

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

Date: 17 January 2019

Public Authority: Department for Environment Food and Rural Affairs

Address: Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested any correspondence between the Prince of Wales and the Secretary of State on the subject of hunting, going back to the beginning of 2017. The Department for Environment Food and Rural Affairs (Defra) refused the request under regulation 12(4)(a) of the EIR on the basis that it did not hold any environmental information and refused to confirm or deny it held any non-environmental information under section 37(2) of the FOIA, which provides that a public authority is not obliged to confirm whether it holds information which constitutes a communication with the heir to the Throne.
2. The Commissioner's decision is that Defra does not hold any environmental information and therefore is entitled to refuse the request under regulation 12(4)(a) of the EIR. Defra is also entitled to refuse to confirm or deny whether it holds any non-environmental information under section 37(2).
3. The Commissioner does not require the public authority to take any further action in this matter.

Request and response

4. On 12 February 2018 the complainant requested information of the following description:

"Please note that I am only interested in information generated between 1 January 2017 and the present day.

Please note that the reference to the Prince of Wales should include the Prince himself and or his private office.

Please note that the reference to the Secretary of State should include the Secretary of State and or his/her private office.

1...During the aforementioned period did The Prince write to the Secretary of State about any of the following issues.

a...Hunting as both a past time and a traditional country pursuit.

b...The importance of hunting to the economy and countryside.

c...Hunting as a form of pest control.

d...The popularity of and importance of hunting to rural communities.

e...The current ban on hunting introduced by the Blair Government.

f...The activities of those opposed to hunting.

g.. Proposals to over turn the ban by measures including but not limited to a free vote in Parliament.

2...If the answer to the above question is yes can you please provide copies of this correspondence and communication including emails.

3...During the aforementioned period did the Secretary of State reply to the Prince of Wales about any of the aforementioned issues.

4...If the answer to question three is yes can you please provide copies of the correspondence and communication including emails.

5...If any relevant correspondence and communication has subsequently been destroyed can you please provide the following details. In the case of each piece of correspondence and communication can you please identify the sender, the recipient and the date it was sent. In the case of each destroyed piece of correspondence and communication can you please state when it was destroyed. In the case of each piece of destroyed correspondence and communication can you please provide details of its contents. If the destroyed document continues to be held in another form can you please provide copies."

5. On 2 May 2018 Defra responded. It explained that Defra had dealt with the request under both the EIR and the FOIA. Defra refused to disclose any environmental information captured by the request under regulation 12(4)(a), on the basis that the information was not held.
6. It also refused to confirm whether Defra held any non-environmental information captured by the request under regulation 37(2) on the basis that, if the information existed, it would exempt information under section 37(1)(aa) – communications with the heir to the throne.
7. The complainant requested an internal review on or around 10 May 2018. Defra sent him the outcome of the internal review on 6 August 2018. Defra upheld its original position.

Scope of the case

8. The complainant originally contacted the Commissioner on the 17 April 2018 to complain that he had not received a response to his request. It was only after Defra eventually provided a response and, then at the request of the complainant, carried out a review of that response, that the complaint became eligible for investigation.
9. The Commissioner considers there are two matters to be decided. The first is whether Defra holds any environmental information relevant to the request and therefore whether Defra can rely on regulation 12(4)(a). The second is whether Defra is entitled to rely on section 37(2) to refuse to confirm or deny whether it holds any non – environmental information.

Reasons for decision

Regulation 12(4)(a) of the EIR – information not held

10. Regulation 12(4)(a) of the EIR provides that a public authority may refuse a request to the extent that it does hold the information at the time the applicant made his request.
11. Where there is some dispute over the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of proof. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

12. The complainant has not provided any specific grounds for thinking that the Prince of Wales did correspond with Defra on the subject of hunting during the period specified in the request. It appears his contention is simply that, since the Prince of Wales is known to have an interest in hunting, the complainant believes it likely that he would have corresponded with Defra on this subject.
13. In order to determine this case the Commissioner has considered the thoroughness of the searches carried out by Defra when trying to identify any information captured by the request.
14. Defra has informed the Commissioner that searches were carried out by both the policy team responsible for hunting issues, i.e. the Hunting Act Team, and the Secretary of State's Office. These searches were repeated at the internal review stage. It explained that the Private Office does not formally hold records, but that the shared mail boxes and personal mail boxes of the Private Secretaries were searched. The Hunting Act Team searched its shared drives, team sites, shared email accounts and personal email accounts for any relevant correspondence.
15. Defra advised the Commissioner that it uses an electronic case management system and any hard copies of letters are scanned on to the system before being disposed of. Therefore if the Prince of Wales had corresponded on the subject of hunting the information would most likely be held as an electronic record. However for completeness, Defra also searched what it has referred to as its 'registered files' to check that no paper records of correspondence were held.
16. The electronic records were searched using the terms, PoW, Prince Charles, Prince of Wales, Charles Windsor, HRH, Duke, Duchy of Cornwall and Royal.
17. During the Commissioner's investigation the search was extended to the Ministerial Correspondence Unit and these search terms were applied to their electronic records too.
18. None of these searches identified any environmental information that was relevant to the request.
19. The Commissioner asked Defra whether any correspondence received within the time frame specified in the request could have been deleted or destroyed. In response Defra said that it was not aware of any relevant information being deleted. In accordance with its records management policy all Minister's correspondence is filed on the relevant team site. Normally the retention of records is reviewed after three years, however as the information in question would, if held, be correspondence with the Prince of Wales, it would be retained for archiving. Therefore Defra would not expect that any correspondence

with the Prince of Wales to have been deleted, nor does it have any record of such records being deleted.

20. The Commissioner is satisfied that the searches which Defra has carried out are thorough. It has searched the relevant business areas, using appropriate terms. The information that had been requested goes back just over a year from when the request was made. It was therefore a request for the most recent information and one would expect such information to be the easiest to locate if it had been held. In light of this the Commissioner finds that, on the balance of probabilities, Defra does not hold any environmental information captured by the request. The exception provided by regulation 12(4)(a) is engaged.
21. All the exceptions provided by regulation 12 are subject to the public interest test and this includes regulation 12(4)(a). The public interest provides that a request can only be refused under an exception where, in all the circumstances of the case, the public interest in favour of maintaining the exception outweighs the public interest in disclosure. However the Commissioner recognises that where a public authority has refused a request on the basis that the information is not held, it is not possible to consider the public interest in its disclosure. The Commissioner is therefore satisfied that Defra is entitled to rely on regulation 12(4)(a) to refuse the request to the extent that it relates to environmental information. Defra is not required to take any further action under the EIR.

Section 37(2) – Communications with the Royal Household

22. Section 37(1)(aa) of FOIA (as amended by the Constitutional Reform and Governance Act 2010) states that information is exempt information if it relates to communications with the heir to, or the person who is for the time being second in line of succession to, the Throne.
23. Section 37(2) states that the duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).
24. In other words information is exempt if constitutes correspondence with the heir to the throne, i.e. the Prince of Wales, and a public authority is not required to confirm or deny whether it holds such information.
25. The request clearly targets communications with the heir to the throne. It follows that Defra is entitled to refuse to confirm or deny whether it holds any non-environmental information relevant to the request.
26. The exemption provided by section 37(2) is engaged. The Commissioner does not require Defra to take any further action under the FOIA.

Other matters

27. Although the complainant has not raised the timeliness of Defra's responses to his request as an issue he was concerned about, the Commissioner considers it appropriate to remind Defra that upon receipt of a request it is obliged under both the EIR and the FOIA to respond within twenty working days. Although the period for responding can be extended under the EIR where a request is particularly complex or voluminous, this does not appear a relevant factor in this case. Therefore Defra was obliged to provide a response to the request by 12 March 2018. It did not respond until 2 May 2018, which clearly far exceeds the statutory deadlines.

Right of appeal

28. 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@hmcts.gsi.gov.uk

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

29. 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.

30. 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

Rob Mehan
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF