

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

**Decision notice**

**Date:** 16 June 2023

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

**Decision (including any steps ordered)**

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1. The complainant has requested copies of copies of correspondence sent between the former Prince of Wales (now King Charles) and the former Prime Minister Boris Johnson in 2021, about climate change, the G20 Heads of State and Government summit, and COP 26. The Cabinet Office stated that it did not hold any environmental information within scope of the request under regulation 12(4)(a). In respect of information that, if it were to be held, is not environmental in nature, it was electing to neither confirm nor deny whether it held any recorded information, relying on section 37(2) by virtue of section 37(1)(aa), section 40(2) by virtue of section 40(5b)(a)(i) and section 41(2) of FOIA. At internal review, the Cabinet Office sought only to apply section 37(2) and section 40(5) of FOIA, and maintained that environmental information was not held.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 37(2) to neither confirm nor deny whether information is held, and that the Cabinet Office does not hold environmental information within scope of the request.
3. The Commissioner does not require any steps.

## Request and response

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4. On 2 November 2021 the complainant wrote to Cabinet Office to make their request for information. Due to length, the request will not be reproduced in the body of this notice but a copy will be appended in an annex.
5. The office of 10 Downing Street responded on 1 December 2021. It stated that it could neither confirm nor deny whether the requested information was held with reliance on section 37(2) (communications with Her Majesty etc. and honours) by virtue of 37(1)(aa), section 40(2) (personal data) by virtue of section 40(5B)(a)(i), and section 41(2) (information provided in confidence). The Cabinet Office also stated that under regulation 12(4)(a) it did not hold any environmental information within scope of the request.
6. Following an internal review the Cabinet Office wrote to the complainant on 2 February 2022. It stated that it was maintaining its position in respect of the application of the relevant exemptions at sections 37 and 40, but did not make reference to section 41. It also maintained that it did not hold any environmental information within scope of the request.

## Scope of the case

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7. The complainant contacted the Commissioner on 10 February 2022 to complain about the way their request for information had been handled.
8. The complainant outlined their grounds of complaint in the following terms:

“As you know the communications of all members of the Royal Family (including the Sovereign and the Prince of Wales) are subject to disclosure under the EIRs if they touch upon the environment and deal with environmental issues. I believe any such discussions between the Prince and prime minister with regard to the G20 gathering and Cop26 would have touched upon environmental issues.

I further note that the Information Commissioner [and the relevant tribunals] has previously ruled that the advocacy correspondence of the Prince of Wales should be disclosed. The Commissioner has argued that there are strong public interest grounds for disclosing such materials and this public interest overrides any data protection concerns.”

9. The complainant has not provided the Commissioner with any links to previous decision notices or appeals which support their statement,

however the Commissioner understands that the complainant is referring to the judgement in the Upper Tribunal, *Evans v (1) Information Commissioner (2) Seven government departments* [2012] UKUT 313 (AAC)<sup>1</sup>.

10. The Commissioner considers there are two matters central to the scope of the case. The first is whether the Cabinet Office holds any environmental information within scope of the request and therefore whether the Cabinet Office is entitled to rely on regulation 12(4)(a), and the second is whether the Cabinet Office is entitled to rely on section 37(2) to refuse to confirm or deny whether it holds any non-environmental information.

### Reasons for decision

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11. The reasoning for the present decision follows that provided in the Commissioner's decision in FER0739456<sup>2</sup>, concerning a complaint brought against the Department for the Environment, Food and Rural Affairs ("DEFRA") about correspondence between the Prince of Wales and Secretary of State on hunting.

### Regulation 12(4)(a) of the EIR – information not held

12. Regulation 12(4)(a) of the EIR states:

"(4) for the purposes of paragraph (1)(a), a public authority may refuse to disclose environmental information to the extent that –

- (a) it does not hold that information when an applicant's request is received;"

13. As in the case FER0739456, the complainant has not provided the Commissioner with any clear basis for their belief that the former Prince of Wales and former prime minister, Boris Johnson, had exchanged any correspondence on the topics of climate change, the G20 Heads of State and Government summit or COP26, during the time period specified in the request. The Commissioner infers that, because it is widely recorded

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<sup>1</sup> [https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Judgments/evans-v-IC-ukut\\_AAC\\_.pdf](https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Judgments/evans-v-IC-ukut_AAC_.pdf)

<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2614162/fer0739456.pdf>

that the former Prince of Wales has a keen and active interest in environmentalism and sustainability, the complainant has assumed that the correspondence on the matters outlined must exist.

14. The Commissioner contacted the Cabinet Office and asked it to detail the searches it had undertaken to locate any environmental information that may fall within scope of the request.
15. The Cabinet Office explained that it had performed a key-word search of the Prime Minister's Office's formal records, as managed by the Private Office Support Team (PMPOST), the policy-correspondence and policy-filing repositories and the correspondence database managed by the Direct Communications Unit.
16. It also asked teams within the Prime Minister's Office to check locally managed records, including hard copies, and for individuals to check records saved on their personal (official) electronic filing environment.
17. In each circumstance searches produced a nil return.
18. Having reviewed the Cabinet Office's submissions the Commissioner is satisfied that the searches undertaken were proportionate to the request and would have located environmental information within scope, were any held. The Commissioner therefore finds that, on the balance of probabilities, the Cabinet Office does not hold any environmental information captured by the request, and the exception at regulation 12(4)(a) is engaged.

### **Public interest test**

19. As the Cabinet Office has not located any information within scope of the request, the Commissioner finds that the public interest in maintaining the exception at regulation 12(4)(a) outweighs any public interest in disclosure on the basis that the Cabinet Office does not hold any information captured by the request. Therefore, there is nothing to disclose.

