

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 March 2024

Public Authority: Sheffield City Council
Address: Town Hall, Pinstone Street
Sheffield

Decision (including any steps ordered)

1. The complainant has made a ten part request to Sheffield City Council for any correspondence with HRH Prince William about homelessness. Sheffield City Council ("the Council") refused to provide the requested information citing section 37 (Communications with the Sovereign etc) of FOIA.
2. The Commissioner's decision is that the Council is correct when it says it holds no environmental information within the scope of the request. He has also decided that the Council is entitled to rely on section 37(1) as its basis for refusing to provide the remaining withheld information.
3. The Commissioner does not require further steps.

Request and response

4. On 12 July 2023 the complainant made the following request for information under the FOIA for:

"Please note that I am only interested in information generated between 1 February 2023 to the present day.

1...During the aforementioned period has Prince William (and or anyone able to correspond and communicate on his behalf) written to or communicated with the council. Please note I am only interested in that correspondence and communications which mentions and or in any way relates to any and or all of the issues and topics listed below.

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

(a)...Homelessness and or a shortage of homes within the council's geographic area and or the issue of homeless and or a shortage of homes anywhere else in the UK.

(b)...The problems faced by rough sleepers in the council's own geographical area and or in any other parts of the UK. This will include but will not be limited to the health and safety of those who are sleeping rough and have no proper protection from the elements.

(c)...The Prince's new Homewards initiative.

(d)...The Royal Foundation of the Prince and Princess of Wales.

(e)... The shortage of housing whether in the council's own geographical area and or in any other part of the UK.

(f)...The need to build and or to secure and or to provide more homes in the council's own geographical area (sic) and or in any other part of the UK.

(g)...The use of vacant land sites within the council's own geographical area and or in any other parts of the country to provide new homes and or new facilities for those regarded as being homeless or those in urgent need of new houses.

(h)...The need to build more housing and or facilities for the homeless on either brown field or green field sites within the council's area.

(i)...The use of existing properties that are either empty and or derelict to provide new homes or new services for the

(j)... The existing housing stock within the council's area.

2...During the aforementioned period has the council written to and or communicated with Prince William (and or anybody able to correspond and or communicate on his behalf) about any of the issues outlined in questions one (a to j). If the answer is yes, can you, please provide copies of this correspondence and communication.

3...During the aforementioned period did either the Royal Foundation of the Prince and Princess of Wales and or any employee and representative of the Prince's Homewards Initiative write to and or communicate with the council. Please note that I am only interested in that correspondence and communication which mentions and or in any way relates to any and or all of the topics and issues listed in question

one (a to j). If the answer is yes, can you, please provide a copy of this correspondence and communication.

4...During the aforementioned period did the council write to and or communicate with the Royal Foundation of the Prince and Princess of Wales and or any employee and or representative of the prince's Homewards Initiative. Please note that I am only interested in that correspondence and communication which mentions and or in any way relates to any and or all of the topics and issues listed in question one (a to j). If the answer is yes, can you, please provide a copy of this correspondence and communication."

5. The Council responded on 9 August 2023. It stated that it did not consider the requested information fell within the scope of "environmental information", and had therefore processed the request under FOIA. The Council withheld the information on the basis of section 37(1) (communications with the sovereign).
6. At internal review, it revised its position slightly, stating it did not hold information relating to topics a, b, or e-j of the request, and any information relating to parts c or d would be considered exempt under section 37(1).

Reasons for decision

7. 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);
8. The Commissioner is of the view that at least some of the requested information, if held, would be information on housing shortages, potential development of vacant land sites and the use of existing properties to house individuals, and the exposure of homeless individuals to the elements. As such, he is satisfied that the information, if held, would be environmental information caught by the EIR.

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

9. 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”.
10. Where there is some dispute between the amount of information identified by a public authority and the amount of 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). For clarity, the Commissioner is not expected to prove categorically whether the information is held.

The complainant’s position

11. The complainant considers the Council holds environmental information relating to the request which should have been disclosed.

The Council’s position

12. In its internal review, the Council stated while it does hold materials on homelessness in Sheffield, it has not had any correspondence about them with the individuals and organisations named in the request. While it may do so in due course, it advised the project was launched at the end of June 2023, and as the request was made on 12 July 2023, correspondence thus far only related to administrative matters.

13. Having considered both the complainant's submissions and those of the Council, the Commissioner has determined that, on the balance of probabilities, the Council does not hold any environmental information within the scope of the request.

Section 37 - Communications with His Majesty and the awarding of honours

14. Section 37 of FOIA 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,
 - (ab) communications with a person who has subsequently acceded to the Throne, or become heir to, or second in line to, the Throne.”

15. The exemption also covers communications made or received by a person or organisation who is acting on behalf of any of the Sovereign or the Heir to the Throne, for example, HRH's private secretary or a representative of Buckingham Palace.
16. Section 37 is an absolute exemption – this means if information engages the exemption then it is automatically exempt. There is no requirement for the Council to consider the public interest in disclosing or withholding the requested information.
17. As explained in paragraph 12 above, the project was launched in June 2023 and any correspondence held related only to administrative matters. Given that correspondence with the Prince (as described in the request) would, if held, fall by definition within the class of information described in the relevant exemption, the Council is entitled to rely on section 37(1)(aa) as its basis for refusing to confirm or deny whether it holds such information.

Right of appeal

18. 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

19. 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.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF