

Director General

David McMillan
EUROCONTROL
Rue de la Fusée 96
Brussels 1130
Belgium

30th November 2011

CC: Javier Balsera

Legal expert, EUROCONTROL

Dear Mr David McMillan,

We are writing in response to your recent denial of our request for information relating to our investigation into the unlawful rendition of prisoners. We wish to explain why we consider your denial to be a very serious mistake and to urge you to reconsider most carefully in the light of your legal, social and ethical responsibilities.

At a minimum, we ask that you conduct an urgent internal review of this important decision, and that you weigh up the evidence which emerges.

We attach the original request for your convenience, to enable you promptly to search your records, identify and disclose the information.

Background

In 2005, investigators, law enforcement officials and journalists became aware of the wide-scale use of private US-registered aircraft, illegally to transport ('render') individuals captured by the US and other governments in the context of the 'war on terror'. Prisoners transported by this method were routinely also held incommunicado and tortured, in contravention of the European Convention on Human Rights, the United Nations Convention against Torture, the Geneva Conventions and the domestic laws of all European countries.

A list of such aircraft was collected and published in two Council of Europe reports, in 2006 and 2007. Owing to the ongoing evolution of the CIA's rendition and detention programme, however, the Council's data remained incomplete.

For the last twelve months, Reprieve and Access Info Europe have been building a more comprehensive overview of aircraft involved in the renditions programme, and their flight routes. The list includes aircraft active before the Council of Europe reports but unknown to the Council of Europe investigators, and aircraft active after the Council of Europe reports. It currently includes 54 aircraft, all of which have substantive documentary connections to entities involved in CIA renditions operations.

It is demonstrable that Eurocontrol holds relevant data on these aircraft, is able to disclose it, and has disclosed such data in the past for the same purpose.

History of Correspondence

On 12 October 2011, Eurocontrol stated to AIE that

“in the context of the EU's single European sky, the EUROCONTROL Agency is committed to promoting the objective of transparency. It is currently working on adapting its internal data rules on public disclosure. Any gap with Regulation (EC) No 1049/2001 should be brought to a minimum.”

On 20 October 2011, therefore, AIE wrote to Eurocontrol, asking for information or documents relating to the movements of 54 aircraft between 2001 and 2011.

On 2 November 2011, Eurocontrol denied this request but failed to provide any reason, stating simply that it was not covered by the regulation (EC) No 1049/2001.

Basis for Requesting Review of Decision to Withhold Information

Eurocontrol is mistaken in asserting that this data must remain confidential, for the following reasons:

1. Similar data has already been disclosed by Eurocontrol and is freely available in the public domain. Public documents attest to the response of Eurocontrol to a similar request in 2008, asking for records from the data warehouse and Central Route Charges Office relating to all flights billed to specific route planning and operating companies from 2001 to 2008.¹ This response includes over 150 pages of precisely the same type of information that we request.² Indeed, the information request in this previous instance was far broader than our request, since it has never been suggested, nor could it be maintained, that all flights billed to these companies were in any way connected with the renditions programme.

In addition, many Eurocontrol member states have already disclosed similar information, demonstrating that this kind of data can and should be released. Member states who have already published similar information include Denmark, Germany, Poland, Ireland, Lithuania, Norway and Finland. See, for example, the recently disclosure by Finavia, at <http://www.formin.fi/Public/default.aspx?contentid=233396&nodeid=15145&culture=fi-FI>.

2. The right of access to information is a human right recognised by the United Nations Human Rights Committee, the European Court of Human Rights and in the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the EU. As such it should be respected by all international institutions.

Eurocontrol is now isolated as one of the few international bodies which remain conspicuously unaccountable and unrepresentative to the public. By contrast, larger international and transnational organisations such as the World Bank and the European Union have taken steps towards ensuring that they meet the same transparency standards as their member states.

In public, Eurocontrol makes commendable claims of transparency. In its message to Access Info Europe on 12 October, the company stated a commitment to matching transparency standards set by the European regulation 1049/2001, despite not being legally bound. However, by refusing to disclose the information, or to identify a legitimate reason for non-disclosure, Eurocontrol has failed to meet even the minimal transparency standards to which it aspires.

¹ <http://www.ft.dk/samling/20072/almdel/tru/spm/612/svar/560145/575871.pdf> and <http://www.ft.dk/samling/20072/almdel/tru/spm/612/svar/560145/575872.pdf>

² <http://www.ft.dk/samling/20072/almdel/tru/spm/612/svar/560145/575873.pdf> and <http://www.ft.dk/samling/20072/almdel/tru/spm/612/svar/560145/575874.pdf>

The alarming disparity between Eurocontrol's professed commitment and its actions highlights a dangerous gap in European transparency standards. If small bodies holding public information cannot meet national standards, both national and EU transparency efforts can be swiftly undermined. Access Info Europe calls on all bodies that hold public information to uphold at least the same transparency standards as their member states. In this case, basic European transparency standards are reflected in the Council of Europe Convention on Access to Official Documents 2009, the EU regulation 1049/2001 as well as member state access to information laws.

3. Had Eurocontrol considered and responded to the request in line with a minimum standard disclosure policy equivalent to EU regulation 1049/2001 or the Council of Europe Convention on Access to Official Documents, Eurocontrol would have found that none of the common exceptions apply to the information requested. Specifically:
 - a. The data we request is historic and cannot therefore prejudice national security;
 - b. The data we request has no commercial relevance and cannot be considered to "undermine the protection of commercial interests";
 - c. The data we request is not inimical to the "privacy and integrity of the individual".
4. There is an overriding public interest obligation on Eurocontrol to disclose the records we have requested. Eurocontrol is the primary - and in some cases the only - repository of information crucial to the investigation of serious crimes and breaches of rights recognized by the European Convention and other conventions cited above. As such, Eurocontrol has a duty to comply with any such investigation, and any failure to disclose relevant information would render it complicit in the continuing cover-up of these crimes.

It is clear from recent developments – including the publicity surrounding the Richmor civil case dossier³ and the filing of torture victim Abu Zubaydah's application against Lithuania in the European Court of Human Rights⁴ – that light will, one way or another, eventually be cast on these abuses and the manner in which they were committed. Eurocontrol is well placed to play an active and responsible role in this process; alternatively, it can choose to be recalcitrant and obstructive, thus ensuring its own future embarrassment.

In the light of the seriousness of the situation described above, we call on Eurocontrol to reconsider its obligations and disclose the requested information without further delay.

Please do not hesitate to contact us if you would like clarification on any of the points above,

Yours sincerely,



Lydia Medland, Access Info Europe
Lydia@access-info.org

Crofton Black, Reprieve
Crofton.black@reprieve.org.uk

³ <http://www.guardian.co.uk/world/2011/aug/31/us-firms-torture-flights-rendition>

⁴ <http://www.guardian.co.uk/world/2011/oct/27/lithuania-cia-rendition-prisons-european-court>