

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

**Date:** 11 September 2018

**Public Authority:** Ministry for Housing, Communities and Local Government

**Address:** 2 Marsham Street  
London  
SW1P 4DF

**Decision (including any steps ordered)**

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1. The complainant has asked the Department for Communities and Local Government [now the Ministry for Housing, Communities and Local Government] to provide him with details of any communications between HRH the Duke of Cambridge and the Secretary of State which relate to environmental issues as defined by the Environmental Information Regulations 2004. The complainant has also requested details of any meetings with the Secretary of State to discuss environmental issues and to be provided with details of the time, date and venue of any meeting, a list of those present, together with an outline of the issues discussed and copies of any written briefing notes issued to the Secretary of State and departmental representatives. Having initially refused to comply with the complainant's request on the grounds that it is not valid for the purpose of the EIR, the MHCLG determined that it should rely on Regulation 12(4)(b) on the grounds that the request is manifestly unreasonable. Following searches of its Correspondence Database, its server, the former Secretary of State's diary and the Court Circular, the MHCLG determined that it does not hold information of the type described in the complainant's request.
2. The Commissioner's decision is that the Ministry for Housing, Communities and Local Government, on the balance of probabilities, does not hold the information which the complainant has requested. By now informing the complainant of this the MHCLG has complied with the provision of Regulation 5(1) of the EIR but has failed to comply with Regulation 5(2) by failing to do so within twenty working days of

receiving the request. The Commissioner has also decided that the MHCLG has failed to comply with Regulation 9 of the EIR by failing to provide the complainant with appropriate advice and assistance.

3. The Commissioner requires the public authority to take no further action in this matter.

## Request and response

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4. On 12 July 2017, the complainant wrote to the Department for Communities and Local Government ("the DCLG") to request recorded information generated between 1 January 2014 to 1 June 2014 and which concerns HRH The Duke of Cambridge (including his private office) and the Secretary of State (including his/her private office). The complainant made clear that his request was made under the Environmental Information Regulations ("the EIR"). The terms of the complainant's request are:
  1. *During the aforementioned period has Prince William exchanged correspondence and communications including emails with the Secretary of State which in any way related to environmental issues as defined by the Environmental Information Regulations (EIRs)*
  2. *If the answer is yes can you please provide copies of this contact and communication including emails and the notes and transcripts of any relevant telephone conversations. Please note that I am interested in receiving both sides of the correspondence and communication.*
  3. *During the aforementioned period has Prince William met with the Secretary of State to discuss environmental issues as defined by the Environmental Information Regulations. If the answer is yes can you please provide the following details. Can you state the time, date and venue of the meeting. Can you provide a full list of those present. Can you outline the issues discussed at that meeting. Can you please provide copies of any written briefing notes issued to the Secretary of State and other departmental representatives who attended the meeting.*
  4. *Can you please provide details of and or copies of any relevant documents which have been subsequently destroyed. In the case of each destroyed document can you state when it was destroyed and provide a brief outline of its contents.*
5. The complainant advised the DCLG that he had restricted his request to the specified timeframe in order to ensure that it stays within the time

and financial constraints laid down by the Regulations. He made clear that he would be interested to “hear of relevant information from outside the time period, even if I have to submit another request to obtain it”, and he also asked the DCLG to let him know whether it is aware of relevant information held by other Government Departments as he would also like to receive it.

6. The DCLG responded to the complainant’s request on 8 August 2017. The DCLG’s letter stated:

“After careful consideration, view are of the view that this is not a valid request under the terms of the Environmental Information Regulations. More generally, as per our obligation to provide advice and assistance under section 16 of the Freedom of Information Act and Regulation 9 of the Environmental Information Regulations, you are advised that a request for information should be clearly defined. In order to exercise your entitlement to recorded information held by public authorities a request must describe the specific recorded information sought and not request information defined by an access regime.”

7. The complainant wrote to the DCLG on 8 August 2017 to request an internal review. The complainant argued that his “request is reasonable and fair as it stands” and he pointed out that he cannot be more specific because he cannot know what issues the Prince has raised with the department.
8. The complainant also pointed out that the DCLG does not publish a schedule of correspondence, and even if meetings were included in the Court Circular, the listings would not provide the details of the topics which were discussed. The complainant asserted his belief that the department’s reply is counter to the spirit of the Regulations, and he drew the department’s attention to the fact that the EIR carry a presumption in favour of disclosure and which allow applicants to request information without explanation.
9. The DCLG concluded its internal review and wrote to the complainant on 17 October 2017. The DCLG advised the complainant that its final decision was to uphold its original response, that his request was not a valid request for information under the EIR. The DCLG added that:

“...the Department could have pointed out in its initial response, the Duke of Cambridge is a patron of a number of charities and has given a number of media interviews, both of which should indicate the types of issues which interest him. Any that fall within the area of the Department’s policy responsibilities, it seems to me, would be likely to form a reasonable basis for a more specific request.”

10. Having initially refused the complainant's request on the grounds that it was not valid under the EIR, and following the intervention of the Information Commissioner, the MHCLG issued a revised response to the complainant on 22 May 2018. The MHCLG advised the complainant that, "With regard to your items 1 and 2, we consider, as drafted, your request to be manifestly unreasonable".
11. On 23 May 2018, the complainant asked the MHCLG to conduct an internal review of its handling of his request. The complainant advised the MHCLG he does not accept that the processing of his request would place an unreasonable burden on the Department. The complainant asserted that it is "highly likely that the Department does hold information relevant to [his] request" and he drew the Department's attention to the fact that Prince William has made no secret that he likes to lobby ministers on matters which are of interest to him. To substantiate his assertion, the complainant provided the Department with links to selected press reports. The complainant stated his belief that the processing would not breach the costs limit laid down by the regulations, and that he is asking for environmental correspondence and communication between two senior individuals over a narrow period of time.
12. Having conducted its internal review, the MHCLG wrote to the complainant on 13 June 2018 to advise him of its latest position. The MHCLG's reviewer informed the complainant that he was satisfied that the Department's revised decision is correct, that the information request is refused by way of Environmental Information Regulations regulation 12(4)(b) – manifestly unreasonable. The MHCLG advised the complainant that there is no central repository for "this potential correspondence", and, "it is difficult for the Department to begin a review of held records. Additionally, the Department advised the complainant that, "there is no agreed naming convention for such potentially held correspondence" and that this would increase the scale and volume of any searches undertaken.
13. Responding to the complainant's assertion that HRH Prince William has been open about his contact with Ministers and the complainant's provision of links to information already in the public domain, the MHCLG acknowledged the fact the Prince William is open about writing to Ministers in the past, but it asserted that it is not known if he contacted "this Department and whether the context of any (or all) correspondence was of an environmental nature".

## Scope of the case

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14. The complainant initially contacted the Commissioner on 19 October 2017 to complain about the way his request for information had been handled.
15. The complainant said that he was unhappy with the Department's refusal to process his request and with its failure to provide any information it might hold. He asserted that the request could have been processed within the time and financial constraints provided by the EIR on the grounds that the information concerns two senior individuals and their private offices. The complainant further asserted his belief that it would not have taken the Department too long to locate the relevant correspondence and to determine whether it was environmental in nature.
16. The focus of the Commissioner's initial investigation was the MHCLG's decision to treat the complainant's request as not valid for the purposes of the EIR. Following the Department's reappraisal of the complainant's request and its decision to consider it as manifestly unreasonable, the Commissioner investigated the Department's reliance on Regulation 12(4)(b) of the EIR.

## Reasons for decision

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*Is the complainant's request valid for the purpose of the EIR?*

17. Regulation 5 of the EIR states:
  - "(1) ...a public authority that holds environmental information shall make it available on request.
  - (2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
18. The EIR is silent as to what constitutes a valid request and therefore the Commissioner has considered this question by referring to the provisions of section 8 of the FOIA.
19. Under section 8(1) of FOIA a valid request for information is one which is made in writing, states the name of the applicant and an address for correspondence, and describes the information requested.

20. The commissioner has issued guidance<sup>1</sup> for the interpretation of section 8(1). This states –

“To be valid under the Act the request must describe the information requested. Any genuine attempt to describe the information will be enough to trigger the Act, even if the description is unclear, or you think it is too broad or unreasonable in some way. The Act covers information not documents, so a requester does not have to ask for a specific document (although they may do so). They can, for example, ask about a specific topic and expect you to gather the relevant information to answer their enquiry. Or they might describe other features of the information (e.g. author, date or type of document).”

