dysphoria/ gender Incongruence ("Transsexualism") either pre or post surgery as well as pre or post commencement of medical (hormonal) transition.*
- 2) Any evidence used to arrive at this policy and the date of any policy changes.*
- 3) Any documents or minutes looking at this policy in light of the Equalities Act 2010, or any Equalities Impact Assessment that has been conducted.*

Our response:

The CAA currently issues EU aeromedical certificates. The regulation that sets out the medical requirements for this is Commission Regulation (EU) 1178/2011 Annex IV (Part MED). There is no direct reference in the regulation to gender dysphoria/ gender incongruence, nor in the Acceptable Means of Compliance published by EASA. The CAA does not have a published policy for the assessment of fitness for applicants with gender dysphoria/ gender incongruence.

However, we have previously assessed individual applicants on a person by person basis by the "first principles" of assessing functional ability and incapacitation risk. Any CAA documentation therefore relates to individual's personal data and in the CAA's view is exempt from disclosure under Section 40(2) of the FOIA. The individuals concerned would not have had an expectation that their personal data would be disclosed, and the CAA can identify no legitimate interest that would be served by disclosing this personal information. Disclosure would therefore be a breach of one of the

Civil Aviation Authority

Aviation House, Beehive Ring Road, Crawley, West Sussex RH6 0YR. www.caa.co.uk

Email: foi.requests@caa.co.uk

data protection principles contained in Article 5 of the GDPR, specifically Article 5(1)(a), which states that personal data shall be 'processed lawfully, fairly and in a transparent manner in relation to the data subject ...' Section 40(2) of the FOIA provides an exception from the duty to disclose information that would contravene any of the data protection principles (a copy of this exemption can be found below).

The assessment process usually begins with obtaining a medical report from the doctor assisting the applicant. The main elements for assessing fitness/incapacitation risk relate to mental wellbeing, medication and any proposed surgical procedures. From our experience thus far, it has usually been medication and surgery that determine whether a period of suspension of the applicant's medical certificate is required. As with many medications, suspension of the medical certificate usually occurs on commencing a drug (or adjusting its dose) and the period of suspension depends on the risks of side-effects that might affect safe exercise of the privileges of the medical certificate. This in turn may be affected by whether the drug is taken periodically, or initially at a low dose which is gradually increased thereafter. Surgical procedures also usually result in a suspension of medical certification at the time surgery commences and until a sufficient recovery is made such that there are no impairments to functional ability and no significant risk of incapacitation related to the surgical procedure. The period of unfitness will depend on the procedure, an individual's recovery rate and the occurrence of complications. If there are any issues that arise outside of these areas, then we would seek to obtain expert opinion from doctors in the relevant speciality. Full unrestricted medical certification for any class of certificate is possible.

If you are not satisfied with how we have dealt with your request in the first instance you should approach the CAA in writing at:-

Caroline Chalk
Head of External Information Services
Civil Aviation Authority
Aviation House
Beehive Ring Road
Crawley
RH6 0YR

caroline.chalk@caa.co.uk

The CAA has a formal internal review process for dealing with appeals or complaints in connection with Freedom of Information requests. The key steps in this process are set in the attachment.

Should you remain dissatisfied with the outcome you have a right under Section 50 of the FOIA to appeal against the decision by contacting the Information Commissioner at:-

Information Commissioner's Office
FOI/EIR Complaints Resolution
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

<https://ico.org.uk/concerns/>

If you wish to request further information from the CAA, please use the form on the CAA website at <http://publicapps.caa.co.uk/modalapplication.aspx?appid=24>.

Yours sincerely

A handwritten signature in black ink, reading "Fitzgerald". The signature is written in a cursive style with a large, stylized 'F' and 'Z'.

Jade Fitzgerald
Information Rights Officer

CAA INTERNAL REVIEW & COMPLAINTS PROCEDURE

- The original case to which the appeal or complaint relates is identified and the case file is made available;
- The appeal or complaint is allocated to an Appeal Manager, the appeal is acknowledged and the details of the Appeal Manager are provided to the applicant;
- The Appeal Manager reviews the case to understand the nature of the appeal or complaint, reviews the actions and decisions taken in connection with the original case and takes account of any new information that may have been received. This will typically require contact with those persons involved in the original case and consultation with the CAA Legal Department;
- The Appeal Manager concludes the review and, after consultation with those involved with the case, and with the CAA Legal Department, agrees on the course of action to be taken;
- The Appeal Manager prepares the necessary response and collates any information to be provided to the applicant;
- The response and any necessary information is sent to the applicant, together with information about further rights of appeal to the Information Commissioners Office, including full contact details.

Freedom of Information Act: Section 40

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if
 - (a) it constitutes personal data which does not fall within subsection (1), and
 - (b) the first, second or third condition below is satisfied.

(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

- (a) would contravene any of the data protection principles, or
- (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

(3B) The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).

(4A) The third condition is that—

- (a) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or
- (b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.

(5A) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(5B) The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—

(a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—

- (i) would (apart from this Act) contravene any of the data protection principles, or
- (ii) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded;

(b) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene Article 21 of the GDPR (general processing: right to object to processing);

(c) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for confirmation of whether personal data is being processed, the information would be withheld in reliance on a provision listed in subsection (4A)(a);

(d) on a request under section 45(1)(a) of the Data Protection Act 2018 (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.

(6).

(7) In this section—

“the data protection principles” means the principles set out in—

- (a) Article 5(1) of the GDPR, and
- (b) section 34(1) of the Data Protection Act 2018

“data subject” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“the GDPR”, “personal data”, “processing” and references to a provision of Chapter 2 of Part 2 of the Data Protection Act 2018 have the same meaning as in Parts 5 to 7 of that Act (see section 3(2), (4), (10), (11) and (14) of that Act).

(8) In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.