

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

Date: 13 December 2022

Public Authority: Natural Resources Wales
Address: Cambria House
29 Newport Road
Cardiff
CF24 0TP

Decision (including any steps ordered)

1. The complainant has requested copies of correspondence between National Resources Wales ('NRW') and King Charles III (who was the Prince of Wales at the time).
2. NRW handled the request under both FOIA and the EIR. The Commissioner's decision is as follows:
 - The withheld information engages section 37(1)(aa) and is therefore exempt from disclosure.
 - On the balance of probabilities, NRW does not hold any further information that would fall within the scope of the request.
3. The Commissioner does not require NRW to take any further steps.

Request and response

4. On 23 May 2022 the complainant made a request for information. Due to the length of this request, it is outlined in an annex at the bottom of this notice.
5. On 22 June 2022 Natural Resources Wales ('NRW') responded and disclosed information in response to part iii (Forests and Woodlands in Wales) of the request. It confirmed that redactions had been made under section 37 (communications with His Majesty and the awarding of honours) and regulation 13 (third party personal data). NRW also confirmed that information had been withheld under regulation 12(4)(d) (material in the course of completion, unfinished documents and incomplete data).
6. On 22 June 2022 the complainant requested an internal review. They expressed concern that NRW holds more information that falls within the scope of their request. They also disputed the redactions made, noting that if the information is environmental section 37 cannot apply.
7. NRW provided the outcome to its internal review on 16 August 2022. It upheld its use of section 37 and regulation 13. It explained that it was incorrect to rely upon regulation 12(4)(d) as it had done but confirmed that this information was also exempt under section 37. However, it did not address the complainant's concern that further information was held.

Scope of the case

8. The complainant hasn't raised any concerns about third party data being withheld – so the Commissioner won't consider this matter any further.
9. It is important that public authorities handle requests for information under the correct access regime. This is particularly important when refusing to provide information since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). Importantly, there is no equivalent for section 37 in the EIR. In order for NRW to be correct in withholding information under section 37, the information can't be environmental.
10. The scope of this case is to determine whether NRW holds any further information that would fall within the scope of the request and to determine whether NRW is correct in withholding information under section 37.

Reasons for decision

11. Regulation 2(1) of the EIR defines environmental information as information relating to:

“(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)...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)”

12. The Commissioner accepts that it can sometimes be difficult to separate out environmental information from non-environmental information. The Commissioner has reviewed the withheld information and it comprises:

- Correspondence between Claire Pillman, Chief Executive of NRW, and the Private Secretary of the Prince of Wales
- Correspondence between Claire Pillman’s personal assistant and the Private Secretary of the Prince of Wales.

13. Having reviewed the withheld information, the Commissioner is satisfied that it is not environmental information. It relates to previous agreements between NRW and the palace and scheduling matters/conflicts between HRH and NRW. Whilst the wider

correspondence may relate to the Welsh woodland, the information which is being withheld under section 37(1)(aa) is solely concerned with networking and administrative matters and, therefore, doesn't 'relate' to the environment in accordance with the definitions a-f outlined above.

14. Furthermore, the Commissioner has considered the information that has been disclosed to the complainant in relation to this request. It clearly 'relates to' the environment in accordance with the definitions a-f above, as it discusses NRW's acquisition of land, its plans for developing that land and how these plans will impact climate change.
15. Section 37 is an absolute exemption. NRW has applied section 37(1)(aa) because, at the time that the request was received, the complainant was requesting communications with the Heir to the Throne. The exemption also covers communications made or received by a person who was acting **on behalf of** the Heir to the Throne, for example, HRH's private secretary.
16. Looking at the withheld information, the Commissioner is satisfied that it engages section 37(1)(aa) and NRW was correct to withhold it.
17. The Commissioner will now go on to consider the complainant's concern that NRW holds further information that would fall within the scope of their request. In cases where a dispute arises over the recorded information held by a public authority at the time of a request, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
18. Whether any further information would fall under the EIR, or FOIA, in this instance is irrelevant. In both circumstances the Commissioner asks the public authority to explain the searches it has undertaken to locate any information that would fall within the scope of this request and to explain why these searches would have been likely to locate all of the information in scope.
19. In this instance, NRW has explained 'Searches were carried out in the CEO and Clare Pillman email accounts.' NRW has explained it used the names of their main contacts at the palace as search terms. It also explained that it 'contacted the Chief Executive's Office, who carried out subsequent searches.' Looking at the focus of the request, the Commissioner is satisfied that NRW carried out targeted and relevant searches in order to retrieve all relevant information.
20. Therefore, on the balance of probabilities, the Commissioner is satisfied that NRW has identified all of the information within scope and no further information is held.

Right of appeal

21. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

22. 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.
23. 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

Alice Gradwell
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

"Please note that I am only interested in information generated since 1 January 2021.

Please note that the reference to the Prince of Wales in the questions below should include the Prince himself (irrespective of which of his titles he used), his Principal Private Secretary (ies), his Assistance Private Secretary (ies), any other private secretary (ies), his Press Secretary and any other members of staff in his private office able to correspond and communicate on his behalf. Please note that I am only interested in the correspondence and communication of these other individuals if it's clear that these individuals are corresponding and communicating on behalf of the Prince and or they are officially representing his views.

Please note that the reference to Claire Pillman in the questions below should be taken to Ms Pillman herself and or anyone in her private office able to correspondence and communicate on her behalf.

Please note that the reference to written correspondence and communications in the questions below should be taken to mean all traditional forms of correspondence such as letters, faxes, telegrams, and memos. It should also include all emails irrespective of whether they were sent and or received through private or official accounts. It should also include all telephone text messages, Gmail messages and messages sent through encrypted messaging services including but not limited to Whatsapp.

Please note that in each case I am interested in receiving actual copies of any written correspondence and communications and not just extracts. So, in the case of a letter, for instance, this should include any letter heads, dates, and signatures. If you are minded redacting any information, can you redact the information where it appears in the document provided. This way I should be able to ascertain the location and extent of the redactions.

1...During the aforementioned period did the Prince of Wales write to and or communicate with Claire Pillman about any or all of the issues listed below. I am interested in all correspondence and communication which mentions and or in any way relates to the issues. If the answer is yes, can you please provide copies of this correspondence and communication together with any supporting documents including but not limited to surveys, drawings, photographs, maps, graphs, charts, and photographs.

(i)...Joint projects (existing and or proposed) which involve the Prince's Foundation and NRW working together.

(ii)...The Duchy Of Cornwall's land holdings and or commercial interests in Wales

(iii)... Forests and woodlands in Wales including but not limited to the challenges posed by deforestation

(iv)...The risks of and or the problems posed by flooding in Wales including but not limited to the issue of flood defences

(vi)...Areas of outstanding (sic) natural beauty in Wales

(vii)...The impact of climate change in Wales and or measures needed to tackle the effects of climate change in Wales

(viii)...Organic food production in Wales

(viii)...Genetic crops and genetic technologies in Wales

2...During the period did Clare Pillman write to and or communicate with the Prince about any and or all the issues listed in question 1 (i) to (viii). If the answer is yes, can you please provide copies of this correspondence and communication including but not limited to any surveys, drawings, photographs, maps, graphs, charts and photographs.

3...If information relevant to questions 1 to 2 of this request has been destroyed can you please provide the following details. Please include details of information destroyed at the time and please include details of information destroyed more recently.

a...Can you identify exactly which information has been destroyed and why. In the case of each destroyed document can you state when it was destroyed.

b...In the case of each piece of destroyed correspondence and communications can you please provide details of author (s), recipient (s) and date generated.

c...If destroyed documentation of any kind continues to be held in another form can you please provide copies of that destroyed information."