

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 August 2024

**Public Authority:** House of Commons  
**Address:** London  
SW1A 0AA

#### Decision (including any steps ordered)

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1. The complainant has requested the House of Commons (HoC) to confirm whether the EFRA Select Committee discussed the 2023 State of Nature Report and, if it had, to disclose any unpublished documentation. The HoC refused to confirm or deny holding the information, citing section 34(2) of FOIA.
2. The Commissioner's decision is that the HoC is entitled to refuse to confirm or deny holding any information within the scope of the request in accordance with section 34(2) of FOIA.
3. The Commissioner does not require further steps to be taken.

#### Request and response

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4. On 20 December 2023, the complainant wrote to the HoC and requested information in the following terms:

"Published EFRA Reports do not include any specific references to the [2023 State of Nature Report](#), nor any previous such reports. However they may have been discussed by the EFRA Select Committee but not yet reported.

I would be grateful if you could answer the following questions using the Environmental Information Regulations:

1. Has the EFRA Select Committee discussed the 2023 State of Nature Report?
  2. If not, when will it do so?
  3. Is there any unpublished documentation referring to 2023 or previous State of Nature reports?
  4. Have the Select Committee made any recommendations following the 2023 or previous State of Nature reports?
  5. Have EFRA sought expert external advice to assist responding to the 2023 or previous State of Nature reports?
  6. Please provide access to any unpublished documentation referring to the State of Nature reports.”
5. HoC responded on 15 January 2024. It refused to confirm or deny whether it holds any information in accordance with section 34(2) of FOIA.
  6. The complainant requested an internal review on 31 January 2024.
  7. The HoC carried out an internal review and notified the complainant of its findings. It upheld the application of section 34(2) of FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 25 February 2024 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to establish whether or not the HoC is entitled to refuse to confirm or deny holding any information in accordance with 34(2) of FOIA.

### **Reasons for decision**

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#### **Section 34 – parliamentary privilege**

10. Section 34 of FOIA provides an exemption for information if its disclosure would infringe parliamentary privilege.
11. As outlined in subsection (2), the duty to confirm or deny does not apply where the exemption is required in order to avoid an infringement of parliamentary privilege.
12. The exemption is absolute, which means there is no public interest test.

13. Regulation 3(4) of the EIR states that the EIR will not apply to the Houses of Parliament themselves if complying would infringe parliamentary privilege. This means that the HoC or the House of Lords, on receiving a request for environmental information, must instead consider it under FOIA, and may find it exempt under section 34 as set out above. This is confirmed in the Commissioner's guidance on section 34, at paragraph 33<sup>1</sup>.
14. The HoC advised that the work of its committees is part of the proceedings of the HoC and therefore subject to parliamentary privilege. It said that these privileges include the exclusive right of each House of their committees to decide whether or when information relating to proceedings should be made public, including any documentation and discussions on the topic specified.
15. The HoC outlined to the Commissioner the process it follows for all requests of this nature and advised that this process was indeed followed in this case. The request is referred to the relevant service area (such as a Committee team) for consideration. It is then escalated to the Clerk of the Journals, a very senior post-holder who views the request. It said that because privileged material, if held, may still be disclosed or published, the request is referred back again to the service area for a further consideration on how the HoC should respond.
16. The HoC confirmed that the exemption was applied in this case because it was considered that to confirm or deny whether it holds any information falling within the scope of the request would infringe parliamentary privilege.
17. It stated on this occasion it did not obtain a Speaker's Certificate to make the decision. It however commented that it is able to apply this exemption without a certificate and referred to previous decisions from the Commissioner in which the exemption was upheld without one.
18. The Commissioner is satisfied that there is no requirement for the HoC to obtain a speaker's certificate in order to apply the exemption. The only difference is that where no Speaker's Certificate is obtained and presented to the Commissioner, the Commissioner must make his own determination of whether the exemption applies (when a certificate is obtained it is, in effect, pre-determined for the Commissioner that the exemption applies).

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<sup>1</sup> [section\\_34\\_parliamentary\\_privilege.pdf \(ico.org.uk\)](https://ico.org.uk/section_34_parliamentary_privilege.pdf)

19. The Commissioner notes that parliamentary privilege includes the right of each House to manage its own affairs and to exercise sole jurisdiction over its own proceedings. He considers the key point is that, as part of its privilege, the relevant House has the right to control publication of its proceedings, including where necessary the confirmation or denial of any such proceedings taking place.
20. As each House has the right to control its own affairs, including the right to control publication of its proceedings (and where necessary the confirmation or denial of any such proceedings taking place), any unpublished information relating to proceedings in Parliament (if indeed held) may be covered by the exemption.
21. If held, the information falling in scope, is information that would relate to the proceedings of the HoC. Therefore, in line with the principles of parliamentary privilege, the HoC has the right to determine what information it wishes to publish.
22. To order the HoC to confirm or deny holding information would in itself result in an infringement of the privileges of the HoC. As HoC has sole jurisdiction over its proceedings and what information it publishes (including making it public whether it simply holds information or not of the nature specified in a request), the Commissioner is satisfied that HoC is entitled to rely on section 34(2) of FOIA.

## **Right of appeal**

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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.

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