Case Reference: EA/2021/0284

First-tier Tribunal
General Regulatory Chamber
Information Rights

Heard: on the papers
Heard on: 6 June 2022
Date of Decision: 13 June 2022

Before

TRIBUNAL JUDGE SOPHIE BUCKLEY

TRIBUNAL MEMBER MARION SAUNDERS

TRIBUNAL MEMBER NAOMI MATTHEWS

Between

GARY KRZYZOSIAK

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decision: The appeal is Dismissed.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice IC-77797-S1C6 of 7 September 2021 which held that the Civil Aviation Authority ('the CAA') were entitled to rely on s 14(1) of the Freedom of Information Act 2000 (FOIA).

2. The Commissioner did not require the public authority to take any steps.

Background to the appeal

3. Where the following background is taken from the letter provided to the Commissioner by the CAA in its letter of 29 July 2021 we find that it is likely to be an accurate representation of the position at the relevant time (the time of the response to the request).

4. The CAA is the U.K.'s independent aviation regulator. Its purpose is to protect the interests of aviation consumers and the public.

5. Some aerodromes do not need a licence to carry out flying activities. They are 'unlicensed'. They are not directly regulated by the CAA. Ultimately the commander of any aircraft operating to or from unlicensed aerodromes is responsible for ensuring that they can operate safely. The CAA provides guidance to operators of unlicensed aerodromes but its contents are guidance not regulation and compliance is not mandatory.

6. The request concerns an aerodrome in Eshott, Northumberland. The appellant lives near to the aerodrome. Eshott is an unlicensed aerodrome.

7. The CAA is still responsible for applicable matters affecting the safety of aircraft at unlicensed aerodromes through its regulation of aircraft operations, flying training providers and maintenance competence.[1]

8. At Eshott, there is a Declaring Training Organisation ('DTO') at the aerodrome, Eshott School of Flying Ltd. DTOs are subject to the CAA's regulatory oversight to check that they continue to be in compliance with the applicable regulations. The DTO at Eshott was inspected in September 2019.

9. An 'amateur built aircraft' has to be registered with the CAA who can issue a Permit to Fly. In general, these aircraft cannot be used for commercial purposes.

10. On 24 July 2019 there was a collision in France of two planes flown from Eshott Aerodrome, which resulted in two deaths.

Requests, Decision Notice, and appeal

The Requests

[1] CAA/HSE/HSENI Memorandum of Understanding Guidance CAP 1484 para 2.12

11. The appeal relates to the following requests made on 4 and 16 November 2020:

> A list of all DTO training aircraft by Eshott Flying School Ltd
>
> I would like a copy of the list of Trust group owners of aircraft G-BDUL.

The CAA's reply

12. The CAA responded on 1 December 2020. They refused to comply with the requests on the basis that they were vexatious. The CAA refused to carry out an internal review on the basis that it had previously refused 3 requests on the basis that they were vexatious and carried out an internal review of one of those requests on 10 March 2020, which upheld the application of s 14.

13. The appellant referred the matter to the Commissioner on 15 December 2020.

The decision notice

14. In a decision notice dated 7 September 2021 the Commissioner decided that the CAA was entitled to rely on s 14 FOIA.

15. The CAA has referred to matters which post-date the request. The Commissioner has only taken account of the history leading up to the requests and the circumstances at that time.

16. The Commissioner noted that the appellant had been in correspondence and dispute with the CAA over Eshott since June 2018. Since June 2018 the CAA has received 83 pieces of correspondence, including 15 FOIA requests, all relating to Eshott and his concerns about aviation safety. The CAA has explained several times its regulatory role, that in its opinion there is no clear evidence of a breach of aviation rules and that it cannot become involved in civil disputes between third parties. Despite this, the appellant continues to pursue the matter and use the FOIA process in order to do that.

17. In April 2019 the Chief Executive wrote to the appellant to advise him that a complete review had been undertaken and there was no credible evidence that would properly result in regulatory intervention. The appellant was also advised that the CAA could no longer justify allocating any further time to responding to his messages.

