

# Rendition on Record

Using the right of access to information to unveil the paths of illegal prisoner transfer flights

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19 December 2011

## About this Report

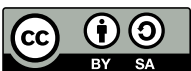
Rendition on Record was researched and written by Crofton Black of Reprieve and Lydia Medland of Access Info Europe. It was edited by Helen Darbishire of Access Info Europe. The case study on Poland was written by Irmina Pacho, of the Helsinki Foundation for Human Rights in Warsaw. Design and layout by Rubén Miján.

Thanks are due to Steve Kostas, who played a significant role in the initiation of the project; to Toby Mendel of the Centre for Law and Democracy who submitted the request in Canada; to Tamar Gurchiani who assisted us with the request in Georgia; and to Ana Gomes and Alexandra Carreira for assistance with the requests in Portugal. Thanks also to Tereza Alexova of the Access to Information Programme, Bulgaria; Rūta Mrazauskaitė of Transparency International, Lithuania; and Alicia Costas Fernández of Access Info Europe.

We were kindly assisted by translators including Mėta Aduavičiūtė, Dilara Alibayova, Tom Bowring, Birte Brodkorb, Paulo Dias Duarte, Maya Foa, Alex Miles, Petra Pavlaskova and Alex Grace.

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**The data in this report is correct as of 15 December 2011.**



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**Access Info Europe** is a human rights organisation dedicated to promoting and protecting the right of access to information in Europe and globally. Access Info's mission is to advance democracy by making the right to information work in practice as a tool for defending civil liberties, for facilitating public participation in decision-making, and for holding governments accountable. Access Info Europe's Access for Rights project includes work on issues of freedom of expression and media freedom in the context of anti-terror laws, freedom of assembly, and protection of privacy in particular on the issue of retention of personal telecommunications data.



**Reprieve**, a legal action charity, uses the law to enforce the human rights of prisoners, from death row to Guantánamo Bay. Reprieve investigates, litigates and educates, working on the frontline, to provide legal support to prisoners unable to pay for it themselves. Reprieve's current casework involves representing 15 prisoners in the US prison at Guantánamo Bay, assisting over 70 prisoners facing the death penalty around the world, and conducting ongoing investigations into the rendition and the secret detention of "ghost prisoners" in the so-called "war on terror".

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## 1. Rendition on Record

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Access Info Europe and Reprieve have used the right of access to information to investigate flights associated with “extraordinary rendition” – the covert transfer of prisoners by the USA from locations in Europe, the Middle East and Asia.

Many of these flights passed through Europe and in some cases the involuntary passengers they carried were held, and tortured, in detention centres in Europe.

This investigation involved the submission to 28 countries and one international body of over 50 access to information requests.

In this report, we present an interim evaluation of the project. We highlight countries which have cooperated in disclosing information as well as those which have not. We also point to some general issues which we have encountered concerning the right of the public to access information about their governments’ involvement in human rights violations.

As the findings show, we encountered systemic problems, including administrative silence, lost requests, incomplete responses, a failure by governments to safeguard potentially important data, and various excuses designed to prevent the release of information. On the other hand, we also found that, when public bodies processed our requests in the framework of national access to information laws, the majority found that the material requested was not confidential.

Access to information held by public bodies is a human right. It is recognised by the United Nations Human Rights Committee, the European Court of Human Rights, the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the EU. It is also recognised by the legal systems of all the countries included in this study, with the exception of Spain. Although limited exceptions to the right of access to information exist, information relating to the abuse of human rights should never be withheld.

## 1. Rendition on Record

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## Current Outcomes for Rendition on Record

| Information Released                                                         | Information Not Held                                        | Administrative Silence                                                                                                              | Information Denied                              |
|------------------------------------------------------------------------------|-------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| Denmark,<br>Finland,<br>Germany,<br>Ireland,<br>Lithuania,<br>Norway,<br>USA | Bulgaria,<br>Czech Republic,<br>Estonia,<br>Slovenia,<br>UK | Albania, Austria,<br>Azerbaijan, Cape<br>Verde, Georgia,<br>France, Iceland,<br>Italy, Latvia,<br>Romania, Russia,<br>Spain, Turkey | Canada,<br>Eurocontrol,<br>Portugal,<br>Sweden, |

To date only seven countries have provided an answer to the requests and almost half, 46%, have answered with only administrative silence. Refusals have been received from three countries and from Eurocontrol, while public bodies in a further five have said that they do not hold the requested information.

## 2. Flight Data and Renditions Accountability

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“Extraordinary rendition” – the forced transfer of a person from one place to another without legal process – became a prominent part of the US counter-terror programme immediately after 9/11. This programme also included rendition’s common corollaries: secret detention and torture. As the “war on terror” evolved, journalists and investigators gradually became aware of a network of secret flights and started to track them.

In June 2006 the Council of Europe published the first report by Swiss Senator Dick Marty on “Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states”. Marty showed how information provided by national and international air traffic control authorities revealed a “spider’s web” of renditions overseen by the US Central Intelligence Agency. Although the USA created it, he added, “it is only through the intentional or grossly negligent collusion of the European partners that this ‘web’ was able to spread also over Europe.” [MORE](#)

Marty’s research concentrated on 55 planes, identified by journalists and NGOs as being potentially linked to CIA renditions. His report demonstrated that flight logs can cast light on how prisoners were transferred, where from, where to, and sometimes by whom.

A second report by Dick Marty, in 2007, built on the findings of the first and showed that “large numbers of people have been abducted from various locations across the world and transferred to countries where they have been persecuted and where it is known that torture is common practice.” [MORE](#) In the same year, the European Parliament published its own report “on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners”. [MORE](#) This also included analysis of flight logs, published in Working Document 7 [MORE](#) and in the “Contribution of the Rapporteur: Research on the Planes Used by the CIA”. [MORE](#)

When Reprieve began to work on European renditions accountability cases, in 2010, it became clear that several planes of interest had not been known to investigators when these reports were compiled. We were faced with a number of holes in the web, especially with regard to later developments in the CIA renditions programme (2005-6) for which very little data had been gathered by the official enquiries.

## 2. Flight Data and Renditions Accountability

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In order to fill these holes, Reprieve and Access Info Europe submitted a series of information requests to likely holders of relevant flight data. The requests concentrated on planes absent from the data collected by the Council of Europe and the European Parliament, although some overlapping material was included in order to test the scope and accuracy of the responses.

The research began with a small group of countries in May 2011, which included Cape Verde, the Czech Republic, Finland, Iceland, Lithuania, Norway and Portugal. The project was then expanded in August 2011 to include, in addition, Albania, Austria, Azerbaijan, Bulgaria, Canada, Denmark, Estonia, France, Georgia, Germany, Ireland, Italy, Latvia, Romania, Russia, Slovenia, Spain, Sweden, Turkey, the UK and the USA.

These countries were chosen for a variety of reasons. Some are known to have been active partners in the US rendition and secret prison programme. Some were important staging points or rest points – in other words, they played a passive but nonetheless vital logistical role in the programme. Some were strategically positioned along flight routes important for the programme and we reasoned that even if planes did not touch down in these countries, their archives might contain relevant information in the shape of overflight permissions.

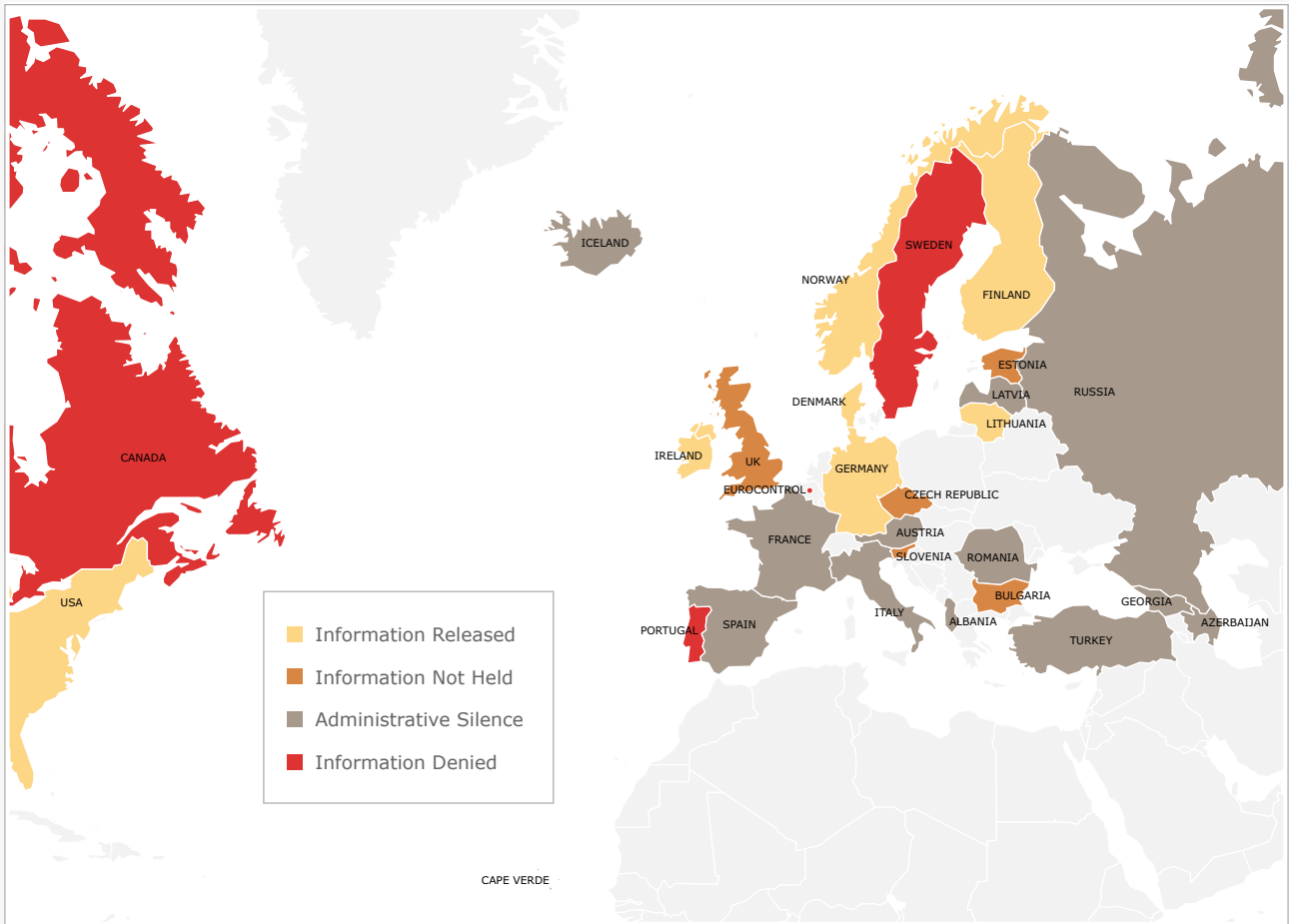
Aside from these targeted national requests, we also made an overarching request to the international organization in charge of pan-European air traffic management, Eurocontrol.



| Country        | Times Request Submitted | Interim Result                                                            | Days Taken to Respond |
|----------------|-------------------------|---------------------------------------------------------------------------|-----------------------|
| Germany        | 1                       | Information Released                                                      | 15                    |
| Ireland        | 1                       | Information Released                                                      | 38                    |
| USA            | 1                       | Information Released                                                      | 68                    |
| Denmark        | 2                       | Information Released                                                      | 17                    |
| Lithuania      | 5                       | Information Released on first request, new response received 14 Dec. 2011 | 82                    |
| Norway         | 5                       | Information Released                                                      | 50                    |
| Finland        | 7                       | Information Released                                                      | 23                    |
| Estonia        | 1                       | Information Not Held                                                      | 12                    |
| UK             | 1                       | Information Not Held                                                      | 2                     |
| Bulgaria       | 2                       | Information Not Held                                                      | 4                     |
| Slovenia       | 2                       | Information Not Held                                                      | 6                     |
| Czech Republic | 4                       | Information Not Held                                                      | 1                     |
| Iceland        | 5                       | Awaiting overdue response                                                 | 71                    |
| Albania        | 1                       | Administrative Silence                                                    | 84                    |
| Azerbaijan     | 1                       | Administrative Silence                                                    | 84                    |
| France         | 1                       | Administrative Silence                                                    | 83                    |
| Italy          | 1                       | Administrative Silence                                                    | 80                    |
| Romania        | 1                       | Administrative Silence                                                    | 73                    |
| Russia         | 1                       | Administrative Silence                                                    | 83                    |
| Spain          | 1                       | Administrative Silence                                                    | 80                    |
| Turkey         | 1                       | Administrative Silence                                                    | 80                    |
| Austria        | 2                       | Administrative Silence                                                    | 84                    |
| Georgia        | 2                       | Administrative Silence                                                    | 83                    |
| Latvia         | 2                       | Administrative Silence                                                    | 83                    |
| Cape Verde     | 3                       | Administrative Silence                                                    | 83                    |
| Canada         | 2                       | Written Refusal: Body not covered by law                                  | 1                     |
| Eurocontrol    | 2                       | Written Refusal: Body not covered by law                                  | 9                     |
| Sweden         | 2                       | Oral Refusal: Awaiting written refusal                                    | 74                    |
| Portugal       | 7                       | Written Refusal: Body not covered by law                                  | 74                    |

Multiple requests are due to referrals, transfers, appeals and re-submissions when requests were lost in the system. It should be noted, however, that we did not follow up the requests in all countries with equal effort: we focused on countries which were most likely to be strategically interesting because they were on common flight paths.

## Rendition on Record Status Overview: Information Denied, Released, and Not Held



### 3. Findings

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The findings per country are shown in the table on the previous page. Below we present the main findings of the study to date, followed by some more detailed case studies.

Of the 28 countries with which requests were filed, Access Info Europe and Reprieve have received information from just seven countries: Denmark, Finland, Germany, Ireland, Lithuania, Norway and USA.

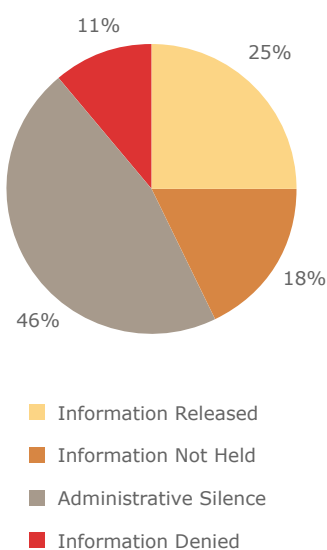
Only two countries, Portugal and Sweden, have specifically refused to provide information on the basis of exceptions stated in their access to information laws. In the case of Portugal we have appealed this refusal on the grounds that the information is held by them and is public information. In the case of Sweden, the refusal was given to us orally and we are waiting for formal confirmation of the refusal in order to be able to launch an appeal.

Canada's civil air navigation services provider, NAV Canada, responded that as a private body it does not fall under the scope of Canada's access to information law and is not obliged to provide information. Similarly, the intergovernmental body Eurocontrol has refused to release information on the grounds that it has no obligation to do so.

Responses from public bodies in five countries (Estonia, UK, Bulgaria, Slovenia and the Czech Republic) told us that they did not hold the requested information. This indicates that when the scandal of CIA rendition flights broke in 2005, the relevant public authorities failed to take any steps to preserve evidence about the routes that these flights took. In so doing, they failed to safeguard data which is essential for piecing together the full picture of extraordinary rendition and the complicity of European governments in it. More generally, it appears that flight data is held for differing amounts of time in different countries. The fact that some countries do not archive such data increases the significance of the information held by Eurocontrol, which holds flight planning information for five years, and holds route charging information for longer.

The remaining 13 countries – 46% of those included in this study – have violated the right of access to information by responding to our requests with silence. In doing so, they are also covering up the serious violations of the human rights of those who were the victims of extraordinary rendition.

**Overall Responses to Requests for Flight Information from 28 Countries**



### 3. Findings

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In some instances, countries gave us information which raised more questions than it answered. As our research developed, we realized that it is often unclear which body is responsible for storing a country's flight data. As a result, it is sometimes hard to know whether a response indicates the full extent of the possible available data.

For example, our request to Ireland's Department of Transport, Tourism and Sport resulted in eight records relating to 4 different tail numbers. We know from other sources, however, that many more of the planes which we included in our request landed in Ireland. The Department of Transport, Tourism and Sport noted in their response that they granted our request "insofar as it relates to records held in this Department". They also noted that other bodies might hold other information, but that none of the other bodies they cited come within the remit of Ireland's Freedom of Information legislation.

In Germany, our request to the Federal Ministry of Transport, Building and Urban Development produced information on three different tail numbers, but again, it was clear from different sources that other planes forming part of our request, which did land in Germany, were not included. The Ministry informed us that they had given us full access to the data available to them. We contacted them, first by telephone and subsequently in writing, to ask which bodies might hold further responsive information. So far, they have not replied.

The Danish Transport Authority told us that it "does not in general have information regarding aircraft route data. However, in some cases we have been asked by the Danish Parliament or Government to collect this data from the relevant air traffic control providers for the use of investigations on alleged CIA-flights in Danish airspace." The Danish Transport Authority was therefore able to give us some information, although this generally did not correspond to the planes we had asked for. A second request, to the air traffic management service provider Naviair, did provide some information.

### 3. Findings

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### Obstacles to Obtaining Information

**Our researchers found that when the law is properly applied, information is released.** No public body, for example, refused us on the basis that the information requested is confidential. But a series of obstacles has emerged, which are preventing members of the public from obtaining information about the renditions programme. These include:

- 1. Silence remains the norm.** Under all access to information laws it is unacceptable for countries to ignore requests for information. Access to information is a human right and should be dealt with according to national and international law. The only countries in this study to release information within the timeframe specified by their laws were Ireland and Germany.
- 2. Requests are lost in the system.** Our researchers have too often had to make multiple phone calls and e-mails to ensure that requests have been seen and have arrived at the desks of the right people. We have often had to emphasise the nature of our requests and the fact that that we are requesting on behalf of civil society organisations in order to trigger any kind of response (Finland, Sweden, Lithuania, Norway, Iceland), which appears to be a violation of the fact that the right of access to information is a right of all persons, not just of well resourced human rights organisations.
- 3. The information is held by a private body.** The research has revealed that flight data is sometimes stored by private bodies which are not directly covered by access to information laws (Canada, Finland). This is a great problem for transparency and accountability. Often these bodies are able to provide this information but may choose not to. It is unacceptable that public information regarding possible human rights abuses be kept secret because it is held by a private body.
- 4. In Europe, Eurocontrol holds considerable information.** Eurocontrol, an independent intergovernmental organisation formed of 39 European states, is the principal body responsible for collating and holding flight information. As such, it is the ultimate holder of much of the information needed to investigate renditions flights. It is, however, an intergovernmental body which is not bound by any kind of transparency policy and has to date been unwilling to provide the requested information.

### 3. Findings

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5. **Europe is lagging behind the USA when it comes to transparency on renditions.** By far the most comprehensive response received to date has been from the USA and no European country monitored has provided a comparable level of detail in their answers. The USA provided a spreadsheet with data on 27,128 flight segments in searchable and reusable form. At best, those European countries which have responded have released incomplete responses usually in non-reusable formats. Norway also provided details in a spreadsheet although only after the fifth information request and after being reminded by phone and e-mail to respond.

## 4. Case Studies

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The following case studies represent the range of country behaviours in the *Rendition on Record* study and highlight both good practices and the challenges faced by civil society in obtaining information about the involvement of European governments in rendition.

The case studies selected are: Lithuania, the USA, Poland, Finland, Canada, Portugal, and Eurocontrol.

### Lithuania

An initial short request on a few planes was sent to the Lithuanian Civil Aviation Authority in May. They responded promptly, providing information drawn from Oro Navigacija, the Lithuanian air traffic service provider. This response played an important role in the case filed against Lithuania in the European Court of Human Rights on behalf of "high value detainee" Abu Zubaydah (27 Oct. 2011). [MORE](#)

The information revealed by the Lithuanian Civil Aviation Authority showed that a plane connected with the renditions programme entered Lithuania in February 2005. This plane had been overlooked by the Lithuanian parliamentary inquiry into Lithuania's role in the CIA's secret detention programme, and by the Lithuanian prosecutor's investigation which followed it.

Following this successful initial request, we made a second, longer request to Oro Navigacija in September 2011. As this report was being finalised on 14 December 2011, Access Info Europe received a response from Lithuania, which is still to be analysed but which contains no additional flight data.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                |            |                       |                       |                       |        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-----------------------|-----------------------|-----------------------|--------|
| Valstybės sienos apsaugos tarnybos vadui                                                                                                                                                                                                                                                                                                                                                                                                                       | 2011-06-20 | Nr. 12K-1289          |                       |                       |        |
| gen. Vainiui Butinui                                                                                                                                                                                                                                                                                                                                                                                                                                           | 2011-06-06 | Nr. (21)-14-2372      |                       |                       |        |
| Kopija el. paštu<br>Lydia@access-info.org                                                                                                                                                                                                                                                                                                                                                                                                                      |            |                       |                       |                       |        |
| <b>DĖL INFORMACIJOS PATEIKIMO</b>                                                                                                                                                                                                                                                                                                                                                                                                                              |            |                       |                       |                       |        |
| Siekdami atsakyti į gautą iš Jūsų 2011-06-13 prašymą, Civilinės aviacijos administracijos (toliau – CAA) specialistai kreipėsi į VĮ „Oro navigacija“ dėl galimų turimų duomenų, nes CAA neišdavė minėtiems skrydžiams leidimų. Tai reiškia CAA nedisponuoja duomenimis apie šiuos skrydžius. VĮ „Oro navigacija“ sistemoje rasti šie JAV orlaivių duomenys su Jūsų pateiktomis registracijos ženklais, kurie vykdė skrydžius Lietuvos Respublikos oro erdvėje: |            |                       |                       |                       |        |
| Eil. Nr.                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Data       | Registracijos ženklas | Išskridimo oro uostas | Atskridimo oro uostas | Laikas |

## 4. Case Studies

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## USA

The United States of America was not included in our first round of requests. As the principal actor in the development of the renditions programme, however, we considered that it would be important to expand our study beyond Europe in the second phase of our requests. We submitted a request for information to the Federal Aviation Authority (FAA) on 26 September 2011.

On 21 November 2011, the FAA responded with a spreadsheet of 27,128 rows of data on the movements of 44 planes between 2002 and 2006.

These results have yet to be fully analyzed. There are already indications of significant new information in them, however, including a flight from Guantanamo Bay to Bagram Airbase in Afghanistan, via Canada, on 19 September 2004 and a flight from Guantanamo Bay to Kabul via Ireland on 11 September 2005.

| Unique Flight_ID | Date      | Departure Airport | Departure Date (GMT) | Departure Time (GMT) | Arrival Airport | Arrival Date (GMT) | Arrival Time (GMT) |
|------------------|-----------|-------------------|----------------------|----------------------|-----------------|--------------------|--------------------|
| 050906767100     | 06-Sep-05 | TEB               | 20050906             | 09:25:00             | LJLJ            | 20050906           | 17:00:00           |
| 050908981836     | 08-Sep-05 | LPAZ              | 20050908             | 06:15:00             | MUGM            | 20050908           | 12:00:00           |
| 050908981837     | 08-Sep-05 | MUGM              | 20050908             | 13:17:00             | MIA             | 20050908           | 14:00:00           |
| 050911277219     | 11-Sep-05 | MIA               | 20050911             | 04:58:00             | MUGM            | 20050911           | 06:00:00           |
| 050911277220     | 11-Sep-05 | MUGM              | 20050911             | 08:09:50             | EINN            | 20050911           | 15:00:00           |
| 050911277221     | 11-Sep-05 | EINN              | 20050911             | 17:55:16             | OAKB            | 20050912           | 02:00:00           |
| 050912364874     | 12-Sep-05 | ENBR              | 20050912             | 10:44:16             | IAD             | 20050912           | 18:00:00           |



## 4. Case Studies

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### Poland

Since Poland already had a good record of releasing data relating to renditions flights, we did not include it in our project. As Irmina Pacho, from the Helsinki Foundation for Human Rights, Warsaw, explains, Poland serves as a model for proper management of access to information requests:

*The Helsinki Foundation for Human Rights (HFHR) first submitted a freedom of information request to the Polish Air Navigation Services Agency (PANSa) in 2009. From February to August 2010 HFHR made several further requests to PANSa about planes allegedly landing on Polish soil which were suspected of collaborating with the CIA renditions programme.*

*PANSa responded to all of HFHR's requests, disclosing flight logs and associated data from their archives. Thanks to PANSa, HFHR managed to obtain data which showed CIA planes landing in Poland several times. The logs also revealed attempts by the CIA and its Polish partners to cover up the true destination of rendition flights: several flights that landed in Szymany, in the north-east of Poland, had declared Warsaw as the official destination.*

*PANSa's cooperation with HFHR was effective, prompt and comprehensive. Their attitude serves as a model for interaction between a state agency and a non-governmental organization in a civil society. Their example has proved that such requests can be an effective tool in investigating allegations of serious human rights violations.*

## 4. Case Studies


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### Finland

The request to Finland coincided with considerable media interest in the role of Finland in renditions flights. [MORE](#) We made an initial request in May 2011 to Finavia, the air navigation system service provider in Finland, who informed us that they were a private body and not bound to respond to access to information requests. We therefore addressed a subsequent request to the Finnish Transport Safety Agency, Trafi, on 23 September 2011.

On 3 November 2011, the Ministry of Foreign Affairs and the Ministry of Transport and Communications jointly released to the human rights organisation Amnesty International a spreadsheet of flight data drawn from the archives of Finavia. This data related to a list of planes drawn up by Amnesty International. Some of the planes we had included in our request also featured in Amnesty's list, and a further 32 did not.

