

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 23 July 2015

Public Authority: Department for Communities and Local Government ('DCLG')

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information relating to a meeting between HRH the Prince of Wales and Brandon Lewis MP. The Department for Communities and Local Government applied the exemptions for communications with the Heir to the Throne at section 37(1)(aa), for personal data at section 40(2), and for information provided in confidence at section 41. The Commissioner's decision is that the Department for Communities and Local Government has correctly applied the exemption at section 37(1)(aa) of the FOIA. He has not therefore not therefore considered the application of the exemptions at section 40(2) and 41 of the FOIA.

Request and response

2. On 1 October 2014, the complainant wrote to the Department for Communities and Local Government ('DCLG') and requested information in the following terms:

"I would like to request the following information under the Environmental Information Regulations...

...My request concerns a meeting which took place between Brandon Lewis MP and His Royal Highness the Prince of Wales on 10 September 2014.

1. In the case of this meeting can you please provide copies of all correspondence and communications (including emails) between

Brandon Lewis and His Royal Highness the Prince of Wales which in way relates to the meeting and the topics under discussion at this meeting. Please note that the references to His Royal Highness the Prince of Wales should also include his Private Secretary and or his private office. Please note that the reference to the Minister should 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 this meeting can you please identify any other representatives and or employees from the department who accompanied Mr Lewis? Can you please identify all other individuals at the meeting irrespective of whether they are connected to the department.
 3. In the case of this meeting can the department please provide copies of all documentation, correspondence and communications (including emails) held by the organisation which in any way relates to the meeting and the topics under discussion.
 4. In the case of this meeting can the department please provide a list all of the environmental topics covered at the meeting.
 5. Can the department please provide copies of any briefing notes and or similar which were issued to Mr Lewis and or any other departmental staff member or representative prior to the meeting taking place.
 6. Can the department please provide copies of any correspondence and communications (including emails) between Mr Lewis and any other departmental employee which in any way relate to the meetings and the topics under discussion at this meeting. These communications could have pre-dated the meetings or it could have been generated afterwards."
3. DCLG responded on 29 October 2014 and confirmed that it held information within the scope of the request but refused to provide it citing the exemptions at sections 37(1)(aa), 40(2) and 41 of the FOIA.
 4. The complainant requested an internal review on 29 October 2014 on the basis that the request should have been dealt with under the EIR and the information should have been disclosed.
 5. On 26 November 2014, DCLG informed the complainant that it needed more time to process the internal review and it expected to respond by 29 December 2014.

6. DCLG provided an internal review response on 3 March 2015. It said that it has considered the definitions in regulation 2 of the EIR and concluded that the withheld information is not sufficiently environmental and therefore handling the request under the FOIA was appropriate. It maintained its original position in relation to the exemptions applied.

Scope of the case

7. The complainant contacted the Commissioner on 18 February 2015 to complain about the way his request for information had been handled. He made specific complaints in relation to DCLG not releasing the requested information under the Environmental Information Regulations ('EIR') and the time taken to conduct an internal review.
8. The Commissioner wrote to DCLG on 1 April 2015 requesting a response to his enquiries on this case by 1 May 2015. DCLG provided the Commissioner with copies of the withheld information on 14 May 2015 and with its response to the enquiries on 26 June 2015.
9. DCLG revised its position and considered that some of the requested information is environmental, that being a submission of 9 September 2014 and three annexes providing briefing to the Minister ahead of the meeting (referred to by DCLG as 'Item 4'). It said that it will now undertake an assessment of that information with the aim of coming to a fresh conclusion under the EIR and intends to issue a fresh response to the complainant by 24 July 2015.
10. It is not the Commissioner's intention to conflate the issues, and as regulation 11 of the EIR provides a statutory basis for internal reviews to be conducted, he will take forward the matters concerning the information DCLG has identified as environmental if the complainant still has concerns after having received DCLG's revised response and any subsequent internal review response. For the avoidance of doubt, item 4 is outside the scope of this decision notice.
11. Therefore, the Commissioner has considered whether it was appropriate for DCLG to deal with the remaining information (referred to by DCLG as items 1-3, 5-6) under the FOIA.
12. As the Commissioner has decided that it was appropriate to deal with the information under the FOIA, he has also considered whether the exemption at section 37(1)(aa) was correctly applied.
13. As the Commissioner has decided that section 37(1)(aa) applies in this case, he has not considered the application of sections 40(2) and 41.

Reasons for decision

The correct access regime – FOIA or EIR

14. The effect of section 39 of the FOIA is that if information is 'environmental', it is excluded from consideration under the FOIA.
15. 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).'
16. 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.

17. DCLG has submitted that the information is very obviously administrative in nature, for the purpose of organising a meeting, and therefore not 'environmental'. It said that it is not information on "the state of the elements of the environment...", and therefore doesn't fall within regulation 2(1)(a), nor is it on "factors...affecting or likely to affect the elements...", and therefore doesn't fall within regulation 2(1)(b), or on "measures...and activities affecting or likely to affect the elements and factors..." and therefore doesn't fall within regulation 2(1)(c). DCLG also said the information is not on "conditions of...built structures in as much as they are or may be affected by..." and therefore doesn't fall within section 2(1)(f) and that the remaining limbs at regulations 2(1)(d) and 2(1)(e) do not require any consideration in this case.
18. Having viewed the withheld information, the Commissioner agrees that it is not connected to any of the definitions within regulation 2(1) such as it could reasonably be regarded as constituting 'environmental' information. It does not inform the public about an environmental matter under consideration, nor would it facilitate effective participation by the public in environmental decision making. He considers that the request for this information, which relates to the organisation and administration of a meeting, was therefore correctly dealt with under the FOIA.

Section 37(1)(aa)

19. Section 37(1)(a) was amended with effect from 19 January 2011, via Schedule 7 of the Constitutional Reform and Governance act 2010, to include Section 37(1)(aa)2. Section 37(1)(aa) of the FOIA provides that information is exempt information if it relates to communications with the Heir to, or the person who is for the time being second in line of succession to, the Throne. This section applies to requests made on or after 19 January 2011. The revised exemption under section 37(1)(aa) is not subject to the public interest test.
20. DCLG said that the wording and scope of the request itself suggests that the information relates to communications with HRH the Prince of Wales, or persons acting on his behalf, and having considered the information held, it has no doubt that the exemption is engaged.
21. The Commissioner notes that the section 37(1)(aa) exemption extends to cover not only communications with the Heir to the Throne but also to information that relates to such communications.

22. The Commissioner has reviewed the withheld information. From that review, along with consideration of the context of the request, it is clear to the Commissioner that the withheld information in this case relates directly to communications, in the form of a meeting, with the Heir to the Throne. Therefore, section 37(1)(aa) is engaged in this case.
23. As section 37(1)(aa) is an absolute exemption there is no requirement to consider the public interest test.

Other matters

24. As he has made clear in his published guidance on internal reviews, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner's view of a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the Commissioner notes that complainant first requested an internal review on 29 October 2014 but DCLG did not provide an internal review response until 3 March 2015, over four months later. DCLG should ensure that internal reviews are carried out promptly in future.

Right of appeal

25. 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

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

26. 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.
27. 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
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