18. Despite this the appellant continued to contact the CAA, sending a further 25 emails and requests for information between 13 May and 19 November 2019, including a Letter before Action in advance of applying for a Judicial Review.

19. The appellant's requests dated 8 November 2019 and 20 February 2020 were deemed vexatious by the CAA. Considering the CAA's clear and firm position

by this point, the correspondence with its legal department and the letter issued by the Chief Executive, the Commissioner considers the most appropriate recourse following the first notice would have been to first request an internal review, then challenge the CAA's section 14(1) application via the Commissioner and First-tier Tribunal.

20. There was then a gap of seven months before the appellant made a further request. The CAA responded on 3 November 2020. Its response was immediately followed by a further request on 4 November 2020 and before this one could be addressed it was followed by another on 16 November 2020. The CAA also received 4 other emails from the appellant before it had responded to these requests. Understandably, the CAA felt the previous pattern of correspondence and requests was resuming despite the prior warning from the Chief Executive and the previous section 14 notices.

21. The Commissioner considers that there was clear evidence of unreasonable persistence and an unwillingness to accept the CAA's position. It is reasonable to state that, regardless of the information and explanations the CAA provides the appellant will continue to send similar levels of correspondence and requests relating to the same matter.

22. Often responses are followed by more correspondence and requests, and correspondence and requests are submitted before the CAA has had a chance to respond to former communications.

23. Despite the prior warning of the time and resources the appellant 's continuing correspondence and requests was taking up, this pattern of behaviour continues.

24. The Commissioner did not consider the requests are without serious purpose and value. The appellant clearly has strong views and concerns over Eshott and aviation safety and such concerns are clearly not to be dismissed. However, in this case considering the level of correspondence and requests, repeated communications from the CAA outlining its position clearly, she considers any serious purpose and value is outweighed by the burden the appellant 's continuing correspondence and requests is placing on the CAA. Particularly as there appears to be no willingness to accept anything the CAA says and a clear pattern of responses just resulting in further correspondence of debate and information requests.

25. In conclusion the Commissioner was satisfied that the requests would cause a disproportionate or unjustified level of disruption, irritation, or distress to the CAA, considering the context and history to them. She was satisfied that the CAA was entitled to refuse to comply with them in accordance with section 14(1) FOIA.

Notice of appeal

26. The tribunal's understanding of the grounds as they relate to the application of s 14 is, in essence, as follows:
    1. It is the request not the requestor that can be classed as vexatious. The request made on 4 November 2020 has been sent in by another individual and has subsequently been answered, which shows that the request was not vexatious.
    2. The decision notice is unbalanced
    3. The requests were made to reveal unlawful activity. The G-BUL aircraft is an aircraft classification 'amateur built', which prohibits commercial use. Facebook posts show that the G-BUL aircraft was purchased with the express purpose of selling shares in, a commercial venture, which is unlawful. The CAA have been made aware of all this.
    4. The correspondence and requests made by the appellant are justified because they arise out of a continuous campaign to seek justice for the residents and neighbours of Eshott aerodrome and the parents of Lewis Stubbs.

The Commissioner's response

The FOI has been classed as vexatious along with the appellant himself

27. The tribunal, just like the Commissioner, are entitled to consider the history and context of the appellant's requests.

The Decision Notice is unbalanced

28. The Commissioner disputes this. In any event the appellant will have the opportunity to put forward his case at the hearing or by way of Reply.

The information should be disclosed as it is in the public interest

29. The Commissioner acknowledges that there is public interest in the information sought. However, taking a holistic approach, and considering the wider issues relating to the Appellant's conduct and behaviour whilst engaging with the CAA, the Appellant's intransigence outweighs the public interest in the information. The Appellant is, with respect, not using FOIA in the way it was intended to be used.

The appellants' reply

30. The appellant submits that the CAA is no longer independent and that it is no longer true that only licenced aerodromes carry fare paying passengers. Unlicensed aerodromes are not regulated by anyone. The commander of an aircraft has no responsibility for and cannot determine whether an unlicensed aerodrome is safe. although guidance is not mandatory compliance provides legal evidence of safe operations and non-compliance provides the opposite.

31. The fact that anyone can set themselves up as a DTO and they may not be inspected at all for up to five years is another recent example of deregulation of safety standards. There is no public transparency of such inspections.

32. The CAA do not hold or maintain an up-to-date list of the DTO aircraft used at Eshott or who owns them. They rely on annual self-reporting by the DTO to inform them of any changes. Recent CAA changes allow the DTO to use privately owned aircraft and remunerate their owners but none of this information is in the public domain. A list of DTO aircraft provided by the CAA in response to a FOI request after the 2019 inspection confirmed the CAA did not have a complete record of the DTO aircraft, listing only two.

33. The requests in this appeal are simple and straightforward and require minimum CAA resource. The CAA should be in possession of these records. The requests are not a repetition of earlier requests. They relate to a new DTO at Eshott which, according to the CAA public register owns no aircraft and to a newly acquired amateur aircraft. It is not unreasonable for nearby residents to have visibility of aircraft ownership. The CAA maintain a public register of aircraft but this allows trusts and DTOs to avoid public disclosure of true ownership and use.

34. It is in the public interest that this information is available to existing and potential customers of the DT), residents affected by the DTO overflying their properties and Northumberland County Council (NCC). It ensures they are in possession of the relevant records to enable them to monitor the activities of the aerodrome for which they have a legal responsibility having granted planning consent.

35. The content of emails and correspondence confirms that there are major problems at the aerodrome which are not being addressed by the responsible authorities. The CAA is trying to close down public debate by relying on vexatiousness.

36. Prior to September 2018 the current operator was operating without planning consent and had done so since taking on the lease in June 2016. In Sept 2018, NCC passed a variation of conditions to the aerodrome which effectively removed many of the restrictions which applied to the original consent. The effect of this was to change what was previously a small private hobby microlight club, into a larger purely commercial venture. Most of the problems started from this point forward and have been ongoing ever since.

37. June 2018 to Dec 2020 is 30 months. Given the ongoing and unresolved problems with the current operator, it is not surprising there has and continues to be new incidents which naturally will lead to yet more complaints and communications.

Given this context and history, the numbers are not excessive and are fully justified.

38. Although the correspondence/requests are sent by the appellant, some of them have been at the request of other residents who have sought my advice and assistance, mainly the adjacent landowners to the aerodrome.

39. It is untrue that many of the emails are repeats of the same topic. They relate to aviation because the CAA is the aviation regulator.

40. It is ridiculous to suggest that the other authorities and agencies have contacted the CAA as a result of being contacted by the appellant.

41. The CAA have an investigations and enforcement team (IET) but have not carried out a single formal investigation as a result of the appellant's notifications. Most of the appellant's communications have been with the General Aviation Unit (GAU) and he is not aware that they have instigated any formal investigations. They make blanket statements saying there is no evidence while ignoring all the evidence the appellant has provided.

42. The CAA are directly responsible for the DTO and for aircraft using the aerodrome. The aerodrome does not conform to CAP 793 CAA published guidance. It is difficult to see how the DTO could be operating safely.

43. The appellant has not been involved in a dispute with the aerodrome, his contacts have only been with the CAA and other authorities.

44. As the plane crash in France involved the avoidable deaths of two people, including an innocent 18 year old passenger, it was in the public interest that these matters should be fully investigated. This would include providing the details of past and present DTO aircraft ownership and the hidden owners of the Mono trust aircraft.

45. The appellant reported his concerns to the CAA and Northumbria police as he had reason to believe Amateur aircraft had been used in a commercial venture which led to the deaths of two people. In addition, a DTO owned aircraft which crashed should not have been carrying passengers. It is difficult to comprehend how such allegations and the evidence provided to support them, would not trigger a formal investigation.

46. The Sunderland Coroner's inquest also ignored all the evidence the appellant had provided to the CAA, choosing instead to accept a superficial French BEA report, which provided no credible explanation as to why two people had died.

47. There is widespread serious concern by residents, demonstrated by the 100+ objections to the recent application to extend the operating hours at the aerodrome. The residents' and the appellant's concerns are being dismissed by the CAA, the AAIB and the Sunderland Coroner.

48. The emails do not show that harassment and distress have been caused to any employee of the CAA.

49. There is a long history of correspondence because this is an ongoing matters with new issues arising on a regular basis. The Commissioner has failed to acknowledge the criteria "in the public interest" as justification for not simply accepting at face value statements made by the CAA.

50. As the appellant is directly accusing the CAA of failing to act on the information he provided to them prior to the fatal crashes occurring and further information following the crashes, it is not surprising they are keen to silence me by whatever means are at their disposal.

51. Under FOI legislation, a person is not deemed to be vexatious, only their communications. It is clear the CAA is treating the appellant personally as vexatious and is ignoring the content of the correspondence.

52. The Decision Notice represents a one sided account based on an incomplete CAA submission of documents.

53. The ICO is mistakenly attributing intransigence to the appellant, when he is simply demonstrating a determination to see justice done when the law has been broken and to hold those responsible to account, no matter what position they hold within an organisation. When two people have died in a predictable and predicted crash, it is very much in the public interest to investigate such matters thoroughly and get to the truth. If public authorities are failing to carry out their legal duties and members of the public are being put at risk daily, then it is very much in the public interest to use the only tools available to seek rectification of this failure of public administration.

Further information/final submissions from the appellant

54. The tribunal has read and taken account of the further information and submissions from the appellant where it is relevant to the issues the tribunal has to determine. This included a document entitled Eshott timeline, an additional bundle and a large number of emails and their attachments.

Issues

55. The issue for the tribunal to determine is whether or not the requests are vexatious within s 14 FOIA.

Legal framework

S 14(1) Vexatious Request

56. Guidance on applying s 14 is given in the decisions of the Upper Tribunal and the Court of Appeal in **Dransfield** ([2012] UKUT 440 (AAC) and [2015] EWCA Civ 454). The tribunal has adapted the following summary of the principles in **Dransfield** from the judgment of the Upper Tribunal in **CP v Information Commissioner** [2016] UKUT 427 (AAC):

57. The Upper Tribunal held that the purpose of section 14 must be to protect the resources of the public authority from being squandered on disproportionate use of FOIA (para 10). That formulation was approved by the Court of Appeal subject to the qualification that this was an aim which could only be realised if 'the high standard set by vexatiousness is satisfied' (para 72 of the CA judgment).

58. The test under section 14 is whether the request is vexatious not whether the requester is vexatious (para 19). The term 'vexatious' in section 14 should carry its ordinary, natural meaning within the particular statutory context of FOIA (para 24). As a starting point, a request which is annoying or irritating to the recipient may be vexatious but that is not a rule.

59. Annoying or irritating requests are not necessarily vexatious given that one of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account (para 25). The Commissioner's guidance that the key question is whether the request is likely to cause distress, disruption, or irritation without any proper or justified cause was a useful starting point as long as the emphasis was on the issue of justification (or not). An important part of the balancing exercise may involve consideration of whether or not there is an adequate or proper justification for the request (para 26).

60. Four broad issues or themes were identified by the Upper Tribunal as of relevance when deciding whether a request is vexatious. These were: (a) the burden (on the public authority and its staff); (b) the motive (of the requester); (c) the value or serious purpose (of the request); and (d) any harassment or distress (of and to staff). These considerations are not exhaustive and are not intended to create a formulaic check-list.

61. Guidance about the motive of the requester, the value or purpose of the request and harassment of or distress to staff is set out in paragraphs 34-39 of the Upper Tribunal's decision.

62. As to burden, the context and history of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether the request is

properly to be described as vexatious. In particular, the number, breadth, pattern, and duration of previous requests may be a telling factor [para 29]. Thus, the greater the number of previous FOIA requests that the individual has made to the public authority concerned, the more likely it may be that a further request may properly be found to be vexatious. A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other or who relentlessly bombards the public authority with email traffic is more likely to be found to have made a vexatious request [para 32].

63. Ultimately the question was whether a request was a manifestly unjustified, inappropriate, or improper use of FOIA. Answering that question required a broad, holistic approach which emphasised the attributes of manifest unreasonableness, irresponsibility and, especially where there was a previous course of dealings, the lack of proportionality that typically characterises vexatious requests [paras 43 and 45].

64. In the Court of Appeal in **Dransfield** Arden LJ gave some additional guidance in paragraph 68:

> In my judgment the Upper Tribunal was right not to attempt to provide any comprehensive or exhaustive definition. It would be better to allow the meaning of the phrase to be winnowed out in cases that arise. However, for my own part, in the context of FOIA, I consider that the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available...

65. Nothing in the above paragraph is inconsistent with the Upper Tribunal's decision which similarly emphasised (a) the need to ensure a holistic approach was taken and (b) that the value of the request was an important but not the only factor.

66. The lack of a reasonable foundation to a request was only the starting point to an analysis which must consider all the relevant circumstances. Public interest cannot act as a 'trump card'. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious.

The role of the tribunal

67. The tribunal's remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether he should have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner.

Evidence

68. We read and took account of an open bundle and a large number of additional documents provided subsequently by the appellant.

69. Whilst we have read and taken account of all the information that the appellant provided where it was relevant to the issue we had to determine, it was not necessary or proportionate to summarise or refer to all the information considered in this decision.

Discussion and conclusions

70. As this is a full merits review, the tribunal looks at the matter afresh and therefore we do not need to consider the appellant's allegations that the decision notice was 'unbalanced', save to emphasise that we have taken a balanced approach to our own decision.

Section 14

71. Although the four broad issues or themes identified by the Upper Tribunal in **Dransfield** are not exhaustive and are not intended to create a formulaic check-list, they are a helpful tool to structure our discussion. In doing so, we have taken a holistic approach and we bear in mind that we are considering whether or not the request was vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA.

Burden

72. Although the appeal relates only to these requests, when assessing the burden on the CAA we must consider the context and history of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question in assessing whether the request is properly to be described as vexatious. Although this does take account of the previous actions of the individual requestor, this is in accordance with the approach of higher authorities, and therefore the approach that this tribunal should take.

73. In looking at context and history we take account of matters that had occurred by the time the CAA responded to the request, not matters that have occurred since.

74. At the point at which the CAA responded to the requests it had received 83 pieces of correspondence from the appellant relating to Eshott over a period of 2 ½ years, including 15 FOIA requests.

75. We accept that these related to different aspects of the appellant's concerns about Eshott, but they are all aspects of the same underlying issue: whether or not the operations at Eshott are being conducted lawfully and safely.

76. We accept that some of this correspondence may have been sent by the appellant on behalf of other residents. Having read the correspondence or the summaries in the spreadsheet, we find that it is likely that the appellant was responsible for the content of the correspondence and the way in which any correspondence was followed up. Given the correspondence that we have read, the table summarising the content of those emails and the content of the appellant's submissions, we find that it is it is legitimate to consider all this correspondence as part of the course of dealings between the appellant and the CAA.

77. We have not taken account of the burden of dealing with contacts from other authorities, even if these contacts might have arisen out of contact by the appellant.

78. We accept that the correspondence often follows a similar pattern. The correspondence often highlights potential breaches or potentially unlawful behaviour which the appellant has identified. In response the CAA generally explains why it does not consider there to have been a breach, or why it is not within the CAA's remit, or why it intends not to take action, often providing a detailed explanation of the legal and operational landscape.

79. The appellant tends not to be satisfied with the responses provided and this usually leads to further requests or correspondence. This can clearly be seen from the spreadsheet. The following correspondence relating to the 'Wings and Wheels' festival provides an example of this.

80. In October 2018 the appellant made a FOI request to CAA asking whether or not an air display permission had been applied for and issued for the 'Wings and Wheels' festival at Eshott in 2017, and if not, whether it should have been. He stated, 'I am just making sure they are following the correct procedures'.

81. The CAA responded on 24 October 2018 confirming the details of the event and confirming that an appropriate permission was issued giving the reference number and the date this was issued. The appellant followed on 27 October with a request for the date the application was submitted, copies of the application and associated documents. This was provided on 1 November 2018.

82. The appellant followed this up again on 12 November with a long letter which begins:

> Thank you for providing a copy of the display permission, including the display area map. It confirms our fear that the CAA may have been misled into issuing permission by the event organiser and/or their appointed Flight Display Director. Either that or the CAA's current application evaluation process is seriously flawed. I assume the CAA is not in the habit of allowing displays over land which is neither owned not controlled by the applicants nor for which any consent has been sought or given by all the owners of the land.

83. The letter goes on to state:

> As the CAA did grant permission the I have to assume you were provided with either evidence or assurances from the applicant or FDD (*Flying Display Director)*, that thy have controlled access to the whole of the display area. Therefore I hereby make an FOI request for copies of the documents submitted by the applicant and FDD which provided the CAA with this evidence or assurance.

84. The CAA responded to this third FOI request on 20 November 2018, withholding the information under s 44 FOI. The CAA also provided background information on Aviation Legislation/Sera Rules and explained the CAA's role as a regulator.

85. The appellant wrote again on 5 December 2018 voicing his dissatisfaction that the follow-up response was sent from the generic email box and no name was provided. He requested a name and job title.

86. The appellant wrote to the CAA again on 6 December 2018 with an objection to any future flying display event over land owned by JL Muir & Son adjacent to Eshott Airstrip.

87. The CAA provided a full response setting out in detail the process for issuing permission, the legal position in relation to airspace and flying over land owned by others and that fact that:

> The CAA do not require evidence that the aerodrome has consulted with neighbouring landowners prior to issuing a permission. Rather, our role as a regulator is to consider the safety aspects of any submission and, where necessary to ensure suitable mitigation is in place for areas such as roads and public rights of way. It is the responsibility of the applicant to ensure that they have conducted an appropriate risk assessment which should take into account roads, paths and any occupied premises. The CAA can confirm that it considered the application, including the map and associated risk assessment carefully before issuing a permission for this event.

88. The following are further examples of the CAA informing the appellant of the reason it cannot take action, or the reason why it considers there is no breach, or that it does not consider there to be prima facie evidence of a breach:

> The CAA do not require evidence that the aerodrome has consulted neighbouring landowners prior to issuing a permission' (12/6/18)
>
> 'for the purposes of taking-off and landing there is no minimum height requirement' (12/10/18)
>
> 'the CAA does not oversee or regulate guidance material published by third party suppliers' (12/31/18)
>
> 'the runway widths referred to in CAP 793 are recommendations only and carry no legal force behind them' (12/31/18)
>
> 'Having reviewed the information provided there is no evidence of a breach of air navigation legislation. The CAA has no role in planning matters' (2/17/19) 'this sits within the remit of the police' (3/11/19)
>
> 'There is absolutely no prima facie evidence of a breach of air navigation law' (3/13/19)
>
> 'I can see no grounds for directing valuable safety resource to investigate further' (3/13/19)
>
> 'there is no prima facie evidence of a breach of aviation rules' (3/19/19)
>
> 'the CAA has no duty to become involved in disputes between third parties' (3/21/19)
>
> 'I can only reiterate that we have comprehensively reviewed your concerns in relation to aviation safety and I am satisfied there is no prima facie evidence of a breach of aviation rules' (3/21/19)
>
> 'as I have explained, Eshott is an unlicensed aerodrome' (3/21/19)

89. The same pattern is demonstrated in relation to, for example, the correspondence between the appellant and the CAA about the proposed trip in April 2019 before the fatal crash. There is extensive correspondence in the bundle in April and May 2019 which follows the pattern identified above i.e. the appellant highlights potential breaches or potentially unlawful behaviour which the appellant has identified, with particular emphasis on why, in the appellant's opinion these are not amateur aircraft or being used for commercial purposes.

90. In response the CAA provides detailed and specific explanations. The appellant is not satisfied with the responses provided and this leads to further correspondence. The volume and frequency of correspondence is high.

91. The CAA's chief executive wrote to the appellant on 25 April 2019 advising that a complete review had been undertaken and confirming that no credible evidence had been identified that would properly result in regulatory intervention by the CAA. The CAA advised that it could no longer justify allocating any further time responding to his messages.

92. The CAA has continued to review the appellant's messages to check whether there is any evidence of a breach of aviation rules.

93. The appellant continued to contact the CAA sending a further 25 emails and requests for information between 13 May and 19 November 2019, including a letter before action in advance of applying for judicial review on 11 October 2019. The appellant did not proceed with his claim following an exchange of correspondence with the CAA's legal department.

94. During this period the fatal crash occurred in July 2019. The appellant raised this with the CAA who wrote to the appellant on 25 July 2019:

> The General Aviation Unit (GAU) considered your complaint about a potential unlawful commercial venture at Eshott Aerodrome and identified no evidence of a breach of aviation rules. Furthermore, we can confirm that GAU was notified of a recent accident occurring in France. In accordance with standard procedures, GAU will now await the outcome of the ongoing safety investigation before considering what, if any regulatory action will need to be taken as result of the conclusions arising from that investigation.

95. On 8 November 2019 the appellant made a further FOI request for information relating to the DTO and its operations. This was the 11th request made in 13 months. The CAA concluded that it was vexatious. The appellant made a further FOI request on 20 February 2020 which the CAA also concluded was vexatious and upheld this on internal review.

96. The appellant did not contact the CAA again until 2 October 2020 when he made another FOI request in relation to a Permit to Fly for aircraft G-BUDW. As the appellant had not made a request for seven months the CAA provided a response to the request on 3 November 2020. The previous pattern immediately resumed with the appellant making the two FOIA requests that are the subject of this appeal on 4 and 16 November 2020 along with sending four other emails to the CAA before the CAA had responded to the request on 1 December 2020.

97. We find that it is legitimate to take account of the whole course of dealings despite the gap before 2 October 2020. We find that the whole period relates to the same underlying issues with Eshott.

98. No doubt many of the the concerns raised by the appellant are legitimate. The CAA has to shoulder some burden in responding to concerns raised by the public, even if the CAA ultimately takes the view that those concerns are mistaken or fall outside its remit or do not need to be investigated.

99. However, the pattern and nature of the requests and correspondence set out above, including in particular the pattern of follow up correspondence/requests and the persistent refusal to accept what seem to be reasonable and detailed explanations from the CAA, is taking up a significant and disproportionate amount of the CAA's time and therefore resources.

100. Having reviewed the correspondence and the summary of the correspondence in the spreadsheet, we accept that the CAA has explained its regulatory role in relation to Eshott, that it has carefully reviewed the appellant's concerns in relation to aviation safety, that it has provided detailed explanations on many occasions and that the CAA has been satisfied throughout that there was no prima facie evidence of breach of aviation rules.

101. We also accept that the correspondence and the summary of the correspondence shows that the appellant appears to disregard the role and functions of the CAA and repeatedly insists that it takes enforcement action. The appellant refuses to accept the CAA's view, repeatedly expressed, that there is no prima facie evidence of breaches.

102. Further we find that the burden was likely to continue. The appellant's conduct before the request has shown that responses lead to follow up questions and more requests.

103. Taking all the above into account, we find that the requests, looked at in the context of the course of dealings, place a significant burden on the CAA. We have concluded that this burden is disproportionate, taking a holistic approach and in the light of our conclusions below.

