

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

**Date:** 25 November 2015

**Public Authority:** Department for Communities and Local Government ('DCLG')

**Address:** 2 Marsham Street  
London  
SW1P 4DF

**Decision (including any steps ordered)**

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1. The complainant has requested information regarding advocacy letters and correspondence to and from HRH the Prince of Wales regarding environmental and planning matters. The Commissioner's decision is that, on the balance of probabilities, DCLG does not hold the requested information. He does not require any steps to be taken to ensure compliance with the legislation.

**Request and response**

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2. On 17 May 2015 , the complainant wrote to DCLG and requested information in the following terms:  
  
"I wish to obtain the following information regarding advocacy letters and correspondence to and from HRH the Prince of Wales regarding environmental and planning matters, including call in applications etc. from 2005 onwards, not including the ones already disclosed in the Evans case.  
  
1. What are the texts of any "advocacy" letters and correspondence from HRH Prince of Wales regarding environmental and planning matters, including call in applications etc. from 2005 onwards, not including the ones already disclosed in the Evans case?"

2. What are the texts of any departmental replies to any "advocacy" letters and correspondence from HRH Prince of Wales regarding environmental and planning matters, including call in applications etc. from 2005 onwards, not including the ones already disclosed in the Evans case?
3. Are the letters and/or replies retained in a separate complete file, or retained in files pertaining to each separate subject matter?"
3. DCLG responded on 16 June 2015. It provided a link to correspondence dating from 2007 and 2008 between HRH the Prince of Wales and Caroline Flint and Yvette Cooper, who were at those times Ministers in the DCLG, published by the Cabinet Office and DCLG<sup>1</sup>. It refused to confirm or deny whether any further information within the terms of the request exists citing regulation 13(5)(a) of the EIR.
4. The complainant requested an internal review on 17 June 2015.
5. DCLG provided its internal review response on 14 July 2015 in which it maintained its original position.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 19 July 2015 to complain about the way his request for information had been handled. He did not accept that regulation 13(5)(a) would apply in this case.
7. During the investigation, the Commissioner provided the council with his initial view that to neither confirm nor deny the existence of the requested information is untenable in this case. He pointed out that, in the Evans case the departments initially applied neither confirm nor deny to the requests but the Commissioner said that was untenable in the circumstances, given what was already in the public domain about HRH the Prince of Wales writing to Ministers on topics of interest to him, and that led to revised responses being issued. The Commissioner said that, given the similarities, he will need cogent arguments from DCLG as to why regulation 13(5)(a) applies.
8. DCLG then issued a revised response to the complainant on 12 October 2015 stating that having given the matter further consideration, it does

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<sup>1</sup> <https://www.gov.uk/government/publications/prince-of-wales-correspondence-with-ministers-at-the-department-for-communities-and-local-government>

not hold any information falling within the terms of the request other than the published correspondence referred to in its original response.

9. On 13 October 2015, the complainant wrote to the Commissioner requesting that the matter proceeds to a decision notice as he is highly sceptical of DCLG's revised response.
10. The Commissioner has therefore considered whether, on the balance of probabilities, DCLG holds further information within the scope of the request.

## **Reasons for decision**

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### **Regulation 5 – Duty to make environmental information available on request**

11. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of request.
12. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
13. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by DCLG, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. He asked DCLG to bear in mind that the scope of the request dates from 2005 to 2015.
14. DCLG explained that there is no single team or policy area in the department that would deal with correspondence from members of the Royal Family. Therefore, when considering requests for such information, it is not a case of searching the records of a particular area.

15. It said that searches of case records of previous requests for information considered under the FOIA or EIR were carried out and explained that this was because it has received a number of requests since 2005 about correspondence with HRH the Prince of Wales and that the scope of some of those requests matched that of the one in this case. It said that it was possible to check those case records dating back to 2005 and be sufficiently sure from those searches that it did not hold any potentially relevant information beyond those letters which had been published and have been referred to in its responses to the complainant.
16. In addition to referring to previous requests, DCLG said that to be doubly sure it also carried out the following searches in this case:
  - Electronic searches of its formal correspondence database. It explained that a copy of any letter from the HRH the Prince of Wales, and any reply, would have been captured in this database and retrieved from it if still held and that any formal letter from HRH the Prince of Wales, such as that requested, would need to be treated formally and managed as such through its formal correspondence procedures.
  - Searches of individual Ministers' private offices and business areas dealing with planning matters. It explained that any relevant information would have only been retained by a Minister's private office if there was no relevant business area (such as planning) for it to be retained by.
  - The negative result of its searches was also checked with the Royal Household and no relevant information was identified that DCLG should be holding.
17. DCLG said that all these conclusions make it extremely unlikely that any relevant information could be held but it commissioned a further check by the Departmental Records Officer of registered files on its official records catalogue. It explained that this identified just one vaguely relevant file title but, on examination, this was found to not to contain any relevant information.
18. The search terms used by DCLG were "Prince Charles", "HRH", "Prince of Wales" and "Duke of Cornwall". It said that by adopting these terms, which would be likely to identify any correspondence from HRH the Prince of Wales and any reply, it was possible to cast the net wider than just environmental and planning matters, thus ensuring that any possibly relevant correspondence would not be missed as a result of search terms perhaps being too narrow

19. In relation to the Commissioner's enquiry as to whether the information, if held, would be held as manual or electronic records, DCLG explained that to assist with the management (including searching) of its documentation, wherever possible all paper records are scanned and held on the same electronic system as those records which are received electronically which enables a thorough search regardless as to whether documentation was originally received in hard copy form or electronically. It said that this would certainly be the case for any correspondence from HRH the Prince of Wales and replies of the nature sought by this request.
20. With regards to the Commissioner's enquiry as to whether any recorded information was ever held relevant to the scope of the complainant's request but deleted or destroyed and whether copies of information may have been made and held in other locations, DCLG said that there is no evidence or reason to think, in all of the circumstances, that may have been the case and said that if documentation was held in more than one location, each location would have come up in searches.
21. The Commissioner also asked DCLG to explain whether the searches included information held locally on personal computers used by key officials (including laptop computers) and information held in personal email accounts. DCLG said that the searches did not include the drives of personal computers held locally by individuals or their personal email accounts. It explained that these are not recognised or used as a record storage system and that it is not departmental protocol to have correspondence from HRH the Prince of Wales, together with any responses, managed through an individual's email account rather than logged through the correspondence database. It said that all staff laptops are linked to shared drives and that any formal correspondence, as in this case, would have been held, as part of networked resources, in the part of the official departmental record keeping system relevant to the business area in question. It also said that it is the responsibility of staff to ensure that any emails, with any correspondence attached, relating to business activity are saved on the relevant divisional approved file plan within that system and not kept within mailboxes.
22. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any business need or legal requirement for DCLG to hold the information. It said that there is no statutory requirement for royal correspondence per se to be held and explained that retention would be related to current business needs. It said that if there were no business needs, correspondence would not have been retained.
23. The Commissioner also considered whether DCLG had any reason or motive to conceal the requested information. He has not seen any

evidence of this and therefore he has not identified any reason or motive to conceal the requested information.

24. In the circumstances, given the searches and explanations provided by DCLG, the Commissioner does not consider that there is any evidence that would justify refusing to accept DCLG's position that no further information, other than that already published and referred to in its initial response to the complainant, is held. He acknowledges that DCLG did not search the drives of personal computers held locally by individuals or their personal email accounts but accepts that its protocol dictates that information of the type requested will be held on networked resources which were searched in this case. The Commissioner appreciates that given what is already in the public domain regarding the HRH the Prince of Wales writing to Ministers on topics of interest to him, the complainant may remain sceptical that no further information exists. However, given that HRH the Prince of Wales appears to be interested in a variety of topics including those outside of DCLG's remit, it doesn't necessarily follow that further information must be held specifically by DCLG and no evidence has been brought to the Commissioner's attention that would demonstrate the existence of further recorded information. The Commissioner is therefore satisfied that, on the balance of probabilities, further information is not held by DCLG. Accordingly, he does not consider that there was any evidence of a breach of regulation 5 in relation to such information.

## Right of appeal

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25. 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:

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

26. 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.
27. 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 .....**

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