

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 22 September 2022

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall

London

SW1A

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to a meeting in 1999 between Prime Minister Tony Blair and The Prince of Wales.
2. The Cabinet Office originally neither confirmed nor denied that they held the requested information under regulation 13(5)(a) of the Environmental Information Regulations (EIR). During the Commissioner's investigation the Cabinet Office revised their response and confirmed that they did not hold any environmental information within scope of the request, under regulation 12(4)(a).
3. Insofar as the Cabinet Office held any non-environmental information within scope of the request, the Cabinet Office would neither confirm nor deny whether or not they held the requested information on the basis of section 37(2) of FOIA, by virtue of section 37(1)(aa)(communications with the heir to the Throne).
4. The Commissioner is satisfied, on the balance of probabilities, that the Cabinet Office do not hold any environmental information requested by the complainant.
5. The Commissioner is also satisfied that the Cabinet Office was entitled to neither confirm nor deny whether they held any non-environmental information within scope of the request, under section 37(2) of the FOIA.
6. No steps are required.

## Request and response

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7. On 15 April 2020, the complainant wrote to the Cabinet Office and requested information in the following terms:

*'I would like to request the following information under the Freedom of Information Act and the Environmental Information Regulations.*

*My request has been inspired by an entry in volume three of Alastair Campbell's diaries 'Power & Responsibility' 1999-2001.*

*In his diary, Mr Campbell refers to a meeting between Tony Blair, the then Prime Minister and His Royal Highness the Prince of Wales. The meeting appears to have taken place on Monday 1 November 1999. I should add that I can find no trace of the meeting in the Court Circular.*

*Could I request the following information:*

- 1. Did – as Mr Campbell suggests – Mr Blair meet with the Prince of Wales on 1 November 1999. If the answer is yes, can you please provide details of the time, date and venue of the meeting. Can you also provide a full list of those present.*
- 2. Did staff working in Mr Blair's office and/or working to prepare Mr Blair for the meeting, prepare an agenda for the meeting. The agenda may have been a formal affair issued to all those present at the meeting. Or it may have been a more informal document simply drafted for Mr Blair's own use. If the answer is yes, can you please provide a copy of the document.*
- 3. For the avoidance of doubt, can you list each and every occasion when the Prince of Wales met with Mr Blair between 25 October 1999 and 2 November 1999. In the case of each meeting can you identify the date, time and venue of the meeting. In the case of each meeting can you please provide a full list of those present.*
- 4. Can you please provide a copy of a paper His Royal Highness presented to Mr Blair on the subject of hunting. This paper appears to have been presented by the Prince to Mr Blair during their meeting on the 1 November 1999. Mr Campbell refers to this paper on page 151 for the aforementioned volume of his diaries. He writes, 'Charles had given TB a long paper on hunting and why it was good for the environment'. Please provide a copy of the paper irrespective of whether it was handed over at the meeting itself, or whether it was handed over immediately prior or immediately following the meeting. Please provide a copy if someone else acting at the behest of the Prince handed over the paper'.*

8. The Cabinet Office did not respond to the request until 31 July 2020, three and a half months later.
9. The Cabinet Office advised that they could neither confirm nor deny (NCND) that they held the requested information under section 37(2) of the FOIA 2000 as that exemption removes the duty in section 1(1)(a) to confirm whether or not information is held. The Cabinet Office stated that the information (if held) would be exempt under section 37(1)(aa), which relates to communications with, or on behalf of, the heir to the Throne. As an absolute exemption, the Cabinet Office confirmed that they were not required to consider the public interest test. The Cabinet Office stated that their response should not be taken as confirmation that the information the complainant had requested was, or was not, held.
10. Although the complainant had specifically cited the EIR 2004 in his request, and despite it being well established that information relating to hunting is environmental information, the Cabinet Office made no reference to the EIR in their response.
11. The complainant requested an internal review on 3 August 2020. He asked for the following points to be taken into consideration by the Cabinet Office:
  - *'The correspondence and communications of the Prince of Wales are not exempt from disclosure under the Environmental Information Regulations. My original request for information was a request lodged under both the Freedom of Information Act and the Environmental Information Regulations, although the department appears to have ignored the environmental aspects of my request.*
  - *The communications of the Prince of Wales are neither exempt from disclosure under the Freedom of Information Act or the Environmental Information Regulations on those occasions when he is acting in his capacity as the Duke of Cornwall.*
  - *The Information Commissioner has previously ruled that information relating to hunting constitutes environmental information.*
  - *The Information Commissioner has previously ruled that the Prince of Wales should expect his correspondence and communications to be made public on those occasions when he has been lobbying on environmental matters'.*
12. The Cabinet Office provided the complainant with their internal review on 16 September 2020. The Commissioner notes that the time taken to provide the review (six weeks) was not unduly excessive or

