Subject: Your request on access to documents
Reference: Your e-mail to EASA, dated 22.01.2014

Dear Mr McDonnell,

Thank you for your email of 22 January 2014, in which you request the Agency to reconsider its decision of 22 January 2014 of refusing to grant access to the documents you requested namely to "audits and resolution of Part-145 foreign repair stations certified by EASA and not another competent authority where a non-compliance was noted regarding AMC 145.A.30(e) Personnel requirements (7) specifically relating to GM 145.A.30(e)" and in particular the sections 1-3. In this e-mail you also clarified that you do not need to know any information regarding individuals or the name of the organisations.

Your confirmatory application has been handled in accordance with Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Your initial application was denied by the Agency on the basis of the exceptions provided for by Article 4.1 (b) and 4.2 third indent of Regulation (EC) 1049/2001. The Agency has now reviewed your confirmatory application and decides to maintain its decision to deny you access to the requested documents in accordance with 4.2 first and third indent of the abovementioned Regulation. The reasons for this decision are laid down in the following.

Nature of the documents you requested

With reference to the audits and inspections related documents that you requested, I would like to draw your attention to the fact that these documents are essential elements of the auditing and control process in the framework of the continued surveillance of an approved maintenance organisation. They contain all the information used by the Agency.
to continuously assess the risk and the resulting oversight planning for the approved Part 145 organisations.

In particular, the requested documents contain the results of the audits which are performed not only on the system of the organisation (processes), but also on how the processes are implemented on the end-products (aircraft, engine or component). Furthermore the Agency see a need here to emphasise that a substantial part of the information in the audit reports are gathered from individuals under the internal reporting scheme of the approved organisation and such internal reporting can only be successful if the principles of just culture, non-reprisal of the reporter, and mutual trust are fully respected. Consequently, the complex and delicate nature of these documents calls for the exercise of particular care.

**Protection of privacy and integrity of the individual**

I duly note your statement in the confirmatory application that you are not interested to know any information regarding individuals or the name of the organisations; hence the Agency does not apply the protection of privacy and integrity of the individual under Art. 4.1 (b) of Regulation (EC) 1049/2001.

**Protection of the purpose of inspections investigations and audits**

Article 4(2) third indent of Regulation (EC) 1049/2001 provides that institutions are under an obligation to refuse access to a document where disclosure would undermine the protection of the purpose of inspections, investigations and audits.

In this particular regard it is important to note that the activity of continued surveillance of the maintenance organisations certified by EASA qualifies as an investigation and audit activity since its purpose is to verify that the organisation is and remains compliant with the applicable legal requirements.

If the outcome of the continued surveillance shows in fact that the organisation concerned fails to fulfil the obligations imposed on it by Regulation (EC) 216/2008 and its Implementing Rules, the result would be a decision of the Agency on the amendment, suspension or revocation of the certificate.

In order for EASA to be able to carry out its tasks and to receive all necessary information from these organisations, there has to be a climate of mutual trust between EASA and the organisations inspected. The applicable legal framework defines the obligations on the organisations to be audited and instructs them to be transparent towards the Agency. In this situation, cooperation in good faith and mutual confidence between the involved parties are indispensable in order to enable the different subjects to express themselves freely. This is of fundamental importance for the safety process to work properly. In this scenario, the public disclosure of the documents concerned would compromise this dialogue and certainly affect the activity of on-going surveillance of the Agency and the climate of reciprocal trust between EASA and the inspected entities and therefore undermine the purpose of the investigation and audit procedure described above.
You state in your confirmatory request that you accept EASA to redact the name of the organisation and that this would nullify the reasons for using the exception provided by Article 4(2) third indent. EASA is however of the opinion that the purpose of the investigation and audit procedure would be harmed even if the name of the organisation would be erased from the documents. Firstly it would not be difficult for a knowledgeable reader to still identify the organisation based on the released information. Secondly, as detailed information about the organisation’s inner life would be made public the audited organisation – as well as other approved organisations – will for the future be less willing provide EASA with any and all information necessary to ensure a correct oversight.

In the light of the above I conclude that the requested documents are covered by the exception provided for in Article 4(2) third indent of regulation (EC) 1049/2001 since the disclosure would undermine the purpose of investigations and audit procedure.

**Commercial Interest**

Furthermore, in addition to the exceptions invoked above, the documents you requested contain commercially sensitive information concerning the set-up and implementation of the technical process for the performance of the maintenance activities by the approvals holders are in fact included in the documents. Indeed maintenance organisations have legitimate interest in preventing third parties from obtaining strategic or other commercially sensitive information of the kind contained in the requested documents and EASA has the obligation to protect such an interest without compromising safety.

In addition, if the said business information would become public the approved organisations will become much less transparent to EASA and this could also have a negative effect on the safety process.

Consequently access to these documents is also to be refused on the basis of article 4(2) first indent of Regulation (EC) 1049/2001, which stipulates that “the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interest of a natural or legal person”.

**Partial access**

EASA has also considered the possibility of granting partial access to the documents under article 4(6) of Regulation (EC) 1049/2001. In particular, in your confirmatory application, you have indicated that the names of individuals, the names of organisations, and the text that identifies them could be redacted since you have no interest in the identity of the persons or the organisations that were involved in the audit activity.

As mentioned above, de-identifying the documents would in this case not devoid their sensitivity; it is the public release of relevant safety information that EASA has received in confidence from the audited organisations that is the crucial issue at stake. EASA is responsible to ensure through its continuous surveillance that the organisations comply with the regulations and thus are safe. To fulfil its role EASA needs unimpeded access to any and all information within the organisations. The organisations are willing to provide this open access to EASA since a situation of mutual trust exist. If EASA would make even parts of the received information public this delicate balance of trust would be
broken with very negative consequences as result. Given EASA's responsibility and the requirement of unimpeded information flow, the Agency is therefore not in the position to agree either on particle access.

Moreover, the redaction of the context that is appropriate to reveal the identity of the organisations and their customers from each requested document would place an excessive administrative burden on the Agency and may result in completely blanked out forms, and that would not in line with the general principle of proportionality as laid down in Article 5(4) of the Treaty on European Union.¹

For these reasons no partial access to the document is possible.

**Overriding public interest**

Pursuant article 4(2) of Regulation (EC) 1049/2001, the exception to the right of access must be waived if there is an overriding public interest in disclosure; that is to say objective and general in nature and which is not indistinguishable from individual or private interests that would outweigh the public interest in protecting the activities performed by the Agency.

In your confirmatory request you make a plead that the citizens of the European Union have to be allowed to monitor how our European Union certifies aviation repair stations. In addition you state that the process of audits of these organisations and how EASA deals with non-compliance of the Part-145 regulations is a vital safety issue for the aviation industry and the citizens of the European Union.

With reference to this, I would like to draw your attention to the fact that for the matter under consideration (oversight of Part 145-organisations) the mission of promoting the highest possible standard of safety has been entrusted by the legislator specifically to EASA and to the other competent civil aviation authorities. In this capacity the Agency is taking full account of the public interest under its responsibility to ensure that citizens are granted high and uniform levels of safety.

If such disclosure of documents would be forced it would jeopardise the climate of confidence among those entities directly or indirectly involved in those audits who trust that safety or commercially sensitive information will not be disclosed, therefore the public interest could be adversely affected since it could lead to a situation where the Agency would face difficulties in obtaining the relevant information from the approval holders, which would be “a vital safety issue for the aviation industry” as you mentioned in your letter as well.

In the light of these observations EASA finds that you have not demonstrated what kind of overriding public interest is at stake which would prevail over the protection of confidentiality provided for in Article 4(2) first and third indent of Regulation (EC) 1049/2001.

¹ The treaty on the European Union Art. 5(4) Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.
Means of redress

If you wish to appeal against this decision, the legal remedies open to you are either to lodge a complaint to the European Ombudsman or to institute court proceedings against the Agency, under Article 228 or 263 of the Treaty on the Functioning of the EU (TFEU), respectively.

Yours sincerely,

Patrick Ky