

Environmental Information Regulations 2004

Decision Notice

Date: 21 December 2009

Public Authority: Department for Environment, Food and Rural Affairs
Address: Nobel House
17 Smith Square
London
SW1P 3JR

Summary

The complainant wrote to the Department for Environment, Food and Rural Affairs to request details of contact and correspondence with HRH The Prince of Wales and his representatives. The public authority refused the request under section 12(2) of the Act on the grounds that the cost of confirming or denying if the requested information was held would exceed the appropriate limit. The Commissioner has investigated the complaint and has found that the request was for environmental information and that therefore the public authority should have dealt with it under the Environmental Information Regulations 2004. However, the Commissioner has found that the request was manifestly unreasonable within the meaning of regulation 12(4)(b) and that therefore the public authority was not obliged to comply with it. The Commissioner also found that the public authority met its obligations under regulation 9(1) (advice and assistance) but breached regulations 14(2) and 14(3) (refusal to disclose information) and regulation 11(4) (representations and reconsideration) in its handling of the complainant's request. The Commissioner requires no steps to be taken.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

The Request

2. On 22 February 2006 the complainant made the following request for information to the public authority.
- A list of all approaches made by HRH The Prince of Wales to MAFF during the lifetime of the Department. This should include the date the Prince contacted the department (for whatever reason), as well as the nature of the matter under discussion. These approaches could have been made by the Prince in person, by email, by telephone or by post.
 - A list of all approaches made by HRH The Prince of Wales to Defra. This should include the date the Prince contacted the Department (for whatever reason), as well as the nature of the matter under discussion. These approaches could have been made by the Prince in person, by email, by telephone or by post.
 - A list of all approaches made by representatives or employees of HRH The Prince of Wales to Defra. This should include the date the representatives/ employees contacted the Department, as well as details about the nature of the approach and the issues involved. These approaches could have been made in person, by email, by telephone or by post.
 - A list of all approaches made by representatives or employees of HRH The Prince of Wales to the Ministry of Agriculture Fisheries and Food. This should include the date the representatives / employees contacted the Department as well as details about the nature of the approach and the issues involved. These approaches could have been made in person, by email, by telephone or by post.
 - How many times has HRH The Prince of Wales personally contacted any civil servant in the employ of Defra or any member of the Department's ministerial team. Please provide details of these approaches, the dates they happened and the issues concerned.
 - How many times have representatives acting on behalf of The Prince of Wales contacted any civil servant in the employ of Defra or any member of the Department's ministerial team? Please provide details of these approaches the date they happened and the issues concerned.
 - How many times did HRH The Prince of Wales contact any civil servant in the employ of MAFF or any member of that Department's ministerial team? Could you please provide further details about the nature of this contact, the issues if involved and the date(s) it occurred.
 - How many times did representative of HRH The Prince of Wales contact any civil servant in the employ of MAFF or any member of that Department's

ministerial team? Could you please provide further details about the nature of this contact, the issues it involved and the date(s) it occurred.

- How many times has HRH The Prince of Wales met with a senior member of staff from Defra or a member of the Department's ministerial team. Could you please provide details of these meetings, including the dates they took place, the venue they were held and the nature of the topics under discussion?
 - How many times did The Prince of Wales hold private talks (of any kind) with a senior member of staff from MAFF or any member of MAFF's ministerial team? Could you please provide details of these meetings, including the dates they took place, the venue they were held and the nature of the topics under discussion?
 - Please provide all internal documents held by Defra, its predecessor and any associated body or agency which falls under its control which relates in any way whatsoever to approaches from the Prince of Wales and or representatives acting on his behalf. These documents should include, among other things, all department minutes, memos, emails, telephone transcripts, letters and reports which touch upon this matter.
 - Please provide all correspondence between Defra and any outside organisation or individual (including other government departments) which relate to approaches from HRH The Prince of Wales or representatives acting on his behalf.
 - Please provide all correspondence between MAFF and any outside organisation or individual (including other government departments) which relate to approaches from HRH The Prince of Wales and or representatives acting on his behalf.
3. On 23 February 2006 the public authority, by email, informed the complainant that MAFF ceased to exist in June 2001. Therefore with the complainant's permission they wished to amend the request to refer only to 'Defra'; to which the complainant agreed. The public authority then asked the complainant to consider narrowing down his request, (detailed at paragraph 2). The public authority reasoned that; "the Act itself also requires us to help people obtain the information they are looking for. Unfortunately your request is very broad and could cover an enormous amount of information, potentially going back over many years. Gathering it together would therefore be likely to involve a significant cost and diversion of resources from the Department's other work. It certainly seems likely to exceed the £600 cost limit which the Government has set for dealing with Freedom of Information requests. The best way we can help you is therefore to ask you to try and narrow down your request to focus more clearly on the precise information you are seeking. "
4. Later on 23 February 2006, the public authority, by email, clarified their understanding of the complainant's request and provided explanation of their logistical arrangements. They advised; "Defra Ministers and Permanent Secretary's offices do not hold historical policy information/ correspondence. In

policy areas (as in the rest of Defra) it is highly unlikely that each area would have a separate HRH the Prince of Wales file (or indeed a Royal correspondence file), and so all correspondence files would need to be searched. Also, if the Prince of Wales has written/spoken on a policy issue, it is also possible that the record for this would be held in the policy files, and so they would also need to be searched. Even if you narrowed your request down to one policy area- it will still involve the search of all files over the 11 year period, which would take more than £600 of staff time (at the standard £25 p/hr rate (see <http://www.dca.gov.uk/foi/feesguide.htm> for further information on how the fees rate is calculated). I hope you therefore understand why that, in order to be able to respond to your request, it would be really helpful if you could narrow your request to cover a limited policy area and a smaller time scale (preferably only covering a few months).“

5. The complainant responded later that same day (23 February 2006) and made a slightly amended request for very similar information. The complainant made the following amendment; “I am happy to narrow down my request. I would now like to request information (as outlined in my original request) dating back to 1995. I am fully aware of the rules regarding expense but I do not believe that the cost will be great given that approaches by HRH The Prince of Wales (and/or his staff) are likely to be relatively few in number and centralised. My list of questions is long but they are designed to get to grips with a fairly straight forward issue.”

6. On 22 March 2006 the public authority informed the complainant of its need to extend the 20 working day time limit for responding. It explained that the exemption in section 37(1)(a) would apply to the requested information if it were held, and that under section 37(2) the obligation to confirm or deny does not arise. It now said that it needed further time to consider whether or not the public interest favoured maintaining the exclusion of the duty to confirm or deny.

7. On 12 April 2006, the public authority advised the complainant:

“I regret to inform you that Defra neither confirms nor denies that it holds information falling within the description specified in your request. The duty in section 1(1)(a) of the Freedom of Information Act 2000 (FOIA) does not apply by virtue of section 37(2) of the FOIA, which relates to communications with Her Majesty, members of the Royal Family and the Royal Household. This should not, however, be taken as an indication that the information you requested is or is not held by the department. We do apologise, however, for the length of time it has taken us to respond to your request.”

8. The public authority also explained that section 37(2) is subject to the public interest test and set out its reasoning in relation to this, as follows:

“factors in favour of confirming or denying that the Department holds information covered by your request include the general public interest in openness in government. Also in favour of neither confirming nor denying whether the information is held is the public interest in keeping communications between HRH The Prince of Wales and public authorities confidential. That there is a public interest in members of the Royal Family being able to correspond with public

authorities in private is acknowledged by the FOIA by the existence of section 37(1) (a) and 37 (2). While it is known and acknowledged by HRH The Prince of Wales that he corresponds on occasions with ministers it is not, however, publicly known with which ministers he corresponds or on what occasion. It is particularly important that the issues on which, and those with whom, HRH The Prince of Wales may or may not choose to correspond, and when he may or may not do so, is protected. Failure to preserve this confidentiality could undermine HRH The Prince of Wales's ability to carry out his constitutional role in an effective manner."

