

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

**Decision notice**

**Date:** 22 March 2021

**Public Authority:** The National Archives  
**Address:** Kew, Richmond  
Surrey  
TW9 4DU

**Decision (including any steps ordered)**

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1. The complainant has requested information from The National Archives (TNA) held in a closed file 'PREM 16/1840 ROYAL FAMILY. Prince of Wales'. TNA withheld the requested information citing sections 37(1)(a) which relates to communication with or on behalf of the sovereign and section 37(1)(aa) which exempts information relating to communications with the heir and second in line to the Throne. TNA also cited section 40(2) and section 41 regarding the withheld information.
2. The Commissioner's decision is that TNA was correct in withholding the information on the basis of the exemptions at section 37(1)(a) and 37(1)(aa). However, TNA breached section 10(1) of the FOIA by not responding within the statutory timeframe.
3. The Commissioner does not require any further steps to be taken.

**Request and response**

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4. On 10 February 2020 the complainant made the following request for information under the FOIA –

*"I would like to request access to the contents of 'closed' file PREM 16/1840 'Prime Minister's Office: Correspondence and Papers 1974 – 1979' via the Freedom of Information Act and the Environmental Information Regulations.*

*In the interests of clarity I would be grateful if you could provide the information in isolation rather than adding it to the contents of a pre-existing file. If you are minded to add the material to a pre existing file can you please identify the newly released materials you are adding."*

5. TNA wrote to the complainant on 9 March 2020 to say that it intended to use the extra time allowed it to consult with other government departments and would comply with his request by 23 March 2020.
6. On 26 March 2020 TNA refused to provide the requested information, citing sections 37(1)(a) - communications with or on behalf of the sovereign and 37(1)(aa) – communications with the heir to the throne, section 40(2) – personal information, and section 41(1) – information provided in confidence.
7. The refusal notice did not mention the EIR, though it was later acknowledged by TNA that the original request had asked for the information to be considered under both the FOIA and the EIR.
8. The complainant made a request for a review on 27 March 2020.
9. TNA provided an internal review on 19 May 2020 in which it maintained its original position and accepted that the question of environmental information had not been addressed in the refusal notice. TNA confirmed that the information held in the requested file was not environmental. The review also acknowledged that TNA had exceeded the statutory timeframe when it sent the refusal notice.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 26 May 2020 to complain about the way his request for information had been handled.
11. The Commissioner considers that the scope of this case concerns TNA's application of section 37(1)(a), 37(1)(aa), section 41 and section 40(2) to the file PREM 16/1840. As the complainant stresses that there may be environmental information, she intends to look at whether any of the

information could fall under the EIRs. She will also consider any procedural breaches that may have occurred.

## Reasons for decision

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### Regulation 2(1) - Is the requested information environmental?

12. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR.
13. The Commissioner has published guidance on regulation 2(1). The Commissioner's guidance states that the test that should be applied by public authorities is whether the information is on, or about, something falling within the definitions in regulations 2(1)(a) – (f), and not whether the information directly mentions the environment or any environmental matter.
14. Regulation 2(1) of the EIR defines environmental information as information on:
  - "(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
  - (b) factors such as substances, energy, noise, radiation or waste...emissions...and other releases into the environment, likely to affect the elements referred to in (a);*
  - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements..."*
15. The complainant's view is that, given Prince Charles's activities and interests during the relevant period, he thinks it highly likely that the file contains environmental information. He argues that pre-existing documentation in TNA shows that the Prince began corresponding with the government on environmental matters in the late 1960s. The complainant stresses that TNA chose to ignore the environmental aspects of his request when it handled the original request.

16. TNA's view is that the contents of the file are not environmental in nature according to the criteria listed in paragraph 11 above. This was confirmed to the complainant in the internal review response, though it had not been in its refusal notice. TNA also confirmed its view in the response it sent to the Commissioner.
17. The Commissioner is unable to comment on what is actually contained in the files. However, having seen the information she can confirm that the information in both closed files is not environmental within the definition of regulation 2. It is information which is too far removed from activities which would affect or be likely to affect the elements or factors and measures referred to in regulations 2(1)(a), 2(1)(b) or 2(1)(c).

### **Section 37 – Communications with Her Majesty and the awarding of honours**

18. The exemption at section 37(1)(a) FOIA (as amended by the Constitutional Reform and Governance Act 2010) states that:

*"Information is exempt information if it relates to communications with the Sovereign."*

19. Section 37(1)(aa) exempts information relating to communications with the Heir and second in line to the Throne.
20. All of the provisions of section 37 were qualified prior to 19 January 2011. This meant that all the provisions were previously subject to the public interest test. However, the Constitutional Reform and Governance Act 2010 amended section 37 to make the following categories of information subject to an absolute exemption:
  - information relating to communications with the sovereign [section 37(1)(a)]; and
  - information relating to communications with the heir to the Throne or second in line to the Throne [section 37(1)(ab)].<sup>1</sup>

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1194/communications\\_with\\_her\\_majesty\\_and\\_the\\_awarding\\_of\\_honours.pdf](https://ico.org.uk/media/for-organisations/documents/1194/communications_with_her_majesty_and_the_awarding_of_honours.pdf)

21. This means that where the exemption is engaged there is no public interest test to be considered. The withheld information simply has to fit the exemption.
22. The Commissioner has had sight of the withheld information and she is satisfied that some of it relates to communications with the Queen whilst the majority of it relates to communications with the Prince of Wales. This includes communications with the Queen's representatives. The information does not have to be sensitive.
23. The Commissioner's guidance states that the term 'relates to' should be interpreted broadly. In practice this means that the scope of the exemption will cover more than just the actual communications themselves; it will also apply to information that refers to, or is derived from those communications.
24. Central government departments, and to a lesser extent, other public authorities, are likely to hold a range of information falling within the scope of these exemptions, such as:
  - communications between the Sovereign and government ministers;
  - correspondence with members of the Royal Family in respect of royal visits or other public engagements;
  - records of audiences (private meetings) with members of the Royal Family;
  - material that has been shown, or will be shown, to the sovereign for approval;
  - copies of speeches given by members of the Royal Family; or
  - copies of messages exchanged between members of the Royal Family.<sup>2</sup>
25. The exemptions also cover communications made or received by a person (or organisation) who was acting on behalf of the sovereign, or

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<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1194/communications\\_with\\_her\\_majesty\\_and\\_the\\_awarding\\_of\\_honours.pdf](https://ico.org.uk/media/for-organisations/documents/1194/communications_with_her_majesty_and_the_awarding_of_honours.pdf)

heir. It includes information that is intended for communication regardless of whether the communications were sent or received or the meetings ever took place. *Brown vs ICO and the Attorney General (EA/2011/0002, 26 August 2011)* concerned a request that had been made to the Attorney General for information about the handling of Royal Wills. The Attorney General refused his request under section 37(1)(a). In his appeal to the Tribunal, the appellant argued that section 37 was not engaged because a will is not a form of communication. However, the Tribunal dismissed the Appeal and ruled that the information was covered by the exemption because it derived from communications with the Queen and that a 'broad interpretation should be afforded to the phrase or concept "relates to"<sup>3</sup> in this exemption.

26. TNA has provided its arguments to the Commissioner that the requested information is exempt from release because it relates to communications with the Queen and communications with the Heir to the Throne. It consulted with the relevant stakeholder, the Cabinet Office, which agreed that the information should be withheld under the stated exemptions. TNA directed the Commissioner to her previous decision notices FS50445018 and FS50546458 where she had agreed that similar material should be withheld.
27. However, the complainant's view is that the age of the material and the fact that TNA regularly releases material about living individuals, including the Prince of Wales, into the public domain means that this file should be released.
28. The Commissioner is satisfied that TNA is entitled to withhold the information held in PREM 16/1840 on the basis of the exemption at section 37(1)(a) as some of the information relates to communications with the Sovereign and section 37(1)(aa) as the majority of the information relates to communications with the Heir to the Throne. The Commissioner accepts that both exemptions are engaged. As section 37(1)(a) and 37(1)(aa) are absolute, there is no further consideration to be made and no public interest to consider.
29. For the above reason, the Commissioner has not gone on to look at either sections 41 or 40(2) which were also cited in relation to the withheld information.

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<sup>3</sup> Paragraph 44.

## **Section 10 – time for compliance**

30. Section 10(1) of the FOIA provides that a public authority must comply with its obligations under section 1(1) within twenty working days of the request being received.
31. The complainant made his request on 10 February 2020. TNA responded on 26 March 2020. Even allowing for the extra time for compliance provided under section 4(2) of the Freedom of Information (Time for Compliance with Request) Regulations 2004, TNA breached section 10(1) of the FOIA.

## Right of appeal

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32. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**