

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

Decision notice

Date: 17 March 2023

Public Authority: The National Archives
Address: Kew
Richmond
Surrey
TW9 4DU

Decision (including any steps ordered)

1. The complainant has requested the closed file PREM 19/4954 ROYAL FAMILY. HRH The Prince of Wales: part 3. The National Archives (TNA) provided some environmental information contained within the requested information. It withheld the remaining information contained within the requested file under section 37(1)(a)(communications with the Sovereign), section 40(2)(personal data) and section 41(1)(information provided in confidence) as it did not consider this constituted environmental information.
2. The Commissioner's decision is as follows:
 - TNA breached regulation 5(2) EIR as it took 60 working days to provide the environmental information held falling within the scope of the request.
 - TNA has correctly withheld the remaining requested information from disclosure under section 37(1)(a) of FOIA.
3. The Commissioner does not require TNA to take any remedial steps.

Request and response

4. On 15 August 2022 the complainant wrote to TNA and requested access to closed information held in PREM 19/4954. The complainant stated

that the request was being made under the Environmental Information Regulations 2004 (EIR).

5. TNA reviewed the closed file requested and determined that some of the information within the file was environmental information. This information was disclosed to the complainant on 9 November 2022. TNA confirmed that no further environmental information was held under regulation 12(4)(a) EIR.
6. The complainant requested an internal review as he was dissatisfied with the amount of time it had taken TNA to respond and the complainant also considers that further environmental information was contained within the requested file.
7. On 31 January 2023 TNA provided the outcome of the internal review. It accepted that it did not respond to this request in accordance with the relevant timescales under the EIR. It upheld its position that no further environmental information was held within the requested file under regulation 12(4)(a) EIR. For completeness, it confirmed that the information within the file which was not environmental was being withheld under sections 37(1)(a), 40(2) and 41(1) FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 6 February 2023 to complain about the way their request for information had been handled.
9. The Commissioner has first considered whether any of the withheld information can be categorised as environmental information. His investigation will then consider whether TNA can withhold that information under the FOIA exemptions it has cited, or any EIR equivalent exceptions. Finally, the Commissioner will consider the timeliness of TNA's response.

Reasons for decision

Is any of the withheld information environmental information?

10. Information is 'environmental information' and must be considered for disclosure, if held, under the terms of the EIR rather than FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR:
 - a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its

components, including genetically modified organisms, and the interaction among these elements;

b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

d) reports on the implementation of environmental legislation;

e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

11. TNA has provided the Commissioner with a copy of the withheld information in this case. Whilst the Commissioner cannot describe the contents of the withheld information, he is satisfied that it does not contain any further environmental information (other than that which has been provided).

Section 37 – Communications with Her Majesty, etc and Honours

12. Under section 37(1)(a) of FOIA information is exempt information if it relates to communications with the Sovereign. Following a Constitutional Reform and Governance Act 2010 amendment, after January 2011 section 37(1)(a) became an absolute exemption. This means that where the exemption is engaged there no public interest test; the withheld information simply has to fit the exemption.
13. The requested file contains correspondence relating to the then HRH Prince of Wales (now HRH King Charles III).
14. As explained above the Commissioner has had sight of the information withheld and is satisfied it relates to communications with the new reigning Sovereign. Even if the information were to be considered under section 37(1)(aa) (communications with the heir or second in line to the

Throne) due to the timing of the request, the exemption would be applicable in the same way as section 37(1)(a) FOIA.

15. TNA said that a recent ICO Decision Notice (2021), IC-66499-D5B2¹, concerning similar material within a record held at The National Archives, outlined that "the term 'relates to' should be interpreted broadly. In practice this means that the scope of the exemption will cover more than just the actual communications themselves; it will also apply to information that refers to, or is derived from those communications". That Decision Notice also explained that the type of material covered by this exemption includes (among others) copies of speeches given by members of the Royal Family, "communications between the Sovereign and government ministers", and "material that has been shown, or will be shown, to the sovereign for approval". In ICO Decision Notice FS50568624² (2015) it was noted that the exemption also covers communications made by officials on behalf of the Sovereign. The information within archival record PREM 19/4954 constitutes such communications on behalf of the then Prince of Wales. ICO Decision Notice FS50568624 also stated that 'there is no need for the information to be sensitive in any way for the exemption to apply'.
16. The Commissioner is satisfied that TNA is entitled to withhold information from closed file PREM 19/4954 ROYAL FAMILY. HRH The Prince of Wales: part 3 on the basis of the exemption at section 37(1)(a) of FOIA. This is because the information relates to communications with the now reigning Sovereign. As section 37(1)(a) is an absolute exemption, there is no further consideration to be made and no public interest to consider. As explained above, as the request was made prior to HRH King Charles III's accession to the throne, if section 37(1)(a) FOIA would not be engaged, section 37(1)(aa) FOIA would be applicable.
17. For the above reason, the Commissioner has not gone on to look at either sections 40(2) or 41 of FOIA which TNA also applied to the withheld information.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619537/ic-66499-d5b2.pdf>

² https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1424171/fs_50568624.pdf

Timeliness

18. The complainant has also raised a concern regarding the length of time TNA took to provide its response under the EIRs and disclose the environmental information it held.
19. Under regulation 5(2) EIR a public authority is required to provide a response within 20 working days. Under regulation 7 EIR a public authority can extend the time for response by a further 20 working days (so allowing them 40 working days in total) to respond to complex or voluminous requests. In this case TNA recognised that despite it considering this request to be complex and voluminous, it took 60 working days to provide a response and was therefore not compliant with the timeframe set out in the EIR.
20. The Commissioner therefore considers TNA breached its obligations under regulation 5(2) EIR in this case as it took 60 working days to provide the complainant with the environmental information held falling within the scope of the request.

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@justice.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.....

Gemma Garvey
Senior Case Officer

Information Commissioner's Office
Wycliffe House
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Wilmslow
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