

## Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004

### Decision Notice

Date: 15 December 2009

**Public Authority:** Department for Environment, Food and Rural Affairs  
**Address:** 3 – 8 Whitehall Place  
London  
SW1A 2HH

### Summary

---

The complainant requested copies of correspondence exchanged between The Prince of Wales and government ministers at the public authority over a seven month period. The complainant also requested a list and schedule of this correspondence. The public authority initially relied solely on Regulation 12(5)(f) of the Environmental Information Regulations 2004 ('the EIR') to refuse to the complainant's request, and, having concluded its internal review of its handling of the request, determined that those parts of the requested information falling within the definition of environmental information should be withheld in reliance of Regulation 12(5)(f), and that, in relation to non-environmental information it could neither confirm or deny whether it held this, in reliance of section 37(2) of the Act

During the course of the Commissioner's investigation the public authority confirmed to the complainant that it held correspondence falling within the scope of his request but it considered the information to be exempt from disclosure by virtue of the provisions of Regulations 12(5)(e) and 12(5)(f). The public authority confirmed that it did not hold a list or schedule of correspondence and that, although accepting it could create one, it believed that such a list or schedule would be exempt from disclosure under the provisions of the Act.

The Commissioner has concluded that all of the correspondence is environmental information and thus should be considered under the EIR rather than the Act. The Commissioner has concluded that the correspondence is exempt from disclosure by virtue of Regulations 12(5)(f) or 13(1). The Commissioner has also concluded that a list and/or schedule of correspondence sent by The Prince of Wales, if it was to be created, would be exempt on the basis of the same exceptions or the exemptions within the Act cited by the public authority.

## The Commissioner's Role

---

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

AND

The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

## The Request

---

2. The complainant submitted an email to the Department for Environment, Food and rural Affairs ('DEFRA') on 8 April 2005. This email contained a number of requests which focused on correspondence which DEFRA may have exchanged with The Prince of Wales. The full text of this email is included in an annex which is appended to this Notice.
3. After some delay, DEFRA issued a refusal notice on 26 September 2005. It determined that disclosure of the requested information should be refused in reliance of the exception provided by Regulation 12(5)(f) of the Environmental Information Regulations 2004 ('the EIR'). The notice informed the complainant that the public interest in maintaining the exception outweighs the public interest in making it available.
4. On 26 September 2005 the complainant asked DEFRA to conduct an internal review of this decision.
5. DEFRA informed the complainant of the outcome of the review on 9 December 2005. The review upheld DEFRA's decision to withhold the information for the reasons set out in the refusal notice. At this point DEFRA also determined that, in respect of non-environmental information, it could neither confirm nor deny that it holds information falling within the description specified in the request, by virtue of section 37(2) of the Act. DEFRA provided the complainant with its considerations of the public interest argument relevant to its application of section 37(2).
6. Following the intervention of the Commissioner, DEFRA contacted the complainant again on 23 April 2009. In its letter DEFRA confirmed that it had re-considered the balance of the public interest test and now believed that the public interest favoured confirming that it did hold information falling within the scope of the requests. DEFRA explained that the information it holds is environmental

information as defined by the EIR, as it 'relates to information on measures [...] affecting or likely to effect the elements or likely to affect elements or and factors affecting or likely to affect the environment'. In consequence of this, DEFRA informed the complainant that the information was exempt under Regulations 12(5)(d) and 12(5)(f) of the EIR. DEFRA confirmed that it did not hold a list or schedule of correspondence falling within the scope of the requests and although it agreed that it could create one, it believed the contents would also be exempt from disclosure under the EIR.

## The Investigation

---

### Scope of the case

7. The complainant contacted the Commissioner on 15 June 2005 to complain about DEFRA's handling of his request. The complainant specifically asked the Commissioner to consider the following:
  - The length of time taken by DEFRA to respond to his request; and
  - Whether DEFRA should publish the requested information.

### Chronology

8. Although the complainant originally contacted the Commissioner in June 2005, due to a backlog of complaints received about public authorities' compliance with the Act, the Commissioner was unable to begin his investigation of this case immediately. Therefore it was not until 13 February 2007 that the Commissioner contacted DEFRA in relation to this complaint.
9. DEFRA provided the Commissioner with a substantive response to his letter of 13 February 2007 on 2 August 2007.
10. The Commissioner also contacted the Cabinet Office in order to discuss the issues relating to this case as a number of other government departments had received similar requests seeking details of correspondence with The Prince of Wales and the Cabinet Office was involved in co-ordinating the various public authorities' responses. (The Commissioner subsequently received a number of complaints about the responses provided by these public authorities).
11. In March 2008 representatives of the Royal Household, the Cabinet Office and the Commissioner's office met to discuss the issues raised by the various complaints the Commissioner had received involving requests for The Prince of Wales' correspondence with government departments.
12. On 7 July 2008 the Commissioner wrote to the Royal Household in order to seek further views on the application of the exemptions in these cases, in particular the refusal to confirm or deny whether information falling within the scope of the requests was in fact held.

13. The Commissioner received a response from the Royal Household in November 2008.
14. In December 2008 representatives of the Royal Household, the Cabinet Office and the Commissioner's office met again in order to further discuss the issues raised by the complainant.
15. On 27 January 2009 the Commissioner contacted DEFRA. He explained that following discussions with the Cabinet Office and the Royal Household, it was his understanding that DEFRA was no longer refusing to confirm or deny whether it held information falling within the scope of these requests. The Commissioner therefore asked DEFRA to contact the complainant and confirm to him that it did in fact hold information which fell within the scope of his requests. The Commissioner also asked DEFRA to provide his office with copies of the information which fell within the scope of these requests.
16. In March 2009 DEFRA provided the Commissioner with copies of the information which it believed fell within the scope of these requests.
17. As noted above, on 23 April 2009 DEFRA contacted the complainant and confirmed that it held information but considered it to be exempt from disclosure on the basis by virtue of the exceptions provided by Regulations 12(5)(d) and 12(5)(f) of the EIR. DEFRA also confirmed its position was that it did not hold a list or schedule of correspondence falling within the scope of the requests.
18. DEFRA wrote to the Commissioner also on 23 April 2009. It confirmed that it had now written to the complainant to inform him that it held information relevant to his request and that it was being withheld in reliance of Regulations 12(5)(d) and 12(5)(f).
19. DEFRA drew the Commissioner's attention to a recent decision of the High Court in *Department for Business Enterprise and Regulatory Reform v O'Brien* [2009] EWHC 164 (QB), on the basis that the arguments considered in that case, relating to legal professional privilege, and therefore section 42 of the Act, are analogous to those arguments considered by DEFRA in its application of section 37 of the Act, due to the historical and constitutional significance of the conventions and doctrines which underpinned the creation of section 37(1)(a).
20. The Commissioner contacted DEFRA again on 29 July 2009 and asked it to clarify its position regarding whether it was solely relying on the exceptions provided by Regulations 12(5)(d) and 12(5)(f) of the EIR, or whether it was also relying on section 37(2) of the Act. In the event that DEFRA was also relying on section 37(2) of the Act, the Commissioner asked it to provide him with an analysis of the withheld information, clearly identifying those pieces of information which are/are not environmental information. To assist the Commissioner in making his decision, DEFRA was also asked to provide him with copies of documents which had been enclosed with the withheld correspondence.
21. The Commissioner received a response to this letter from DEFRA on 13 November 2009. DEFRA confirmed its belief that the requested correspondence

