

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

Decision notice

Date: 1 February 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 information on a meeting that the complainant considered had taken place between The Prince of Wales and Michael Gove MP.
2. 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 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.
3. 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).

Request and response

4. On 22 March 2018 the complainant wrote to the Department for Environment Food and Rural Affairs (Defra) and requested information in the following terms:

"I note that The Prince is not exempt from The Environmental Information Regulations and I understand the request will take 20 working days to process.

Please note that my reference The Prince of Wales in the questions below should include the Prince himself and or his private office.

Please note that my reference to the Rt Hon. Michael Gove should include the Secretary of State and or his private office.

My requests concerns the meeting between The Prince of Wales and Mr Gove which according to The Court Circular took place at Clarence House on 15 September 2017.

Could I please request the following information.

1... Could you identify any departmental representatives and employees who accompanied Michael Gove to the meeting.

2... Could you please identify anyone else who was present at the meeting including representatives and employees of The Prince of Wales.

3... Could you please detail what topics and issues were discussed at the meeting.

4... Can you please provide copies of any briefing notes which were prepared for Michael Gove and or any other departmental staff/representatives prior to the meeting taking place.

5... Prior to the meeting taking place did Michael Gove write to the Prince about the meeting and the specific issues to be discussed at the meeting. If the answer is yes, can you please provide copies of this correspondence and communication including any emails.

6... Prior to the meeting taking place did The Prince of Wales write to Mr Gove about the meeting and the specific issues to be discussed at the meeting. If the answer is yes can you please provide copies of this correspondence and communication including emails.

7... During the course of the meeting did The Prince of Wales ask Mr Gove for any help or assistance with a particular issue or policy or raise a particular issue of concern to him. If the answer is yes can you please provide details. Can you please provide copies of any written requests and or similar handed over by The Prince and or his staff at the meeting.

8... Following the meeting did The Prince of Wales and Michael Gove exchange correspondence and communications with each other about the meeting and or the discussions which took place at the meeting. If the answer is yes can you please provide copies of this correspondence and communication including emails. Please note that I am interested in receiving both sides of the correspondence and communication."

5. Defra responded on 23 April 2018 stating that the information within the scope of the request that would be environmental was not held so was refused under regulation 12(4)(a). For any information that was not environmental and within the scope of the request Defra refused to either confirm or deny if this was held by virtue of the exclusion at section 37(1)(aa) of the FOIA.
6. The complainant asked for an internal review of this decision on 23 April 2018 and an internal review response was sent on 1 August 2018 upholding Defra's position.

Scope of the case

7. The Commissioner considers there are two matters to be considered. 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(1)(aa) and the provision at section 37(2) to refuse to confirm or deny whether it holds any non-environmental information.

Reasons for decision

Regulation 12(4)(a)

8. 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.
9. 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).

10. In his request the complainant referred to a meeting he was aware of taking place between The Prince of Wales and Michael Gove on 15 September 2017. He stated that this meeting had been cited in The Court Circular. The Commissioner therefore accepts there were grounds for assuming that Defra may hold information regarding this meeting. However, there was no indication as to the subject matter of this meeting (if it occurred) and whilst it is well known that the Prince of Wales has an interest in environmental matters it cannot be assumed this would be the subject matter of any meeting that took place.
11. However, the Commissioner has considered the thoroughness of the searches carried out by Defra when trying to identify any information captured by the request.
12. Defra explained it had searched both paper records and electronic records for information on the meeting that might be environmental in nature. Defra has previously explained to the Commissioner that the most effective search is of staff's mail boxes and it confirmed that all staff who might have held relevant information searched their mailboxes. The Commissioner is aware that Defra uses an electronic case management system where hard copies of letters are scanned to before the letters are disposed of. Therefore if any environmental information relating to this meeting was held it would be in electronic format but for completeness Defra also searched its paper records to ensure no correspondence was held.
13. None of these searches identified any environmental information that was relevant to the request.
14. The Commissioner is satisfied that the searches which Defra has carried out were sufficient in the circumstances. It has searched the relevant business areas and relevant staff for information on the meeting. The information that had been requested goes back roughly six months 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.
15. 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 are not required to take any further action under the EIR.

Section 37(2) – Communications with the Royal Household

16. 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.
17. 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).
18. 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.
19. 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.
20. The exemption provided by section 37(2) is engaged. The Commissioner does not require Defra to take any further action under the FOIA.

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: 0870 739 5836

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

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF