

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

Decision notice

Date: 28 March 2024

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

Decision (including any steps ordered)

1. The complainant submitted an information request to the Cabinet Office for correspondence between the then Prince of Wales, Prince Charles, and the former Prime Minister John Major, relating to organic farming between 1 January 1993 and 31 December 1993.
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.
3. The Commissioner additionally finds that the Cabinet Office was entitled to neither confirm nor deny whether they held any non-environmental information within scope of the request, under section 37(2) by virtue of 37(1)(aa) of FOIA.
4. The Commissioner does not require further steps, as a result of this decision notice.

Request and response

5. On 2 August 2023, the complainant wrote to the Cabinet Office and requested information in the following terms:

"My request concerns correspondence and communications of Prince Charles (the then Prince of Wales) and John Major the then Prime Minister.

Please note that I am only interested in that correspondence and communication generated between 1 January 1993 and 31 December 1993.

1.) During the aforementioned period did Prince Charles write to or communicate with John Major. Please note that I am only interested in that correspondence and communication which mentions or in any way relates to the following. If the answer is yes, can you please provide copies of this correspondence and communication.

- a.) Organic farming.
- b.) The environmental and or economic and or social and or agricultural benefits to be derived from organic farming.
- c.) The environmental damaged caused by the use of pesticides and or chemicals and or non-organic farming methods.
- d.) Financial assistance for those farmers or landowners either involved in and or actively considering a switch to organic farming methods.
- e.) The conversion of the Prince's Highgrove estate to organic farming methods.

2.) During the aforementioned period did Mr Major write to or communicate with Prince Charles. Please note that I am only interested in correspondence and communication which mentions and or in any way relates to the matters listed in question one. If the answer is yes, can you, please provide copies of this correspondence and communication.

3.) Does the Cabinet Office keep records of documents transferred to the National Archives or any external archive.

4.) Has the Cabinet Office transferred the correspondence of Prince Charles and Mr Major to the National Archives and any other external archive. Please note that I am only interested in the correspondence and communications of the kind outlines in questions one and two. If the answer is yes, can you identify the archive.

Can you provide the reference numbers and titles of the transferred documents. If you hold copies of the transferred material, can you, please supply those copies.”

6. A response was provided on 1 September 2023, in which the Cabinet Office confirmed that it does not hold any environmental information within scope of the request. The Cabinet Office also stated that any non-environmental information (if held) would fall under section 37(2), by virtue of 37(1)(aa) of FOIA.
7. Upon receiving this request, the complainant asked the Cabinet Office to conduct an internal review on 1 September 2023. On 17 November 2023, the Cabinet Office provided its internal review response, in which it maintained its original position.

Reasons for decision

Regulation 12(4)(a)-information not held

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. 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).
10. In this case, the complainant believes that it is “highly likely that the Cabinet Office holds environmental information relevant to the request”.
11. In its initial response, the Cabinet Office informed the complainant that there may be relevant environmental information in the PREM 19 files held at The National Archives (TNA), and it provided a link to TNA’s catalogue. However, the Cabinet Office did state that it could not guarantee that there is relevant environmental information contained within the files.
12. In submissions to the Commissioner, the Cabinet Office stated that records covering the period specified in the request would appear on Discovery, which is the online catalogue of TNA, and that that is where the Cabinet Office had started its searches.

13. The Cabinet Office further explained that if any environmental information existed within scope of the request, it would likely be contained in the Royal Family: HRH Prince of Wales series¹ parts two and three, which covers November 1989 to September 1994. The file references are PREM 19/4417 and PREM 19/4954.
14. The Cabinet Office confirmed that PREM 19/4417 was transferred to TNA in 2017, and PREM 19/4954 in 2018. Both were transferred as closed records and for the purposes of FOIA are held by TNA.
15. The Cabinet Office confirmed that it does not routinely keep copies of files once transferred to TNA. However, there may be exceptions where the contents are of relevance to an ongoing piece of policy or operational delivery, but it confirmed that "neither of these scenarios would have been the case within the scope of this request". The Cabinet Office is therefore not able to say whether it ever held any recorded information relevant to the scope of the complainant's request.
16. The Commissioner notes the complainant's comments that "during the period covered by the request the Prince repeatedly pressed the case for organic farming. There is also evidence to suggest that the government of the day was sympathetic to what the Prince was trying to achieve." However, this does not guarantee that the Cabinet Office would hold information relating to this, and ultimately, the Commissioner has to base his view on the balance of probabilities.
17. 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.
18. The Commissioner is therefore satisfied that regulation 12(4)(a) is engaged and he does not require the Cabinet Office to take any further steps in this case.

¹ [ROYAL FAMILY. HRH Prince of Wales: part 2 | The National Archives](https://discovery.nationalarchives.gov.uk/details/r/C16992333)
<https://discovery.nationalarchives.gov.uk/details/r/C16992333>

Section 37(1)(aa)-Communications with the heir to, or the person who is for the time being, second in line of succession to the Throne.

19. Section 37(1)(aa) of FOIA is a class-based exemption, which means that information falling within the description in section 37(1)(aa) automatically engages the exemption, regardless of whether there would be any harm in disclosure. The exemption is not subject to a public interest test.
20. Communications with the heir to the Throne need not necessarily be made directly by, or to, the heir to the Throne. The exemption will also include communications made, or received on his behalf, by officials. Furthermore, the communication need not be a written one; the exemption would apply equally to discussions with the heir to the Throne, in person or via telecommunications. The exemptions cover any recorded information relating to such a communication.
21. Section 37(2) states that 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).
22. To engage section 37(2) of the FOIA, the requested information (if held) would therefore have to fall within the scope of one of the exemptions contained within section 37(1).
23. As the complainant has requested information relating to correspondence and communications between the then heir to the Throne and the then Prime Minister, the Commissioner is satisfied that if the Cabinet Office held non-environmental information within scope of the request, it would be exempt from disclosure on the basis of section 37(1)(aa) of FOIA. He is therefore satisfied that section 37(2) is engaged, and that the Cabinet Office were entitled to issue a NCND response to the request.

Procedural matters

24. Under the requirements of regulation 11, a public authority is obliged to respond for a request for internal review within 40 working days. In failing to carry out an internal review within 40 working days in this case the Cabinet Office breached regulation 11 of the EIR.

Right of appeal

25. 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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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