9. The public authority explained that it had considered whether the public interest in maintaining the exclusion from the duty to confirm or deny outweighs the public interest in disclosing whether it holds the information. It concluded the public interest lies in maintaining the exclusion.
10. On 18 April 2006 the complainant asked the public authority to carry out an internal review of its handling of the complainant's request.
11. On 30 June 2006 the public authority communicated the outcome of its internal review to the complainant. First of all it apologised for the length of time it had taken in dealing with the Review and then stated the following.

"in responding to your request Defra should have relied on section 12 of the Freedom of Information Act (FOIA), under which a request can be refused if responding to it would exceed an appropriate cost limit, which has been set at £600. We consider that your request is so widely worded that the searches the Department would need to carry out to ascertain whether it holds the information requested would exceed the appropriate limit. As it stands the request remains too broad and we therefore consider s12 FOIA applies."

12. The public authority stated that although an initial assessment was carried out in order to determine what information may or may not be held, a detailed search of the Department's files was not undertaken. It added that despite the complainant's attempts to narrow down his requests, it ought to have refused the request on cost grounds. The public authority added "it would have been more appropriate for Defra to refuse the refined request submitted in your [the complainant's] email of 23 February [2006] purely on cost grounds, since it was apparent that the cost of complying would have exceeded the cost limit." Therefore the public authority upheld the appeal relying upon section 37 in refusing to supply the information but, as a result of the request for internal review, changed its basis for refusing to confirm or deny whether it holds the requested information.
13. In the same letter (dated 30 June 2006), the public authority considered the need for the complainant to narrow down his request. In an earlier email dated 23 February 2006 the public authority had advised the complainant that it does not hold centralised records of approaches, contacts or meetings with HRH The Prince of Wales or his representatives. Further, any subsequent searches would have needed to cover all policy and correspondence files held within each policy area across the public authority, and would take a; "massive amount of time-

costing far more than the £600 cost limit for dealing with FOI requests, and resulting in an unreasonable diversion of resources.”

14. The public authority, reminded the complainant of its earlier correspondence asking him to significantly narrow down his request to a policy area over a limited period of a few months, in order to reduce the costs of any searches required to within the cost limits. It now informed the complainant that if narrowed down requests are submitted then it may still be applicable for it to consider relying upon section 37 FOIA as and if required. The public authority advised the complainant that he may obtain some of the information sought by utilising its website <http://www.defra.gov.uk> suggesting parameters “Prince of Wales” or “Prince Charles” as examples. It then advised the complainant of the ICO contact details should he seek to appeal.

The Investigation

Scope of the case

15. On 3 July 2006 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant specifically asked the Commissioner to consider the application of section 12 as well as the exemptions applied by the public authority. However, the Commissioner’s investigation is limited to the application of section 12 as this was the public authority’s position as at the completion of the internal review.

Chronology

16. The Commissioner began his investigation by writing to the public authority on 19 February 2007 and asking it to provide the following details:
 - A breakdown of the costs it would expect to incur in establishing if it held the information requested by the complainant.
 - More detail regarding the application of the cost limit; in particular a breakdown of those costs and an explanation of how the costs have been applied.
 - An explanation of its suggestion directing the complainant to its website in order to obtain related information within the public domain.
17. The public authority responded in a letter dated 30 July 2007 where it explained its change from section 37; to total reliance on section 12. It explained that it did not undertake a detailed search of its records when considering section 12 costs, instead it undertook an assessment of the likely costs involved in undertaking such a detailed search. The public authority concluded that this basic assessment would, in itself, exceed the £600 threshold.

18. The public authority's letter of 30 July 2007 further responded to the Commissioner's questions by explaining its reasons for referring the complainant to its website. It explained that the complainant's refined request (narrowed to only cover information from 1995 and with references to MAFF removed) would still have exceeded the appropriate limit of £600 and therefore it had referred the complainant to its website to assist him in submitting a more focused request.

Findings of fact

19. The Ministry of Agriculture Fisheries and Food (MAFF) commenced in 1955 and ceased in June 2001 when its responsibilities were redistributed following a Comprehensive Spending Review undertaken by H.M. Treasury and influenced by the 2001 outbreak of the foot and mouth disease. MAFF's former functions were, in the main, split between Food Standards Agency (FSA); the public authority and the new Department for Energy and Climate Change (DECC).
20. The public authority's website (<http://www.defra.gov.uk>) details its mission statement, ethos and objectives. Within this website public information regarding HRH The Prince of Wales may be found which summarises some of the interests in which he is involved and which the public authority has responsibility for; such as sponsorship of the Business and Environment Programme; community projects within the North East as well as various marine, fisheries, land-owning and farming projects.
21. The Commissioner has conducted a separate investigation in which the complainant in that case made a similar request to the public authority for correspondence with HRH The Prince of Wales and his representatives. The Commissioner has reviewed a sample of the information falling within the scope of the request to help him reach a decision in this case.

Analysis

22. A full text of the statutory regulations referred to below is contained within the legal annex.

Substantive procedural matters

Is the requested information environmental?

23. Regulation 2(1) of the EIR defines 'environmental information' as any information in any material form on:

'(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)'

24. The Commissioner considers that the phrase "any information...on" should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor etc in question. In other words, information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.

25. The Commissioner also finds support for this approach in two decisions issued by the Information Tribunal. The first being *The Department for Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth* (EA/2007/0072). In this case the Tribunal found:

'that the Decision Notice [in which the Commissioner has concluded that none of the requested information was environmental information] fails to recognise that information on "energy policy in respect of "supply, demand and pricing" will often fall within the definition of "environmental information" under Regulation 2(1) EIR. In relation to the Disputed Information we find that where there is information relating to energy policy then that information is covered by the definition of environmental information under EIR. Also we find that meetings held to consider "climate change" are also covered by the definition.' (Tribunal at paragraph 27).

26. In reaching this conclusion the Tribunal placed weight on two arguments advanced by Friends of the Earth (FoE), the first being that information on energy policy, including the supply, demand and pricing issues, will often affect or be

likely to affect the environment and the second that the term 'environmental information' should be interpreted broadly:

'23. Mr Michaels on behalf of FOE contends that policies (sub-para (c)) on "energy supply, demand and pricing" often will (and are often expressly designed to) affect factors (sub-para (b)) such as energy, waste and emissions which themselves affect, or are likely to affect, elements of the environment (sub-para (a)) including, in particular and directly, the air and atmosphere and indirectly (in respect of climate change) the other elements.

24. He provides by way of simple and practical example, national policy on supply, demand and pricing of different energy sources (e.g., nuclear, renewable, coal, gas) has potentially major climate change implications and is at the heart of the debate on climate change. Similarly, national policy on land use planning or nuclear power has significant effect on the elements of the environment or on factors (e.g. radiation or waste) affecting those elements.

25. Mr Michaels further argues that the term 'environmental information' is required to be construed 'very broadly' so as to give effect to the purpose of the Directive. Recognition of the breadth of meaning to be applied has been recognised by the European Court of Justice, by the High Court and by this Tribunal in *Kirkaldie v Information Commissioner & Thanet District Council* EA/2006/001. The breadth is also recognised in the DEFRA guidance 'What is covered by the regulations'. It does not appear, Mr Michaels argues, that the Commissioner has adopted such an approach.'

27. Moreover in reaching this conclusion the Tribunal appeared to reject BERR's arguments that there must be a sufficiently close connection between the information and a probable impact on the environment before it can said that the information is 'environmental information'.
28. The second Tribunal decision is *Ofcom v Information Commissioner and T-Mobile* (EA/2006/0078) which involved a request for the location, ownership and technical attributes of mobile phone cellular base stations. Ofcom had argued that the names of Mobile Network Operators were not environmental information as they did not constitute information 'about either the state of the elements of the environment...or the factors.....that may affect those elements.'
29. The Tribunal disagreed, stating at para 31 that:

'The name of a person or organisation responsible for an installation that emits electromagnetic waves falls comfortably within the meaning of the words "any information...on....radiation". In our view it would create unacceptable artificiality to interpret those words as referring to the nature and affect of radiation, but not to its producer. Such an interpretation would also be inconsistent with the purpose of the Directive, as expressed in the first recital, to achieve "... a greater awareness of environmental matters, a free exchange of views [and] more effective participation by the public in

environmental decision making...". It is difficult to see how, in particular, the public might participate if information on those creating emissions does not fall within the environmental information regime.'

30. The Commissioner has considered the role and responsibilities of the public authority, the interests of HRH The Prince of Wales and the likely contexts in which he would correspond with this particular government department. The Commissioner has also reviewed correspondence between the public authority and HRH The Prince of Wales which he obtained as part of a separate investigation. On the basis of this the Commissioner is satisfied that the requested information constitutes environmental information because it falls within the scope of one [or more] of the regulations contained within 2(1) of the EIR. Therefore the complainant's requests must be dealt with under the EIR rather than under the Act.

Exception

Regulation 12(4)(b) – Manifestly unreasonable

31. The public authority had refused the request under section 12(2) of the Act on the grounds that confirming or denying if the information is held would exceed the appropriate limit of £600. However, the Commissioner has decided that the requested information constituted environmental information and that therefore the public authority should have dealt with the request under the EIR. Under the EIR there is no direct equivalent to section 12, however, regulation 12(4)(b) provides that a request may be refused if it is manifestly unreasonable. It is the Commissioner's view that regulation 12(4)(b) provides for an exception to the duty to disclose environmental information in circumstances where the request is vexatious or where the time required is so substantial that it would significantly interfere with the normal conduct of the authority's activities or entail a significant diversion of resources from other functions. The Information Tribunal in *DBERR v The Information Commissioner and Platform* (EA/2008/0096) accepted that a request could be properly described as manifestly unreasonable in such circumstances. It also commented that:

'It is clear to us that the expression means something more than just "unreasonable" The word "manifestly imports a quality of obviousness. What is in issue, therefore, is a request that is plainly or clearly unreasonable." (paragraph 31)

32. During the course of the Commissioner's investigation the public authority provided an overview of how it is structured and the systems and procedures it has in place to deal with any correspondence it may have received from the Royal Household. It advised:
- The public authority has approximately 100 divisions in total.
 - The public authority's Secretariat (Ministers and Permanent Secretary's Offices) do not hold historical policy information/correspondence.

- Each business area would not have a separate, His Royal Highness (HRH) file, or a royal correspondence file. Therefore all correspondence files would need to be searched.
- If HRH has written or spoken on a subject/ policy issue which the public authority has responsibility for, it is possible that the record for this would be held in particular policy files.
- Any business transactions concerning HRH's land-owning and farming interests would also have been contained within separate files.
- Searches would therefore cover the majority of files held since the creation of the public authority and its predecessor department from 1995.
- The public authority considered an estimated calculation. They notionally equated that if 100 divisions spent, approximately 15 minutes searching for any information they held, the cost limits would be exceeded. Adding non-policy areas such as Human Resources, it may be confident they do not hold any information falling within the scope of the request; however it may be possible that areas such as 'complaints' (about its staff), may also be caught by the request and have to be searched.
- The public authority advise other policy-divisions would need to spend a considerable time checking their records and so the 15 minute estimate for each of its division is suggested to be a very conservative estimate.
- The public authority also considered its nine executive agencies which are not legally distinct from the public authority. Given their size, remit and files the following also require cost considerations: Central Science Laboratory; Pesticides Safety Directorate; Rural Payments Agency; Veterinary Laboratories Agency; Veterinary Medicines Directorate; Centre for Environment, Fisheries and Aquaculture Science; Animal Health Agency; Marine Fisheries Agency and Government Decontamination Service.
- The public authority stated that the additional estimated time it would take to coordinate, gather together and then undertake any potential redactions from information found would considerably add towards the time/costs involved.
- The public authority highlighted that the request was not confined to direct approaches from HRH. Also covered were all approaches made by his representatives and those persons acting on his behalf, engaging with any civil servant in the employment of the public authority or the ministerial team. They considered that given the interests of HRH includes landowning and farming, the scope may also cover correspondence involving issues as wide-ranging as the Common Agricultural Policy; Single Payment Scheme; health care; inspections and rural affairs. Therefore cursory inspections are not an option and only a thorough search would be a proper and appropriate response.

- The public authority conducted fact-finding or basic research by asking agency heads for estimates of timescales involved in checking departmental files. Of 69 responses received 36 thought it unlikely to hold relevant information and the remainder considered they may hold relevant information.
33. In determining whether the cost of complying with a request would be manifestly unreasonable the Commissioner will use the Fees Regulations as a starting point to ascertain what costs or diversion of resources would be involved in answering a request. The fees regulations set the appropriate limit at £600 for central government departments which equates to 24 hours work based on a rate of £25 per person, per hour. This does not mean however that a request exceeding the appropriate limit will necessarily be manifestly unreasonable under regulation 12(4)(b). The Commissioner notes the comments of the Information Tribunal in *DBERR v The Information Commissioner and Platform* (EA/2008/0096) that

‘Regulation 12(4)(b) is quite different. There is no “appropriate limit” to act as a cut off point. It is the request that must be “manifestly unreasonable”, not just the time required to comply with it, nor indeed any single aspect of it. In our view, this means that Regulation 12(4)(b) requires the public authority to consider the request more broadly. This does not mean that the time required to comply with a request is irrelevant. Rather, it is one factor to be considered along with others when assessing whether a request is “manifestly unreasonable”.’ (paragraph 36), and

‘We note that recital 9 of the Directive calls for disclosure of environmental information to be “to the widest extent possible”. Whatever the reasons may be, the effect is that public authorities may be required to accept a greater burden in providing environmental information than other information.’ (paragraph 39)

34. Under regulation 4(3) of the fees regulations a public authority, in estimating the cost of complying with a request, may take into account the costs it reasonably expects to incur in:
- determining whether it holds the information requested,
 - locating the information or documents containing the information,
 - retrieving such information or documents, and
 - extracting the information from the document containing it.

The Commissioner considers that the costs of undertaking these tasks may also be relevant when assessing whether a request is manifestly unreasonable.

35. The establishment of a “reasonable” cost calculation has been considered in Tribunal Decisions EA/2006/0093 and EA/2008/0042. In these cases it was held that:

“the Commissioner and the Tribunal can enquire into whether the facts or assumptions underlying the estimation exist and have been taken into account by the public authority. The Commissioner and the Tribunal can also enquire about whether the estimation has been made upon other facts or assumptions which ought not to have been taken into account. Furthermore the public authority’s expectation of the time it would take to carry out the activities set out in regulation 4(3) a) – d) must be reasonable.”

36. The Commissioner accepts that the facts underlying the estimation provided by the public authority are reasonable and that to determine if the requested information is held would in itself exceed the cost limit. In reaching this view the Commissioner considered the public authority’s detailed explanations listed at paragraph 32. As no record is kept on which subjects HRH The Prince of Wales speaks in order to comply with the complainant’s request the public authority would have to manually and electronically search all files, papers and databases it holds to provide assurances that none of its approximately 100 divisions and 9 executive agencies hold any relevant information. The Commissioner considered whether the scoping exercise undertaken by the public authority in order to determine if any information is held was reasonable. The public authority advised the Commissioner that they estimated a minimum of 15 minutes searching would need to be undertaken at each of its 100 divisions. This amounts to 25 hours work, or £625. Therefore the £600 threshold would be exceeded just by the costs incurred in determining if the information is held.
37. The public authority has explained that it had made approaches to its business managers in order to gain a very basic feeling of what information may be held. The result of this exercise was that 33 divisions within the public authority felt it was likely that they would hold information and 31 divisions believed they may hold information although each of the 100 divisions would still need to spend the estimated 15 minutes to establish if requested information was held. Where information was found to be held additional costs would be incurred in locating, retrieving and extracting the information which would be in addition to the £625 the public authority estimates it would cost to determine if it holds the requested information. Even if we accept that only 33 divisions would be likely to hold relevant information the costs incurred would still be significant and therefore the total cost would considerably exceed the appropriate limit.
38. The Commissioner considered whether if all the information held by the public authority and its Agencies were electronically held in databases then would parameter searching assist in identifying information along with its location, relevance and retrievability. Additionally the public authority may also be able to exclude some paper or Departmental searches, such as those relating to Human Resources or staff. Would these considerations assist the public authority in complying with the request? The Commissioner decided that as the public authority does not hold all information electronically then parameter searching would not reveal information kept on manual or in paper records and that as the request was very wide ranging and even the list of parameters used would be extensive then these options were not practicable. The only way to assure compliance with the request, even narrowing to those non-Human Resources or

staff related or with the exclusion of 33 business areas, the administrative costs employed by the public authority to locate, retrieve and extract the information would exceed the cost threshold.

