

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

**Decision notice**

**Date:** 22 September 2015

**Public Authority:** Historic Royal Palaces  
**Address:** Hampton Court Palace  
Surrey  
KT8 9AU

**Decision (including any steps ordered)**

---

1. The complainant submitted a request to the public authority for information in relation to two meetings held in 2014 between the authority's Chief Executive and His Royal Highness The Prince of Wales. The public authority withheld some of the information in scope in reliance on the exemptions at sections 37(1)(aa), 40(2) and 41(1) of the FOIA, and the remainder in reliance on the exceptions at regulations 12(3), 12(4)(d), 12(5)(e) of the EIR.
2. The Commissioner's decision is that:
  - The information in scope (ie only "the disputed information") constitutes environmental information within the meaning in regulation 2(1) of the EIR.
  - However, the public authority was entitled to withhold the disputed information on the basis of the exception at regulation 12(5)(e).
3. No steps are required.

**Request and response**

---

4. On 1 October 2014, the complainant wrote to the public authority and requested information in the following terms:

*'.....Please note that this is a specific request for information under the Environmental Information Regulations which carry a presumption in favour of disclosure.....'*

*My request concerns two meetings held between Michael Day, the Chief Executive of Historic Royal Palaces and His Royal Highness the Prince of Wales. According to the court circular the meetings took place on 20 March 2014 and 10 September 2014.*

*1..In the case of each of the two meetings can you please provide all correspondence and communications (including emails) between Historic Royal Palaces and His Royal Highness the Prince of Wales which in way [sic] relates to the two meetings and the topics under discussion. Please note that the reference to His Royal Highness the Prince of Wales should also include his Private Secretary and or his private office. This correspondence and communication could have been generated prior to the meeting taking place or it could have been generated afterwards.*

*2..In the case of each meeting can you please identify any other representatives and or employees of Historic Royal Palaces who accompanied Mr Day. Can you please identify all other individuals at the meeting irrespective of whether they are connected to Historic Royal Palaces.*

*3..In the case of each meeting can Historical Royal Palaces [sic] please provide copies of all documentation, correspondence and communications (including emails) held by the organisation which in any way relates to the visits and the topics under discussion.*

*4..In the case of each meeting can Historical Royal Palaces [sic] please provide a list of all environmental topics covered at the meeting.*

*5..Can Historic Royal Palaces please provide copies of any briefing notes and or similar which were issued to Mr Day and other HRP staff member or representative prior to the meeting taking place.*

*6..Can Historic Royal Palaces please provide copies of any correspondence and communications (including emails) between Mr Day and other HRP staff and trustees which in any way relate to the meetings and the topics under discussion. These communications could have pre-dated the meetings or it could have been generated afterwards.*

*7..Since 1 October 2013 have there been any other occasions when the employees and or representatives of Historic Royal Palaces have met with the Prince of Wales. Please only include details of meetings which were pre-arranged. Do not include any chance meetings at social events or other similar engagements.'*

5. On 27 October 2014 the public authority wrote to the complainant explaining that it had judged his request to be *manifestly unreasonable* within the meaning in regulation 12(4)(b) of the EIR due to the excessive cost and work needed to comply with it. This, the authority explained, was on the basis of its understanding that the complainant was seeking all the information it held on Hillsborough Castle that had been collected since it was first approached by the Northern Ireland Office to look after Hillsborough Castle.
6. The complainant wrote back to the public authority on the same day (ie 27 October). He explained that he was only interested *'in information which relates to the specific meetings themselves and NOT all the information you hold on a topic that may be discussed at the meeting.'* He therefore asked the authority to re-consider its application of regulation 12(4)(b) to his request.
7. On 11 December 2014 the public authority provided its response to what it considered to be *'a new narrower, request for information "which relates to the specific meetings themselves and NOT all the information you hold on a topic that may be discussed at the meeting".'*
8. The public authority disclosed some information to the complainant. It explained that this was environmental information extracted from some of the communications within the scope of his request.
9. It also explained that it considered some of the remaining information in scope to be environmental information and withheld the relevant information on the basis of the exceptions at regulations 12(3) (personal data), 12(4)(d) (material in the course of completion) and 12(5)(e) (confidentiality of commercial information).
10. The public authority withheld the other remaining information in scope (ie the information it did not consider to be environmental information) in reliance on the exemptions at sections 37(1)(aa) (communications with the heir to the Throne), 40(2) (personal data) and 41(1) (information provided in confidence) of the FOIA.
11. On 17 December 2014 the complainant requested an internal review. He argued that all the information within the scope of his request fell under the EIR. In other words, it was all environmental information. He also disagreed with the decision not to disclose the remaining information in scope.
12. Following an internal review the public authority wrote to the complainant on 23 January 2015. It maintained that not all of the information in scope was environmental information. It also upheld the application of the exceptions and exemptions originally cited.

## Scope of the case

---

13. The complainant contacted the Commissioner on 24 February 2015 to complain about the way his request for information had been handled. He specifically challenged the public authority's decision not to handle the whole of his request under the EIR and the decision to withhold the remaining information in scope.
14. The Commissioner has addressed the complainant's submissions in support of his position further below.
15. During the course of the Commissioner's investigation, the public authority wrote back to the complainant and clarified its position in relation to each part of the request. Briefly, the authority explained that the information in scope relates specifically to part 1 of his request. It provided the complainant with a list relevant to part 4 of his request and noted in relation to part 7 that a relevant meeting was listed in the Court Circular on 2 April 2014.
16. The complainant did not challenge the public authority's clarified position.
17. To be clear, the substantive scope of the Commissioner's investigation therefore was:
  - To determine whether the public authority was correct to handle some of the information within the scope of the request under the terms of the FOIA, rather than the EIR, and,
  - To determine whether the public authority was entitled to withhold all the information within the scope of part 1 of the request (the disputed information) in reliance on the exceptions at regulations 12(3), 12(4)(d), 12(5)(e) and/or the exemptions at sections 37(1)(aa), 40(2) and 41(1).

## Reasons for decision

---

### Background

18. The public authority is an independent charity, established by Royal Charter, which looks after the Tower of London, Hampton Court Palace, The Banqueting House, Whitehall, Kensington Palace State Apartments, Kew Palace, and since 1 April 2014, Hillsborough Castle (the Castle).
19. In November 2013 the public authority entered into contractual negotiations with the Northern Ireland Office (NIO) for the transfer of

responsibilities in respect of the care, conservation and presentation to the public of the Castle. Negotiations were ongoing until 24 March 2014 when a contract was signed, under which a transfer date of 1 April 2014 was agreed. The public authority noted that at the time of the request, October 2014, only 7 months had passed since the authority's responsibility for the Castle had come into effect, and less than a month had elapsed since the meeting with the Prince of Wales on 10 September 2014.

20. The public authority explained that its aim in taking over management of the Castle is to develop and re-present the Castle site, to help everyone explore the important historical role it has played, and to make the Castle and its gardens widely accessible for future generations to share and enjoy. In doing this, the authority will apply its established business model which will, by 2020, result in significant saving to the cost of running the Castle previously borne by the public purse.
21. Under the contract, the public authority is required to provide, maintain and keep the Castle ready for use by the Royal Family, the Prime Minister, and others. In addition, the authority undertakes to provide services related to the Castle being the official Royal residence in Northern Ireland, such as the provision of rooms for Royal Proclamations, hosting of investitures and hosting of garden parties.

### **Disputed Information**

22. The disputed information comprises email correspondence between the public authority and members of the Prince of Wales's Household, a briefing note for the Prince of Wales and a landscape design concept document. Information in the chain of emails and the briefing note was divided by the public authority between environmental and other information. A small amount of information from both documents was extracted and disclosed to the complainant. An email in the chain of emails was considered to be outside the scope of the request because it does not specifically relate to the relevant meetings with the Prince of Wales. The Commissioner accepts that the relevant information does not fall within the scope of the request for that reason.
23. Information in the landscape design document was withheld in full by the public authority under the EIR.
24. For the avoidance of doubt, the disputed information comprises of information in the chain of emails, the briefing note, (save the disclosed information and the information not within the scope of the request) and the landscape design document.

## **Applicable access legislation**

25. The Commissioner first considered whether the disputed information in its entirety should have been handled by the public authority under the EIR.
26. According to the complainant, by the public authority's own admission, the meetings appear to have been about matters relating to property management, planning and historic conservation. He therefore concluded that the disputed information fell within the definition of environmental information in the EIR.
27. The public authority explained that it identified two areas where the disputed information potentially fell within the definition of environmental information. These are:
  - Information on the gardens and landscape at the Castle, as information on the state of one of the elements of the environment (landscape) and/or as information on the state of a cultural site to the extent that it is or may be affected by the state of the landscape, which is an element of the environment.
  - Information on site development plans at the Castle (work which might require planning consent/listed building consent), as this is information on measures and activities affecting or likely to affect the elements and factors.
28. The authority submitted that the information in the withheld documents which did not fall under the above categories was too remote from the environmental factors in the EIR. It was of the view that this information did not in any way amount to *information about, concerning or relating to* the various aspects of the definition of environmental information.
29. The public authority did not consider that it was necessary to apply the *predominant purpose test* set out in the Commissioner's guidance on identifying environmental information because in its view, the disputed information could be relatively easily divided between environmental and other information.

### *Commissioner's finding on the applicable access legislation.*

30. Environmental information is defined in regulation 2(1) of the EIR as follows:

*'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);...*
31. The Commissioner's general approach will be to interpret 'any information... on...' fairly widely. The relevant Oxford English Dictionary definition of 'on' is 'In reference to, with respect to, as to, concerning, about.' The ICO view, in line with the purpose expressed in the first recital of the Directive<sup>1</sup>, is that 'any information ...on...' 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.
32. In *Department for Business Enterprise and Regulatory Reform v the Information Commissioner & Friends of the Earth*<sup>2</sup> the Information

---

<sup>1</sup> Council Directive 2003/4/EC

<sup>2</sup> Appeal no EA/2007/0072

Tribunal commented on the issue of documents which may contain both environmental and other information.

33. According to the Tribunal, *'Where a document divides easily into parts where the subject matter of each part is easily identifiable this should enable the document to be considered in parts so as to decide which information is caught by EIR. Where this is not the case do we need to review the document in exacting detail to decide which parts or even paragraphs or sentences are subject to EIR or FOIA? To do so would be an extremely onerous approach on those needing to apply the law. But our information laws are based on requests for information not documents. We believe that Parliament may not have appreciated such a consequence and that where possible would have wanted a pragmatic approach to be taken. Therefore we find that where the predominant purpose of the document covers environmental information then it may be possible to find that the whole document is subject to EIR. Where there are a number of purposes and none of them are dominant then it would appear that the public authority has no choice but to review the contents of the document in detail.'*<sup>3</sup>
34. The Commissioner has generally adopted the Tribunal's pragmatic approach when a document that potentially contains environmental and other information cannot be easily divided (most likely where there are potentially mixed sentences and/or mixed paragraphs), and the predominant purpose of the document covers environmental information. This is because the EIRs are a free-standing regime, incorporating the provisions of the Directive. The purpose of the Directive is set out in the recitals, whereas the FOIA has no purpose clause.
35. Broadly speaking, the disputed information relates to communications between the Prince of Wales, the Royal Household and the public authority concerning the regeneration of the Castle to serve as both an official Royal residence in Northern Ireland and a historical attraction for the public to visit and explore.
36. Therefore, the Commissioner considers that the disputed information is *information on* activities affecting, or likely to affect, the state of the elements of the environment such as land and landscape. The Commissioner accepts that, some of the information, when viewed in isolation (ie in the absence of any contextual background), will, strictly speaking, fall outside the scope of the definition of environmental

---

<sup>3</sup> Paragraph 29



information. However, he considers that, broadly speaking, the disputed information relates to activities which are likely to affect the elements and that the predominant purpose of the discussions covers environmental information.

37. Against that background, and in light of the disputed information itself, the Commissioner does not consider that dividing the disputed information in the manner that the public authority has done is appropriate in the circumstances. The broad purpose of the communications is very clear; it relates to the regeneration of the Castle and its surroundings which clearly involve activities likely to affect the state of the elements.
38. The Commissioner therefore finds that the request should have been handled under the terms of the EIR because the disputed information constitutes environmental information within the meaning in regulation 2(1)(c) of the EIR.

### **Application of exceptions**

#### *Regulation 12(5)(e)*

39. Having found that the disputed information is environmental information, the Commissioner has gone on to consider the application of the exceptions relied on by the public authority.
40. The Commissioner first considered application of the exception at regulation 12(5)(e) to the disputed information. As mentioned, the public authority applied this exception to the parts of the disputed information it considered to be environmental information. The Commissioner is however satisfied that the authority's submissions in support of the application of the exception equally applies to all the disputed information.
41. By virtue of the exception at regulation 12(5)(e), a public authority may refuse to disclose environmental information to the extent that *'its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest...'*<sup>4</sup>

---

<sup>4</sup> The EIR exceptions (including regulation 12(5)(e)) to the duty to disclose environmental information can be found here:

<http://www.legislation.gov.uk/ukxi/2004/3391/regulation/12/made>

42. From the above, it is clear that four criteria have to be met in order to engage regulation 12(5)(e). First, the disputed information has to be commercial or industrial in nature. Second, the disputed information has to be subject to a duty of confidence provided by law. Third, the confidentiality has to be required to protect an economic interest. Finally, that confidentiality has to be adversely affected by disclosure of the disputed information.
43. The Commissioner accepts that the disputed information relates to the public authority's plans not just to regenerate an official Royal residence but to also transform the Castle into a commercially viable visitor attraction. The public authority explained that it is (and was at the time of the request) actively seeking sponsorship, commercial and other partners to support its plans for the Castle. The authority also stated that it competes with other charities and visitor attractions on similar activities. The Commissioner therefore accepts that the disputed information is broadly commercial in nature.
44. The Commissioner accepts that the email exchanges and the briefing note were communicated with the clear expectation of confidentiality. There is a long standing convention that communications with the Royal Family are confidential. The Commissioner accepts that the landscape design document was provided with a similar expectation of confidentiality, not least because of its proprietary value to the designer. The Commissioner therefore accepts that the disputed information was provided under the common law of confidence.
45. The public authority explained that it had a legitimate economic interest in creating a viable visitor attraction and competing with other charities and visitor attractions. It argued that disclosure of the disputed information would have revealed to its competitors, the authority's plans for the Castle, its sources of funding, and the developments it considers are required to make the Castle a success and to generate commercial income. Specifically, in terms of the communications with the Royal Household, the public authority argued that disclosure would damage the particular and essential relationship of trust it has built up with the Royal Family and the Royal Household. Disclosure would make sharing information about the Castle with the Royal Family and the Royal Household difficult in future.
46. The public authority further argued that disclosure of this early stage commercial information would reduce its flexibility in making individual business cases or requests for support and that would clearly adversely affect its economic interests. It would, it argued, leave the authority at a competitive disadvantage. Additionally, with regard to the landscape design document, the public authority argued that disclosure would

prejudice the designer's commercial interests because it would reveal the design work to competitors.

47. The public authority also stressed that at the time of the request, the process of decision-making about the Castle and consideration of the outcome of the consultation with the Prince of Wales was very much live and on-going. The authority therefore argued that disclosure would have made (and would make) consideration of the outcome of the consultation, finalising the various planning applications, briefing the landscape designer and decision-making regarding the Castle in general much more difficult. According to the authority, the process of finalising its plans in relation to the Castle was still not complete.
48. The Commissioner accepts that revealing some of the disputed information could place the public authority at a competitive disadvantage in terms of developing a case for funding and for support from donors. It is likely to reduce the authority's flexibility in this area because those wanting to contribute could make assumptions based on the disclosed information which might not necessarily be the case given that the plans had yet to be finalised. This would in turn adversely affect the public authority's ability to adequately invest in the Castle and consequently affect the authority's economic interests. He also accepts that disclosure of the landscape design document would adversely affect the designer's economic interests because it is likely to place her at a competitive disadvantage.
49. Furthermore, the Commissioner agrees with the public authority that revealing communications with the Royal Family and the Royal Household is likely to damage the authority's relations with the authority due to the strong expectation of confidentiality that is usually placed on such communications. If the public authority was unable to communicate freely and frankly with the Royal Family and the Royal Household in relation to its plans for the Castle, it would have an adverse effect on its ability to undertake its contractual responsibilities (and by extension, the authority's economic interests) towards the Castle including its aim of making the Castle a viable visitor attraction.
50. He also accepts that disclosure of the disputed information whilst the public authority is still in consultation with the Royal Family on its future plans for the Castle is likely to inhibit similar future discussions and consequently adversely affect the confidentiality of the authority's economic interests.
51. The Commissioner therefore finds that the disputed information engages the exception at regulation 12(5)(e).

## **Public interest test**

52. The exceptions in the EIR are all subject to a public interest test. Therefore, the Commissioner must consider whether in all the circumstances of the case, the public interest in disclosing the disputed information outweighs the public interest in maintaining the exception at regulation 12(5)(e).

### *Complainant's submissions*

53. The complainant's submissions in respect of the public interest in disclosing the disputed information are summarised below.
54. The EIR carry a presumption in favour of disclosure. They were introduced to ensure the greatest possible degree of transparency when it comes to matters relating to the environment. The public has the right to know if the Prince of Wales's views are impacting on policy issues relating to the environment.
55. The complainant also referred to *'well sourced press reports about the Prince's future plans for the Monarchy.'*<sup>5</sup>

### *Public authority's submissions*

56. The public authority's submissions on the public interest in maintaining the exception are summarised below.
57. It is not in the public interest to receive less funding from external partners or to have less flexibility to appeal to potential sponsors, nor is it in the public interest for the public authority to be at a competitive disadvantage in its approach to potential funders as compared with other organisations.
58. It would not be in the public interest to damage the particular and essential relationship of trust the public authority has built up with the Royal Family and the Royal Household. This relationship of trust allows the public authority to run the Castle as both a Royal residence and a viable visitor attraction. The relationship also serves the public interest more generally because of the importance of the trust of the Royal Family to the success of the public authority's operations generally and to the other Palaces the authority looks after.

---

<sup>5</sup> <http://www.dailymail.co.uk/news/article-2841679/Charles-speak-mind-s-King-claims-source.html> & <http://www.theguardian.com/uk-news/2014/nov/19/becoming-king-not-silence-prince-charles-allies>

59. The public authority's plans (which are reliant on the attraction of sponsorship and partnerships, and the general commercial viability of the site) will ensure conservation of the unique heritage and special character of the Castle for the benefit of the public. Leaving the Castle to decline – which is what will happen if the authority cannot make a success of the site – would not be in the public interest. There is also a related public interest in opening the Castle for the public to enjoy, and making a contribution to the tourism sector.
60. Finally, the public authority argued that the disputed information reveals very little of substance in terms of public understanding of environmental matters and nothing which would ultimately contribute to a better environment. It argued that any such public interest is in any event already being served by the information about its plans for the Castle in the public domain. For example, through the planning application and the various press releases on the public authority's website. According to the authority, it is also planning a new project update section on its website to post updates in relation to the changes at the Castle and to disseminate information about the project more widely.

*Balance of the public interest*

61. The Commissioner considers that disclosure of the disputed information would enhance the general public interest in openness and transparency in relation to the public authority's plans for the Castle especially with regards to its consultations with the Royal Family and the Royal Household.
62. Having said that, he does not consider that the disputed information adds any substantially new information or particularly sheds any additional light on the Prince of Wales's views on environmental matters. In the Commissioner's view, most observers would consider it reasonable that the Royal Family, including the Prince of Wales, was consulted by the public authority in relation to plans to refurbish an official Royal residence including the regeneration of the surrounding landscape.
63. In any event, although the Commissioner considers that the disputed information (especially the landscape design document) would increase public understanding in relation to landscape design and conservation issues, he does not consider that it would add much value to substantive debates on environmental matters, such as the impact of human activity on the environment.
64. Therefore, in all the circumstances, the Commissioner has attached significant weight to the public interest in not undermining the ability of

the public authority to attract adequate funding for its plans for the Castle. He does not consider that there is a corresponding significant public interest in disclosing the disputed information. In addition, there is a public interest in ensuring that a site of such historical significance is accessible to the wider public to enjoy.

65. The Commissioner has therefore concluded that in all the circumstances of the case, the public interest in disclosing the disputed information does not outweigh the public interest in maintaining the exception at regulation 12(5)(e).
66. In light of his decision, the Commissioner did not consider the applicability of any of the other exceptions relied on by the public authority.

## Right of appeal

---

45. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

46. 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.
47. 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 .....**

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