

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

Date: 28 July 2021

Public Authority: Historic Royal Palaces
Address: Hampton Court Palace
Surrey
KT8 9AU

Decision (including any steps ordered)

1. In a seven part request, the complainant has requested information about any meetings or communications between The Prince of Wales and the Chief Executive and/or the Chair of Historic Royal Palaces between January 2014 and January 2015. He has requested this information under the EIR and the FOIA.
2. Historic Royal Palaces (HRP) released some environmental information within scope of part 4 of the request and advised that it does not hold any other environmental information within scope of parts 2, 3, 5 and 7 that it has not previously released.
3. HRP released non-environmental information within scope of part 6 of the request and relied on section 37(2) of the FOIA (communications with the heir to the Throne) to neither confirm nor deny it holds any non-environmental information within scope of parts 1-5 and part 7.
4. The Commissioner's decision is as follows:
 - The information requested in parts 2, 3, 4 and 5 of the request can be categorised as environmental information within the meaning of regulation 2(1) of the EIR.

- On the balance of probabilities, HRP does not hold any further environmental information within scope of parts 2, 3, 4 and 5 of the complainant's request and has complied with regulation 5(1) of the EIR.
 - Under section 37(2) of the FOIA HRP is not obliged to confirm or deny whether it holds any non-environmental information within scope of parts 1-5 and part 7 of the request.
5. The Commissioner does not require HRP to take any remedial steps.

Background

6. In its submission to the Commissioner, HRP has provided a background to the request. It says that the complainant has now made four requests to HRP for information on the topic of the current request. Requests 1 and 2 were made in October 2014 and were subject to internal review in November 2014 and January 2015 respectively. In 2015 the complainant made a complaint to the Information Commissioner, resulting in her decision notice of 22 September 2015.
7. The Commissioner has noted her 22 September 2015 decision: FER0573098¹. The complainant's request had concerned meetings between HRP's Chief Executive and The Prince of Wales between March and September 2014. HRP had disclosed some environmental information in response to the request. The Commissioner's decision was focussed on one element of the request – correspondence between The Prince of Wales and the Chief Executive about those meetings. That element was as follows:

"1..In the case of each of the two meetings can you please provide all correspondence and communications (including emails) between Historic Royal Palaces and His Royal Highness the Prince of Wales which in way [sic] relates to the two meetings and the topics under discussion. Please note that the reference to His Royal Highness the Prince of Wales should also include his Private Secretary and or his private office. This correspondence and communication could have been generated prior to the meeting taking place or it could have been generated afterwards."

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432876/fer_0573098.pdf

8. The Commissioner had found that HRP could withhold the information in scope under regulation 12(5)(e) of the EIR (confidentiality of commercial information).
9. In July 2019 the complainant submitted Request 3. This request concerned the period 1 January 2014 to 1 January 2015 and was for information about HRP's communications with The Prince of Wales and the destruction of any such communications.
10. HRP advised it held environmental information relevant to two parts of the request and explained what this information concerned: the redevelopment of Hillsborough Castle and proposals for a new building behind the Orangery, Kensington Palace. HRP withheld information relevant to two other parts of the request under three EIR exceptions and confirmed it did not hold any environmental information within scope of another part.
11. HRP then considered that request under the FOIA and advised it was relying on section 37(2) of the Act to neither confirm nor deny it held any non-environmental information as the request concerned The Prince of Wales, who is heir to the Throne.
12. Finally, HRP noted that this request overlapped with the complainant's request of 2014.
13. Following an internal review, HRP confirmed that it had carried out appropriate searches for environmental information relevant to the request and had not identified any additional such information. HRP advised that information it holds about the Orangery proposal did not actually fall within the scope of the complainant's request. HRP withdrew its reliance on regulation 12(4)(d) of the EIR (material still in the course of completion) and disclosed some information it had previously withheld under this exception. It maintained its reliance on regulation 12(5)(f) (prejudice to the interests of the person who provided the information) and 13(2) (personal data) to withhold other information.

Request and response

14. On 15 April 2020 the complainant wrote to HRP and requested information in the following terms:

"Please note that I am only interested in information generated between 1 January 2014 and the 1 January 2015.

Please note that the reference to correspondence and written communications in the questions below should include all traditional

forms of correspondence such as letters, faxes and memos, all emails irrespective of whether they were sent through private or official accounts and all messages sent through encrypted messaging services.

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 else in his private office able to correspond on his behalf and or to represent his views.

Please note that the reference to HRP's Chief Executive should include the Chief Executive himself and anyone in his private office able to correspond on his behalf. Please note that the reference to HRP's Chair should include the Chair himself and anyone in his private office able to correspond on his behalf.

I am interested in receiving all information relating to the Chief Executive and or the Chair irrespective of whether they were acting individually or together.

Please do redact any confidential financial information from the documentation.

Please redact the name of any HRP employees/representatives (other than the Chair and Chief Executive) and the names of any members of the public from the documents.

My request has been inspired by HRP's response to a previous request - Your reference: RG/HRP/7501. So feel free to hold back any information released to me as part of that request.

1...During the aforementioned period did the Prince meet with the Chief Executive and or the Chair. If the answer is yes can you provide the full details. In the case of each meeting can you provide details of the date, time and venue. In the case of each meeting can you please provide a full list of those present. I am interested in receiving details of all meetings irrespective of the topics under discussion.

2...During the aforementioned period did the Prince of Wales write to or correspond with either the Chief Executive and or the Chair about Hillsborough Castle, its orangery and its grounds. This correspondence and communications will include but will not be limited to a planned redesign and refit of the castle, the orangery and the gardens/grounds.

3...If the answer to question two is yes can you please provide copies of this correspondence and communications including any emails and encrypted messages.

4...During the aforementioned period did the Chief Executive and or the Chair (either acting individually or collectively) write to the Prince of Wales about Hillsborough Castle, its orangery and its grounds. This correspondence and communications will include but will not be limited to a planned redesign and refit of the castle, the orangery and the gardens/grounds.

5...If the answer to question four is yes can you please provide copies of this correspondence and communications including any emails and encrypted messages.

6...During the aforementioned period how many HRP employees and or new recruits to the organisation and or HRP representatives spend time at Dumfries House. Please do not identify any employees/representatives. But in the respect of each employee/representative can you state how much time they spent at Dumfries House.

7...If any relevant documentation has been destroyed. Can you please provide the following details...

a...In the case of each piece of destroyed documentation can you please provide a full description of the destroyed document. For example was it a letter? Was it an email? Was it a fax?

b...In the case of each destroyed piece of documentation can you state when it was destroyed and why?

c...In the case of each destroyed piece of documentation can you please provide a brief outline of its contents.

d...In the case of each destroyed piece of correspondence and communication can you state when it was generated? Can you also identify author (s) and recipient (s). Can you also provide a brief outline of its contents.

e...If destroyed documentation continues to be held in another form can you please provide copies of that documentation."

15. HRP responded on 21 May 2020. At that point, it advised that it did not hold any environmental information within the scope of the request and, to that end, cited 12(4)(a) of the EIR. With regard to parts 1-5 and part 7 of the request, HRP relied on section 37(2) of the FOIA to neither confirm nor deny it held non-environmental information within scope of these parts. HRP confirmed that it did not hold non-environmental information within the scope of part 6 of the request.
16. HRP provided an internal review on 17 July 2020; it upheld its original response.

17. As a result of the complaint to the Commissioner and changes in its staff, HRP reconsidered the request and provided the complainant with a fresh response to his request on 8 July 2021.
18. HRP confirmed that it does not hold any environmental information relevant to part 1 of the request and referred to regulation 12(4)(a) of the EIR with regard to that part.
19. Discussing part 1, HRP confirmed that it is a matter of public record that The Prince of Wales met HRP representatives on three occasions in 2014. The Commissioner notes that from the complainant's request in FER0573098 it is evident that he was already aware of two of the meetings from the Court Circular. However, in its current response, HRP nonetheless provided the complainant with information about those two meetings and the same information (date, venue, attendees) about a third meeting. HRP has told the Commissioner that this information is on public record, in the Court Circular.
20. With regard to parts 2 to 5 and part 7 of the request, HRP noted that these parts overlapped with or were similar to the previous requests the complainant had submitted to it. HRP confirmed that it had considered these parts under the EIR. It released environmental information within scope of part 4 – Hillsborough Castle development proposals - and confirmed that it does not hold any environmental information within the scope of parts 2, 3, 5 and 7 that has not previously been disclosed to the complainant. HRP referred to regulation 12(4)(a) with regard to those four parts and also part 6.
21. HRP released some (non-environmental) information within scope of part 6 - information about the movements of particular HRP staff in 2014. With regard to the remaining parts, HRP relied on section 37(2) of the FOIA to neither confirm nor deny it holds information within scope of parts 1 to 5 and part 7 of the request.

Scope of the case

22. The complainant contacted the Commissioner on 10 August 2020 to complain about the way his request for information had been handled.
23. HRP has released some environmental information within scope of part 4 of the request under the EIR and has released information that addresses part 6 of the request under the FOIA.
24. The Commissioner has first considered the extent to which the parts of the request are for environmental information. Where she finds they are, the Commissioner has then considered whether HRP holds any environmental information additional to that which it has been disclosed.

25. To the extent that, if held, any information within scope of parts 1-5 and part 7 is not environmental information, the Commissioner has finally considered whether HRP can rely on the exception under regulation 37(2) of the FOIA to neither confirm nor deny it holds information within the scope of those parts.

Reasons for decision

Is any of the requested information environmental information?

26. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR rather than the FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.
27. Regulation 2(1)(a) defines environmental information as information that concerns the state of the elements of the environment, including: water, soil, land, landscape and natural sites. Regulation 2(1)(b) gives a definition of environmental information as 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).
28. Regulation 2(1)(c) defines environmental information as information that concerns measures (including administrative measures) such as policies, legislation, plans, programmes and activities affecting or likely to affect the elements referred to in (a) and (b) as well as measures or activities designed to protect those elements.
29. The information requested in this case is as follows: 1 - Administrative information about meetings, 2, 3, 4 and 5 - Correspondence about Hillsborough Castle including its planned redesign, 6 - Movements of HRP staff and 7 - Information about the destruction of any relevant documents.
30. In its submission to the Commissioner, HRP has confirmed that it does not consider the information requested in part 1, part 6 and part 7 to be environmental information. The Commissioner agrees.
31. HRP has released some information relevant to part 4 of the request under the EIR, namely development proposals associated with Hillsborough Castle and its grounds. HRP considers that specific information is environmental information and, again, the Commissioner agrees.
32. With regard to parts 2, 3 and 5, in FER0573098 the Commissioner had found that correspondence between The Prince of Wales and HRP's Chief Executive about particular meetings could be categorised as

environmental information. As such, the Commissioner is satisfied that, in addition to part 4 of the request, any held information caught by parts 2, 3 and 5 could also be categorised as environmental information.

Regulation 5 – duty to make environmental information available on request

33. Under regulation 5(1) of the EIR, a public authority that holds environmental information must make it available on request, unless it is subject to one or more of the exceptions under regulation 12.
34. HRP has now released some environmental information within scope of part 4 of the request. In its submission to the Commissioner, HRP has detailed the searches it carried out for environmental information within the scope of parts 2, 3 and 5, and any further environmental information within scope of part 4.
35. HRP has told the Commissioner that it has reviewed:
 - its Hillsborough Castle & Gardens Project Archive
 - Chief Executive's correspondence and Hillsborough Castle & Gardens electronic filing
 - its current Chief Executive's mail archive
 - email and calendar search for Dumfries House
 - the complainant's previous FOI requests
 - the paper records held by Chief Executive Office at Hampton Court Palace, contents of current and former CEO, Chair, Trust and Company Secretary filing reviewed
 - paper records held by Hillsborough Castle & Gardens by the current Head of Hillsborough Castle; and
 - records held by HRP's legal advisors.
36. HRP has confirmed that its searches included its networked file shares, emails and archived project files. It has told the Commissioner the email domain names that it used as search terms, as well as the term 'dumfries house', and that it searched within the timeframe specified in the request. Because it is no longer licenced to use particular email archive software HRP noted that it does not have access to emails and diaries of employees who left the organisation between 2010 and 2018. This means that the emails and diaries for the CEO (who left in 2017) and the Chair (who left in 2015) no longer exist.
37. The Commissioner considers that the searches that HRP has carried out were appropriate and adequate. She is satisfied that, at the time of the current request in April 2020 and on the balance of probabilities, HRP did not hold any further environmental information within scope of parts 2, 3, 4 and 5 of the request and complied with its duty under regulation 5(1) of the EIR.

Section 37 - Communications with Her Majesty, etc. and honours

38. The Commissioner has found that the information requested in parts 1, 6 and 7 of the request cannot be categorised as environmental information and so those requests fall under the FOIA. In its response to the complainant of 8 July 2021, HRP released information within the scope of part 6, which the Commissioner considers fully addresses that part.
39. It may also be the case that HRP holds non-environmental information within scope of parts 2, 3 and 5 and further information which is not environmental in nature within scope of part 4. As such, in addition to parts 1 and 7, the Commissioner has considered HRP's response to those four parts under FOIA.
40. Section 37(1)(aa) of the FOIA states that information is exempt information if it relates to communications with the heir to, or the person who is for the time being second in line of succession to, the Throne.
41. Section 37(2) states that the duty to confirm or deny [whether requested information is held] 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).
42. Parts 1 – 5 and part 7 of the request concern meetings and correspondence with The Prince of Wales and the destruction of any correspondence. As such, the Commissioner is satisfied that, if held, any non-environmental information within scope of those parts would relate to communications with the heir to the Throne and would be exempt information under section 37(1)(aa). The Commissioner has therefore decided that HRP is entitled to rely on section 37(2) to neither confirm nor deny whether it holds any non-environmental information relevant to parts 1 - 5 and part 7 of the request.
43. The provision under section 37(1)(aa) is an absolute exemption and not subject to the public interest test.

Right of appeal

44. 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

45. 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.
46. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF