

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

**Date:** 11 July 2023

**Public Authority:** The National Archives  
**Address:** Kew  
Richmond  
Surrey  
TW9 4DU

**Decision (including any steps ordered)**

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1. The complainant submitted a request to The National Archives (TNA) for all the environmental information held within the closed file, "PREM 19/4955 ROYAL FAMILY. HRH The Prince of Wales: part 4" (PREM 19/4955).
2. TNA provided the complainant with a copy of some information, stating that it considered this to be all the environmental information that was held that was relevant to the request. TNA also confirmed that it considered the remaining information contained within closed file PREM 19/4955 to be exempt from disclosure under section 37(1)(a) – communications with the Sovereign, section 40(2) – personal data, and section 41(1) - information given in confidence, of FOIA.
3. The Commissioner's decision is that TNA has provided the complainant with a copy of all the environmental information held within the closed file PREM 19/4955. Furthermore, the Commissioner is satisfied that TNA is entitled to rely on section 37(1)(a) of FOIA as its basis for withholding the remaining information contained within that file.

4. However, as TNA failed to provide the complainant with a copy of the environmental information that was held within the required statutory time period, the Commissioner has found a breach of regulation 5(2) of the EIR.
5. The Commissioner does not require TNA to take any steps.

## Request and response

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6. On 15 August 2022, the complainant made a request to TNA for "information via the Environmental Information Regulations (EIRs)" contained within two closed files:
  - closed file "PREM 19/4954 ROYAL FAMILY. HRH The Prince of Wales: part 3" (PREM 19/4954), and
  - closed file "PREM 19/4955 PREM 19/4954 ROYAL FAMILY. HRH The Prince of Wales: part 4" (PREM 19/4955).
7. TNA considered the complainant's correspondence of 15 August 2022, to be two requests for information, and subsequently handled them separately.
8. TNA's handling of the complainant's request for information contained within closed file PREM 19/4954 has already been considered within decision notice [IC-214334-T1V3](#), issued on 17 March 2023.
9. This decision notice therefore only relates to the complainant's request for information contained within closed file PREM 19/4955.
10. On 9 November 2022, TNA responded to the complainant's request for information held within closed file PREM 19/4955. It advised that it had identified some environmental information within the file, and released a copy of a draft speech by The (then) Prince of Wales to open the conference on Urban Growth and the Environment in Hong Kong on 7 November 1994. TNA went on to advise the complainant that no other environmental information was held within the relevant file.
11. On 15 November 2022, the complainant requested an internal review, advising that they believed additional environmental information would be held.
12. On 17 January 2023, TNA provided its internal review response, confirming that it was satisfied that it had already released all of the information held within the relevant file that fell within the scope of the EIR. TNA went on to say that it had also considered whether any other

information could be released under FOIA; however, TNA confirmed that all the remaining information contained within the closed file was to be withheld under section 37(1)(a), section 40(2) and section 41(1) of FOIA.

## Scope of the case

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13. The Commissioner is to consider:

- Whether TNA has correctly identified all of the environmental information held within closed file PREM 19/4955.
- Whether TNA is entitled to rely on section 37(1)(a), section 40(2) and, or, section 41(1) of FOIA as its basis for refusing to provide any information within the relevant closed file that does not fall within the scope of the EIR.
- The timeliness of TNA's response, as requested by the complainant.

## Reasons for decision

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### **Regulation 5(1) of EIR – duty to make environmental information available on request**

14. [Regulation 5\(1\) of the EIR](#) states that "a public authority that holds environmental information shall make it available on request." This is subject to any exceptions that may apply.
15. TNA has provided the Commissioner with a copy of all of the information that is contained within closed file PREM 19/4955. Having considered the definition of environmental information as set out within [regulation 2\(1\) of the EIR](#), the Commissioner is satisfied that there is no additional information held within the relevant file that is environmental information.
16. The Commissioner is therefore satisfied that TNA has correctly identified and released all of the environmental information relevant to the request, and has therefore complied with the requirements of regulation 5(1) of the EIR.

## **Section 37 of FOIA – Communications with His Majesty, etc and Honours**

17. Under [section 37\(1\)\(a\) of FOIA](#), information is exempt information if it “relates to” communications with the Sovereign. This is an absolute exemption, which means that where it is found to be engaged, there is no requirement to carry out the public interest test.
18. The Commissioner is satisfied that the information contained within closed file PREM 19/4955 relates to communications with the new reigning Sovereign.
19. The Commissioner considers it to be pertinent to note that, due to the timing of the request, in this instance the exemption at section 37(1)(aa) – communications with the heir or second in line to the Throne, would be applicable in the same way as section 37(1)(a) of FOIA.
20. The Commissioner’s guidance states that, when considering the exemption at section 37 of FOIA, the term “relates to” should be interpreted broadly. In practice this means that the scope of the exemption will cover more than just the actual communications themselves; it will also apply to information that refers to, or is derived from, those communications. The exemption also covers communications made or received by a person (or organisation) acting on behalf of the Sovereign.
21. In this case, the Commissioner considers the information contained within closed file PREM 19/4955 to constitute communications that were sent, or received, on behalf of The (then) Prince of Wales.
22. The Commissioner is therefore satisfied that the withheld information contained within the closed file PREM 19/4955 relates to communications with the now reigning Sovereign, and that TNR is entitled to rely on the exemption at section 37(1)(a) of FOIA as its basis for refusing to release this information.
23. Given that section 37(1)(a) is an absolute exemption, there is no requirement to consider the public interest test.
24. As the Commissioner has found the exemption at section 37(1)(a) to be engaged in respect of all of the withheld information, he has not found it to be necessary to go on and consider TNA’s application of the exemptions at section 40(2), and section 41(1), of FOIA in this instance.

## **Procedural matters**

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25. Whilst TNA provided the complainant with all of the environmental information held relevant to their request, as it failed to do so within the statutory time limits of the EIR, the Commissioner has found a breach of regulation 5(2) of EIR.

## Right of appeal

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26. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.
28. 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 .....**

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