

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

Date: 17 August 2023

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office for information relating to a meeting between the then HRH Prince Charles and the former Prime Minister Boris Johnson on 24 June 2022.
2. The Commissioner's decision is that, on the balance of probabilities, the Cabinet Office does not hold the requested environmental information and therefore has complied with regulation 12(4)(a) of the EIR. In respect of the information that is not environmental, the Commissioner has decided that, on the balance of probabilities, the information is not held. However, in failing to respond to the request within the statutory timescale, the Commissioner has determined that the Cabinet Office has breached sections 10(1) of FOIA and regulation 5(2) of the EIR.
3. The Commissioner does not require further steps as a result of this decision notice.

Request and response

4. On 26 October 2022, the complainant wrote to the Cabinet Office and requested information in the following terms:

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

My request for information concerns a meeting which took place between Boris Johnson and the then Prince Charles on 24 June 2022. The meeting is listed as having taken place in the Court Circular.

Please note that the reference to written correspondence and communications in the questions below should include all traditional forms of correspondence and communications including letters and memos, all emails irrespective of whether they were sent and or received via private and official accounts, all telephone texts, all G-mail messages and all messages sent through encrypted messaging services including but not limited to WhatsApp.

Please note that the reference to the then Prince Charles in the questions below should include the Prince himself (irrespective of which of his then titles he used), his then Principal Private Secretary(ies), his then Assistant Private Secretary (ies), any other private secretary (ies) and any member of his team able to compose and or receive correspondence and communications on his behalf.

Please note that the reference to the prime minister should include Boris Johnson himself and or anyone in his private office able to compose and or receive correspondence and communications on his behalf.

1. Did the two men meet in private or where there any other individuals present at the meeting. If other individuals were present, can you, please identify them.

2. Can you provide a list of topics discussed at the meeting which were either about the environment or which had implications for the elements of the environment as defined by the EIRs.

3. Was a briefing note/document prepared for the prime minister in advance of the meeting, so he could be better prepared for discussions which were likely to be raised at the meeting. Can you please provide a copy of this document. Please note I would like to request a copy of the actual document rather than just excerpts from the document. If you must redact any information which is not eligible for release via the EIRs, can you redact where it appears in the

document. That way I will be able to judge the extent and location of any redactions.

4. Does the Cabinet Office hold a copy of an agenda (formal or otherwise) which was prepared for this meeting. The agenda could have been prepared by the Prince and or his team. The agenda could have been prepared by the prime minister and or his team. Please note that I would like to receive a copy of the actual document rather than just excerpts from the document. If you must redact any information which is not eligible or release via the EIRs, can you redact it where it appears in the document. That way I will be able to judge the extent and location of any redactions.

5. During the four weeks leading up to the meeting did the Prime Minister and Boris Johnson exchange correspondence and communications about the meeting and or the issues likely to be raised at the meeting. Can you please provide copies of all correspondence and communications written by Boris Johnson to the Prince as well as all copies of correspondence and communication written by the Prince to Boris Johnson. Please note that I would like to receive actual copies of all correspondence and communication rather than just excerpts from that correspondence. Letters should include the letter heads, any other design features and the signatures. If information must be redacted from correspondence and communication, can you redact it where it appears in the actual correspondence and communication. That way I will be able to judge the location and extent of the redaction.

6. During the four weeks following the meeting did the Prime Minister and Boris Johnson exchange correspondence and communications about the meeting and or the issues raised at the meeting and or any agreed follow up action. Can you please provide copies of all correspondence and communication written by Boris Johnson to the then Prince Charles as well as copies of all correspondence and communications written by the then Prince Charles to Boris Johnson. Please note that I would like to receive actual copies of all correspondence and communication rather than just excerpts from the correspondence. Letters should include the letter heads, any other design features and the signatures. If information must be redacted from correspondence and communication, can you redact it where it appears in the actual correspondence and communication. That way I will be able to judge the location and extent of the redaction."

5. A response was provided on 5 December 2022 in which the Cabinet Office confirmed that the request had been handled under both FOIA and EIR and that the information is not held.

6. Upon receiving this response, the complainant submitted an internal review request on 5 December 2022, and on 6 February 2023, the Cabinet Office provided its internal review response and maintained its original position.

Reasons for decision

Regulation 12(4)(a) and Section 1(1)-information held/not held

7. In correspondence sent to the Commissioner, the Cabinet Office explained that the relevant EIR exception is 12(4)(a), but that it also responded under FOIA because "not all the questions relate to information that (if held) would be environmental information as defined by the EIR".
8. Regulation 12(4)(a) of the EIR provides that a public authority may refuse to comply with a request for information to the extent that it does not hold that information when it receives the request.
9. Section 1(1) of FOIA states that:

Any person making a request for information to a public authority is entitled-

 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.
10. When there is some dispute between the information held by a public authority and the information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
11. In this case the complainant believes that it is "highly likely" that environmental issues will have been discussed at this meeting.
12. In submissions to the Commissioner, the Cabinet Office explained that the Prime Minister's Office advised it of where the information would be located, if held. It confirmed that searches were conducted in the "Prime Minister's Office's official records, as managed by the Private Office Support Team (PMPOST), the policy-correspondence and policy-filing repositories and the correspondence database as managed by the Direct Communications Unit" which covers external correspondence.

13. Using search terms of 'Prince Charles', 'Prince of Wales', 'Environment' and 'CHOGM' (Commonwealth Heads of Government Meeting), the Cabinet Office also searched the "contents lists for the hard copy files of documents read by PM Johnson, the No.10 electronic shared storage area for outgoing and ingoing correspondence and a definitive diary of the PM's engagements for 24 June 2022".
14. The Cabinet Office further explained that it did not search personal computers used by key officials as it is a "longstanding practice that information is stored for preservation by PMPOST" and that if any documentation existed PMPOST would hold it.
15. The Cabinet Office confirmed that the searches stated above "were thorough" and would have located the information, if it existed. It further explained that the searches have been re-conducted and that no information has been located.
16. The Commissioner notes the complainant's comments that the now King has a "well known and long-life interest in environmental matters". Furthermore, he also notes that there are several news articles¹ speculating as to what may have been discussed, during the meeting.
17. However, like case IC-156269-F2N6², no evidence has been provided showing that the then HRH Prince of Wales and Prime Minister Boris Johnson discussed anything environmental in this meeting. Therefore, the Commissioner has to base his view on the balance of probabilities.
18. When considering the public interest test, the Commissioner can only find that the public interest in maintaining the exception at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because the information is not held.
19. The Commissioner is therefore satisfied that both regulation 12(4)(a) of the EIR and section 1(1) of FOIA are engaged, and he does not require the Cabinet Office to take any further steps in this case.

¹ <https://www.itv.com/news/2022-06-24/charles-and-pm-all-smiles-as-they-meet-for-first-time-amid-rwanda-policy-row>
<https://www.reuters.com/world/uk/uks-boris-johnson-will-not-disclose-discussion-with-prince-charles-2022-06-24/>

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4025564/ic-156269-f2n6.pdf>

Procedural matters

20. Section 10(1) of FOIA states that a public authority must respond to a request promptly and in any event not later than the twentieth working day following the date of receipt.
21. Regulations 5(1) and (2) of the EIR states that a public authority that holds environmental information shall make it available on request, subject to any exceptions, as soon as possible and no later than 20 working days after the date of receipt of the request.
22. In this case the Cabinet Office failed to respond within the statutory time for compliance and therefore breached section 10(1) of FOIA and regulation 5(2) of the EIR.

Right of appeal

23. 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

24. 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.
25. 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

Joanna Marshall
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF