

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

Date: 11 May 2022

Public Authority: Greater London Authority
Address: City Hall
Kamal Chunchie Way
London
E16 1ZE

Decision (including any steps ordered)

1. The complainant made a multi-part request for information relating to meetings between the Mayor of London and the Prince of Wales between 1 January 2010 and 1 January 2012.
2. The Greater London Authority (GLA) provided details of some relevant information and confirmed it did not hold any further information within the scope of the request.
3. The Commissioner's decision is that the GLA has conducted reasonable searches for the requested information which would have located further information if it was held. He has therefore concluded that, on the balance of probabilities, the GLA does not hold any further information in the scope of the request.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 19 August 2020, the complainant wrote to the GLA making a multi-part request for information under both FOIA and the EIR. The request related to information generated between 1 January 2010 and 1 January 2012 and requested information in the following terms:

- “1. During the aforementioned period did the Mayor and the Prince of Wales meet in person to discuss issues of interest to both men.
2. If the answer is yes can you please provide basic details of the meetings including date, time and venue. In the case of each meeting can you provide a full list of those present.
3. In the case of each meeting can you highlight those occasions when the environment or environmental matters (as defined by the EIRs) were discussed. In the case of each meeting can you identify the environmental issues discussed.
4. In the case of each meeting when the environment or environmental matters (as defined by the EIRs) were discussed can you please provide copies of any briefing notes or similar prepared for Boris Johnson in advance of the meeting. In the case of each meeting when the environment or environmental matters (as defined by the EIRs) were discussed can you provide copies of any documents handed over by the Prince to the Mayor at the meeting. In the case of each meeting when the environment or environmental matters (as defined by the EIRs) were discussed can you provide copies of any formal or informal agenda prepared in advance of the meeting. Please feel free to redact any information from the documents which does not relate to the environment or environmental matters as defined by the EIRs.
5. During the aforementioned period did the two men discuss via telephone the environment or environmental matters (as defined by the EIRs). If the answer is yes can you please provide the date and time of any conversation (s). In the case of each conversation can you provide either a sound recording of the conversation or a written transcript. Please redact from the recording or the transcript any topics of conversation which do not relate to the environment or environmental matters as defined by the EIRs.
6. If documentation relevant to any of the points identified as 1 to 5 has been destroyed can you please provide the following details. In the case of each piece of destroyed documentation can you state when it was destroyed and why. In the case of each destroyed piece of documentation can you please provide a brief outline of its contents. If destroyed documentation continues to be held in another form. Can you please provide copies of that documentation.”
6. The GLA responded on 6 October 2020. It directed the complainant to relevant information on its website and confirmed that it did not hold any further information within the scope of the request.

7. The GLA provided an internal review on 27 May 2021. It maintained its original position, clarifying that, to the extent that any information within the scope of the request relates to environmental information, it considers regulation 12(4)(a) of the EIR applies.

Scope of the case

8. Following earlier correspondence, the complainant contacted the Commissioner on 28 May 2021 to complain about the way his request for information had been handled.
9. As is his practice, the Commissioner wrote to the complainant at the start of his investigation, setting out his understanding of the complaint and the scope of his investigation.
10. The Commissioner acknowledged that the complainant is unhappy with the time taken to process the internal review request – he considers it constitutes an unacceptable delay, even allowing for the pandemic.
11. The Commissioner also recognised that the complainant does not accept that a public body would not keep a record of its contacts and communications with the Prince of Wales. The complainant believes it is highly likely that the GLA will either hold documentation relevant to the request or will hold information relating to the destruction of that documentation.
12. The GLA's position in this case is that it has provided the recorded information that it holds and has explained to the complainant why it does not hold any further information within the scope of his request. It also confirmed that it has considered the request under both FOIA and the EIR.
13. The Commissioner told the complainant that he has previously issued a decision notice about a similar request for information to the GLA, case reference IC-71239-F4G5. The Commissioner's decision in that case was that, on the balance of probabilities, the GLA does not hold any information in the scope of the request.
14. He told the complainant that he considered that similar arguments have been put forward by the GLA in this case and that any decision notice in this case would be likely to conclude that the GLA does not hold further information within the scope of the request.
15. The complainant responded, confirming that he would like the case to be concluded formally by way of a decision notice. He told the Commissioner:

"I think on the balance of possibilities information will be and is held".

16. The analysis below considers whether, on the balance of probabilities, the GLA holds further information within the scope of the request.

Reasons for decision

17. The requested information in this case relates to meetings when the environment or environmental matters (as defined by the EIRs) were discussed.

Regulation 5(1): duty to make information available

Regulation 12(4)(a) – information not held at the time of the request

18. Regulation 5(1) of the EIR states that, subject to other provisions, a public authority holding environmental information shall make it available on request. Regulation 12(4)(a) provides an exception from the duty to make information available if the authority does not hold the requested information at the time of the request.
19. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
20. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
21. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. He will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, he will consider any other information or explanation offered by the public authority which is relevant to his determination.

The GLA's view

22. The GLA acknowledged that Boris Johnson was the Mayor of London during the period covered by the request, with the current Mayor, Sadiq Khan, elected Mayor of London in May 2016.

23. The GLA told the complainant that the email and IT accounts of departing staff are deleted shortly after they have left the organisation. It confirmed that this is an established process that has been in place at the GLA for a considerable period of time and predates the 2016 Mayoral Election.
24. In the course of his investigation, the GLA acknowledged the Commissioner's decision in case reference IC-71239-F4G5, and confirmed:

"we adopted similarly thorough searches for this request, albeit focusing on different areas of the Authority as necessary"

The Commissioner's view

25. The Commissioner accepts that the complainant disputes that the GLA does not hold further information within the scope of the request.
26. The Commissioner also recognises that, in its correspondence with the complainant, the GLA has described the searches it has undertaken, explained that the email and IT accounts of departing staff are deleted and provided the complainant with details of its Records Management Policy.
27. The Commissioner is mindful of the decision reached in case reference IC-71239-F4G5. The subject matter of that request, dated 13 April 2020, was any correspondence and communication, from August 2008 to August 2009, between the then Deputy Mayor for Policing, Kit Malthouse, and HRH The Prince of Wales on the subject of the planned redevelopment of Chelsea Barracks. The Commissioner accepted that the request asked for environmental information.
28. In that case the Commissioner was satisfied that appropriate searches had been undertaken by the GLA. The Commissioner's decision in that case was that, on the balance of probabilities, the GLA does not hold any information in the scope of the request.
29. Having considered all the factors applicable to this case, the Commissioner is satisfied that the similarity between this case and IC-71239-F4G5 is such that he is able to conclude, without the need for further analysis, that, to the extent that the information comprises environmental information, the GLA does not hold further information in the scope of the request.

Section 1 general right of access

30. Section 1 of FOIA states that:

“Any person making a request for information to a public authority is entitled – (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him”.

31. In light of his decision above, and to the extent that any information within the scope of the request does not comprise environmental information, the Commissioner is also satisfied that the GLA has conducted reasonable searches in the areas most likely to hold the requested information. His decision is that, on the balance of probabilities, no further recorded information is held. He is therefore satisfied that the GLA has complied with the requirements of section 1 of FOIA in this case.
32. The decision notice in case reference IC-71239-F4G5 is attached for reference.

Right of appeal

33. 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

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

34. 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.
35. 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

Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF