

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice**

Date: 4 March 2021

Public Authority: The Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office seeking correspondence between the then Prime Minister, Tony Blair, and HRH The Prince of Wales concerning hunting during the period January 2003 to January 2004. Under FOIA the Cabinet Office refused to confirm or deny whether it held any such information on the basis of section 37(2) of FOIA, by virtue of section 37(1)(aa) (communications with the heir to the Throne). Under the EIR, the Cabinet Office explained that it did not hold any environmental information.
2. The complainant challenged the Cabinet Office's position that it did not hold any environmental information falling within the scope of the request. The Commissioner has concluded that on the balance of probabilities the Cabinet Office does not hold any environmental information falling within the scope of the request.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the Cabinet Office on 6 February 2020:

'I would like to request the following information under the Freedom of Information Act and Environmental Information Regulations (EIRS).

Please note that I am only interested in information which relates to the period 1 January 2003 to 1 January 2004.

Please note the reference to His Royal Highness the Prince of Wales should include His Royal Highness himself, his principal private secretary (ies), any other private secretaries and any one in his private office able to communicate and correspond on his behalf.

Please note that the reference to the then Prime Minister and to Tony Blair should include Tony Blair himself, his principal private secretary (ies), any other private secretaries and any one in his private office able to communicate and correspond on his behalf.

Please note that the reference to 'write and communicate' should be taken to include all traditional forms of correspondence such as letters, memos and notes, emails irrespective of whether they were sent through official or private accounts and any messages sent through encrypted messaging services.

I would like to request the following...

1...During the aforementioned period did the Prince of Wales write to and communicate with Tony Blair about any of the following – hunting as a past time and the perceived beneficial effects of hunting, the activities of hunt saboteurs and other campaigners opposed to hunting, animal welfare issues in so far as they relate to hunts, the popularity of hunting, the impact of hunting on the countryside, the Prince's membership of particular hunt (s), the need to control foxes and other vermin, the then government's plans to amend legislation on hunting and the possible impact of these legislative changes.

2... During the aforementioned period did Tony Blair write to and communicate with His Royal Highness the Prince of Wales about any of the following - hunting as a past time and the perceived beneficial effects of hunting, the activities of hunt saboteurs and other campaigners opposed to hunting, animal welfare issues in so far as they relate to hunts, the popularity of hunting, the impact of hunting on the countryside, the Prince's membership of particular hunt (s), the need to control foxes and other vermin, the then government's plans to

amend legislation on hunting and the possible impact of these legislative changes.

3... During the aforementioned period did the Prince of Wales write to and communicate with Tony Blair about any other blood sports including but not limited to shooting. If the answer is yes can you please provide a copy of this correspondence and communication including any emails.

4... During the aforementioned period did Tony Blair write to and communicate with Prince of Wales about any other blood sports including but not limited to shooting. If the answer is yes can you please provide a copy of this correspondence and communication including any emails.

5...If relevant documentation has been destroyed can you state when it was destroyed and why. In the case of each piece of correspondence and communication which has been destroyed can you please identify the author, the recipient, the date sent and can you also provide a brief outline of its contents. If the destroyed documentation continues to be held in another form can you please provide a copy of that destroyed documentation.'

5. The Cabinet Office responded on 25 February 2020 and explained that it did not hold any environmental information falling within the scope of the request. Insofar as information, if held, may not fall under the EIR the Cabinet Office refused to confirm or deny whether it held such information on the basis of section 37(2) of FOIA, by virtue of section 37(1)(aa).
6. The complainant contacted the Cabinet Office on 27 February 2020 and asked it to conduct an internal review of this response.
7. The Cabinet Office informed him of the outcome of the internal review on 20 March 2020. The review upheld the position set out in the refusal notice.

Scope of the case

8. The complainant contacted the Commissioner on 22 March 2020 to complain about the way his request for information had been handled. He argued that the Cabinet Office was likely to hold environmental information falling within the scope of his request.

Reasons for decision

Regulation 12(4)(a)

9. Regulation 12(4)(a) of the EIR allows a public authority to refuse to disclose information to the extent that it does not hold the information.
10. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
11. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
12. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out, or other explanations offered as to why the information is not held.

The Cabinet Office's position

13. In order to investigate this complaint, the Commissioner asked the Cabinet Office to respond to a number of questions. The Commissioner has set out below what these questions were and summarised the Cabinet Office's response to them.

Question: *What searches have been carried out to locate any environmental information falling within the scope of the request and why would these searches have been likely to retrieve any relevant information?*

Answer: The time period given in the request is 1 January 2003 to 1 January 2004 and so covers Tony Blair's administration. All the information from this administration is held in paper files. There is an electronic database containing a library of all the files from Tony Blair's administration, but a search of the database simply identifies those files that might hold information; the database does not contain the information itself.

The Archives team in the Cabinet Office's Knowledge and Information Management (KIM) unit conducted a search of the relevant files for the period covered by this administration. As the files are in hard copy this was a manual read-through. The files were searched for any environmental information potentially in the scope of this request. In conducting these searches the Cabinet Office focused on the fact that parts 1 and 2 of the request sought information on the following topics:

- hunting as a pastime
- the perceived beneficial effects of hunting
- the activities of hunt saboteurs and other campaigners opposed to hunting
- animal welfare issues in so far as they relate to hunts
- the popularity of hunting
- the impact of hunting on the countryside
- the Prince's membership of particular hunt(s)
- the need to control foxes and other vermin
- the then government's plans to amend legislation on hunting and the possible impact of these legislative changes.

The Cabinet Office explained that having conducted these searches it did not hold any environmental information falling within the scope of the request.

Question: *Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.*

Answer: After transfer from the Prime Minister's office, the whole collection of Prime Minister's papers forms the archive of the administration. The KIM team does not add to or rearrange these papers after transfer but preserves them until they are transferred to The National Archives under the Public Records Act. The files searched are therefore the only ones that would contain the information if it existed.

Question: *Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?*

Answer: No. After transfer from the Prime Minister's office the whole collection of Prime Minister's papers forms the archive of the administration. The KIM team does not add to or rearrange these papers after transfer but preserves them until they are transferred to The National Archives under the Public Records Act.

Question: *What does the Cabinet Office's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the Cabinet Office describe the way in which it has handled comparable records of a similar age?*

Answer: The policy states that the Cabinet Office will always preserve correspondence between the Government and the Royal Family.

The Commissioner's position

14. In the Commissioner's view, on the balance of probabilities the Cabinet Office does not hold any environmental information falling within the

scope of the complainant's request. In reaching this conclusion the Commissioner has taken into the account the that fact that any correspondence which falls within the scope of the request would only be held in the files from Tony Blair's administration. Furthermore, the Commissioner is satisfied that the searches conducted by the Cabinet Office were sufficiently focused and detailed ones that would have located any environmental information falling within the scope of this particular request if it were held. In reaching this conclusion the Commissioner notes that she is satisfied, based upon the Cabinet Office's submissions summarised at paragraph 13, with its application of the definition of environmental information in the context of the information sought by this specific request.

15. The Commissioner appreciates that the request also sought clarification as to whether any information falling within the scope of the request had been destroyed. However, as is clear from the Cabinet Office's response its retention policies would ensure that no information falling within the scope of this request would have been destroyed, either during Tony Blair's time in office or after he left office.

Right of appeal

16. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
18. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
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