Motive

104. We accept that the requests are not made simply to cause annoyance or disruption at the CAA, or as part of any campaign of harassment.

Harassment and distress

105. The CAA has highlighted a number of extracts from correspondence which it says show 'unfounded accusations and criticisms of the competence of the CAA'. We accept that the appellant sometimes adopts a sarcastic tone, and

that he criticises the CAA. In general this is not specifically aimed at particular individuals. Whilst we accept that it may not be pleasant for the individuals dealing with such correspondence, we do not accept that it is at such a level that it is could be classed as 'harassment' and there is no specific evidence from the CAA that it is causing distress. We do not place any particular weight on this element.

Purpose or value

106. We deal first with the purpose or value of the correspondence and requests as a whole. Many of the matters raised by the appellant relate to legitimate concerns about the impact on nearby residents of the operations of the aerodrome. Many relate to safety concerns, and in aviation if things go wrong this can have devastating consequences, as can be seen by the fatal crash in France detailed in the bundle. We accept that the underlying purpose behind the correspondence and the requests is legitimate, whether they are made for the benefit of nearby residents, including the appellant, or in the general interest of safety.

107. As indicated above, we do not accept that these legitimate purposes necessitate or justify the approach that the appellant has taken, both in terms of the pattern of correspondence and the nature of that correspondence.

108. Moving to the specific requests in issue in this appeal, the appellant argues that G-BDUL is an amateur built aircraft being used to further the commercial objectives of the Eshott airfield's directors. The aircraft was flown up to the North East by a director of Eshott and the appellant relies on the following Facebook post on 8 November 2020, which he says shows that shares are being sold as part of their commercial operation at Eshott:

> We still have one final share remaining in the G-BDUL Flying Group forming at Eshott. If you are interested in flying this fun and affordable aeroplane, PM me for more info!

109. The appellant states that the aircraft is not changing hands privately, it is being run and organised by a commercial organisation which is against the working and spirit of the permit to fly restrictions which forbid commercial involvement.

110. The CAA already have the information, and have already had the appellant's concerns drawn to their attention on numerous occasions.

111. The appellant states that this is relevant to the inquest and/or police investigation into the fatal crash that occurred in France in July 2019, because he says that the three amateur built planes taken abroad were also serially refurbished and wrongly used for a commercial enterprise. It is a matter for the coroner or the police as to whether this information is relevant to either

the inquest or any police enquiry. We are not persuaded that disclosing the requested information to the world would have been of any assistance to either the coroner or the police in relation to their investigations. It relates to a different aircraft and is unlikely to shed light on the issues before them.

112. In our view, there is relatively limited value in the disclosure of the list of Trust group owners of aircraft G-BDUL or the list of all DTO training aircraft. We note the appellant's view that it is not unreasonable for nearby residents to have visibility of aircraft ownership and that it is in the public interest that this information is available to existing and potential customers of the DTO residents affected by the DTO and Northumberland County Council (NCC). The appellant argues that it ensures they are in possession of the relevant records to enable them to monitor the activities of the aerodrome for which they have a legal responsibility having granted planning consent.

113. We do not accept that this purpose necessitates or justifies the approach that the appellant has taken, both in terms of the pattern of correspondence and the nature of that correspondence.

114. Looked at as a whole, our conclusion is that the burden on the CAA is disproportionate to the purpose or value of the requests.

Conclusions on whether the request is vexatious

115. We have taken a holistic and broad approach and have looked at the requests in the light of the past course of dealings between the appellant and the CAA. We have considered the burden on the CAA and the value and purpose of this request and the value and purpose of the ongoing correspondence with the CAA. We have looked at the appellant's motive and any distress that is likely to be caused by the request. Looking at all these factors we find that the request was vexatious in the sense of being a manifestly unjustified, inappropriate, or improper use of FOIA.

116. We conclude accordingly that the exemption in s 14 does apply and this part of the appeal is dismissed.

Signed Sophie Buckley Date: 13 June 2022

Judge of the First-tier Tribunal