After some delay, Trafi eventually replied to our request on 14 November 2011, stating that our request referred to information they did not have, and pointing us to the release of information by the Ministries. We therefore filed a further request with the Ministry of Transport and Communications, on 22 November 2011, on the 32 planes not included in Amnesty International's list, asking for information on these planes to be released in the same format. Just as this report was going to press on 15 December 2011, Access Info Europe received a response from the Ministry with more flight data, which we have yet to analyse.



|                                                                     |                                                                                                                                                                                                                                                                                                                                                     |                    |                   |                  |                              |                    |                                                  |
|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-------------------|------------------|------------------------------|--------------------|--------------------------------------------------|
| <b>Access Info Europe</b><br>Lydia Medland<br>Lydia@access-info.org | <table border="0"><tr><td style="padding-right: 10px;">Päiväys/Datum/Date</td><td>November 14, 2011</td></tr><tr><td style="padding-right: 10px;">Dnro/Dnr/Ind.No.</td><td>TRAFI/19846/00.04.01.01/2011</td></tr><tr><td style="padding-right: 10px;">Viite/Referens/Ref</td><td>Your request for information dated Sep. 23, 2011</td></tr></table> | Päiväys/Datum/Date | November 14, 2011 | Dnro/Dnr/Ind.No. | TRAFI/19846/00.04.01.01/2011 | Viite/Referens/Ref | Your request for information dated Sep. 23, 2011 |
| Päiväys/Datum/Date                                                  | November 14, 2011                                                                                                                                                                                                                                                                                                                                   |                    |                   |                  |                              |                    |                                                  |
| Dnro/Dnr/Ind.No.                                                    | TRAFI/19846/00.04.01.01/2011                                                                                                                                                                                                                                                                                                                        |                    |                   |                  |                              |                    |                                                  |
| Viite/Referens/Ref                                                  | Your request for information dated Sep. 23, 2011                                                                                                                                                                                                                                                                                                    |                    |                   |                  |                              |                    |                                                  |

**Decision of the Finnish Transport Safety Agency**

By your e-mail of September 23, 2011, you have requested specific information on certain aircraft identified by registration. On October 28, 2011, you reminded the Agency about the issue and asked for reasons why the consideration of the request has been delayed.

To investigate the issue, we have examined our files in accordance with your request and concluded that your request, in many parts, refers to such information that the Agency does not have.

## 4. Case Studies

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### Canada

In September 2011 we requested data from the Canadian Air Transport Security Authority (CATSA). They replied that they did not hold the information we requested, but advised us that NAV Canada (the civil air navigation services provider) should have it. NAV Canada is a private corporation and as such not bound by Canada's 1980 Access to Information Act.

Responding to an inquiry, NAV Canada confirmed that they do hold the information we requested but would only provide it to government bodies in the context of a safety or police investigation, and not for other purposes.

Despite this, on 15 November 2011, the Centre for Law and Democracy, Access Info Europe and Reprieve made a formal request for the information to NAV Canada, in which we highlighted the context of the request:

*The flight data in question relates to flights we believe were commissioned by the Government of the United States of America, and which are suspected of being related to a global programme involving extradition and torture. International standards on transparency indicate clearly that information relating to the abuse of human rights should always be made public.*

We also pointed out that similar information had previously been made public in other countries.

In its reply of 16 November 2011, NAV Canada refused to comply with the request on the grounds that "information pertaining to Air Traffic Services tapes, flight plans, and other materials is only released to the Transportation Safety Board in the case of an accident."

-----  
Mr. Mendel,

Thank you for contacting NAV CANADA Customer Service.

However, as you have already been advised by our Legal department, NAV CANADA policy dictates that information pertaining to Air Traffic Services tapes, flight plans, and other materials is only released to the Transportation Safety Board in the case of an accident.

Regards,

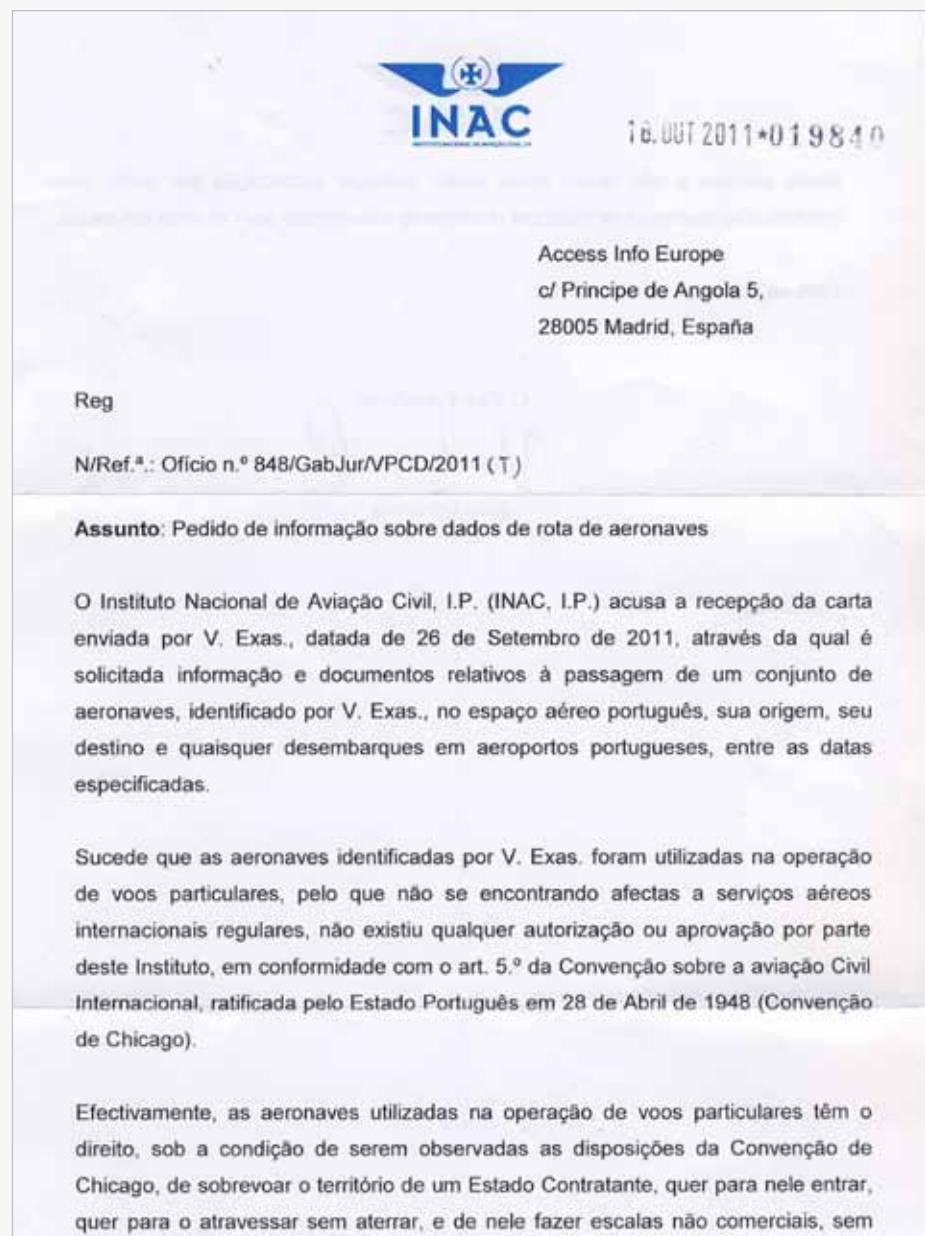
## 4. Case Studies

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### Portugal

Analysis of existing flight records suggests that Portugal (and its Atlantic archipelago, the Azores) provided vital stop-off points for planes in the renditions programme, enabling them to break their journeys and refuel on the way to Africa, Afghanistan and the Middle East. The European Parliament report of 2007 cited 91 stopovers in Portugal. [MORE](#)

In 2006, the Portuguese air navigation body Instituto Nacional de Aviação Civil (INAC) released documents relating to the landings in Portugal of 9 private chartered US planes: N85VM, N368CE, N982RK, N540EA, N168D, N50BH, N58AJ, N2189M and N8183J.



**INAC** 16. OUT 2011\*019840

Access Info Europe  
c/ Principe de Angola 5,  
28005 Madrid, España

Reg

N/Ref.º: Oficio n.º 848/GabJur/VPCD/2011 (T)

**Assunto:** Pedido de informação sobre dados de rota de aeronaves

O Instituto Nacional de Aviação Civil, I.P. (INAC, I.P.) acusa a recepção da carta enviada por V. Exas., datada de 26 de Setembro de 2011, através da qual é solicitada informação e documentos relativos à passagem de um conjunto de aeronaves, identificado por V. Exas., no espaço aéreo português, sua origem, seu destino e quaisquer desembarques em aeroportos portugueses, entre as datas especificadas.

Sucedem que as aeronaves identificadas por V. Exas. foram utilizadas na operação de voos particulares, pelo que não se encontrando afectas a serviços aéreos internacionais regulares, não existiu qualquer autorização ou aprovação por parte deste Instituto, em conformidade com o art. 5.º da Convenção sobre a aviação Civil Internacional, ratificada pelo Estado Português em 28 de Abril de 1948 (Convenção de Chicago).

Efectivamente, as aeronaves utilizadas na operação de voos particulares têm o direito, sob a condição de serem observadas as disposições da Convenção de Chicago, de sobrevoar o território de um Estado Contratante, quer para nele entrar, quer para o atravessar sem aterrar, e de nele fazer escalas não comerciais, sem

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When we contacted INAC, however, they refused to disclose the information we requested on the basis that it was not available to them. In a letter of 18 October 2011, they stated:

*It transpires that the planes identified were employed for private flights. [...] Effectively, the planes employed in this instance to perform these private flights have the right, provided the conditions of the Chicago Convention being observed, to fly over a State that is party to the convention, whether it lands there or not, and to make non-commercial stops, without prior authorization from that State. In that sense, and in the fact that no authorization came from this institution, we cannot provide any documentation for the flights in question.*

This response is disingenuous since some of the planes included in our request were the very same planes about which INAC had previously disclosed information. An appeal was submitted to the Portuguese Commission on Access to Administrative Documents (Comissão de Acesso aos Documentos Administrativos, CADA) on 3 November 2011. At the time of writing, we are awaiting their ruling.

Commenting on the Portuguese response, Ana Gomes, a Portuguese Member of the European Parliament with a long-standing interest in renditions accountability, has stated:

*When in 2006-7 the European Parliament conducted an investigation on European collaboration with the extraordinary renditions programme, I supplied the Portuguese Government with data obtained from Eurocontrol, but waited months for confirmation from the Portuguese air, customs and border authorities. When this finally came, in the form of lists provided by INAC (which authorized civilian flights) and NAV Portugal (air traffic service provider for both civilian and military flights), it was fragmented and incomplete. I insisted on the existence of further data, concerning flights to and from Guantanamo Bay, but this was only eventually disclosed thanks to a courageous whistleblower, who revealed details of a list of flights (mostly military) compiled for the Portuguese Foreign Ministry by NAV.*

It is evident that in Portugal much more could still be revealed about the global renditions programme.

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### Eurocontrol

Eurocontrol, the European Organisation for the Safety of Air Navigation, is an independent intergovernmental organization comprising 39 member states, with headquarters in Brussels. Eurocontrol develops and coordinates pan-European air traffic management and collects route charges. [MORE](#)



Photo © Eurocontrol

In the past, Eurocontrol has played a key role in investigations into rendition flights. Data from Eurocontrol was core to the Council of Europe Parliamentary Assembly's 2006 investigation led by Dick Marty. [MORE](#) Eurocontrol also provided flight logs to the European Parliament's "Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners". [MORE](#) In addition, in 2008 Eurocontrol disclosed over 150 pages of flight data in response to a Danish government request. [MORE](#)

Given this backdrop, we were hopeful that Eurocontrol would provide a significant body of data with which we could collate the responses from individual states. Our experience has been disappointing.

To an initial inquiry, Eurocontrol responded fairly positively, stating that:

*The European Organisation for the Safety of Air Navigation ("Eurocontrol") is not bound by the rules on access to documents developed by the European Union (EU), namely Regulation No (EC) 1049/2001. However, 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.*

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Eurocontrol nevertheless rapidly rebuffed the formal request which asked for information or documents relating to all movements of 54 planes between 1 September 2001 and 1 September 2011. Notwithstanding their previous commitment, Eurocontrol merely replied that:

*Eurocontrol is not bound by a public disclosure policy. It receives these data in confidence, for specific purposes related to air traffic management, route charging and public security. In the present state of the law, we therefore regret to inform you that they cannot be made available to you.*

Given that Eurocontrol's previous activities showed that they could, and would, make available such information for the investigation of human rights abuses – and indeed that public disclosure of a tranche of their records was available from the Danish parliament – we wrote to them again on 30 November 2011 outlining why we considered their refusal to be misconceived. [MORE](#) We are currently awaiting their response.

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As the data in this study shows, there are still serious problems for human rights groups and members of the public trying to find out what actually happened during the extraordinary rendition programme.

This means that members of the public across Europe are being denied basic information about the involvement of their governments in serious violations of human rights. Those who were directly involved in this illegal programme cannot be held to account, and there cannot be a full public debate about how to prevent the recurrence of such abuses.

Access Info Europe and Reprieve are calling on the all European countries governments to take urgent steps to publish all the information that they hold about renditions flights, including flight data and related documents, and to make this available in a reusable open data format to the civil society organisations working to map out the full extent of renditions.

The right of information is a fundamental right in itself, as has been recognised by the European Court of Human Rights and the UN Human Rights Committee. It is also an instrumental right, essential for the protection of other human rights. Information concerning grave infringements of human rights should never be withheld from the public.

### Recommendations

1. **All countries should take urgent steps to publish all the information that they hold about renditions flights,** including flight data and related documents, and to make this available in a reusable open data format to the civil society organisations working to map out the full extent of renditions.
2. **Access to information laws should always be properly applied.** Refusal to disclose information should only be based on exceptions stipulated in access to information laws. Where information does potentially fall under a legitimate exception, public officials should carefully consider both the potential harm and the public interest in releasing the information. If the public interest is greater than the potential harm, the information should still be released. Information relating to abuses of human rights should never be withheld.



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3. **Citizens should never be ignored. Requests should be acknowledged and tracked internally.** All requests for information should be acknowledged, and the acknowledgement should state who is responsible for dealing with the request. Requests should be internally registered and not lost in the system. One way of keeping track of requests is to give them a reference number which requesters may quote should they need to check the status of the request.
4. **Requests should be answered within the timeframe stipulated by each national law.** Information requests should be answered as soon as possible and at a maximum within the timeframes permitted by national law. In the case of complex requests, should a government body need more time, it should notify the requester within the initial timeframe, and should not delay the request any longer than the extension period permitted by national law.
5. **All bodies that perform public functions and/or hold information of high public interest should be subject to the same transparency standards as national governments.** National, international or private organisations which currently fall outside of the scope of national access to information laws but which perform the public function of managing airspace and/or which hold information, including flight plans, of value to the public and relevant to investigations into the violations of human rights should be bound by national access to information laws or should adopt equivalent transparency policies to those of national governments.
6. **Information storage and destruction should be strictly regulated in the interests of protecting human rights.** If information is likely to be useful in the future for revealing violations of human rights, then destroying information after a short period of time may be irresponsible and should be prohibited by law. Governments should take urgent measures to ensure that such data is not stored exclusively by private or international bodies which are less accountable to citizens: it is the responsibility of each national government to ensure that it holds and reviews such data and that it makes it available to the public.

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- 7. Information should be supplied in an open and re-usable format.** The right of access to information also means the right to use and re-use the information received. This means that information should be released in formats which permit copying, editing, analysis, and distribution. For numerical data this will often mean releasing it in spreadsheets. For copies of documents this will usually mean sending in open specification (e.g.: Microsoft Word) or open data formats (e.g.: Open Office) or in unlocked, machine readable PDFs but never in locked PDFs or as images.

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