### **Regulation 9(1) – Advice and assistance**

20. Within their request for internal review the complainant stated the following:

"I had asked the Cabinet Office to let me know if the Prince had been in contact with other members of the ministerial team and or if he had been in contact outside of the time frame stated. I am disappointed that the Cabinet Office chose to ignore this request for help. I would be grateful if the reviewer could let me know if there is scope for another request with a different time frame and different personalities."

21. In their internal review the Cabinet Office stated that the request was asking it to “carry out searches for information across all ministerial private offices over an unspecified period. I do not believe the legislation requires us to search for information so that we can tell a requester it exists and can be requested. If you wish to make additional requests relating to different ministers and/or timescales you are free to do so.”
22. While he recognises that the EIR carry a presumption in favour of disclosure, and that there is nothing to prevent the Cabinet Office from actively providing the complainant with any related environmental information (if it were held), the Commissioner considers it unreasonable to expect the Cabinet Office to perform a speculative search for unspecified information for the purposes of notifying the complainant of what it holds; indeed the legislation does not require a public authority to do so.
23. The Commissioner considers that the Cabinet Office has provided appropriate advice and assistance in response to the complainant’s request.

**FOIA – communications with Her Majesty, etc. and honours.**

24. Section 37(1)(aa) states that:

“(1)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”

25. Section 37(2) states that:

“(2) 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)”

26. The Commissioner is satisfied that the entirety of the information sought by the request, if it were held, would have, at the time the request was made, constituted communications with the heir to the Throne and therefore considers that the Cabinet Office are entitled to rely on the relevant subsections outlined at section 37 to neither confirm nor deny whether the information is held.
27. The Commissioner does not require the Cabinet Office to take any further steps under FOIA.

**Section 40 of FOIA – personal data**

28. As the Commissioner is satisfied that the Cabinet Office are entitled to rely on the relevant subsections outlined at section 37 to neither confirm nor deny whether all of the requested information is held, he has not considered the Cabinet Office's reliance on section 40(5b)(a)(i).

## Right of appeal

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29. 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)

30. 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.
31. 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 .....**

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

## Annex A

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32. A full copy of the request is reproduced below:

"I would like to request the following information via the Environmental Information Regulations.

Please note that the reference to the Prince of Wales in the questions below should include the Prince himself (irrespective of which of his official titles he used) and or Clive Alderton, his Principal Private Secretary and or any of the Prince's other private and assistant private secretaries and or anyone in his private office able to correspond and communicate on his behalf and or in his name.

Please note that the reference to Mr Johnson should include the prime minister himself and or anyone in his private office able to correspond and communicate on his behalf and or in his name.

Please note that I would like to receive actual copies of any correspondence and communication rather than just excerpts from that correspondence and communication. Any letters should include letter headings, any other design features and any signature (s). If the department feels the need to make redactions, can you, please redact the material where it appears in the correspondence and communication. That way I can be sure of the extent and location of the redaction.

Please note that the reference to correspondence and communication in the questions below should include all traditional forms of correspondence and communication including letters, memos and faxes, all emails irrespective of whether they were sent through private or official accounts/addresses, all Gmail messages, all telephone conversations, all text messages and all messages and communications sent through encrypted messaging services including but not limited to WhatsApp. In the case of any telephone conversations can you state the date and time of the conversation (s). In the case of each conversation can you supply a written transcript and or audio recording. Please feel free to redact or withhold any aspect of the conversation not related to the request.

I have tried to keep the request within the time and cost constraints laid down by the EIRs. Please let me know if the Prince was in contact with Mr Johnson about any of the issues listed below at any stage in 2021. I would be happy to submit another request. Alternatively, if the Prince and his team corresponded with another member of the ministerial team



about these issues e.g. Alok Sharma can you let me know. I will be happy to submit another request.

1...Since 1 May 2021, has the Prince of Wales written to and or communicated with Boris Johnson about any of the issues listed below.

(i)...The threat posed by climate change and or what might be done to tackle the problem. This will include but not be limited to the threat posed by climate change either to the planet as a whole and or individual countries and or particular eco-systems. It will also include but not be limited to possible solutions to the problems of climate change including the Prince's own ideas for tackling the issue. It will also include the role of the British government and or the international community and or the private sector in the fight against climate change.

(ii)...The G20 Heads of State and Government summit which took place in Rome at the end of October 2021 and or the Prince's attendance at and or participation in this G20 summit. This will include but will not be limited to arrangements for the Prince's speech and or the contents of that speech. Please note that I am only interested in correspondence and communication about the G20 summit which relates to the environment and or climate change and or the fight against climate change and or COP26.

(iii)...COP26 which launched in Glasgow on November 1, 2021, and or the Prince's attendance at and or participation in COP26. This will include but not be limited to arrangements for the Prince's speech and or the contents of that speech.

If the answer to question one is yes, can you, please provide copies of this correspondence and communication.

2...Since 1 May 2021 has Boris Johnson written to and or communicated with Prince Charles about or and all any of the issues outline in question one (i to iii). If the answer is yes, can you, please provide a copy of this correspondence and communication.

3...Did the Prince of Wales provide Mr Johnson with advance copies of his speeches to the G20 and COP26 gatherings. If the answer is yes, can you, please state when the speeches were made available to Mr Johnson. Did Mr Johnson suggest any changes to these advance copies. If Mr Johnson did suggest any changes, can you, please specify what changes were made. Can you please state if the Prince agreed to these changes.

4...If documentation relevant to this request has been destroyed can you identify which correspondence and communication has been destroyed and why. In the case of destroyed correspondence and

communication which is held in another form can you please provide copies of that correspondence and communication.”