

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

**Date:** 3 October 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 communications between Liz Truss, when she was Prime Minister, [6 September – 25 October 2022], and the former Prince of Wales, now King Charles III regarding the United Nations Climate Change Conference (COP 27). The Cabinet Office relied on EIR regulation 12(4)(a) – information not held and FOIA section 37(2) – communications with Her Majesty by virtue of section 37(1)(a) and (aa), to neither confirm or deny holding any information in response to the request.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on regulation 12(4)(a) and FOIA section 37(2).
3. The Commissioner does not require any further steps.

**Request and response**

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4. On 28 January 2023, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I would now like to request the following information via the Environmental Information Regulations(EIRs)

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 or 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 I want to receive actual copies of correspondence and communications rather than just excerpts from that correspondence and communication. In the case of any letters, I would like to receive the letter heads, signatures and any other design features. In the case of emails and other messages I would like to see the original paragraph and sentence structure as well as the time and date sent. If you must redact any information in the correspondence and communication, can you redact it where and when it appears in the correspondence and communication than I will be able to judge the extent and location of any redaction.

Please note that my reference to His Majesty King Charles III in the questions below refers to both the King himself and the King himself when he was Prince Charles, Prince of Wales and Duke of Cornwall. Please note that it should also include anyone who is currently able to correspond and communicate on behalf of the King and anyone who was able to correspond and communicate on behalf of the King when he was Prince Charles, Prince of Wales. These individuals will include the King and or the former Prince's Principal Private Secretary (ies), his Assistant Private Secretary (ies), any other private secretary (ies). Please note that with the exception of questions 4 and 5 that I am only interested in information, which was generated between 6 September 2022 and 25 October 2022.

I have now restricted my request to the premiership of Liz Truss.

1. During the aforementioned period did His Majesty King Charles III (whether as King and/or Prince Charles, the Prince of Wales) write to and or communicate with the prime minister about any and or all of the following issues.

(a) The 2022 United Nations Climate Change Conference (aka Cop 27) which was held in Egypt.

(b) The environmental issues likely to be and or which were discussed at Cop 27.

(c) The British government's ambitions for Cop 27.

(d) The possible attendance at Cop 27 by the former Prince Charles and or King Charles III.

(e) The achievements of Cop 27 including but not limited to any final resolution

(f) The wider issue of climate change and the action which could be taken to tackle it.

2. If the answer to question one is yes can you please provide copies of all correspondence and communication. Please note that I am interested in receiving all correspondence and communication which mentions and or in any way relates to any and or all of the issues and topics outlined in question 1 (a to f).

3. During the aforementioned period did the prime minister write to and or communicate with His Majesty King Charles III (whether as King and/or Prince Charles, the Prince of Wales) about any and or all of the issues outlined in question one (a to f). If the answer is yes, can you please provide copies of this correspondence and communication. Please note that I am interested in receiving all correspondence and communication which mentions and or in any way relates to any and or all of the issues and topics outlined in question 1 (a to f).

4. Prior to Miss Truss entering Downing Street in 2022 did the Prince of Wales write to and or communicate with her and or anyone acting on her behalf about any of the issues outlined in question 1 (a to f). You may recall that Miss Truss was the runaway favourite to win the Tory leadership contest of 2022. It may be that the Prince and his team opened lines of communication with her and or her team about this issue prior to her being named as Tory party leader and prime minister. Please note that I am only interested in correspondence and communication generated between 7 July 2022 and 5 September 2022. If the answer is yes, can you please provide copies of this correspondence and communication.

5. Prior to Miss Truss entering Downing Street in 2022 did Miss Truss and or anyone acting on her behalf write to or communicate with the King (when he was Prince of Wales) about any of the issues outlined in question 1 (a to f). You may recall that Miss Truss was the runaway favourite to win the Tory leadership contest of 2022. It may be that she and or her team opened lines of communication with him about this issue prior to her being named as Tory party leader and prime minister. Please note that I am only interested in correspondence and communication generated between 7 July 2022 and 5 September 2022. If the answer is yes, can you please provide copies of this correspondence and communication."

5. The Cabinet Office responded on 24 February 2023. It stated that it did not hold any information within the scope of the request and refused the request in reliance on EIR regulation 12(4)(a).
6. Following a request for an internal review on 25 February 2023 the Cabinet Office wrote to the complainant on 22 May 2023. It stated that having confirmed the nature and scope of the searches undertaken it was satisfied that any information in the scope of the request would have been located. It therefore upheld its initial response.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 23 May 2023 to complain about the way their request for information had been handled. They explained that they did not accept that no information was held by the Cabinet Office and provided links to newspaper articles asserting that as there had been newspaper coverage it was "highly likely" that information was held.
8. The complainant advised that the request in this case was a revised request which was the latest in a series of requests submitted by them to the Cabinet Office about Prince Charles / King Charles III and COP 27.

## **Reasons for decision**

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### **Would the requested information be environmental?**

9. 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;

- (d) reports on the implementation of environmental legislation;
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
10. In cases where the existence of information is disputed, the Commissioner must consider whether the requested information, if it existed, would be environmental.
11. As the requested information relates to communications about COP 27<sup>1</sup> the Commissioner is satisfied that at least some of the requested information, if held, would fall within the definition of environmental information at regulation 2(1)(c). The Commissioner would point out that he cannot say that any information which may be held within the scope of the request fits the definition of environmental information simply because it is connected to the COP 27 event. Accordingly he has considered the request under the EIR and FOIA.

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

12. Under regulation 5(1) of the EIR and subject to a number of EIR provisions, a public authority that holds environmental information shall make it available on request.
13. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information “to the extent that it does not hold that information when an applicant’s request is received.”
14. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant’s evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is

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<sup>1</sup> COP27, the Conference of the Parties – the United Nations Climate Change Conference was held on from 6-20 November 2022 in Sharm El-Sheikh, Egypt.

not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.

15. 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.
16. The complainant considers that a series of press articles during 2022 covering discussion on King Charles' attendance at COP27 and "a reported decision by Liz Truss to stop the King speaking at COP", suggests that the Cabinet Office is likely to hold information in the scope of the request.
17. The Cabinet Office's position is that it does not hold information within the scope of the request. It provided the Commissioner with details of the searches undertaken by No. 10 to determine this at the time of the internal review, as follows:
  - the Prime Minister's Office's formal, official records as managed by the Private Office Support Team (PMPOST).
  - the policy-correspondence and policy-filing repositories (which make up No.10's formal records) on a keyword basis.
  - the correspondence database managed by the Direct Communications Unit. This would encompass external correspondence with Members of Parliament, members of the public, businesses etc – so unlikely to hold any correspondence from The then Prince of Wales.
  - asking the relevant team within the Prime Minister's Office to check any locally managed records, including hard copy.
  - asked individuals to check any records they had saved into their personal (official) electronic filing environment.
18. The Commissioner specifically asked the Cabinet Office if its searches included messaging services. It responded stating that its position on messaging services remains that official information is routinely captured and saved to the official record – therefore, if it existed, it would have been highlighted in searches undertaken.
19. At the time of the Commissioner's investigation the hard copy files from the Truss administration had been transferred from the Prime Minister's office to the Cabinet Office Public Records and Archives (COPRA) team who have conducted their own searches from the list of transferred files checking the files most likely to contain relevant information. The Cabinet Office explained:

“These files were searched manually, and no environmental information in scope of the request was located, i.e. there is no environmental information comprising communications between the then Prince of Wales or HM King Charles and the Prime Minister, nor environmental information relating to communications on their behalf. The Court Circular identifies Audiences between HM The King and the Prime Minister that took place during the time period stated in the request, but Audiences are held in private and therefore there is no record of the discussion.”

20. The Cabinet Office explained that it holds no information to show that records were ever held and subsequently deleted. It pointed out that the official record is retained until the Prime Minister leaves office and the records of the administration are then transferred by No.10 to the Cabinet Office to be retained for 20 years before they are transferred to The National Archives for permanent preservation.
21. The Prime Minister’s office follows the Guidance on the management of Private Office Papers (2009) ([nationalarchives.gov.uk](https://nationalarchives.gov.uk))<sup>2</sup>. The Cabinet Office formal records management policy states that the Cabinet Office will always preserve correspondence between the Government and the Royal Family in compliance with the Public Records Act to preserve records worthy of permanent preservation at The National Archives.
22. The Commissioner considers that the Cabinet Office has conducted adequate searches for any information held within the scope of the request. He accepts that the Cabinet Office’s conclusion, that it does not hold any environmental information falling within the scope of the request, is a reasonable one in the circumstances.
23. In conclusion, the Commissioner finds, on the balance of probabilities, the Cabinet Office does not hold any recorded environmental information falling within the scope of the request and so the exception provided by regulation 12(4)(a) is engaged.
24. The exception at regulation 12(4)(a) is subject to the public interest test. However, as no information within the scope of the request is held, 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 there is no information to disclose.

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<sup>2</sup> <https://cdn.nationalarchives.gov.uk/documents/popapersguidance2009.pdf>

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

25. Regulation 9(1) states:

“A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.”

26. The Cabinet Office explained its view that it would not be reasonable for it to try to establish if it holds information similar to the requested information which could have assisted the complainant.

27. The Commissioner accepts that in the circumstances of this case, in particular the breadth of the request and the result of the searches undertaken, it was not reasonable to expect the Cabinet Office to be able to assist the complainant further.

**FOIA Section 37 – Communications with Her Majesty, etc**

28. Section 37(1) states:

“(1) Information is exempt information if it relates to –

(a) Communications with the Sovereign

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

29. Section 37(2) 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).”

30. Notwithstanding the EIR consideration of the request, for completeness the Commissioner asked the Cabinet Office to confirm whether it held any information in the scope of the request which was not environmental but was located at the time of the searches. The Cabinet Office acknowledged that in responding to the complainant it should also have included a response under the FOIA. It explained:

“Our position is that any non-environmental information (if held) would be exempt under section 37(1)(aa) of the Act for the period prior to King Charles’ accession to the Throne, and under section 37(1)(a) for any information created since he became King. We therefore rely on the absolute exclusion at section 37(2) of the Act to neither confirm nor deny if any non-environmental information is held.”

31. The Commissioner is satisfied that any information falling within the scope of the request, if held and was not environmental information,



would have comprised communications with the heir to the Throne or the Sovereign. The Cabinet Office is therefore entitled to rely on the stated subsections of section 37 to neither confirm or deny holding any such information.

## Other matters

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32. In respect of the EIR there is a statutory requirement to meet the requirements of regulation 11(2)<sup>3</sup> to complete an internal review within 40 working days.
33. FOIA does not impose a statutory time within which internal reviews must be completed albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and to be completed within 40 working days when reviews address complex issues, require consultation with third parties or consider substantial amounts of information.
34. The complainant asked for an internal review of the outcome of his request on 25 February 2023. The Cabinet Office did not provide a response until 22 May 2023, 57 days later. The Commissioner does not consider there to have been a legitimate reason for more than 40 working days to have been taken.

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<sup>3</sup> <https://www.legislation.gov.uk/uksi/2004/3391/regulation/11/made>

## Right of appeal

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35. 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)

36. 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.

37. 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 .....**

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