

## CIVIL AVIATION AUTHORITY OF NEW ZEALAND

### TRANSPARENCY STATEMENT

The CAA collects information from a wide range of sources and for a variety of purposes in the course of executing its regulatory functions. The information largely falls into four categories:

- Information that is legally required to be reported, such as accident reports made under Part 2 of the Civil Aviation Act or Part 12 of the Civil Aviation Rules
- Information about aviation concerns that is reported to the CAA by members of the public (which we refer to as Aviation Related Concerns or ARCs)
- Information that is submitted to the CAA (or which we are given authorisation to collect) as part of an application for a regulatory approval – for example as part of an application for certification
- Information that we actively gather during our surveillance and monitoring work, or as part of an investigation.

All information that the CAA collects is managed in accordance with our obligations under the Privacy Act 2020 and the Official Information Act 1982.

When we actively gather information as part of our regulatory role, it is critical that we act reasonably, fairly and in a manner that the public expects of state servants. Regardless of the regulatory activity we are conducting, the people we are dealing with always retain the right to be treated with dignity and respect. Therefore, we must always be mindful of the impact that our actions have on the subjects of our surveillance or investigations and only employ investigative techniques that are lawful, fair, and as minimally intrusive on privacy rights as possible.

This transparency statement is intended to:

- Outline the types of investigations and information gathering the CAA conducts;
- Outline the purposes of those investigations;
- Outline the way we conduct these investigative and information gathering activities.

#### INFORMATION GATHERING AS PART OF OUR SURVEILLANCE AND MONITORING WORK

*Why do we do surveillance?*

The purpose of the CAA's surveillance activities is to check that participants (aviation document holders) who have entered the civil aviation system continue to operate safely, in accordance with relevant prescribed safety standards and practices, and in compliance with the conditions attached to their aviation documents.

Surveillance provides essential information on the safety risk and state of compliance of organisations and individual participants. This information allows the CAA to identify any corrective actions or other regulatory interventions necessary to manage risk and ensure operational performance is meeting or exceeding the level required by legislation. Without this information, a vital safety loop is lost and the CAA and participants are deprived of the opportunity to respond appropriately to mitigate risks or non-compliances before they cause an accident or incident.

Information from surveillance activities is recorded so that an accurate risk profile and compliance history of each participant can be developed. The amount of surveillance activity (frequency, scope, sample size etc.) is determined by the assessed risk level and safety performance of document holders both collectively and individually. The CAA has a range of surveillance methods and uses the method most appropriate for the circumstances. In all cases, the primary aim is to acquire accurate and complete information about the level of risk and compliance, to record this information, and to initiate action on the basis of this information as necessary to promote acceptable safety outcomes.

#### *How do we conduct surveillance?*

The way in which surveillance activity is conducted is set out in the CAA's Surveillance Policy. Surveillance activity is usually conducted face to face with participants and, in most cases, after agreeing the time and scope of the activity in advance. In some cases, surveillance may take place without prior notice to the participant being inspected or monitored.

In order to carry out effective surveillance activity, the CAA may examine records that are required to be maintained under the Civil Aviation Rules in order to assess actual performance against the procedures documented in the organisation's exposition. CAA staff will often retain copies of records as evidence to support inspection conclusions.

#### *Gathering information as part of our surveillance work*

In the overwhelming majority of cases, participants freely provide CAA with the records that are required to assess regulatory compliance. In those rare instances where a participant is unwilling to provide information that is requested, CAA staff who hold the appropriate delegations from the Director of Civil Aviation:

- may require participants (or any other person operating in a role relevant to aviation safety) to provide in writing any information that the Director considers relevant to the inspection or monitoring (see s15 of the Civil Aviation Act). The breadth of the information that may be requested using this provision is wide, as it would extend to any information that was relevant to the organisation's or individual's compliance with the Civil Aviation Act, rules or regulations, or relevant to any other matter of aviation safety or security;

- have the right of access at any reasonable time to any place (other than a private dwelling house or marae) or an aviation-related document or record (see s24(1) of the Civil Aviation Act);
- may require the production and surrender of any aviation-related document or record (see s24(3) of the Civil Aviation Act).

If a CAA staff member were to exercise the Director's delegated powers under s24, they would first need to produce a copy of their warrant for inspection.

The right of access to a dwellinghouse or marae can be granted only by a warrant issued by a judge.

### *Information disclosure*

The CAA provides information obtained from surveillance to the party concerned unless there are grounds for withholding such information under the Official Information Act 1982 or the Privacy Act 2020.

Findings and causal factors identified during surveillance are discussed with the participant at the time whenever possible. The contents of surveillance reports or audit reports are not disclosed to third parties unless the CAA is required to do so under the Official Information Act or other authority. Where additional information about the party concerned (such as a complaint from a member of the public) is considered in taking or proposing action with respect to matters raised during surveillance, this information is also provided to that party unless there are grounds for withholding such information under the Official Information Act 1982 or the Privacy Act 2020.

### *Unobserved surveillance*

Unobserved surveillance means surveillance or monitoring of a document holder's operational behaviour without the knowledge of the document holder. It may be necessary in those instances where CAA has reasonable grounds to believe that a document holder may alter their compliance or operational behaviour pattern when they are aware of CAA surveillance. This type of surveillance is undertaken when a document holder appears to meet the requirements for compliance with their documented procedures and applicable Civil Aviation Rules when CAA staff are present, but may revert to non-compliant behaviour when CAA staff are not present. Unobserved surveillance is the exception, rather than the rule; it is employed in those situations where more routine surveillance is considered unlikely to achieve the necessary outcomes, or where it is considered useful to confirm the results obtained from routine surveillance.

## **CAA REGULATORY INVESTIGATIONS**

Following a serious incident or accident, it is likely that the CAA will commence an investigation to establish, insofar as it is possible:

- the causes of the accident or incident with a view to feeding safety learnings back into the civil aviation system;

- whether all the parties involved, at both an individual and corporate level, met their obligations under the Civil Aviation Act, Civil Aviation Rules, and the Health and Safety at Work Act.

In some cases, at the conclusions of these investigations, the Director of Civil Aviation may lay charges against individuals or organisations.

Enforcement of regulatory requirements is an essential part of any regulatory system and is a statutory function of the Director of Civil Aviation. However, legislation provides the CAA with a range of regulatory tools aimed at ensuring desired safety and security outcomes are achieved. Tools and associated interventions can be applied at a system level, (e.g. safety seminars, training courses, rule development) or at an individual level, (e.g. investigation or administrative actions). The CAA will use the regulatory tool most suitable for the circumstances and is committed to conducting investigations that are fair, reasonable and proportionate to the nature of the behaviour giving rise to the concern.

#### *Exercise of powers*

CAA staff conducting investigations have a number of powers under both the Civil Aviation Act and the Health and Safety at Work Act to require provision of information relevant to the investigation. In some circumstances, CAA staff can require the subject of the investigation to attend an interview. In all cases, CAA staff will ensure that their exercise of these compulsive powers are fair and reasonable in the circumstances of the case and comply with the New Zealand Bill of Rights Act 1990 and the Search and Surveillance Act 2012. When speaking with the subject of an investigation, CAA staff will always be clear that they are conducting a regulatory investigation so that the subject is able to take appropriate steps to protect their position, such as instructing legal counsel.

#### *How we conduct regulatory investigations*

Regulatory investigations are conducted using standard investigative techniques. We:

- collect information from CAA business systems;
- collect information from other government agencies (such as the Ministry of Health or Airways Corporation, for example) to the extent that this is permitted by law;
- interview witnesses and take statements from them;
- look at publically available social media posts, such as YouTube or publically accessible Facebook accounts;
- interview the subject, generally under caution and after the subject has been afforded a fair and reasonable opportunity to instruct legal counsel;
- review any relevant CCTV footage or other recordings of the incident or accident (subject to the cockpit voice or video recorder exceptions as set out in s14C of the Transport Accident Investigation Commission Act 1990)

- use information obtained through covert investigative techniques, so long as the material has been gathered lawfully, fairly and in accordance with CAA's Covert Investigation Policy.
- use expert advice from both internal and external sources

The CAA **DOES NOT** use external contractors or security consultants to carry out any investigative duties.

At the end of an investigation, the Officer in Charge of the investigation will issue a report that concludes with a recommendation as to whether or not charges should be laid. In making this recommendation, the Officer in Charge will consider the CAA's Regulatory Operating Model, the Regulatory Tools Policy and will use as his or her touchstone the Solicitor General's Prosecution Guidelines.

The investigator's report must be signed off and approved by the relevant regulatory manager and the Chief Legal Counsel. The agreed action must then be approved by the relevant Deputy Director or the Director of Civil Aviation.

## **INVESTIGATIONS UNDER S15A OF THE CIVIL AVIATION ACT**

Section 15A of the Civil Aviation Act empowers the Director of Civil Aviation to conduct an investigation of an aviation document holder to determine whether they are, or have been, exercising their privileges safely.

Section 15A investigations are carried out openly and transparently and only after advising the subject about the proposed investigation and providing a terms of reference.

The purpose of a s15A investigation is to determine whether the interests of aviation safety require that administrative action be taken against the aviation documents held by the subject of the investigation.

A s15A investigator will be looking for a different type of evidence than a regulatory investigator. A s15A investigator needs to gather evidence that demonstrate whether a participant is capable of exercising their privileges safely. In the case of an individual this information might comprise:

- a history of their reported incidents and accidents, to determine their safety record over time
- a history of their aviation related convictions and other information arising from recent fit and proper person assessments;
- interviews with people who work or fly with the participant, in order to better understand their attitude to aviation safety generally;
- an interview with the subject with the aim of understanding their knowledge of relevant regulatory requirements and their general attitude towards aviation safety

In the case of a corporate entity under investigation this information might comprise:

- a review of the organisation's most recent certification
- a review of how the organisation is managed the risks identified in its business, including a review of the implementation of its safety management system (if applicable)
- a review of surveillance activity involving the organisation, to see if there is a pattern of concern emerging over time;
- interviews with approved senior persons within the organisation
- a review of all reported incidents and accidents involving the organisation
- a review of the organisation's financial stability and sustainability

All s15A investigations observe the rules of natural justice and procedural fairness. At the conclusion of the investigation, subjects are afforded a fair and reasonable opportunity to respond to a draft report and provide submissions before the report is finalised.

### **ARC INVESTIGATIONS**

Every year the CAA receives over 800 reports from participants, members of the public or even CAA staff about aviation-related concerns – ARCs. The CAA reviews each one of these ARCs as they sometimes contain valuable information indicating a potentially serious aviation risk.

Investigations usually involve speaking to the person who submitted the information or any other people directly involved, and reviewing relevant information from the CAA's business systems. Once the CAA understands more about the nature and details of the concern, decisions are made as to whether follow-up is required either by the operational regulatory team or another specialist team, e.g. the Regulatory Investigations team.

### **COMPLAINTS PROCESS**

It is important that the CAA is open to receiving feedback and complaints about its performance and, in particular, about the way it conducts its information gathering and investigative activities.

The CAA has a robust complaints policy in place. All complaints receive a substantive response.

If you have a complaint about the CAA, you can email [info@caa.govt.nz](mailto:info@caa.govt.nz). All complaints will be dealt with in accordance with our complaints policy and our obligations under the CAA Service Charter.

For more information, visit the CAA website, [www.caa.govt.nz](http://www.caa.govt.nz):

[Transparency and complaints](#)