

Decision in case 272/2014/OV on the release by the European Aviation Safety Agency (EASA) of audit reports on aircraft maintenance organisations

Decision

Case 272/2014/OV - Opened on 20/02/2014 - Decision on 19/10/2015 - Institution concerned European Union Aviation Safety Agency (Friendly solution) |

The complainant made a request for public access to *EASA's approval recommendation reports relating to foreign aircraft maintenance organisations in which non-compliance with certain personnel requirements was found. The EASA refused access on the basis of the need to protect its continued surveillance activity and the commercial interests of the organisations concerned. The complainant turned to the Ombudsman alleging that the EASA had wrongly refused access.*

The Ombudsman took the view that the EASA should, in principle, grant access to redacted versions of the approval recommendation reports. Given that the complainant's request for access did not specify a certain period, she therefore made a solution proposal that, as provided for in Regulation 1049/2001, the EASA could confer with the complainant to find a fair solution so as to grant partial access to at least some (redacted) approval recommendation reports. The EASA accepted the Ombudsman's solution proposal and informed her that it had conferred with the complainant and agreed to assess the 3-year period preceding the complainant's request with a view to granting partial access to the relevant documents. The complainant was satisfied with this outcome and the Ombudsman closed the case.

The background

1. This complaint concerned a request for access to documents relating to the certification by the EASA of aircraft maintenance organisations which are based outside the EU. The detailed rules on the certification of such organisations and their personnel are set out in Commission Regulation 2042/2003 [1] . Article 4 of the Regulation ("*Maintenance Organisations Approvals*" - MOAs) states that organisations involved in the maintenance of large or commercial transport aircrafts shall be approved in accordance with the provisions of Annex II "*Part 145*". Among the requirements to be met by an organisation to qualify for approval, or for that approval to be extended, is rule 145.A.30 which concerns "*Personnel requirements*".

2. Every 24 months, the EASA's auditors prepare an "*EASA part 145 Approval*



Recommendation Report (EASA Form 6 Part 4) " with findings and relevant recommendations concerning the EASA's approval.

3. The complainant was interested in reports where non-compliance by foreign maintenance organisations with the "personnel requirements" was found. On 19 December 2013, he made a request to the EASA for public access to:

"[a] udits and resolution of part 145 for foreign repair stations certified by EASA and not another competent authority where a non-compliance was noted regarding AMC [Acceptable Means of Compliance] 145.A.30(e) Personnel requirements (7) specifically relating to GM [Guidance Material] 145.A.30(e) and in particular the sections

1. "Adequate communication and literacy skills"

2. "Ability to understand work orders, work cards and refer to and use applicable maintenance data"

3. "Ability to properly record and sign for work accomplished " [the complainant's request did not specify a time period].

4. The EASA refused access to the documents on the basis of the exceptions concerning the protection of the purpose of inspections, investigations and audits (Article 4(2), third indent, of Regulation 1049/2001), and the protection of commercial interests (Article 4(2), first indent).

5. In reply to the complainant's argument that there is an overriding public interest for EU citizens to be able to monitor how the EASA certifies aviation repair stations, the EASA stated that the legislature had entrusted the mission of promoting the highest standards of safety specifically to the EASA. In that capacity, the EASA is already taking full account of the public interest in ensuring that citizens are granted high and uniform levels of safety. Disclosing the documents in question would jeopardise the climate of confidence among the entities directly or indirectly involved in the audits and their expectation that safety or commercially sensitive information will not be disclosed.

6. On 7 February 2014, the complainant turned to the Ombudsman. The Ombudsman opened an inquiry into the complaint and identified the following allegation and claim:

Allegation:

The EASA has wrongly refused to grant access to the documents requested by the complainant in his request of 19 December 2013.

Claim:

The EASA should grant access to the requested documents



7. In the course of the inquiry, the Ombudsman received the opinion of the EASA on the complaint and, subsequently, the brief comments of the complainant in response to the EASA's opinion. Her services also carried out an inspection of the EASA's file. On 5 May 2015, the Ombudsman made a solution proposal to the EASA [2] .

Allegedly wrongful refusal to grant access to audit reports

The Ombudsman's solution proposal

8. When making her proposal for a solution, the Ombudsman took into account the arguments and opinions put forward by the parties.

9. The Ombudsman took the view that the EASA should, *in principle* , grant access to redacted versions of the approval recommendation reports, in the same way as it had done in response to the Ombudsman's draft recommendation in the similar case 1174/2011/MMN.

10. However, in the present case, the complainant's request for access was extremely broad and open-ended, since i) it did not concern specifically identified maintenance organisations and ii) was moreover not limited in time, and thus potentially covered about 6000 reports over a period of ten years, since 2004. The Ombudsman pointed out that Article 6(2) and 6(3) of Regulation 1049/2001 envisage the situation where - like in this case - an institution is faced with a request for access which is not specific enough and/or covers a very large number of documents, in which case the institution can ask the applicant to clarify the application and "*confer with the applicant informally, with a view to finding a fair solution* ".

11. In its opinion to the Ombudsman, the EASA underlined that it had practical difficulties in identifying the requested documents since no meaningful electronic copies of those reports exist. In the absence of an electronic database, the Ombudsman shared the EASA's position that identifying all the requested documents would put an unreasonable burden on the EASA's administration.

12. The Ombudsman's inspection however showed that the EASA had identified at least some approval recommendation reports from the years 2005 to 2014 concerning maintenance organisations for which the EASA had suspended or revoked the certificate and which contained references to subparagraph 145.A.30(e) of the AMC and GM. On this basis, the Ombudsman made the following solution proposal:

" Taking into account the above findings, the Ombudsman proposes that, in accordance with Article 6(2) and (3) of Regulation 1049/2001, the EASA should confer with the complainant in order to find a fair solution to his request for access. A fair solution could be to grant partial access to some approval recommendation reports of foreign aircraft maintenance organisations in which non-compliance with subparagraph 145.A.30(e) of the AMC and GM was found "



13. The Ombudsman further noted that it was very unusual, for such an important air safety related activity as the continued surveillance of aircraft maintenance organisations, that there exists no electronic database, and that the relevant documents are kept in paper archives and pdf copies only. She therefore made the following further remark:

" In the context of its Transparency Programme, the EASA should pay particular attention to the EASA part 145 Approval Recommendation Reports (EASA Form 6 Part 4) and consider whether those reports should be entered in a searchable electronic database.

As a matter of good practice generally, the EASA should always engage with the requester, at the outset, where an access to documents request made under Regulation 1049/2001 is unclear or imprecise, or where the request is for a very long document, or a very large number of documents. Such engagement, as provided for at Article 6 of Regulation 1049/2001, is potentially to the benefit of both the EASA and of the requester " .

14. In its opinion of 15 July 2015, the EASA informed the Ombudsman that a solution had been agreed with the complainant. More particularly, it was agreed with the complainant that the EASA would assess the 3-year period preceding his request of 19 December 2013 with a view to identifying and granting partial access to those documents that contain findings concerning subparagraph 145.A.30(e) of Regulation 2042/2003. The EASA indicated that it would redact the names of individuals and organisations, as well as references allowing their identification. In a follow-up letter of 16 October 2015, the EASA informed the Ombudsman that, following this exercise, it had provided partial access to the complainant and released extracts of the relevant findings.

15. As regards the Ombudsman's further remark, the EASA stated that the use of a searchable electronic database was already being considered and that it was currently looking for suitable providers. In reply to the second part of the further remark, the EASA stated that it would put even more emphasis on discussing the request with requesters when required.

16. In his observations, the complainant thanked the Ombudsman for the efforts she had made.

The Ombudsman's assessment after the solution proposal

17. The Ombudsman notes that the EASA has accepted her solution proposal and has engaged with the complainant with a view to agreeing a fair solution.

18. The Ombudsman also welcomes the EASA's reaction to her further remark.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following



conclusion:

The EASA has accepted the Ombudsman's proposal for a solution.

The complainant and the EASA will be informed of this decision.

Emily O'Reilly

Strasbourg, 19/10/2015

[1] Commission Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (OJ 2003 L 315, p.1), several times amended. The consolidated version is available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2003R2042:20120801:EN:PDF> [Link]

[2] For further information on the background to the complaint, the parties' arguments and the Ombudsman's inquiry, please refer to the full text of the Ombudsman's solution proposal available at:

<http://www.ombudsman.europa.eu/cases/correspondence.faces/en/60984/html.bookmark> [Link]