unreasonable, in the context of the delays and disruption caused by the Covid-19 pandemic at the time.

13. The review upheld the section 37(2) response but the Cabinet Office apologised for their oversight in having omitted any reference to the EIR.
14. The Cabinet Office neither confirmed nor denied that they held any information within scope of the request by virtue of regulation 13(5)(a) of the EIR, which provides that the duty to confirm or deny whether information is held does not arise where to do so would reveal personal data and contravene any of the data protection principles in the Data Protection Act 2018.
15. The Cabinet Office advised that:

*'The scope of your request includes communications with The Prince of Wales on the subject of hunting provided at a meeting. If we were (hypothetically) to confirm that information is held it would reveal whether The Prince of Wales had chosen to communicate in the way suggested in the request, and that would be to reveal his personal data.*

*For regulation 13(5)(a) to apply, confirming or denying whether personal data is held must also contravene one of the data protection principles in Article 5(1) of the General Data Protection Regulations and section 34(1) of the Data Protection Act 2018. In this case, we believe confirming or denying would contravene the first data protection principle, which provides that processing of personal data is lawful and fair. Hypothetically, if the Cabinet Office were to confirm it held information, this would reveal the fact not only that we hold the requested information, but would also confirm the general content of said information'.*

16. The Cabinet Office advised that they had considered the legitimate interests in confirming or denying that they held the requested information, and had found that, on balance, there was not an overriding legitimate interest in confirming or denying that outweighed the reasonable expectations of privacy of the individual concerned.
17. The Cabinet Office reiterated that their NCND response should not be taken as an indication that they do or do not hold the requested information.
18. Responding to the complainant's points, the Cabinet Office disagreed with his *'blanket statement'* that the correspondence and communications of The Prince of Wales are not exempt from disclosure under the EIR. They stated that, *'there may well be occasions when such communications are found to be exempt under one or more of the exceptions in the EIR'*.

19. The Cabinet Office noted that the complainant had not mentioned the Duke of Cornwall in his request and so they were not clear how that point was relevant to this case. The Cabinet Office noted that the Upper Tribunal ruled in *The AG for The Prince of Wales v the Information Commissioner and Mr Michael Bruton* [2016] that the Duke of Cornwall is subject to the EIR when acting as the harbour and lighthouse authority for the harbour at St Mary's on the Isles of Scilly. The Harbour Authority being a public authority for the purpose of the EIR and Environmental Information Directive 2003/4 and the Duke of Cornwall's obligations to provide environmental information being limited to the environmental information he holds as the Harbour Authority.
20. The Cabinet Office disagreed with the complainant's '*blanket statement*' that information relating to hunting constituted environmental information, contending that, '*it is entirely possible that some information relating to hunting may fall under the EIR, but other information may not*'.
21. Finally, the Cabinet Office advised that it would not be appropriate for them to comment on the previous rulings by the Commissioner concerning The Prince of Wales' lobbying on environmental matters, given their NCND response in the present case.

### **Scope of the case**

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22. The complainant contacted the Commissioner on 26 September 2020 to complain about the way his request for information had been handled.
23. During the course of the Commissioner's investigation, and in submissions to the Commissioner, the Cabinet Office advised that they were no longer relying on regulation 13(5) and their revised position was that they do not hold any environmental information within scope of the request, and were therefore relying on regulation 12(4)(a).
24. The Commissioner considers that the scope of his investigation is to determine whether the Cabinet Office have applied section 37(2) of the FOIA and regulation 12(4)(a) of the EIR correctly to the complainant's request.

### **Reasons for decision**

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25. Section 37(1)(aa) of the FOIA states:

*'Information is exempt information if it relates to...*

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

26. It is a class based exemption, which means that information falling within the description in section 37(1)(aa) automatically engages the exemption regardless of whether there would be any harm in disclosure. The exemption is not subject to a public interest test.
27. Communications with the heir to the Throne need not necessarily be made directly by, or to, the heir to the Throne. The exemption will also include communications made, or received on his behalf, by officials. Furthermore, the communication need not be a written one; the exemption would apply equally to discussions with the heir to the Throne, in person or via telecommunications. The exemption covers any recorded information relating to such a communication.
28. Section 37(2) of the FOIA states:  
  
*'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)'.*
29. To engage section 37(2) of the FOIA, the requested information (if held) would therefore have to fall within the scope of one of the exemptions contained within section 37(1).
30. As the complainant has requested information relating to a meeting between the heir to the Throne and the then Prime Minister, the Commissioner is satisfied that if the Cabinet Office held non-environmental information within scope of the request, it would be exempt from disclosure on the basis of section 37(1)(aa) of the FOIA. He is therefore satisfied that section 37(2) is engaged, and that the Cabinet Office were entitled to issue a NCND response to the request.

### **Regulation 12(4)(a)**

31. Regulation 12(4)(e) of the EIR allows a public authority to refuse to disclose information to the extent that it does not hold the information.
32. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
33. In other words, in order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request.

34. In applying this test, the Commissioner will consider the extent and quality of the searches carried out by the public authority, or other explanations offered as to why the information is not held.

The Cabinet Office's position

35. In submissions to the Commissioner, the Cabinet Office advised that they considered that the EIR applied to part 4 of the complainant's request. They noted that, *'the description of the paper as being a "long paper on hunting and why it was good for the environment" is sufficient to suggest that the paper would be likely to include information on an activity. Hunting is an activity, and its effects on biological diversity and other environmental elements may be good or bad'*.
36. The Cabinet Office noted that the date given in part 4 of the request (1 November 1999) falls within Tony Blair's administration. All the information from this administration is held in paper files. There is an electronic database containing a library of all the files from Tony Blair's administration, but a search of the database simply identifies those files that might hold information; the database does not contain the information itself.
37. After transfer from the Prime Minister's office, the whole collection of Prime Minister's papers forms the archive of the administration. The Cabinet Office Knowledge and information Management (KIM) team does not add to or rearrange these papers after transfer but preserves them until they are transferred to The National Archives under the Public Records Act.
38. The Cabinet Office advised the Commissioner that the KIM team conducted a search of the relevant files for the period covered by this request around the 1 November 1999 date. As the files are in hard copy this was a manual read-through. The files were searched for any environmental information potentially in the scope of the request. The Cabinet Office confirmed that having conducted these searches they did not hold any environmental information falling within the scope of the request.
39. The Cabinet Office also confirmed that no relevant recorded information had previously been held by them but had been deleted/destroyed prior to the request. Asked by the Commissioner to provide details of their formal records management policy in respect of the retention and deletion of records of the type requested, the Cabinet Office advised that the policy states that the Cabinet Office will always preserve correspondence between the Government and the Royal Family. The business purpose is to retain such information because it has archival value.

The Commissioner's position

40. In the Commissioner's view, on the balance of probabilities, the Cabinet Office does not hold any environmental information falling within the scope of the complainant's request. In reaching this conclusion the Commissioner has taken into account the fact that any correspondence which falls within the scope of the request would only be held in the files from Tony Blair's administration. The Commissioner is satisfied that the searches conducted by the Cabinet Office would have located any environmental information falling within the scope of this particular request if it were held.
  
41. Given that Alastair Campbell's diaries specifically reference a '*long paper on hunting*' having been given to Mr Blair by The Prince of Wales on or around 1 November 1999, the Commissioner considers that it was not unreasonable for the complainant to have presumed that this environmental information would have been held by the Cabinet Office. However, it is important to note that such references in political diaries and memoirs, whilst clearly significant and of understandable public interest, do not have official or authoritative status.



## Right of appeal

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42. 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)

43. 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.
44. 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 .....**

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**