should be considered firstly under the Act and in relation to the exemptions provided by sections 37(1)(a), 40(2) and 41(1). To the extent that the information is environmental, DEFRA considered that it would be exempt from disclosure under Regulations 12(5)(d), 12(5)(f) and 13. DEFRA outlined its approach for dealing with the complainant's request for lists and schedules of documents. It asserted that this element of the request should be considered under the Act. In relation to the complainant's request for complete copies of documents, DEFRA considered this to be a statement of preference, under section 11(1)(a) of the Act, of how the complainant wanted to receive the information.

## Findings of fact

22. As the information in the Chronology explains the Commissioner exchanged communications about this complaint both with the public authority to which the request was submitted and also with the Cabinet Office. In some instances the Cabinet Office has provided the Commissioner with a submission on the application of a particular exemption and asked Commissioner to consider these submissions when reaching his decision in all cases involving requests for correspondence with The Prince of Wales. The Commissioner has agreed to do so. Therefore although for consistency and ease of reference the remainder of this Notice suggests that information or a particular submission has been provided by the DEFRA it maybe the case that it was in fact provided by the Cabinet Office on its behalf.
23. DEFRA confirmed that although it believed that the withheld information did not constitute 'environmental information' it believed that it would be exempt from disclosure under the EIR by virtue of regulations 12(5)(d), 12(5)(f) and 13(1).
24. DEFRA also confirmed that it believed a list and/or schedule of correspondence sent by The Prince of Wales would be exempt from disclosure, if it was held, on the basis of sections 37(1)(a), 40(2) and 41(1) of the Act and that a list and/or schedule of information sent to The Prince of Wales would be exempt, if it was held, on the basis of sections 37(1)(a) and 40(2) of the Act.

## Analysis

---

### Is any of the requested information 'environmental'?

25. Regulation 2(1) of the EIR explains that defines 'environmental information' as any information in any 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)'

26. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor etc in question. In other words, information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.
27. The Commissioner also finds support for this approach in two decisions issued by the Information Tribunal. The first being *The Department for Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth* (EA/2007/0072). In this case the Tribunal found:
- 'that the Decision Notice [in which the Commissioner has concluded that none of the requested information was environmental information] fails to recognise that information on 'energy policy' in respect of 'supply, demand and pricing' will often fall within the definition of 'environmental information' under Regulation 2(1) EIR. In relation to the Disputed Information we find that where there is information relating to energy policy then that information is covered by the definition of environmental information under EIR. Also we find that meetings held to consider 'climate change' are also covered by the definition.' (Tribunal at paragraph 27).
28. In reaching this conclusion the Tribunal placed weight on two arguments advanced by Friends of the Earth (FoE), the first being that information on energy policy, including the supply, demand and pricing issues, will often affect or be likely to affect the environment and the second that term 'environmental information' should be interpreted broadly:



'23. Mr Michaels on behalf of FOE contends that policies (sub-para (c)) on 'energy supply, demand and pricing' often will (and are often expressly designed to) affect factors (sub-para (b)) such as energy, waste and emissions which themselves affect, or are likely to affect, elements of the environment (sub-para (a)) including, in particular and directly, the air and atmosphere and indirectly (in respect of climate change) the other elements.

24. He provides by way of simple and practical example, national policy on supply, demand and pricing of different energy sources (e.g., nuclear, renewable, coal, gas) has potentially major climate change implications and is at the heart of the debate on climate change. Similarly, national policy on land use planning or nuclear power has significant effect on the elements of the environment or on factors (e.g. radiation or waste) affecting those elements.

25. Mr Michaels further argues that the term 'environmental information' is required to be construed 'very broadly' so as to give effect to the purpose of the Directive. Recognition of the breadth of meaning to be applied has been recognised by the European Court of Justice, by the High Court and by this Tribunal in *Kirkaldie v Information Commissioner & Thanet District Council* EA/2006/001. The breadth is also recognised in the DEFRA guidance 'What is covered by the regulations'. It does not appear, Mr Michaels argues, that the Commissioner has adopted such an approach.'

29. Moreover in reaching this conclusion the Tribunal appeared to reject BERR's arguments that there must be a sufficiently close connection between the information and a probable impact on the environment before it can said that the information is 'environmental information'.
30. The second Tribunal decision is *Ofcom v Information Commissioner and T-Mobile* (EA/2006/0078) which involved a request for the location, ownership and technical attributes of mobile phone cellular base stations. Ofcom had argued that the names of Mobile Network Operators were not environmental information as they did not constitute information 'about either the state of the elements of the environment....or the factors.....that may affect those elements.'
31. The Tribunal disagreed, stating at para 31 that:
- 'The name of a person or organisation responsible for an installation that emits electromagnetic waves falls comfortably within the meaning of the words "any information...on....radiation". In our view it would create unacceptable artificiality to interpret those words as referring to the nature and affect of radiation, but not to its producer. Such an interpretation would also be inconsistent with the purpose of the Directive, as expressed in the first recital, to achieve "... a greater awareness of environmental matters, a free exchange of views [and] more effective participation by the public in environmental decision making...". It is difficult to see how, in particular, the public might participate if information on those creating emissions does not fall within the environmental information regime.'

32. The Commissioner has reviewed the withheld information and has concluded that it constitutes environmental information, falling within the scope of the regulations contained within 2(1) of the EIR. Therefore this information must be dealt with under the EIR rather than under the Act.
33. However, the Commissioner is not able to explain which sections of the withheld information he considers to be environmental, and why, in the body of this Notice without potentially revealing the content of this information. Therefore the Commissioner has included in the confidential annex, which will be provided to the DEFRA but not the complainant, an explanation of which parts of the withheld information he has concluded is environmental information and why.

### **Exceptions**

34. Given that the Commissioner has determined that the withheld information is environmental information he must consider the exceptions contained in the EIR.

### **The request for the correspondence**

35. DEFRA has argued that if the Commissioner finds that any of the withheld information constitutes 'environmental' information as defined by the EIR, it would seek to rely on the exceptions contained at regulations 12(5)(d), 12(5)(f) and 13(1).
36. As the Commissioner has concluded that all of the information contained within the correspondence is environmental information, he has therefore considered the application of these exceptions, starting within 12(5)(f).

### **Regulation 12(5)(f) – interests of the person who provided the information**

37. Regulation 12(5)(f) states:

'a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

(f) the interests of the person who provided the information where that person –

  - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
  - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
  - (iii) has not consented to its disclosure;'
38. The Commissioner is conscious that the threshold to engage an exception under regulation 12(5) of the EIR is a high one compared to the threshold needed to engage a prejudiced based exemption under the Act:



- Under regulation 12(5) for information to be exempt it is not enough that disclosure of information will have an effect, that effect must be 'adverse'.
  - Refusal to disclose information is only permitted to the extent of that adverse effect – i.e. if an adverse effect would not result from disclosure of part of a particular document or piece of information, then that information should be disclosed.
  - It is necessary for the public authority to show that disclosure 'would' have an adverse effect, not that it may or simply could have an effect. With regard to the interpretation of the phrase 'would' the Commissioner has been influenced by the Tribunal's comments in the case *Hogan v Oxford City Council & Information Commissioner* (EA/2005/0026 & 0030) in which the Tribunal suggested that although it was not necessary for the public authority to prove that prejudice would occur beyond any doubt whatsoever, prejudice must be at least more probable than not.<sup>1</sup>
39. Furthermore, the wording of the exception makes it clear that the information has to have been provided to the public authority by another person and the adverse effect has to be on the person who provided the information rather than the public authority that actually holds the information.
40. The Commissioner accepts that the correspondence in this case which DEFRA received from The Prince of Wales clearly constitutes information 'provided' to it by a third party and thus such information falls within the scope of the exception contained at 12(5)(f).
41. With regard to the correspondence that DEFRA sent to The Prince of Wales the Commissioner has taken into account the arguments advanced by DEFRA in respect of section 41(1)(a) of the Act. This sub-section requires that for information to be exempt from disclosure on the basis of section 41 it must have been 'obtained from another person'. DEFRA argued that this sub-section should be interpreted broadly to include information about a person, as well as information actually provided by a person.
42. In relation to this argument the Commissioner recognises that deciding whether information has been 'obtained from any other person' requires an assessment of the content of information, not simply of the mechanism by which it was imparted and recorded. However, the Commissioner does not agree with DEFRA's assertion that simply because information it holds is about an identifiable individual it constitutes information obtained from that person. Rather it will depend upon the content of the information which was communicated.
43. In the Commissioner's opinion there has to be a significant degree of similarity to the information which DEFRA is sending to The Prince of Wales to the information which His Royal Highness originally provided to DEFRA for it to meet the requirements of section 41(1)(a). In the Commissioner's opinion it is not

---

<sup>1</sup> These guiding principles in relation to the engagement of exceptions contained at regulation 12(5) were set out in Tribunal case *Archer v Information Commissioner & Salisbury District Council* (EA/2006/0037)

sufficient that the information is simply on the same topic; the correspondence being sent to The Prince of Wales has to reflect the actual views or opinions His Royal Highness may have raised on a particular topic.

44. The Commissioner believes that a similar approach should be taken in respect of whether correspondence sent to The Prince of Wales can be said to be information originally 'provided' by His Royal Highness.
45. The Commissioner has examined the contents of the correspondence sent by DEFRA sent to The Prince of Wales. He is satisfied that parts of that correspondence reflect the views of The Prince of Wales sufficiently closely that it falls within the scope of regulation 12(5)(f).
46. Before considering the nature of the adverse effect, the Commissioner has considered whether the three limbs of 12(5)(f) are met. With regard to the first limb, the Commissioner accepts that The Prince of Wales was not under any legal obligation to supply the information; although it is an established tradition, and one protected by the convention which is discussed below, that the Heir to the Throne will communicate with government Ministers, he is under no legally binding obligation to do so. The Commissioner believes that the second limb will be met where there is no specific statutory power to disclose the information in question. It is clear that there is no such power in this case and thus the second limb is met. Finally with regard to the third limb the Commissioner understands that The Prince of Wales has not consented to disclosure of the withheld information.
47. The Commissioner has summarised below the nature of the adverse effects which DEFRA has argued would occur if the withheld information was disclosed:
48. Firstly, if the information was disclosed this would adversely harm The Prince of Wales because it would undermine his position of political neutrality. DEFRA has argued that this potential harm to The Prince of Wales' position of political neutrality was directly linked to the constitutional convention that The Prince of Wales should be educated in, and about, the business of government in order to prepare him for the time when he will be the Sovereign, without that process putting at risk the political neutrality which is essential to the role and functions of the Sovereign. DEFRA argued that it is essential to the operation of the convention that His Royal Highness should be able to express views to Ministers on important issues of government and moreover should receive their views in response. This also ensures that The Prince of Wales can carry out his role as Privy Councillor, a Counsellor of State and as next in line to the throne he also has a statutory duty under the Regency Act 1937 to act for The Queen during her absence or incapacitation. DEFRA argued that convention that The Prince of Wales will be informed about the business of government in order to prepare for being Sovereign can only be maintained if both His Royal Highness, and government Ministers who advise and inform him about the business of government, can be assured that their communications with each other remain confidential.

49. DEFRA explained that this convention is inextricably tied to the role of the Sovereign in the British constitution and the separate constitutional convention which the Sovereign has: namely to counsel, encourage and warn the Government and thus to have opinions on government policy and to express those opinions to her Ministers. However, whatever personal opinions the Sovereign may hold she is bound to accept and act on the advice of her Ministers and is obliged to treat her communications with them as absolutely confidential. Such confidentiality is necessary in order to ensure that the Sovereign's political neutrality is not compromised; such neutrality is vital in circumstances where the Government will be formed from whichever party can command a majority in the House of Commons, (i.e. a hung Parliament.) Consequently, The Prince of Wales must not be in a position where his position of political neutrality is compromised (or may appear to be compromised) because it cannot be restored on accession to the throne. DEFRA argued that if correspondence between The Prince of Wales and government Ministers were routinely disclosed His Royal Highness' position of political neutrality would be put at risk.
50. Secondly DEFRA argued that disclosure of the correspondence would have a chilling effect on the way in which The Prince of Wales corresponds with government ministers, for example by The Prince of Wales no longer recording particular comments or the nature in which His Royal Highness' views and opinions are recorded being less free and frank nature. DEFRA argued that such a chilling effect would directly impinge upon the established convention that The Prince of Wales is able to confidentially correspond with government ministers.
51. Thirdly, DEFRA explained that disclosure of the correspondence would impinge upon The Prince of Wales' privacy. In respect of the protection which should be afforded to The Prince of Wales' privacy in this case DEFRA noted the effect of Article 8 of the European Convention on Human Rights.
52. Article 8 provides that:
- '1. Everyone has the right to respect for his private and family life, his home and his correspondence.  
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society for the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'
53. DEFRA highlighted the fact that the concept of 'private life' within Article 8(1) is a broad one, based upon the need to protect a person's autonomy and relationships with others from outside interference. DEFRA argued that the right is not confined to activities which are personal in the sense of being intimate or domestic but can be extended to business or professional activities. To support this broad interpretation DEFRA quoted the European Court of Human Rights case of *Niemietz v Germany* and also noted that this judgment confirmed that Article 8(1) was intended to protect correspondence, (i.e. the type of information which is the focus of this case):

'[29]The Court does not consider it possible or necessary to attempt an exhaustive definition of the notion of "private life". However, it would be too restrictive to limit the notion to an "inner circle" in which an individual may choose to live his personal life as he chooses at to exclude entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings.

There appears, furthermore, to be no reason of principle why this understanding of the notion of "private life" should be taken to exclude activities of a professional or business nature since it is, after all, in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity of developing relationships with the outside world...'<sup>2</sup>

And:

'[32] In this connection, it is sufficient to note that the provision does not use, as it does for the word "life", any adjective to qualify the word "correspondence". And, indeed, the Court has already held that, in the context of correspondence in the form of telephone calls, no such qualification is to be made...in a number of cases relating to correspondence with a lawyer...the Court did not even advert to the possibility that Article 8 might be inapplicable on the ground that the correspondence was of a professional nature'.

54. The Commissioner accepts that there is a causal link between disclosure of the correspondence in this case and the adverse effects described above:

Disclosure of information which revealed The Prince of Wales' views on particular issues of public policy could clearly have the potential to result in His Royal Highness' political neutrality being compromised.

55. In relation to DEFRA's argument, disclosure would have a chilling effect on the way in which The Prince of Wales communicates with government ministers, the Commissioner believes that it is more difficult to make an assessment of such an argument given the unique nature of this relationship and thus the lack of any clear precedents, e.g. previous disclosures under the Act of similar information.

56. However, the Commissioner is aware of the biography of The Prince of Wales by Jonathan Dimbleby which was published in 1994.<sup>3</sup> In his introduction to this publication, Dimbleby explains that The Prince of Wales provided him with access to His Royal Highness' archives at St James's Place and Windsor Castle. Dimbleby therefore had access to The Prince of Wales' journals, papers and correspondence between with Whitehall. In relation to the inclusion of such information in his book Dimbleby explains that:

---

<sup>2</sup> *Niemietz v Germany* (1993) 16 EHRR 97

<sup>3</sup> J Dimbleby, *The Prince of Wales: A Biography*, (Bath: Chivers Press, 1994)

'I have been persuaded that the verbatim publication of the material might have a deleterious effect either on the conduct of British diplomacy or on the confidential nature of communications between the monarchy and Whitehall or Westminster; in these cases I have either withheld information or paraphrased the relevant documents or correspondence. However, when it was obvious that only the culture of secrecy which pervades Whitehall was under threat and not the conduct of good governance, I have not complied with requests to delete pertinent material'.

57. Therefore, it would clearly be incorrect to argue that details of Prince of Wales' communications with government have **never** been placed in the public domain. To take but two examples from *The Prince of Wales: A Biography*, at page 582 Dimbleby quotes from a letter sent by His Royal Highness in 1985 to the then Prime Minister Margaret Thatcher, in addition to quoting from a draft section of the letter which did not make the final version. And at page 809 Dimbleby notes that The Prince of Wales wrote to the then Secretary of State for Defence, Malcolm Rifkind, about the implications of cutting the Army's manpower and quotes from the this letter. Although the quote is not particularly lengthy in nature it clearly shows The Prince of Wales' strong views on this issue. The Commissioner has not been provided with any evidence by DEFRA that the inclusion of details of The Prince of Wales' correspondence in this book has resulted in any sort of the chilling effect.
58. However, the Commissioner accepts that a direct parallel cannot be drawn between the disclosure of the withheld information which is the focus of this case and the previous disclosures such as the Dimbleby biography. To some extent, as Dimbleby himself acknowledges, his book was been 'self-censored': extracts have not been included that would undermine the confidential nature of communications between the monarchy. In contrast, disclosure of the withheld information in this case would be without the consent of The Prince of Wales and would result in complete copies, as opposed to extracts or paraphrased sections, of correspondence being revealed.
59. Furthermore the Commissioner believes that an inherent part of the convention is the ability of both the Heir to the Throne and government ministers to be free and frank when discussing matters of government business. This is to ensure that the Heir to the Throne is instructed in the business of government in the most effective and efficient way possible. In the Commissioner's opinion, disclosure of information falling within the scope of convention could lead The Prince of Wales to feel restrained or more reluctant to take part in the process of being educated about the business of government.
60. In reaching this conclusion the Commissioner wishes to clarify his position in relation to the scope of the Constitutional convention provided to the Heir to the Throne. In the Commissioner's opinion given that the purpose of this convention is to allow the Heir to the Throne to be educated in the ways and workings of government, the only information which will attract the protective confidentiality of this convention is information in which The Prince of Wales is in fact being educated in the ways and workings of government. In the Commissioner's opinion



this convention cannot be interpreted so widely as to encompass **all** of The Prince of Wales' communications with the government, i.e. it does not cover correspondence in which His Royal Highness may be discussing his charitable work or indeed information of particularly personal nature (this is not to say of course that the withheld information in this case includes examples of either class of information.)

61. With regard to the relevance of the chilling effect arguments for correspondence which does not fall within the scope of the convention, the Commissioner does not believe that such arguments automatically attract weight in the way in which correspondence falling within the convention does. Rather, the assessment as to whether a chilling effect will occur will be based upon factors considered in other cases involving an assessment of the chilling effect, most notably the content of the information itself. This because in the Commissioner's opinion in order for a chilling effect argument to be convincing the information which is disclosed has to be more than anodyne in nature otherwise disclosure of such information is unlikely to dissuade individuals from making frank and candid comments in the future. In the circumstances of this case the Commissioner accepts that the correspondence which is not covered by the convention is of a relatively frank and candid nature and thus some weight should be attributed to the argument that disclosure of this information would result in a chilling effect in the way in which The Prince of Wales drafts his correspondence.
62. Finally with regard the third effect, the Commissioner agrees with DEFRA that in respect of Article 8(1) the term 'private' should be interpreted broadly to ensure that a person's relationships with others are free from interference. The Commissioner also accepts that matters of a business and professional nature are covered by the protection afforded by Article 8(1). Moreover, the Commissioner recognises the unique position which The Prince of Wales occupies: there is clearly significant overlap between the His Royal Highness' public role as Heir to the Throne and a senior member of the Royal Family and his private life; he only occupies such positions because of the family into which he was born. Therefore in the Commissioner's opinion The Prince of Wales' public and private lives can be said to be inextricably linked. Consequently the Commissioner accepts that disclosure of information in this case, even if it focuses on some aspects of The Prince of Wales' public role could still be said to have an impact on his privacy and dignity.
63. In relation to the likelihood of such effects actually occurring, the Commissioner believes that the higher threshold of 'would occur' is met. This is because there a number of ways in which the adverse effect could manifest itself: it could be to his privacy, dignity, political neutrality and/or the practical way in which he actually corresponds with government Ministers. Furthermore, it is clear that The Prince of Wales communicates with Ministers across government, rather than simply to one or two departments, thus the likelihood of the adverse effect occurring is increased.
64. Vitally, the Commissioner believes that arguments concerning political neutrality are still relevant, and indeed attract similar weight, even when the information being withheld does not fall within the scope of the Heir to the Throne's



convention. In other words disclosure of correspondence not strictly on issues related to the business of government could still lead to The Prince of Wales being perceived as having particular political views or preferences and thus undermine his political neutrality. Similarly the Commissioner accepts that a chilling effect on the nature of correspondence falling within the convention could occur even if the withheld information does fall within the scope of the convention. That is to say, disclosure of information on topics not associated with the business of government, would still be likely to affect future correspondence not simply on similar topics but also on topics falling within the scope of the convention.

65. The Commissioner therefore accepts that regulation 12(5)(f) is engaged in respect of those parts of the correspondence which reflect the views of The Prince of Wales. However all exceptions contained within the EIR are qualified and therefore the Commissioner must consider the public interest test set out at regulation 12(1)(b) which states that information may only be withheld if the public interest in maintaining the exception outweighs the public interest in disclosing the information. Regulation 12(2) states explicitly that a public authority must apply a presumption in favour of disclosure.

### **Public interest test**

#### **Public interest arguments in favour of disclosing the information**

66. There is a public interest in disclosure of information to ensure that the government is accountable for, and transparent in, its decision making processes.
67. Moreover, there is a specific public interest in disclosure of information that would increase the public's understanding of how the Government interacts with the Royal Family and the Royal Household, and in particular in the circumstances of this case, the Heir to the Throne. This is because the Monarchy has a central role in the British constitution and the public is entitled to know how the various mechanisms of the constitution operate. This includes, in the Commissioner's opinion, how the Heir to the Throne is educated in the ways of government in preparation for his role as Sovereign. In the Commissioner's opinion such an interest is clearly distinct from the prurient public interest alluded to by DEFRA.
68. Disclosure of the information may allow the public to understand the influence (if any) exerted by The Prince of Wales on matters of public policy. If the withheld information demonstrated that DEFRA or government in general had placed undue weight on the preferences of The Prince of Wales then it could to the public interest in disclosing the information.
69. Conversely, if the withheld information actually revealed that The Prince of Wales did not have undue influence on the direction of public policy, then there would be a public interest in disclosing the information in order to reassure the public that no inappropriate weight had been placed on the views and preferences of The Heir to Throne. In essence disclosure could ensure public confidence in respect of how the government deals with The Prince of Wales.

70. These two arguments could be seen as particularly relevant in light of media stories which focus on the Prince of Wales' alleged inappropriate interference in matters of Government and political lobbying.
71. Linked to this argument, is the fact that disclosure of the withheld information could further public debate regarding the constitutional role of the Monarchy and particularly the Heir to the Throne. Similarly, disclosure of the information could inform the broader debate surrounding the reform of the British constitutional system.

### **Public interest arguments in favour of maintaining the exception**

72. The public interest arguments in favour of maintaining the exception inevitably focus on the need to ensure that the adverse effects described above do not occur.
73. It is clearly in the public interest to preserve the political neutrality of the Royal Family as this is essential to ensuring the stability of the constitutional monarchy.
74. It would not be in the public interest for The Prince of Wales to alter the way in which he corresponds with the government ministers. Such a chilling effect would result in The Prince of Wales being less prepared in the business of government for when he is Monarch and furthermore may undermine His Royal Highness' ability to carry out his role as a Privy Councillor, a Counsellor of State and any duties he may be called upon to undertake in line with the Regency Act 1937.
75. There is a clear public interest in protecting the privacy, and by implication, the dignity of the Royal Family so as to preserve their position and ability to fulfil their constitutional role as a unifying symbol for the nation.

### **Balance of public interest arguments**

76. The Commissioner believes that significant weight should be attributed to the argument that disclosure would undermine The Prince of Wales' political neutrality: it is clearly in the public interest that The Prince of Wales, either as Heir to the Throne or when Monarch, is not perceived to be politically biased in order to protect his position as Sovereign in a constitutional democracy. Vitally, as noted the Commissioner believes that arguments concerning political neutrality are still relevant, and indeed attract similar weight, even when the information being withheld does not fall within the scope of the convention relating to the Heir to the Throne.
77. Furthermore the Commissioner agrees that it is clearly in the public interest that the Heir to the Throne and government ministers can be free and frank when discussing matters of government business. This is to ensure that the Heir to the Throne is instructed in the business of government in the most effective and efficient way possible. Again as noted above the Commissioner accepts that the chilling effect arguments are still relevant even when the correspondence itself may not fall within his interpretation of the convention and some weight should be given to them.

78. There is a clear public interest in protecting the dignity of the Royal Family so as to preserve their position and ability to fulfil their constitutional role as a unifying symbol for the nation. To the extent that disclosure of the withheld information would undermine His Royal Highness' dignity by invasion of his privacy, the Commissioner accepts that this adds further weight to maintaining the exemption.
79. However, given the number of public interest arguments in favour of disclosure that the Commissioner has identified, he is of the opinion that the benefit of disclosing this information should not be dismissed lightly. Rather the arguments identified by the Commissioner touch directly on many, if not all, of the central public interest arguments underpinning the Act, namely ensuring that public authorities are accountable for and transparent about their actions; furthering public debate; improving confidence in decisions taken by public authorities. Furthermore, the specific arguments relevant to this case in relation to The Prince of Wales relationship with government Ministers deserves to be given particular weight.
80. In reaching a conclusion about where the balance of the public interest lies the Commissioner has to focus on the content of the information. In the Commissioner's opinion although the public interest arguments in favour of disclosing the information are compelling, he believes that disclosure of the particular correspondence falling within the scope of this request would not necessarily fulfil these public interest arguments. In contrast, as the Commissioner has explained above he believes that disclosure of this correspondence would result in the prejudicial effects identified by DEFRA and moreover there are weighty public interest arguments in such effects not occurring. Therefore the Commissioner believes that in all the circumstances of this case the public interest in maintaining the exception outweighs the public interest in disclosing the information.

### **Regulation 13(1)**

81. As explained above the Commissioner has concluded that some of the information contained within the correspondence cannot be exempt on the basis of regulation 12(5)(f) because it was not 'provided' to DEFRA by The Prince of Wales.
82. The Commissioner has therefore considered whether this information is exempt by virtue of regulation 13(1). This states that:
- 'To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.'

83. The elements of regulation 13 relevant to this request are as follows:

'13(2) The first condition is –

- (a) in a case where the information falls within any paragraphs (a) to (d) of the definition of "data" in section

1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –

(i) any of the data protection principles'

84. Section 1(1) of the Data Protection Act 1998 (DPA) defines personal data as:

'data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

85. DEFRA has argued that the withheld information constitutes The Prince of Wales' personal data because:

- the views expressed in communications between the Prince of Wales and any Government minister are clearly data relating to the Prince of Wales;
- they contain the Prince of Wales' 'deeply held convictions on government business' and thus comprise opinions which 'relate to' him; and
- they contain a minister's understanding of the Prince of Wales personal interests on a particular matter.

86. The Commissioner has reviewed remaining withheld information and accepts that it falls within the definition of personal data as defined by the DPA for the reasons set out above.

87. DEFRA has also argued that disclosure of this information would breach the first data protection principle which states that:

1. Personal data must be processed fairly and lawfully; and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

88. DEFRA has argued that disclosure would breach the first data protection principle for reasons which overlap and buttress the reasoning why the withheld information is exempt from disclosure on the basis of section 12(5)(f). Disclosure would be unfair because:

- The parties exchanged the correspondence with the clear expectation that the contents would not be disclosed;
- For information of a particularly personal nature, this would infringe The Prince of Wales' right to private life under Article 8 ECHR; and

- More widely, disclosure would harm The Prince of Wales' ability to carry out his public duties and detract from His Royal Highness' position of political neutrality and the appearance of such neutrality.
89. In assessing whether disclosure of personal data would be unfair the Commissioner takes into account a range of factors including:
- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
    - whether information of the nature requested is already in the public domain;
    - if so the source of such a disclosure; and
    - even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
  - The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
    - what the public authority may have told them about what would happen to their personal data;
    - their general expectations of privacy, including the effect of Article 8 ECHR;
    - the nature or content of the information itself;
    - the circumstances in which the personal data was obtained;
    - particular circumstances of the case, e.g. established custom or practice within the public authority; and
    - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
90. With regard to the reasonable expectations of The Prince of Wales both the operation of the convention to educate the Heir to the Throne and the general way in which correspondence between the Royal Family and government has been historically handled give rise to this expectation. Given the respect and recognition that the Commissioner has accepted should be attributed to this constitutional convention, he believes that the expectations of the Prince of Wales when shaped by the convention are ones that are objectively reasonable. That is to say, DEFRA has not created an unrealistic or unreasonable expectation under which The Prince of Wales may assume his personal data will not be disclosed.
91. With regard to the consequences of disclosure, the Commissioner accepts that disclosure of the correspondence has the potential to harm The Prince of Wales in a more than one way. It could impact on The Prince of Wales's position of political neutrality and thus his ability to carry out his public duties both as Heir to the Throne and when he becomes Monarch. Furthermore, it could harm The Prince of Wales' privacy and dignity as protected by Article 8 ECHR.

92. Consequently, in light of the weighty expectations and the impact on The Prince of Wales if the correspondence were disclosed, the Commissioner accepts that such a disclosure would be unfair and therefore the Commissioner is satisfied that DEFRA can rely on regulation 13(1) to withhold the remaining environmental information. In consequence of this decision, the Commissioner has not gone on to consider regulation 12(5)(d).

### **The requests for the lists and schedules**

93. In addition to asking for copies of correspondence exchanged between The Prince of Wales and Ministers at DEFRA, the complainant also requested a list of this correspondence and furthermore a schedule of such correspondence. The complainant's request specified that the list should include the recipient of the correspondence, the sender of the correspondence and the date of the correspondence. The complainant's request also specified that the schedule should include a brief description of each relevant document including the nature of the document, the date of the document, and whether the document is being released or not.
94. DEFRA has argued that a list/schedule of documents which The Prince of Wales sent to DEFRA would be exempt from disclosure, if it was held, on the basis of section 37(1)(a), 40(2) and 41(1) and that a list/schedule of documents which DEFRA sent to The Prince of Wales is exempt from disclosure, if it was held, on basis of sections 37(1)(a) and 40(2). Although the Commissioner has decided that all of the correspondence in this case should be dealt with under the EIR, he has taken the view that a list or schedule of this correspondence would not itself fall within the definition of environmental information.
95. Having taken the view that the correspondence itself is environmental information, he has not had to address in detail DEFRA's reliance on sections 37(1)(a), 40(2) and 41(1) of the Act. However, the Commissioner is issuing at the same time as this decision notice another decision involving a request by the same complainant to another government department for correspondence with The Prince of Wales. This decision notice does include a detailed analysis of the application of sections 37(1)(a), 40(2) and 41(1) of the Act. Therefore rather than repeat this detailed analysis in this present notice the Commissioner has attached this related notice which sets out his position on the exemptions contained within the Act which have been cited by DEFRA in this present case. The following paragraphs provide a summary of the Commissioner's considerations in relation to sections 41 and 37(1)(b).
96. In relation to section 41, DEFRA argued that disclosure of the details of the letters The Prince of Wales sent to DEFRA clearly constituted information which was provided to it by a third party and thus met the requirements of section 41(1)(a). In relation to why disclosure of this would constitute an actionable breach, DEFRA referred to the arguments set out above in relation to the application of section 41(1)(b) to copies of the letters.
97. In relation to the application of section 37(1)(a), DEFRA explained that whilst it is publicly acknowledged that The Prince of Wales corresponds on occasion with



- government, it is not generally known when and with whom he corresponds. Disclosure of such information, e.g. by providing a list and/or schedule of the correspondence falling within the scope of this request would not be in the public interest because disclosure of the details of when and with whom His Royal Highness corresponds, even in the absence of disclosure of the subject matter of the correspondence would lead to damaging speculation about the nature of that correspondence. Inferences would be drawn, whether warranted or not, from the knowledge that The Prince of Wales had written a certain number of times to a government department within a particular period, that he had written on particular topics or had expressed particular views. That in turn would inhibit His Royal Highness and Ministers from exchanging views on governmental matters which would inhibit the convention that the Heir to the Throne should be instructed in business of government. Again DEFRA noted that the reasons for the application of section 41(1) overlapped and supported the application of section 37(1)(a).
98. DEFRA argued that these public interest concerns should be given particular weight even without the need to demonstrate particular prejudice arising from these particular lists; section 37(1)(a) applied without proof of damage. To support this point DEFRA suggested that there was a strong parallel to be drawn between this case and *HM Treasury v Information Commissioner and Evan Owen [2009] EWHC 1811*. That case, like the present case, concerned a narrow and specific exemption. In that case, the exemption related to the advice of Law Officers under section 35(1)(c). DEFRA highlighted the fact that Blake J held that the general public interest considerations behind non-disclosure, which are reflected in section 35(1)(c), should be taken into account in the absence of proof of damage. This was why Parliament had enacted the specific exemption for Law Officers' advice under section 35(1)(c) without requiring proof of damage. DEFRA argued that same considerations applied in the context of this case.
99. In addition to this point, DEFRA highlighted to the Commissioner a particular instance where a particular public authority had disclosed the number of times The Prince of Wales had contacted it and the harm this had caused to His Royal Highness position, an in particular his position of political neutrality. (The Commissioner does not consider it necessary or appropriate to include details of this in the main body of this Notice).
100. Having considered the arguments advanced by DEFRA very carefully the Commissioner has concluded that the list and schedule information in relation to correspondence sent by The Prince of Wales would be exempt from disclosure on the basis of section 41(1). The Commissioner accepts that disclosure of this information would constitute an actionable breach of confidence broadly for the reasons the Commissioner has set out above with regard to the application of section 41(1) to the correspondence itself. Although the Commissioner acknowledges that disclosure simply of a list and/or schedule of information would result in less information being placed into the public domain, the Commissioner still believes that this would constitute an infringement of The Prince of Wales' right of privacy under Article 8 ECHR. For the reasons set out above the Commissioner does not believe that there is a sufficient public interest defence to warrant disclosure of this information.

101. In relation to the application of section 37(1)(a) to the lists and schedules detailing the correspondence sent to The Prince of Wales, the Commissioner also accepts that balance of the public interest favours non-disclosure of such details. In reaching this conclusion the Commissioner again broadly adopts the same approach to balancing the public interest arguments as for the correspondence itself. Furthermore, the Commissioner placed some weight on the example provided to him by DEFRA where disclosure of some information arguably lead to a negative impact on The Prince of Wales' position of political neutrality. In reaching this conclusion the Commissioner has also placed particular weight on the fact that the time period specified by the complainant in this request is a narrow one, seven months, and the request seeks details of correspondence between The Prince of Wales and Ministers – as opposed to a broader request seeking for example correspondence between any individuals acting on behalf of His Royal Highness and any individual at DEFRA.
102. The Commissioner notes that the complainant seeks 'a brief description of each relevant document including the nature of the document', as part of his request for a schedule of documents. In this case the documents contain environmental information and therefore the Commissioner considers that any description of the environmental information contained within the documents would in itself constitute environmental information. The Commissioner has determined that those parts of such a schedule would be exempt from disclosure either on the basis of regulation 12(5)(f) or regulation 13(1) for the reasons set out above.

### **Procedural Requirements**

103. The Commissioner has concluded that DEFRA committed a number of procedural breaches when handling this request
104. The Commissioner finds that DEFRA breached regulation 14(1) of the EIR in failing to provide a refusal notice citing regulation 13(1) contained within the EIR which it later relied upon. DEFRA also breached regulation 14(2) and 14(3) which require that such a notice is provided within 20 working days following the request and states the exceptions that are being relied upon.
105. Regulation 11(4) of the EIR requires a public authority to inform an applicant of the outcome of its internal review 40 working days after the date of receiving a request for such a review.
106. In this case the complainant requested an internal review on 22 September 2005 and DEFRA issued the outcome of the internal review on 9 December 2005. Therefore the Commissioner has concluded that DEFRA breached regulation 11(4).<sup>4</sup>

---

<sup>4</sup> See the 'Other Matters' section for the implications under the Act of DEFRA's delays in conducting an internal review.

## The Decision

---

107. The Commissioner has decided that the following elements of the requests were not dealt with in accordance with the Act:

- DEFRA breached the following procedural requirements of the EIR: regulation 11(4) and regulations 14(1) to 14(3).

108. However, the Commissioner has also concluded that:

- The correspondence falling within the scope of the requests is exempt from disclosure on the basis of regulations 12(5)(f) and 13(1) and in all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosing the information.
- The list and schedule information in relation to correspondence sent by The Prince of Wales is exempt from disclosure on the basis of section 41(1) of the Act. To the extent that any parts of the schedule would contain environmental information, this information would be exempt from disclosure on the basis of regulations 12(5)(f) or 13(1) and the public interest in maintaining the exception outweighs the public interest in disclosure.
- The list and schedule information in relation to correspondence sent to The Prince of Wales would be exempt from disclosure on the basis of section 37(1)(a) of the Act and in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure. To the extent that any parts of the schedule contain environmental information, this information would be exempt from disclosure on the basis of regulations 12(5)(f) or 13(1) and the public interest in maintaining the exception outweighs the public interest in disclosure.

## Steps Required

---

109. The Commissioner requires no steps to be taken.

## Other matters

---

110. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

111. In February 2007 the Commissioner issued guidance on the time public authorities should take when considering the public interest test.<sup>5</sup> This guidance

---

<sup>5</sup> [Freedom of Information Good Practice Guide No. 4](#)

notes that whilst the Act and the section 45 Code of Practice do not specify how long a public authority can extend the public interest for, even in exceptional cases, the time taken should not exceed 40 working days. Clearly, in dealing with this request DEFRA took longer than 40 working days to reach its conclusions in relation to the balance of the public interest test.

112. Although the delay preceded the guidance, the Commissioner expects DEFRA to ensure that when it extends its consideration of the public interest test when dealing with future requests that it adheres to the time guidelines set out in the guidance paper reference above.

## Right of Appeal

---

113. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 15<sup>th</sup> day of December 2009**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **Annex – text of request**

The complainant wrote to the Department for Environment Food and Rural Affairs on 8 April 2005 asking it to provide the following information:

“Under the Act, I would like to request a list of any and all correspondence which has been sent by Prince Charles to each minister in the Department for Environment, Food and Rural Affairs between September 1 2004 and April 1 2005. I assume that this would cover letters, emails, faxes, and any other forms of correspondence.

Under the Act, I would also like to request a list of any and all correspondence which has been sent by each minister in the Department for Environment, Food and Rural Affairs to Prince Charles between September 1 2004 and April 1 2005. I assume that this would cover letters, emails, faxes, and any other forms of correspondence.

For each piece of correspondence, I would be grateful if you could list the recipient of the correspondence, the sender of the correspondence and the date of the correspondence.

Under the Act, I would also like to request complete copies of each piece of correspondence listed above between ministers in the Department for Environment, Food and Rural Affairs between September 1 2004 and April 1 2005. This request covers correspondence which has been both received and sent by ministers in the Department for Environment, Food and Rural Affairs to and from Prince Charles. I assume that this would cover letters, emails, faxes and any other forms of correspondence.

I would also like to ask the Department for Environment, Food and Rural Affairs, on answering the above request, to comply with a further request under the Freedom of Information Act. This request is to provide a schedule of documents which are relevant to the above request. I believe that there should be a brief description of each relevant document including the nature of the document, the date of the document, and whether the document is being released or not. I believe that providing such a schedule would clarify what documents are being released and what is being withheld. This is a specific request for information under the Freedom of Information Act, and would also represent best practice in open government.”



## Legal Annex

### Freedom of Information Act 2000

#### Communications with Her Majesty.

**Section 37(1)** provides that –

“Information is exempt information if it relates to-

- (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or
- (b) the conferring by the Crown of any honour or dignity.”

**Section 37(2)** provides 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).”

#### Information provided in confidence.

**Section 41(1)** provides that –

“Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

**Section 41(2)** provides that –

“The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”

### Environmental Information Regulations 2004

#### Regulation 2 - Interpretation

**Regulation 2(1)** In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“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 elements of the environment referred to in (b) and (c);

“historical record” has the same meaning as in section 62(1) of the Act;

“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

**Regulation 2(4)** The following expressions have the same meaning in these Regulations as they have in the Data Protection Act 1998(b), namely –

- (a) “data” except that for the purposes of regulation 12(3) and regulation 13 a public authority referred to in the definition of data in paragraph (e) of section 1(1) of that Act means a public authority within the meaning of these Regulations;
- (b) “the data protection principles”;
- (c) “data subject”; and

(d) “personal data”.

## **Regulation 12 - Exceptions to the duty to disclose environmental information**

**Regulation 12(1)** Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

**Regulation 12(2)** A public authority shall apply a presumption in favour of disclosure.

**Regulation 12(5)** For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

- (a) international relations, defence, national security or public safety;
- (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- (c) intellectual property rights;
- (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
- (f) the interests of the person who provided the information where that person –
  - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
  - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from the Regulations to disclose it; and
  - (iii) has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.

## **Regulation 13 - Personal data**

**Regulation 13(1)** To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

**Regulation 13(2)** The first condition is –

- (b) in a case where the information falls within any paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –
  - (i) any of the data protection principles; or
  - (ii) section 10 of the Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and
- (c) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the

data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998(a) (which relates to manual data held by public authorities) were disregarded.

**Regulation 13(3)** The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of the Act and, in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

**Regulation 13(4)** In determining whether anything done before 24<sup>th</sup> October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

**Regulation 13(5)** For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that –

- (a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded; or
- (b) by virtue of any provision of Part IV of the Data Protection Act 1998, the information is exempt from section 7(1)(a) of the Act.

## **Data Protection Act 1998**

### **Schedule 1**

The data protection principles

1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

2 Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

3 Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

4 Personal data shall be accurate and, where necessary, kept up to date.

5 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

6 Personal data shall be processed in accordance with the rights of data subjects under this Act.

7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

8 Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.