

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 January 2014

Public Authority: Department for Culture, Media and Sport
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant requested information relating to meetings and communications between the public authority and The Duchy of Cornwall Estate. The public authority claimed that it did not hold information within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority does not hold the information requested. He however finds the public authority in breach of section 10(1) FOIA for failing to respond to the request within 20 working days.
3. No steps required.

Request and response

4. On 21 January 2013, the complainant wrote to the public authority and requested information in the following terms:

'.....I am only interested in information which relates to the period 21 January 2012 to the current day.

1....During the aforementioned period has any member of the Ministerial team (past or present) exchanged written communications and or correspondence with The Duchy of Cornwall estate. If the answer to the above question is yes can you please supply copies of all correspondence and communications (including emails). Please do include all Ministerial correspondence and communications with any representative and or employee of the estate and any legal representative. These correspondence and communications will include

but will not be limited to correspondence and communications about the issue of Prince's consent.

2...During the aforementioned period has any member of the Ministerial team met with any employee and or representative and or legal representative of the Duchy of Cornwall estate. I am only interested in meetings which were about business related to the Duchy of Cornwall. In the case of each meeting can you please provide a list of all those present including the relevant Minister(s), any civil servants and special advisers and of course anyone representing the Duchy of Cornwall. Can you also include details of the time and date of any meeting? Can you also indicate the subjects under discussion?

3...Can you please provide copies of all written documents held by the Minister's Office (including emails) which in any way relates to these meetings and the subjects under discussion. Some of this information could have been generated prior to the meeting taking place. Some of it could have been generated afterwards.'

5. On 7 May 2013 the public authority responded. It confirmed that it held some information within the scope of the request. It however claimed that the information was exempt from disclosure on the basis of section 37(1)(a) FOIA.
6. On 7 May 2013 the complainant requested an internal review challenging the application of the exemption at section 37(1)(a) to the information supposedly held within the scope of his request.
7. On 14 October 2013 the public authority wrote to the complainant with details of the outcome of the internal review. It explained that the information originally thought to be within the scope of the request was actually not in scope because it does not relate to The Duchy of Cornwall estate. It claimed that it did not hold any information within the scope of the request.

Scope of the case

8. The complainant contacted the Commissioner on 9 July 2013¹ (while he was waiting for the public authority to complete its internal review) to complain about the way his request for information had been handled.
9. Following the internal review, the complainant complained about the length of time it had taken the public authority to respond to his request in addition to the public authority's claim that it did not hold any information relevant to the request.
10. Therefore, the scope of the investigation was to consider;
 - i. Whether the public authority was correct to say it did not hold any information within the scope of the request, and
 - ii. The timeliness of the public authority's responses to the request.

Reasons for decision

Section 1 FOIA – general right of access to information held

11. A public authority is required by virtue of section 1(1)(a) FOIA to inform any person making a request whether it holds information of the description specified in the request.
12. The public authority informed the Commissioner that there had been no meetings between any member of the Ministerial team and any employee and/or representative and/or legal representative of The Duchy of Cornwall estate in connection with business related to The Duchy of Cornwall during the relevant period. Private offices had checked their records and confirmed this. The public authority also checked emails and networked information but did not find records of any relevant meetings or correspondence within the scope of the request. The search terms were limited to *The Duchy of Cornwall estate* because the request did not specify individuals, other than representatives/employees/legal representatives. Communications with

¹ The complaint regarding the public authority's response was however not accepted for investigation until 9 September 2013 because the Commissioner's staff were in contact with the public authority to try and get the authority to complete its internal review.

The Prince of Wales were also checked in case any relevant information had been wrongly recorded.

13. The public authority also searched its *Correspondence Management System* which holds records of all correspondence in and out of the public authority but did not find any relevant information other than the piece of correspondence which it had mistakenly thought was in scope. The search was conducted using criteria that matched that of the request. Namely, under *organisation*, *Duchy/Cornwall/Royal* was searched, and under *applicant*, *Duchy/Cornwall/Prince/Wales* was searched.
14. In determining whether information is held, the Commissioner applies the normal civil standard of proof – i.e. he will decide on the balance of probabilities whether the information is held. Clearly, the explanations offered as to why the information is not held would be crucial to the Commissioner's decision.
15. The Commissioner is satisfied with the public authority's explanations and has found no reason to question them. He is also satisfied with the rigour and adequacy of the searches conducted for the information requested.
16. The Commissioner therefore finds that, on the balance of probabilities, the public authority does not hold the information requested.

Procedural breaches

17. A public authority is required by virtue of section 10(1) FOIA to respond to a request within 20 working days.
18. The Commissioner finds the public authority in breach of section 10(1) for responding to the request on 7 May 2013, well over the statutory time limit.

Other Matters

19. The FOIA does not stipulate a time limit for public authorities to issue internal reviews. However, as a matter of good practice, the Commissioner considers that a public authority should take no more than 20 working days to issue an internal review and in exceptional circumstances, 40 working days.
20. The Commissioner therefore wishes to record his concern that it took the public authority well over 40 working days to issue the outcome of its internal review to the complainant, and this only after the Commissioner's intervention. He expects the public authority to

complete internal reviews of responses to requests for information more promptly in future.

Right of appeal

21. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
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SK9 5AF