

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

Decision notice

Date: 13 January 2021

Public Authority: Department for Environment, Food & Rural Affairs (Defra)

Address: Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested communications held by Defra between the Secretary of State and the Duke and Duchess of Sussex within a specific time period. Defra stated that no information was held.
2. The Commissioner's decision is that Defra does not hold the requested information and has complied with section 1 of the FOIA by informing the complainant that it does not hold the information he has asked for. She requires no steps to be taken.

Request and response

3. On 21 June 2019 the complainant made a request to Defra in the following terms:

"Please note I am only interest [sic] in information which relates to 1 January 2019 to present day.

1... During the aforementioned period did the Duke and or Duchess of Sussex communicate with the Secretary of State in writing. The correspondence and communication will include letters, faxes and emails (including but not limited to emails sent via private email accounts) and messages sent via encrypted message services.

2...If the answer to question one is yes can you please provide copies of these written messages and communications?

3...During the aforementioned period did the Secretary of State reply to these messages and or did he/she communicate with the Duke and or Duchess of Sussex in writing. These written messages will include letters, faxes and emails (including but not limited to email sent via private email accounts) and messages sent via encrypted message services.

4... If the answer to question three is yes can you please provide copies of these written messages.

5...If any relevant documentation has been destroyed can you please provide the following details. In the case of each destroyed piece of documentation can you state when it was destroyed and why. In the case of each destroyed piece of correspondence can you also provide a brief outline of its contents. In the case of each piece of destroyed communication and correspondence can you provide details of sender(s), recipient(s) and detail of the date it was generated. In the case of each piece of destroyed communication can you please provide a brief description of its contents. If any of this destroyed documentation continues to be held in another form can you please provide copies of that documentation."

4. The DVLA responded on 12 July 2019. For parts 1-4 of the request Defra stated the information was not held but did not appear to address part 5 of the request.
5. The complainant requested an internal review of this decision on 12 September 2019 at which time he pointed out Defra's lack of response to part 5 of his request.
6. Defra conducted an internal review and provided the outcome on 7 November 2019. Defra upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 4 December 2019 to complain about the way his request for information had been handled, he specifically referred to the decision by Defra to consider the request under the FOIA rather than the EIR and the failure to address part 5 of the request and confirm if any information had been held and subsequently destroyed.

8. The Commissioner considers the scope of her investigation to be to determine if Defra has considered the request under the correct access regime and if it has correctly stated that it holds no relevant information and has fully answered all parts of the request.

Reasons for decision

Is the request environmental?

9. The complainant raised concerns as to whether the FOIA was the correct legislation under which to consider the request. Defra did consider this point as part of its internal review and concluded that any correspondence that would be held with the Duke and Duchess of Sussex would not be 'environmental information' as defined in regulation 2(1)(c) of the EIR.
10. Regulation 2(1)(c) of the EIR states that information will be environmental if it relates to "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)"
11. The request asked for correspondence that may be held between the Duke and Duchess of Sussex and the Secretary of State. Whilst the Commissioner can see how it might be assumed any correspondence held by Defra would be 'environmental' due to its remit there is no clear evidence to suggest that any correspondence, if held, would be in relation to the environment, factors affecting it or measures relating to it. It is also possible that any correspondence could be on issues outside of these areas and not directly linked to environmental issues.
12. As such the Commissioner accepts that Defra correctly considered the request under the FOIA.

Section 1 – information held

13. Section 1 of the FOIA states that:

"(1) Any person making a request for information to a public authority it entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

14. The Commissioner has sought to determine whether Defra holds the information, or has held the information, which the complainant has asked for. To make this determination the Commissioner applies the civil test which requires her to consider the question in terms of the balance of probability.
15. The Commissioner has investigated whether Defra holds any correspondence between the Duke and Duchess of Sussex and the Secretary of State during the prescribed time period. She has done this by asking Defra questions about the searches it has made to locate any information in the scope of the request, and questions about any possible destruction or deletion of relevant information.
16. Defra has explained that as the information requested was between the Secretary of State and the Duke and Duchess of Sussex it was able to focus its searches to its Private Office as this was the area that would be involved in these communications. Searches were carried out within the Private Office where all individuals search their inboxes, sent and received emails. Shared depositories where electronic files could be stored were also checked. The search terms used were 'Duke of Sussex', 'Prince Harry', 'Duchess of Sussex' and 'Royal Family'.
17. Defra also advised that it consulted with its Records Management Team to search physical paper records. Defra states that in all cases no results were returned so it concluded that it did not hold any information within the scope of the request.
18. Defra has further explained to the Commissioner that it is aware that the complainant also asked for correspondence sent by the private and press secretaries of the Duke and Duchess of Sussex and any other staff authorised to write on their behalf. Defra has stated it does not know the identities of the Duke and Duchess of Sussex's private staff over the relevant period but it considers its search terms would have encompassed any communications sent on behalf of the Duke and Duchess as it is almost certain they would have been referred to in the correspondence.
19. In regard to the final part of the request relating to the possible deletion/destruction of any information that may have been held; Defra has explained to the Commissioner that it does have retention policy in place that dictates that information of this nature be retained for seven years. Therefore if any information relevant to the request existed it would still be held. Defra also consulted with its physical records team and asked them to search their records using the previously mentioned search terms for any information that might have been destroyed and no records were returned.

20. The Commissioner has considered Defra's representations in this matter. She finds that the searches undertaken by Defra were reasonable in the circumstances; correspondence is most likely to be held electronically within emails or electronic records management systems so searching using search terms should provide results if information is held. The Commissioner considers the search terms used were broad enough to identify any relevant information. In addition Defra has also checked its physical records sufficiently and has found no record of any documents destruction.
21. The complainant has not provided any compelling argument as to why this information would be held and the Commissioner considers Defra's representations to be credible. She therefore finds, on the balance of probability, Defra has complied with section 1 of the FOIA by informing the complainant that it does not hold the information he has asked for.

Right of appeal

22. 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

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

23. 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.
24. 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

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF