

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

**Decision notice**

**Date:** 8 November 2022

**Public Authority:** Cabinet Office  
**Address:** 70 Whitehall  
London  
SW1A 2AS

**Decision (including any steps ordered)**

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1. The complainant has requested correspondence from 1987-1988 between the then Prince of Wales and the then Prime Minister. The Cabinet Office maintained that it did not hold the requested information.
2. The Commissioner's decision is that the request fell to be considered under the EIR and FOIA. In any event the Commissioner finds that the Cabinet Office does not hold the requested information. The Commissioner does not require any steps to be taken.

**Request and response**

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3. On 21 January 2021 the complainant requested the following information from the Cabinet Office:

"Please note that I am only interested in information generated between 1 January 1987 and 1 January 1988.

...

1. During the aforementioned period did the Prince of Wales and Mrs Thatcher exchange correspondence and communication which in any way related to: The street layout and skyline of London; local and central government planning policies as they related to London, the impact of high-rise buildings on London's skyline and on London's

existing historic properties, the attitude of architects and planners towards London, the plight of historic buildings in London, public views in London, the proposed redevelopment of Paternoster Square in London and its surrounding area and the proposed redevelopment of Mansion House Square in London and the surrounding area.

2. If the Prince wrote to Mrs Thatcher about any of the issues outlined in question one can you please provide a copy of this correspondence and communication and not just an excerpt. I would like the copy to include the letter headings, the signature, and any other design features. If information in the letter is not relevant to the request can you please redact it at that point in the letter/communication when it appears. This way I will be able to tell where the redaction appears and how extensive the redaction is. In the case of each piece of correspondence and communication can you also provide copies of any maps, designs, plans, photographs and sketches, which were submitted along with this correspondence.
3. If Mrs Thatcher replied to this correspondence or communication or if she chose to write to the Prince about any of the issues outlined in question one can you please provide a copy of the correspondence and communication. Please note that I would like an actual copy of the correspondence and communication and not just an excerpt. I would like the copy to include the letter headings, the signature, and any other design features. If information in the letter is not relevant to the request can you please redact it at that point in the letter/communication when it appears. This way I will be able to tell where the redaction appears and how extensive the redaction is. In the case of each piece of correspondence and communication can you also provide copies of any maps, designs, plans, photographs and sketches, which were submitted along with this correspondence.
4. If correspondence and communication relevant to this request has been destroyed. Can you state when it was destroyed and why. In the case of each destroyed piece of correspondence and communication can you state the date it was created. In the case of each destroyed piece of

correspondence and communication can you identify the relevant author(s) and recipient(s). In the case of each destroyed piece of documentation that continues to be held in another form can you please provide a copy of that piece of correspondence and communication.

5. If information relevant to the request has been transferred to an archive can you please identify the archive and date the material was transferred. In the case of each document and file transferred can you please identify the appropriate file title and reference number.
4. The Cabinet Office responded on 22 February 2021. It stated that it did not hold any of the requested information, and that if it had been held it would have been transferred to The National Archives (TNA).<sup>1</sup> The Cabinet Office also suggested that the complainant consult the Margaret Thatcher Foundation Archive.<sup>2</sup>
5. The complainant requested an internal review on 27 February 2021, and received the outcome of that review on 22 April 2021. The internal review maintained that the requested information was not held.

### **Scope of the case**

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6. On 28 April 2021 the complainant contacted the Commissioner to complain about the Cabinet Office's response.
7. The complainant did not accept the Cabinet Office's position that it did not hold the requested information.
8. The request in this case refers to the Prince of Wales, who acceded to the Throne on 8 September 2022. For clarity, this decision notice refers to the Prince of Wales rather than the Sovereign.

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<sup>1</sup> <https://www.nationalarchives.gov.uk/>

<sup>2</sup> <https://www.margaretthatcher.org/archive>

## Reasons for decision

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### Access regime

9. The Commissioner notes that the Cabinet Office maintains the position that it does not hold any information falling within the scope of the request. He therefore observes that the question of the applicable access regime may be academic.
10. However, for completeness the Commissioner has considered whether the request fell to be considered under FOIA, or the EIR, or under both access regimes.
11. Information that is environmental information falls to be considered under the EIR rather than FOIA. Regulation 2(1) of the EIR defines environmental information as being information on:
  - “(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;”

12. The Commissioner has published guidance to assist public authorities in identifying environmental information.<sup>3</sup>
13. In this case the request refers to the street layout and skyline of London, which the Commissioner considers would fall under regulation 2(1)(a) in that it relates to the landscape. The request also refers to planning policies and redevelopment proposals. The Commissioner considers that this information would relate to measures and activities likely to affect the elements and factors, therefore it would fall under regulation 2(1)(c).
14. Accordingly the Commissioner is satisfied that the requested information, if held, would fall within the definition of environmental information at regulation 2(1)(c) of the EIR. Whilst this does not affect whether information is held, it affects the way the Cabinet Office ought to have handled the request in procedural terms. The Commissioner considers that information relating to historic buildings is not necessarily environmental information but may fall under regulation 2(1)(a) or regulation 2(1)(c) if it relates to the state of the buildings, or proposals for demotion or redevelopment.
15. In light of the above the Commissioner considers that the majority of the requested information, if held, would be environmental information. He has therefore focused on the EIR in his analysis below, but would point out that his consideration of whether or not the requested information is held may apply equally to FOIA.

**Regulation 12(4)(a): information not held**

16. Regulation 5(1) of the EIR says that a public authority is required to make environmental information available in response to a request, unless an exception applies. Regulation 12(4)(a) provides an exception from this duty where the public authority does not hold the requested information at the time of the request.
17. In cases where there is a dispute as to the information held by a public authority, the Commissioner will apply the civil standard of proof, i.e. the balance of probabilities. In order to determine such complaints the Commissioner must decide whether, on the balance

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<sup>3</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/>

of probabilities, a public authority holds any information which falls within the scope of the request.

18. Accordingly the investigation will consider the scope, quality, thoroughness and results of the searches, and/or other explanations offered by the public authority as to why the information is not held.
19. The Commissioner will also consider any arguments put forward by the complainant as to why the information is likely to be held (as opposed to why it ought to be held). Finally, the Commissioner will consider whether there are any further steps the public authority could be required to take if the complaint were upheld. If a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require the authority to take any further action.

### **The complainant's position**

20. The complainant put forward a number of arguments in support of his position that the Cabinet Office may hold relevant information.
  - i) The Prince of Wales was known to be active in the area of planning and design around the time of the request.
  - ii) The Cabinet Office has a policy of not destroying the correspondence of the heir to the Throne. Therefore if the information existed at any time it should be possible to identify where it is held.
  - iii) The complainant said that the Cabinet Office was unable to confirm what material it had transferred and when those transfers took place.
  - iv) The Cabinet Office had advised that it only retains material if the classification is "Secret or above, or for other national security reasons". However the complainant argued that the Cabinet Office holds at least two files relating to the Prince of Wales (PREM 19/1927 and PREM 19/2473). The complainant considered it "highly likely" that the requested information would have been classified as Secret or above, owing to the sensitivity surrounding the Prince's correspondence. He therefore argued that the Cabinet Office may not have transferred it to TNA.

## **The Cabinet Office's position**

21. The Commissioner asked the Cabinet Office how it had searched for the requested information, and how it was satisfied that it did not hold the information specified by the complainant. The Commissioner also asked the Cabinet Office for its response to the arguments put forward by the complainant.
22. The Cabinet Office confirmed that its formal records management policy stated that it would always preserve correspondence between the Government and the Royal Family. Such correspondence would subsequently be transferred to TNA in compliance with the Public Records Act 1958.<sup>4</sup>
23. The Cabinet Office confirmed that the Prime Minister's records from 1987 had been transferred to TNA for releases in December 2015,<sup>5</sup> February 2016<sup>6</sup> and July 2016.<sup>7</sup> However it emphasised that it did not keep an inventory of the contents of papers contained in files transferred to TNA.
24. The Cabinet Office pointed out that it had advised the complainant that the relevant file series for the Thatcher administration files was PREM 19, which would enable them to search the TNA online catalogue using the search term "Royal Family". This would return 54 results, which the complainant could examine to see if any files were likely to hold information of interest. The complainant could also seek access under FOIA to any closed records.

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<sup>4</sup> <https://www.nationalarchives.gov.uk/information-management/legislation/public-records-act/public-records-system/>

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<https://webarchive.nationalarchives.gov.uk/20161003153436/http://www.nationalarchives.gov.uk/about/news/newly-released-files-from-1986-88/>

<sup>6</sup>

<https://webarchive.nationalarchives.gov.uk/20161003161610/http://www.nationalarchives.gov.uk/about/news/files-from-1986-88-released/>

<sup>7</sup>

<https://webarchive.nationalarchives.gov.uk/20161003143519/http://www.nationalarchives.gov.uk/about/news/more-files-from-1986-88-released/>

25. The Cabinet Office confirmed that the requested information, if held, would only be held in paper format given its age, therefore it did not conduct electronic searches. It also confirmed that it did not consider it necessary to search files outside PREM 19 since this was where any relevant information ought to be held. The Cabinet Office did not have any reason to believe that other files would hold relevant information.

### **The Commissioner's findings**

26. The Commissioner acknowledges that there is a legitimate public interest in correspondence sent from the then heir to the Throne to the Government of the day. The Commissioner further acknowledges that the complainant has made arguments to support his assertion that the Prince of Wales corresponded with the Prime Minister regarding the issues described in the request.
27. However the Commissioner must reiterate that he is required to decide whether the requested information was held by the Cabinet Office at the time of the request. He is not required to determine whether the information exists, or has ever existed.
28. The Commissioner considers that the Cabinet Office has provided a detailed and persuasive account of its response to the request. The Commissioner accepts that the Cabinet Office has transferred to TNA the records it holds from the time period specified by the complainant. The Commissioner further notes that the Cabinet Office specifically preserves royal correspondence for transfer to TNA.
29. The Commissioner is of the opinion that the complainant has not provided any evidence to suggest that the Cabinet Office holds information relevant to his request. Rather, the complainant has speculated that the Cabinet Office may not have transferred all the relevant records to TNA. However the Commissioner cannot attach any weight to such speculation without supporting evidence.
30. It is always possible that relevant information has been misplaced or misfiled, but the Commissioner has seen no evidence to suggest that this is the case here. The Commissioner would also point out that public authorities are not required to search all records "just in case" information is identified. Rather, the Commissioner remains of the view that it is reasonable to scope out files on the basis that they would be unlikely to contain the specific requested information.



31. The Cabinet Office confirmed that it had searched its database of retained files, but did not identify any files that would be reasonably likely to contain relevant information. The Commissioner is not persuaded that further searches would be likely to identify the requested information. He does not therefore consider it reasonable, proportionate or a good use of scarce resources, to require the Cabinet Office to undertake any further searches in respect of the complainant's request.
32. Accordingly, on the balance of probabilities the Commissioner accepts that the Cabinet Office does not hold any information relevant to the request.

### **Section 16: advice and assistance**

33. Section 16 of FOIA requires a public authority to provide advice and assistance to requesters. Public authorities are taken to have complied with section 16 if they have followed the recommendations set out in the Code of Practice (the Code) issued under section 45 of FOIA.<sup>8</sup>

34. Paragraph 2.12 of the Code recommends that:

"2.12 In most cases where a public authority does not hold the information, but thinks that another public authority does, they should respond to the applicant to inform them that the requested information is not held by them, and that it may be held by another public authority. The public authority should, as best practice where they can, provide the contact details for the public authority they believe holds the requested information."

35. As set out at paragraph 24 above, the Cabinet Office directed the complainant to TNA in respect of transferred records. The Cabinet Office further provided explanatory information to assist the complainant in searching the TNA online catalogue.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

36. The Commissioner also observes that the Cabinet Office provided the complainant with information regarding the Margaret Thatcher Archive (which is not itself a public authority under FOIA).
37. In light of the above the Commissioner considers that the Cabinet Office has complied with the requirements of section 16 of FOIA in offering appropriate advice and assistance to the complainant.

## 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: 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)

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 .....**

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**