39. The Commissioner is satisfied that the costs involved in complying with the request would be considerable. However, as stated above, just because a request would exceed the appropriate limit is not in itself grounds for refusing to disclose environmental information under the EIR. The Commissioner has taken into account other factors such as what impact disclosure would have on the activities of the public authority. The Commissioner recognises that the public authority is a large central government department and therefore he considers it unlikely that disclosure would actually prevent the public authority from performing its core functions. However the Commissioner does accept that complying with the request would involve a significant amount of searching within the public authority and the costs involved would be so considerable that it would nonetheless amount to an unreasonable diversion of the public authority's resources away from its core functions. He considers that the wide scope of the request, and the unreasonable diversion of resources that would be required to answer it, are sufficient to mean that this request is plainly or clearly unreasonable. Therefore the Commissioner has decided that the request can be characterised as manifestly unreasonable.

Public interest test

40. For the reasons given above the Commissioner is satisfied that the request is manifestly unreasonable and therefore falls within the exception in regulation 12(4)(b) of the EIR. However under regulation 12(1)(b) the complainant's request may only be refused under this exception if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. It should be noted that under regulation 12(2) there is a presumption in favour of disclosure.

Public interest arguments in favour of disclosing the information

41. There is an inherent public interest in disclosure of information to ensure that the government is accountable for, and transparent about, its decision making processes.
42. Moreover, there is a specific public interest in disclosure of information which would increase the public's understanding of how the Government interacts with the Royal Family, and in particular in the circumstances of this case, the Heir to the Throne. This is because the Monarchy has a central role in the British constitution and the public is entitled to know how the various mechanisms of the constitution operate. This includes, in the Commissioner's opinion, how the Heir to the Throne is educated in the ways of government in preparation for his role as Sovereign.
43. Disclosure of the information may allow the public to understand the influence (if any) exerted by The Prince of Wales on matters of public policy. If the withheld information demonstrated that the public authority or government in general had

placed undue weight on the preferences of The Prince of Wales then the public interest in disclosure would be stronger.

44. Conversely, if the withheld information actually revealed that The Prince of Wales did not have undue influence on the direction of public policy, then there would be a public interest in disclosing the information in order to reassure the public that no inappropriate weight had been placed on the views and preferences of The Heir to Throne. In essence disclosure could ensure public confidence in respect of how the government deals with The Prince of Wales.
45. These two arguments could be seen as particularly relevant in light of media stories which focus on the Prince of Wales' alleged inappropriate interference in matters of government and political lobbying.
46. Linked to this argument, is the fact that disclosure of the withheld information could further the public debate regarding the role of the constitutional Monarchy and particularly the Heir to the Throne. Similarly, disclosure of the information could inform broader debate surrounding the reform of the British constitutional system.

Public interest arguments in favour of maintaining the exception

47. The Commissioner feels that there are compelling arguments in favour of maintaining the exception because of the public interest in protecting the integrity of the Environmental Information Regulations and ensuring that they are used responsibly.
48. There is a public interest in the public authority being able to carry out its core functions without the distraction of having to comply with requests that would impose a significant burden in both time and resources. The Commissioner is also mindful of the fact that the public authority's ability to comply with other more focused requests for information would be undermined if it had to routinely deal with wide ranging requests for large amounts of information covering a timeframe of a number of years.

Balance of public interest arguments

49. The Commissioner recognises that the appropriate limit is not a barrier to the disclosure of information under the EIR. However, he considers that the appropriate limit is a useful benchmark for assessing the costs involved in responding to requests for information. Had the public authority's estimate of the costs it expects to incur in dealing with this request only just exceeded the appropriate limit the Commissioner would have been more inclined to decide that the public interest in maintaining the exception does not outweigh the public interest in disclosure. However, it is clear that in this case the costs of complying with the request would considerably exceed the appropriate limit and therefore the public interest in protecting the ability of the public authority to not be diverted from its core functions, is stronger.

Procedural matters

Regulation 9 – Advice and assistance

50. Regulation 9(1) provides that a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
51. Regulation 9(3) provides that a public authority will have complied with regulation 9(1) where it has conformed to a code of practice issued under regulation 16 in relation to the provision of advice and assistance.
52. The 'Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004' ('The Code of Practice') sets out at paragraphs 8 to 23 what is expected of public authorities as regards the provision of advice and assistance. The Code of Practice states that appropriate assistance may include providing an outline of the different kinds of information that might meet the terms of the request.
53. In this case the public authority, on the same day as the request was received, suggested to the complainant that in order to refine his request he could:
 - reduce the time period of the request to cover a few months,
 - explain which policy areas he is most interested in,
 - browse through the material already published on its website to help him identify more precise questions which it would be able to answer at less cost.
54. At the internal review stage the public authority again suggested to the complainant that he consult its website because there was already a large amount of information which could be viewed using the website's search engine and, for example search terms such as 'Prince', 'Prince of Wales' or 'Prince Charles'. The public authority suggested that this may provide the complainant with some of the information he requested or else would assist him in narrowing his request.
55. By referring him to its website the public authority allowed the complainant to identify areas in which the public authority would have been most likely to hold information. The Commissioner considers that it would have been unreasonable for the public authority to have given any further details of any information it may hold because, given the very broad nature of the request and the fact that the complainant did not specify a particular subject which he was interested in, this would have required it to carry out a search to locate information falling within the scope of the request and the costs of this would have been significant.
56. The Commissioner is satisfied that the public authority made reasonable efforts to help the complainant refine his request and therefore met its duty to provide advice and assistance under regulation 9(1).

Regulation 11 – Representations and reconsideration

57. Regulation 11 provides that where an applicant makes representations to a public authority where it appears that the public authority has failed to comply with a requirement of the EIR:

“A public authority shall notify the applicant of its decision...as soon as possible and no later than 40 working days after the date of the receipt of the representations.”

58. In this case the complainant wrote to the public authority on 18 April 2006 to ask that it carry out an internal review of his request for information. However, the public authority only presented the findings of its internal review on 30 June 2006, outside of the 40 working day deadline. This constitutes a breach of regulation 11(4).

Regulation 14 – Refusal to disclose information

59. By failing to respond to the request under the EIR the public authority breached regulation 14(2) and 14(3) which provide that a refusal of a request must be made no later than 20 working days and shall specify the reasons not to disclose the information, including details of the exception relied on and matters the public authority took into consideration with respect to the public interest.

The Decision

60. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the EIR:
- The public authority was not obliged to comply with the complainant's request because it was manifestly unreasonable under regulation 12(4)(b).
 - The public authority provided the complainant with advice and assistance in accordance with regulation 9(1).

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- By failing to deal with the request under the EIR the public authority breached regulation 14(2) and regulation 14(3).
- By failing to respond to the complainant's request for an internal review within 40 working days the public authority breached regulation 11(4).

Steps Required

61. The Commissioner requires no steps to be taken.

Right of Appeal

62. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 21st day of December 2009

Signed

**Lisa Adshead
Senior Policy Manager**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal annex

Freedom of Information Act 2000

Section 1(1) provides 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.”

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

Section 37(1) provides that –

“Information is exempt information if it relates to-

- (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or
- (b) the conferring by the Crown of any honour or dignity.”

Section 37(2) provides 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).”

Environmental Information Regulations 2004

Regulation 2(1) In these Regulations –

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on

–

- (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 elements of the environment referred to in (b) and (c);

Regulation 9(1) A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

Regulation 9(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall –

- (a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and
- (b) assist the applicant in providing those particulars.

Regulation 9(3) Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.

Regulation 11(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

Regulation 11(2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

Regulation 11(3) The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

Regulation 11(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations.

Regulation 12(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Regulation 12(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

Regulation 14(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

Regulation 14(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 14(3) The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).