21. The Commissioner has considered the request made by the complainant and also the response made by the MHCLG to that request.
22. The Commissioner considers the complainant’s request to be valid under section 8(1) of the FOIA for the following reasons:
23. Firstly, the information which the complainant seeks is defined by its subject: The complainant seeks information which relates “to environmental issues as defined by the Environmental Information Regulations”. The definition of environmental information is provided by Regulation 2 of the EIR.
24. Secondly, the complainant has identified the persons who might have generated the environmental information of interest, i.e. HRH The Duke of Cambridge (and his private office) and the Secretary of State (and his/her private office).
25. Thirdly, the complainant has identified the forms and formats by which the information might be held: The complainant seeks any communications including emails, notes and transcripts of telephone conversations, details of any meetings between Prince William and the Secretary of State where environmental issues were discussed.
26. Fourthly, the complainant has specified a particular timeframe in which the information he seeks was received/created, i.e. the six month period 1 January 2014 to 1 June 2014.
27. The Commissioner accepts that that the scope of the request is particularly broad, potentially encompassing a wide range of subjects

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<sup>1</sup> <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

which the Duke of Cambridge and/or his private office may or may not have corresponded or met with the Secretary of State and/or departmental representative. However, the broad scope of the request is not sufficient grounds for the MHCLG to determine that the request is not valid for the purpose of the EIR. It must therefore consider the request and make an alternative response.

28. Having received the Commissioner's initial correspondence in this matter, the MHCLG accepted that the complainant's request is valid and it revisited its position.

29. On 10 May 2018, the MHCLG advised the Commissioner that:

"We do however hold the view that the request, even when taking the Duke of Cambridge's patron role into account, would be sheer guesswork. The request, as set out by Mr Hastings did not describe what recorded information was being sought in order for us undertake appropriate searches. Using terms such as "environmental issues" would be most unlikely to identify information in scope, even when we take into account areas which may be of interest to HRH Prince William. We consider that the request was too vague and would engage regulation 12(4)(c) of the EIR. Were we to proceed with such vague search terms due to the lack of key words we consider that the request should be refused as manifestly unreasonable."

And:

"...without seeing and considering any information in scope, we would be unable to identify the appropriate information regime.

30. The MHCLG subsequently issued a new response to the complainant which informed him that it considered his request to be manifestly unreasonable. The Department said it is "satisfied that it would not be possible to respond to your complete request within [the appropriate limit<sup>2</sup>] due to the number of searches and reading through of documentation which would be required. The Department invited the complainant to make a revised request using more succinct search terms.

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<sup>2</sup> The appropriate limit is set at £600 for government departments under Regulation 3 of The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

<http://www.legislation.gov.uk/ukxi/2004/3244/regulation/3/made>

31. The MHCLG explained that, "any searches to identify information in scope of your request would have to be identified by a key word search system. Simply searching on 'environmental issues' would not be a robust or secure way of tracing the appropriate documentation, should it exist, indeed, much is likely to be missed". The Department suggested that the complainant may wish to use the words 'river pollution', 'asthma' or other specific matters where a search could meaningfully be undertaken.
32. On 4 July 2018, having received the MHCLG's new response to his request, the complainant wrote to the Commissioner and asked her to continue with the investigation of his complaint. The complainant advised the Commissioner that he did not accept that processing his request would breach the costs limits, and he asserted that it is "highly likely that correspondence from Prince William [...] would be treated differently from general correspondence". In the complainant's opinion, "It is likely the correspondence would be flagged up to the Secretary of State and filed in isolation along with other correspondence from His Royal Highness".
33. In view of the complainant's renewed complaint, the Commissioner wrote to the MHCLG on 12 July 2018, in respect of its application of Regulation 12(4)(b) of the EIR – manifestly unreasonable.
34. The MHCLG made its response to the Commissioner's enquiry on 8 August 2018.
35. In response to the Commissioner's first question of why the MCLG's response and subsequent review of this case is silent in respect of items 3 and 4 of the complainant's request, the Department made clear that its application of Regulation 12(4)(b) is in respect of the whole of the complainant's request.
36. The Department referred the Commissioner to her own guidance on the use of this exception and to the Upper Tier Decision notice *Craven v The Information Commissioner and the Department of Energy and Climate Change [2012] UKUT442 (AAC)(paragraph 25)*. This guidance states that authorities should, in practice, apply the same principles as those relevant to section 12 (appropriate limit) of the Freedom of Information Act.
37. In the opinion of the MHCLG "it is reasonable that the requester could have subsequently refined his request to only that information at points 3 and 4 had he required."



38. Under Regulation 12(4)(b) of the EIR a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
39. The EIR differ from the FOIA in that there is no specific limit set for the amount of work required by an authority to respond to a request, as that provided by section 12 of the FOIA.
40. The Commissioner asked the MHCLG whether, as a matter of fact, it had carried out any search or searches for information within the scope of the complainant's request. The Department's response to this enquiry was:

"Since the complaint was received, subsequent searches have identified that the information sought is not held. Therefore the Department will be revising its position and issuing an information not held response."

41. Notwithstanding its revised position, the MHCLG described the difficulties it has in searching for information concerning members of the Royal Household. It told the Commissioner that:

"In general terms, searches involving members of the Royal Household are prone to difficulties which would not apply to searches for correspondence to/from other individuals. This is due in part to the number of titles held by members of the Royal Household, for example HRH Prince William is also officially known as His Royal Highness Prince William Arthur Philip Louis, Duke of Cambridge, Earl of Strathearn, Baron Carrickfergus and Royal Knight Companion of the Most Noble Order of the Garter. In addition searches for meetings can also identify road names linked with Royalty and names of pubs. Because of our Secretary of State's quasi-judicial role in the planning process and the majority of information about planning applications are considered under EIR, more environmental information is held by MHCLG than many other Government Departments. With regard to meetings, all official meeting with the Royal Household are detailed in the Court Circular; the applicant has referred to the Court Circular and received information previously on a different EIR case in relation to a particular meeting."

42. The Department advised the Commissioner that it had carried out searches of its Correspondence Database and had made enquiries with the Private Offices and Correspondence Team.
43. Responding to the Commissioner's suggestion that it would be reasonable for a member of the public to expect that, if Prince William had corresponded with the Secretary of State, it would be relatively straightforward to identify that correspondence, the Department referred the Commissioner to the difficulties listed above at paragraph

- 41 and it provided the Commissioner with a URL to the Departmental guidance on correspondence which is provided by the Cabinet Office<sup>3</sup>.
44. The Department directed the Commissioner to the part of that guidance which refers to correspondence from MPs. This says that such correspondence will be recorded on the Department's Database.
  45. Additionally, the Department advised the Commissioner that it does not have a written protocol for recording Royal correspondence. It said, "The correspondence will be recorded on the Departmental centralised system – Despatch Box, but there can be searching difficulties with regard to members of the Royal Household".
  46. The MHCLG advised the Commissioner that, prior to the introduction of its current system, searching on the previous correspondence database was cumbersome, and that this system collapsed and became non-operational early in 2014, with the data becoming corrupted.
  47. The MHCLG also advised the Commissioner that it has no formal written policy for dealing with correspondence from senior persons such as MPs and members of the Royal Family. It says that, "all correspondence is recorded on our Correspondence Database which staff are trained to use. Searches for MP correspondence is relatively straightforward by inserting the name of the MP and date range", and, "Royal Household searches are less so, due to the number of different titles used".
  48. The MHCLG provided the Commissioner with a link to its Record Retention and Disposal Policy<sup>4</sup> and advised her that correspondence is not held prior to 2010.
  49. Having considered the MHCLG's response of 8 August, the Commissioner wrote to the Department on 17 August to advise it that its response contained insufficient detail for her to make her decision in this matter.

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<sup>3</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/504396/Cabinet\\_Office\\_Guidance\\_on\\_correspondence\\_-\\_March\\_2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/504396/Cabinet_Office_Guidance_on_correspondence_-_March_2016.pdf)

<sup>4</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/447672/DCLG\\_Record\\_Retention\\_and\\_Disposal\\_Policy\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447672/DCLG_Record_Retention_and_Disposal_Policy_2015.pdf)

50. The Commissioner stated that the Department had given little evidence of the searches it has carried out as a matter of fact. The Commissioner also challenged the Department's position in respect of the lesser titles available to the Duke of Cambridge which might be used when he, or his household meets with or corresponds with the MHCLG. In view of her scepticism, the Commissioner asked the MHCLG to provide responses to questions about the searches made by the Department for information relating to any meetings between HRH (including his household and representatives) with the Secretary of State (including members of the private office and departmental office).
51. The MHCLG responded to the Commissioner's enquiry on 29 August. The Department informed the Commissioner that, "The Secretary of State would normally be copied in on any correspondence with senior royals", and therefore it searched the archived email account of the, then Secretary of State Sir Eric Pickles.
52. The Department advised the Commissioner that it used the term 'Prince William' which yielded 24 items. None of these items proved to be relevant to the complainant's request, being mostly references to Prince William in the Press.
53. Using 'Duke of Cambridge' as a search term 37 items were retrieved. Again none of these items was found to be relevant to the complainant's request for the same reasons as above.
54. Both of the search terms used by the Department were chosen because it is believed that they would "maximise coverage".
55. The Department advised the Commissioner that its searches were carried out on its server as any material held on local devices would normally have been synced to the server and given the time period specified in the complainant's request, the Department would expect the material to be held electronically if any material was held.
56. In its response to her question concerning the deletion or destruction of material within the scope of the complainant's request, the MHCLG advised the Commissioner that it has no systems to indicate deletion or destruction had taken place given the passage of time.
57. The Department also advised the Commissioner that it has no systems which would indicate when, if at all, the MHCLG held information relevant to the request, which had subsequently been deleted or destroyed. It added that. "...destruction certificates are currently only generated for the destruction of individual registered files", and, "Generally, external correspondence records are deleted shortly after

the correspondence has completed and it not required to be held for business purposes.

58. The Department told the Commissioner that there is a “theoretical possibility” that copies of now deleted electronic data might have been made and is now held in other locations. That said, the Department added that it lacks the technical tools to carry out an enterprise-wide search for a multi-word search term”.
59. Finally, the MHCLG assured the Commissioner that it has no business purpose to retain information of the type the complainant seeks, nor is there any statutory requirement for it to retain it if it was once held.
60. Turning to item 3 of the complainant’s request, which concerns possible meetings between the Duke of Cambridge (and/or his household) and the Secretary of State (and representatives of the Department), the MHCLG told the Commissioner that it has searched the diary entries of the Secretary of State – Sir Eric Pickles, using the search terms ‘Prince William’ and ‘Duke of Cambridge’ and had found no entries.

*The Commissioner’s considerations and conclusion*

61. In cases where a public authority says it does not hold the information which a requester has asked for, the Commissioner will make her decision in those matters by applying the “balance of probabilities’ civil test. This is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.
62. The MHCLG’s position is that it does not hold any information which is described by the terms of the complainant’s request. It has provided the Commissioner with explanations as to why it has adopted this position based on what the Department has established from the searches of its database, the Secretary of State’s diary and the Court Circular. In making this decision the Commissioner has accepted that the Department’s explanations have been given in good faith.
63. The Commissioner acknowledges that the Duke of Cambridge holds numerous titles and honours which he is entitled to use, in the Commissioner’s opinion, if the Duke had written to the Department, he would be likely to have used his more senior titles such as the ones actually used by the Department in its searches.
64. In the Commissioner’s opinion the MHCLG’s explanations are sufficient for her to decide, on the balance of probabilities, the Department does not hold the information which the complainant seeks through his request. The Commissioner’s decision is that the MHCLG has complied with Regulation 5(1) of the EIR.

65. However, the Commissioner has also decided that the MHCLG has failed to comply with Regulation 5(2) by failing to properly respond to the complainant's request within twenty working days.

*Regulation 9: Advice and assistance*

66. The Commissioner asked the MHCLG whether it holds information that is similar to the information requested by the complainant and whether it considers the Department has given the complainant appropriate advice and assistance in respect of his request.
67. In response to this question, the MGCLG told the Commissioner that the Department was not aware of it holding similar, EIR-related information, from Prince William.
68. The Commissioner feels obliged to acknowledge that the purpose of the complainant's request is essentially to uncover instances where Prince William (or his household) has corresponded or met with the representatives of the MHCLG in matters concerning issues which fall within the definition of environmental information provided by Regulation 2 of the EIR – as such, the request represents a fishing expedition.
69. The Commissioner acknowledges the wide scope of the complainant's request and its lack of specificity in respect the environmental issues which might be of interest to the Duke of Cambridge.
70. The Commissioner is in no doubt that the lack of specificity of the complainant's request has made it difficult for the MHCLG to focus its searches. However, in consideration of how the MHCLG has addressed the complainant's request, particularly in respect of the Departments' subsequent changes of position, the Commissioner considers that a more requester-oriented approach, involving meaningful engagement with the complainant, might have removed the need for the complainant to refer this matter to her.
71. The Commissioner recognises the invitation given to the complainant to suggest specific environmental issues which are known to be of interest to the Duke of Cambridge. That invitation was wholly insufficient to constitute the provision of advice and assistance and therefore the Commissioner has decided that the MGCLG has breached Regulation 9 of the EIR.

## Right of appeal

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73. 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)

74. 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.

75. 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 .....**

**Andrew White  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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Cheshire  
SK9 5AF**