

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 September 2023

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall  
London  
SW1A 2AS

### **Decision (including any steps ordered)**

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1. The complainant has requested copies of correspondence between the former Prince of Wales (now King Charles III) and the former leader of the House of Commons, Margaret Beckett, on the topic of the Prince's consent for the bill for the House of Lords Act 1999<sup>1</sup>. The Cabinet Office initially stated that the requested information was exempt under section 22 (information intended for future publication) of FOIA, and that it needed further time to consider the balance of the public interest in maintaining the exemption, however later amended its position and stated that it did not hold information within scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the Cabinet Office does not hold information within scope of the request.
3. The Commissioner does not require further steps.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1999/34/contents>

## Request and response

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4. On 29 June 2021, the complainant wrote to the Cabinet Office and requested information in the following terms:

"After careful consideration I would like to submit a request for information.

I understand this will be treated as a new request for information and will take 20 working days to process.

I would like to request the following information under The Freedom of Information Act and the Environmental Information Regulations (EIRs).

I understand my request will take 20 working days but I would be grateful if you could acknowledge receipt via [email address redacted].

My request concerns the issue of Prince's Consent for the House of Lords Reform Bill/Act 1999 which was introduced into the House of Commons by Margaret Beckett the then leader of the House of Commons on 19 January 1999.

Please note that the reference to the Prince of Wales in the questions below should include the Prince himself (irrespective of which official title he used); his Principle Private Secretary (ies), and other private secretary (ies), his legal representatives who deal with issues relating to Prince's Consent and anyone in his private office able to correspond and communicate on his behalf.

Please note that I am interested in receiving copies of actual correspondence rather than just excerpts. These copies will include the original letter head, other design features and any signatures. If you think some information should be redacted from correspondence and communications, can you redact it where it appears. I will then be able to judge the location and extent of the redactions.

Please note that the reference to written correspondence and communications will include all traditional forms of correspondence and communication including letters and faxes and all emails irrespective of whether they were sent through public or private accounts, all Gmail messages and the transcripts and or audio recordings of any relevant telephone conversations.

Please note that the reference to Margaret Beckett in the questions below should include Ms Beckett herself, her Principal Private Secretary (ies) and or anyone in her private office able to correspond on her

behalf.

- 1...Did Ms Beckett and or anyone acting on her behalf seek Prince's Consent for the House of Lords Reform Bill/Act 1999. If so when was the initial approach to the Prince of Wales and or his staff made?
- 2...Did Margaret Beckett and or anyone acting on her behalf write to and or communicate with the Prince of Wales about the issue Prince's Consent for the House of Lords Reform Bill/Act 1999? If the answer is yes, can you, please provide copies of this correspondence and communications.
- 3...Did the Prince of Wales and or anyone acting on his behalf write to Margaret Beckett about the issue of Prince's consent for the aforementioned bill. If the answer is yes, can you, please provide a copy of this correspondence and communication"
5. The Cabinet Office responded on 28 July 2021. It stated that the requested information was exempt under section 22 of FOIA (information intended for future publication) and that it needed further time to consider whether the balance of the public interest favours disclosure of the information or maintaining the exemption. The Cabinet Office wrote to the complainant in the same terms on 26 August 2021 and 24 September 2021.
6. The Cabinet Office provided its substantive response on 15 October 2021. It stated that it did not hold information within scope of the request, but did not offer an explanation for why it had previously considered information to have been held within scope of the request.
7. On 16 October 2021 the complainant requested an internal review. The complainant provided the Cabinet Office with a link to the Queen's and Prince's Consent Pamphlet (September 2018)<sup>2</sup> which details that very occasionally the Prince's consent may be required for a bill that expressly refers to the Prince of Wales or the Duchy of Cornwall. In this instance the bill for the House of Lords Act 1999 (which removed the bulk of hereditary peers from the House of Lords), expressly provided that "hereditary peerage" included the principality of Wales. The

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<sup>2</sup> This document is now titled the King's and Prince's Consent Pamphlet:

<https://www.gov.uk/government/publications/kings-or-princes-consent/kings-and-princes-consent#chapter-3-princes-consent>

See also: <https://erskinemay.parliament.uk/section/5604/prince-of-wales-consent/?highlight=%22BILLS%22#:~:text=30.81%20The%20Prince%27s%20consent%20is%20required%20for%20a,Act%20which%20does%20any%20of%20those%20things.%203>

complainant stated that the existence of this document proved that consent was provided by the Prince of Wales.

8. The complainant also stated that the Cabinet Office was the department concerned with the bill for the House of Lords Act 1999 and "it therefore follows that the Cabinet Office should hold information relevant to the request." They stated further that they understood that the Cabinet Office does not routinely destroy correspondence with the Prince of Wales and his office.
9. The complainant raised their concerns that the Cabinet Office had chosen not to offer any advice or assistance – in line with their duties at section 16 of FOIA – about how they may secure the requested information either from the Cabinet Office or from another government department. Finally, they stated that "correspondence and communications relating to Prince's Consent inevitably relate to the Prince's position as Duke of Cornwall. These communications are not exempt from disclosure either via both the FOIA or the Environmental Information Regulations."
10. The complainant wrote to the Cabinet Office on 17 October 2021 to ask that it provide an explanation as to why it had provided them with a 'not held' response when it had "previously confirmed information is held."
11. Following an internal review the Cabinet Office wrote to the complainant on 2 December 2021. It stated that it was upholding its original position. In response to the complainant's correspondence of 17 October 2021 the Cabinet Office explained that the officials handling the request had not understood what the specific reference to Prince's consent meant, which led to a misinterpretation of the scope of the request. On re-visiting the request it had determined that it did not hold any information in scope. The Cabinet Office apologised to the complainant for the error in its handling of the request.

## **Scope of the case**

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12. The complainant contacted the Commissioner on 10 December 2021 to complain about the way their request for information had been handled.
13. In their grounds of complaint the complainant explained that they had difficulty believing that the Cabinet Office did not hold information within scope of the request, on the basis that the Cabinet Office had previously confirmed that it does not destroy correspondence with the Prince of Wales. The complainant also stated that the responses they had been provided by the Cabinet Office - in terms of whether information within scope is held - were contradictory.

14. The Commissioner considers that the scope of his investigation is to determine whether, on the balance of probabilities, the Cabinet Office holds information within scope of the request.

## **Reasons for decision**

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### **Section 1(1)**

15. 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."

16. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

### **The complainant's position**

17. The complainant's position is summarised in the following points:

(1) The Cabinet Office was the sponsor of the Bill in question, therefore it must hold information relevant to that Bill.

(2) The Cabinet Office has a policy of not destroying the correspondence of the heir to the Throne, which would include the requested information.

(3) The requested information relates to the Prince of Wales' position as Duke of Cornwall, which is not exempt under FOIA or the EIR.

### **The Cabinet Office's position**

18. In a letter to the Commissioner the Cabinet Office explained that it had searched the two areas most likely to hold information: the Office of the Parliamentary Counsel ("OPC") and the Cabinet Office Public Records and Archives team ("COPRA").
19. OPC conducted a manual search of paper records relating to the Queen's and Prince's consent for the Bill, which returned six files. A member of

the team reviewed each of the files and concluded that no information was held within scope of the request. OPC acknowledged that the fact that Prince's consent was signified means there must have been formal correspondence seeking and giving Prince's consent, however it confirmed that it does not hold copies of the actual correspondence involved.

20. As the time period given in the request is 1999, the COPRA team searched its database containing a library of all the files from Tony Blair's administration to identify which paper files may hold information. The team used the terms 'PoW' ('Prince of Wales') and 'House of Lords' to search the database, however their searches did not return any files that may have held information within scope of the request.
21. For background, the Cabinet Office explained that at the point of transfer from COPRA to The National Archives ("TNA") the team undertake a selection process in which material not worthy of permanent preservation is destroyed. Often, this is routine administrative information or material where there is no discernible Prime Minister involvement. Most PREM files are selected for permanent preservation but a small number are destroyed.
22. In response to the complainant's position, the Cabinet Office confirmed that it was the sponsoring department for the House of Lords bill, which received Royal assent on 11 November 1999 as the House of Lords Act 1999. Queen's and Prince's consent was signified at the second reading of the Bill's passage through the House of Commons and is recorded in Hansard<sup>3</sup>, and at the Bill's passage through the House of Lords, also recorded in Hansard<sup>4</sup>. However, searches of relevant locations within the department have demonstrated that it does not hold information within scope of the request.
23. In response to the complainant's statement that the Cabinet Office does not destroy correspondence between the Government and the Royal Family, the Cabinet Office also stated that correspondence that is deemed worthy of permanent preservation in compliance with the Public Records Act is qualitatively different than that requested in this case. The Cabinet Office explained that the formal seeking and granting of Prince's consent to a Bill is conducted by an exchange of routine administrative correspondence between the sponsoring department and

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<sup>3</sup> <https://hansard.parliament.uk/commons/1999-02-01/debates/ca74c9f6-e09f-4c8a-b262-2763900c0f23/OrdersOfTheDay#609>

<sup>4</sup> <https://hansard.parliament.uk/Lords/1999-03-29/debates/c0baa833-04e6-445a-ae30-0454682b3cd8/HouseOfLordsBill>

the Royal Household. The Cabinet Office stated that it was unlikely that correspondence of an administrative nature would have been transferred to COPRA for permanent preservation, and that the OPC was the only other area of the Cabinet Office likely to hold information within scope of the request. The Cabinet Office explained that this would be due to its own records retention policies rather than because the information has archival value and is deemed worthy of permanent preservation. As explained at paragraph 19 above, searches within OPC had not returned information within scope of the request.

24. In response to the complainant's assertion that the information requested relates to the Prince of Wales' position as Duke of Cornwall and is therefore not exempt under FOIA or EIR, the Cabinet Office stated that neither the role of Prince of Wales or Duke of Cornwall constitutes a public authority under FOIA. Furthermore, the Cabinet Office did not consider the request to fall to be considered under the EIR and the complainant had not identified what environmental information may be contained within correspondence relating to legislation on hereditary peerage.
25. The Cabinet Office also stated that, per the Upper Tribunal decision in *The A-G for the Prince of Wales v the IC and Mr Michael Bruton* [2016]<sup>5</sup> the Duke of Cornwall's obligations to provide environmental information are limited to the information he holds as the Harbour Authority.

### **The Commissioner's position**

26. The Commissioner must reiterate that he is required to decide whether the requested information was held by the Cabinet Office at the time of the request. He is not required to determine whether the information exists, or has ever existed.
27. The Commissioner considers that the Cabinet Office has provided a detailed and persuasive account of the searches it had undertaken in order to locate information within scope of the request, and is satisfied that these searches were reasonable and proportionate.
28. The complainant has speculated that the Cabinet Office must hold information within scope on the basis that it was the sponsor department for the Bill, it has been confirmed that Queen's and Prince's consent was given for the Bill (as recorded by the pamphlet referenced

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[https://assets.publishing.service.gov.uk/media/5784f4b7ed915d622c000119/GIA\\_0158\\_2012-00.pdf](https://assets.publishing.service.gov.uk/media/5784f4b7ed915d622c000119/GIA_0158_2012-00.pdf)

at paragraph 7 above), and that correspondence with the Royal Household is typically retained by the department. The Commissioner understands the complainant's position but also considers that it is always possible that relevant information has been misplaced or misfiled.

29. Furthermore, the Cabinet Office has explained that administrative correspondence with the Royal Household is less likely to be retained for the purposes of permanent preservation in The National Archives, in comparison with correspondence sent directly from the Prince of Wales which is generally retained for this purpose.
30. The Commissioner is not persuaded that further searches would be likely to identify the requested information. He does not therefore consider it reasonable or proportionate to require the Cabinet Office to extend its searches in respect of the request.
31. Accordingly, on the balance of probabilities the Commissioner accepts that the Cabinet Office does not hold any information relevant to the request.
32. Section 16 of FOIA requires a public authority to provide advice and assistance to requesters. Public authorities are taken to have complied with section 16 if they have followed the recommendations set out in the Code of Practice (the Code) issued under section 45 of FOIA<sup>6</sup>.
33. Paragraph 2.12 of the Code recommends that:

"2.12 In most cases where a public authority does not hold the information, but thinks that another public authority does, they should respond to the applicant to inform them that the requested information is not held by them, and that it may be held by another public authority. The public authority should, as best practice where they can, provide the contact details for the public authority they believe holds the requested information."
34. In its response to the Commissioner the Cabinet Office explained that as the request relates to a Bill for which the Cabinet Office was the sponsoring department, there is nothing to suggest that any other public authority would hold the requested information. Therefore it was unable

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

to provide the complainant with advice and assistance on where they may redirect their request.

35. The Commissioner accepts the Cabinet Office's position.

### **Other matters**

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36. The Commissioner has considered the delays experienced by the complainant in obtaining an initial response to their information request, due to a misunderstanding of the reference to Prince's consent by the officers handling it and, in turn, a misinterpretation of the request and the information located.
37. The Commissioner considers that the explanation provided by the Cabinet Office is sufficient to explain why the delays occurred.

## Right of appeal

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38. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

39. 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.
40. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**