

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

**Decision notice**

**Date:** 27 August 2019

**Public Authority:** HM Treasury  
**Address:** 1 Horse Guards Road  
London  
SW1A 2HQ

**Decision (including any steps ordered)**

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1. The complainant requested copies of communications between the Chancellor of the Exchequer and The Duke of York and/or Sarah, Duchess of York, concerning the wedding of their daughter Princess Eugenie. The public authority neither confirmed nor denied holding the requested information, relying on sections 37(2) (communications with members of The Royal Family) and 40(5)(B)(a) (personal data) FOIA.
2. The Commissioner has concluded that the public authority was entitled to rely on section 37(2) FOIA.
3. No steps are required.

## Request and response

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4. The complainant submitted a request for information to the public authority on 5 October 2018 in the following terms:

"I would like to request the following information under the Freedom of Information Act..

Please do treat any environmental information as a request for information under The Environmental Information Regulations (EIRS).

Please note that I am only interested in information generated between 5 October 2017 and the present day.

Please note that the reference to Prince Andrew and the Duchess of York should include those two individuals as well as their private offices.

Please note that the reference to The Chancellor should include the Prime Minister and her private office.

1...Since October 2017 has Prince Andrew and or the Duchess of York written to The Chancellor about any of the issues listed below.

a..The up coming wedding of their daughter to Princess Eugenie to Jack Brooksbank and arrangements for the event.

b...The cost of the wedding and the possibility of tax payer support for the event.

c...The possibility of an official title for Brooksbank once he is married.

d...The couple's official duties once they are married and or the question of continuing financial support for the couple.

2...If the answer to Question one is yes can you please provide copies of this correspondence and communication including emails.

3...Did The Chancellor reply to the above correspondence and communication?

4..If the answer is to question three is yes can you please provide copies of this correspondence and communication including emails.

In the event that relevant documentation has been destroyed. Can you please supply the following details? In the case of each destroyed piece of correspondence can you provide details of the recipient, sender and date it was generated? In the case of each destroyed piece of documentation can you please say when it was destroyed? If the

destroyed documentation continues to be held in another form can you please provide copies of that documentation.”

5. The public authority responded on 2 November 2018 neither confirming nor denying whether any information was held within the scope of the request relying on sections 37(2) and 40(5)(B)(a) FOIA.
6. The complainant requested an internal review of this decision on 3 November 2018.
7. On 19 February 2019 the public authority wrote to him with details of the outcome of the review. The review upheld the original decision.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 20 February 2019 in order to complain about the public authority's handling of his request. He specifically disagreed with the public authority's response to his request. On 4 July 2019 the complainant asked the Commissioner to additionally consider whether any part of his request should have been handled under the EIR<sup>1</sup>.
9. In relation to this complaint it is important to note that the right of access provided by FOIA is set out in section 1(1) and is separated into two parts: section 1(1)(a) gives an applicant the right to know whether a public authority holds the information that has been requested. Section 1(1)(b) gives an applicant the right to be provided with the requested information, if it is held. Both rights are subject to the application of exemptions.
10. As explained above, the public authority is seeking to rely on section 37(2) and section 40(5) to refuse to confirm or deny whether it holds information falling within the scope of the request. Therefore, this notice considers whether the public authority is entitled, on the basis of these exemptions, to refuse to confirm or deny whether it holds the requested information. Nothing in this notice should be construed as confirming or denying whether the public authority holds information within the scope of the request.

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<sup>1</sup> This was the first time that the complainant had raised this issue. It was not raised with the public authority on 3 November 2018 further to the public authority's response to his request.

11. Further to the complainant's correspondence of 4 July 2019, the Commissioner has additionally considered whether any part of the complainant's request should have been handled under the EIR.

## Reasons for decision

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12. The Commissioner has first considered whether the public authority was entitled to handle the complainant's request under the terms of the FOIA, or the EIR, or both.
13. As mentioned, section 1(1) FOIA provides two rights to applicants. They are:
- a) The right to be informed in writing by the public authority whether or not it holds the information requested by the applicant, and
  - b) If so, the right to have that information communicated.
14. Both these rights are subject to other provisions in the FOIA including exemptions.
15. The right in section 1(1)(a) FOIA is commonly referred to as a public authority's "duty to either confirm or deny" whether it holds the information requested by an applicant.
16. There are a number of exemptions in the FOIA from the duty in section 1(1)(a). Sections 37(2) and 40(5)(B)(a) are two of such exemptions.
17. Under the EIR there are two exceptions from the duty to "confirm or deny" whether a public authority holds environmental information. These relate to the exceptions at regulation 12(5)(a) (international relations, defence, national security or public safety) and regulation 13 (personal data) of the EIR. Both of these exceptions can be found at regulations 12(6) and 13(5) EIR. There are no other exemptions in the EIR from the duty to confirm or deny whether environmental information is held.
18. "Environmental information" is defined at regulation 2(1) of the EIR.<sup>2</sup>
19. There are two reasons why the public authority did not handle the complainant's request under the EIR. The first and primary reason has been shared with the Commissioner in confidence. In addition, the public

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<sup>2</sup> <http://www.legislation.gov.uk/uksi/2004/3391/regulation/2/made>

authority considers that given the wording of the request, there is no indication that, if information were held, it would fall to be considered under the EIR.

20. In view of the explanation provided by the public authority in confidence, the Commissioner is satisfied that the public authority was entitled to handle the request under the FOIA. The Commissioner also shares the view that based on the wording of the request, it is unlikely that any information held would constitute environmental information within the meaning of regulation 2(1) EIR.

### **Section 37(2) FOIA**

21. The Commissioner next considered whether the public authority was entitled to neither confirm nor deny holding any information within the scope of the complainant's request relying on section 37(2) FOIA.

22. Section 37 FOIA states:

"(1) Information is exempt information if it relates to—

(a) communications with the Sovereign,

(aa) communications with the heir to, or the person who is for the time being second in line of succession to, the Throne,

(ab) communications with a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne,

(ac) communications with other members of the Royal Family (other than communications which fall within any of paragraphs (a) to (ab) because they are made or received on behalf of a person falling within any of those paragraphs), and

(ad) communications with the Royal Household (other than communications which fall within any of paragraphs (a) to (ac) because they are made or received on behalf of a person falling within any of those paragraphs), or]

(b) the conferring by the Crown of any honour or dignity.

(2) 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)."<sup>3</sup>

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<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2000/36/section/37>

20. The public authority considers that confirming or denying whether it holds information within the scope of the request would itself reveal information relating to communications with The Duke of York which would otherwise be exempt under section 37(1)(ac) because it relates to communications with members of the Royal Family.
21. It is clear from section 37 that information is exempt on the basis of section 37(1)(ac) if it relates to communications with members of the Royal Family other than those mentioned in sections 37(1) (a), (aa) and (ab).
22. Section 37(2) is also clear that a public authority is excluded from the duty to confirm or deny whether it holds information which is or if it were held by the public authority would be exempt from disclosure by virtue of section 37(1)(ac).
23. The Commissioner is satisfied that confirming or denying whether the information requested by the complainant is held would reveal information which would otherwise be exempt under section 37(1)(ac).
24. The public authority was therefore entitled to rely on the exemption at section 37(2) FOIA.

### **Public interest test**

25. The exemption at section 37(2) from the duty to comply with section 1(1)(a) with respect to information that would otherwise be exempt under section 37(1)(ac) is subject to the public interest test set out in section 2(1)(b) FOIA.
26. The Commissioner has therefore considered whether in all the circumstances of the case, the public interest in maintaining the exemption at section 37(2) outweighs the public interest in complying with section 1(1)(a) FOIA.
27. The complainant has argued that the public has a right to know if "the Royal Family has been lobbying for the financial and other interests of their own family. This kind of lobbying would be above and beyond any constitutional responsibilities they have."
28. The public authority's submissions on the balance of the public interest are summarised below.
29. The public authority recognises that there is a public interest in understanding the roles of members of The Royal Family. There is a public interest in confirming whether or not the public authority holds any correspondence between the Chancellor of the Exchequer and the Duke of York about the wedding of Princess Eugenie and related events.

30. Some information about the Royal wedding, including a public ballot for seats and charities invited to attend the wedding is available on the website of the Royal Household at the following links:

<https://www.royal.uk/wedding-princess-eugenie-york-mr-jack-brooksbank-public-ballot-privacy-notice>

<https://www.royal.uk/charities-invited-wedding-princess-eugenie-and-jack-brooksbank>

31. It should be noted that the Royal Household is fully financial accountable. The Royal Household's business accounts are audited by the National Audit Office, laid before Parliament, and published on the royal.uk website.
32. There is a strong public interest in members of The Royal Family being able to carry out their official duties. That they are able to do so depends on the maintenance of the confidentiality of their communications. There is no specific and particularly pressing public interest that would supersede the countervailing public interest in respect of any hypothetical information concerning the wedding of Princess Eugenie. Whilst interest and speculation in The Royal Family from the media continues, this is not equivalent to a public interest in such information being publicly available.
33. Furthermore, the request is topic-specific. If a confirmation or denial were to be given under the FOIA, this would reveal that information relating to communications with or on behalf of the Chancellor and The Duke of York does or does not exist. Although members of The Royal Family are not in the same constitutional position as The Queen, the need to maintain the neutrality of The Sovereign, and not to undermine diplomatic and goodwill work of all members of The Royal Family are still relevant factors in deciding whether complying with section 1(1)(a) is in the public interest in this case.
34. The effective performance of The Duke of York's official role is dependent upon maintaining the expectation of confidentiality of communications. Complying with section 1(1)(a) in the circumstances of this case would undermine this principle.

*Balance of the public interest*

35. The Commissioner accepts that in order for members of the Royal Family to be able carry out diplomatic and goodwill work they must be able to exchange correspondence with public authorities with the expectation that such information would be treated confidentially. Furthermore, the Commissioner accepts that confirmation as to whether or not the public authority held the requested information would reveal

whether the Duke of York, or Sarah, Duchess of York, had corresponded with the Chancellor on specific issues.

36. In the Commissioner's view such a confirmation would represent a direct infringement of the principle that such communications are considered to be confidential. In turn, the Commissioner accepts that such an outcome risks undermining the diplomatic and goodwill work carried out by the members of the Royal Family. In attributing weight to this argument the Commissioner notes that the request concerns a senior member of The Royal Family which in her view arguably increases the risk of this harm occurring if the public authority complied with section 1(1)(a) in his case. However, the Commissioner acknowledges that complying with section 1(1)(a) would contribute towards the transparency of how the members of The Royal Family and the Chancellor (may) engage on particular topics.
37. The Commissioner also accepts that there is a genuine and legitimate public interest in how Princess Eugenie's wedding was funded. Nevertheless, taking into account the wider consequences of undermining the confidentiality of such communications, and given the importance of such confidentiality to the work of The Royal Family, the Commissioner has concluded that in the circumstances of this case, the public interest in maintaining the exemption contained at section 37(2) outweighs the public interest in complying with section 1(1)(a).



## Right of appeal

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

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

Tel: 0300 1234504  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.

40. 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 .....**

**Terna Waya**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**