

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

Date: 28 June 2021

Public Authority: Department of Health and Social Care (DHSC)
Address: 39 Victoria Street
London
SW1H 0EU

Decision (including any steps ordered)

1. The complainant has requested information relating to a meeting which took place between His Royal Highness the Prince of Wales and Alun Milburn on 27 March 2000. DHSC refused to disclose the requested information held under section 37(1)(aa) FOIA.
2. The Commissioner's decision is that DHSC has correctly applied section 37(1)(aa) FOIA in this case.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 1 January 2020 the complainant submitted a nine part request to DHSC for the following information:

"I would like to request the following information relating to a meeting which took place between His Royal Highness the Prince of Wales and Alun Milburn on 27 March 2000.

According to the Court Circular the meeting took place at St James's Palace.

Please note that the reference to the Prince of Wales in the questions below should include the Prince himself, his principal Private

Secretary(ies), any other Private Secretary(ies), and anyone in his private office able to correspond and communicate on his behalf.

Please note that the reference to Mr Milburn in the questions below should include Mr Milburn himself, his principal Private Secretary(ies), any other Private Secretary(ies), and anyone in his private office able to correspond and communicate on his behalf.

Please note that the reference to written communications in the questions below should include traditional forms of correspondence such as letters and faxes, emails irrespective of whether they were sent through private or official email accounts and any messages sent through any encrypted messaging services.

I understand the Department of Health and Social Care holds information previously created and held by the Department of Health. I would be grateful if you could provide that information.

1. Does the Department of Health and Social Care hold written records (generated at the time) which relates to the meeting and the issues discussed at the meeting.
2. Can you please provide a full list of those present at the meeting.
3. Did His Royal Highness the Prince of Wales communicate with Mr Milburn about the meeting and the specific issues discussed at the meeting. This correspondence may have take place before the meeting itself or it may have post dated the meeting. If the answer is yes can you please provide copies of this correspondence and communication.
4. Did Mr Milburn write to the Prince of Wales about the meeting and the specific issues discussed at the meeting. This correspondence may have taken place before the meeting itself or it may have post dated the meeting. If the answer is yes can you please provide copies of this correspondence and communication including any emails.
5. Was any agenda produced in advance of the meeting even if only on an informal basis and for internal purposes only. If the answer is yes can you please provide a copy of this agenda.
6. Were any briefing notes (or similar) provided to Mr Milburn in advance of the meeting. These briefing notes or similar would explore possible areas for discussion at the meeting and or include detail of the Prince's own work in the relevant areas being discussed and or the Government's relevant policies in the areas to be discussed.
7. If the answer to question six is yes can you please provide a copy of these briefing notes.

8. Did the Prince of Wales hand over any written or visual material to Mr Milburn at the meeting. If the answer is yes can you please provide a copy of this material.
9. If relevant documentation has been destroyed by the Department of Health and Social Care, or its predecessor department or any other organisation acting on its behalf can you please provide the following details.
 - a. Can you please identify which documents have been destroyed and in the case of each piece of destroyed documentation can you provide a relevant title and a brief outline of its contents.
 - b. In the case of each piece of destroyed documentation can you please state when it was destroyed and why?
 - c. In the case of each piece of actual correspondence and communication which has been destroyed can you provide details of the date generated, the author, the recipient and a brief outline of its contents.
 - d. In the case of all destroyed documentation if the documentation continues to be held in another form can you please provide a copy of that destroyed documentation."
5. DHSC responded on 29 January 2020, it refused to disclose the requested information under section 37(1)(aa) FOIA.
6. The complainant requested an internal review on 6 February 2020, in particular he asked DHSC to consider whether any of the information he had requested would fall under the Environmental Information Regulations 2004 (EIR). DHSC sent the outcome of its internal review on 4 March 2020. It confirmed that the request had been dealt with under the correct access regime and upheld the application of section 37(1)(aa) FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 7 March 2020 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether DHSC handled this request under the correct access regime and whether section 37(1)(aa) FOIA was correctly engaged to withhold the requested information in this case.

Reasons for decision

Is the withheld information environmental?

9. Regulation 2(1) defines environmental information as follows:

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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) and (b) 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. The DHSC has confirmed that it has checked all of the definitions in regulations 2(1)(a)-(f) of the EIR and believes that none of them apply to the withheld information.
11. The DHSC has provided the Commissioner with a copy of the withheld information.

12. Having viewed the withheld information, the Commissioner is satisfied that it does not fall under the definition of environmental information as set out in regulation 2(1)(a)-(f) EIR.

Section 37(1)(aa)

13. Section 37(1)(aa) exempts information relating to communications with the heir and second in line to the Throne.
14. Sections 37(1)(aa) is a class-based and absolute exemption. This means that if the information in question falls within the class of information described in the exemption in question (in this case information relating to communications with the heir to the Throne), it is exempt from disclosure under FOIA. It is not subject to a balance of the public interest test.
15. Communications with the heir are not necessarily made directly by, or to His Royal Highness the Prince of Wales. The exemption will also include communications made or received on his behalf by his officials. Furthermore the communication need not be a written one; the exemption would apply equally to discussions with the heir, in person or via telecommunications. The exemption covers information which relates to such a communication.
16. For the exemption under section 37(1)(aa) to be engaged the information must constitute, or relate to, a "communication". So, for example, an internal note held by a government department that simply references the heir will not fall within this definition unless it specifically relates to a relevant communication.
17. Having viewed the withheld information, the Commissioner is satisfied that the information that was withheld relates to communications with the heir to the Throne as it relates to a meeting between His Royal Highness the Prince of Wales and Alun Milburn on 27 March 2000. Therefore the exemption at section 37(1)(aa) has been correctly engaged.
18. As explained above there is no need for the information to be sensitive in any way for the exemption to apply. It is sufficient that the information falls within the class of information described by the exemption. The Commissioner finds that the information is exempt by virtue of section 37(1)(aa).

Right of appeal

19. 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

20. 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.
21. 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.....

Gemma Garvey

Senior Case Officer

Information Commissioner's Office

Wycliffe House

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Wilmslow

Cheshire

SK9 5AF