

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 October 2022

Public Authority: HM Treasury
Address: 1 Horse Guards Road
London
SW1A 2HQ

Decision (including any steps ordered)

1. The complainant requested information from HM Treasury about whether there had been any exchange of correspondence between named individuals and HM Treasury during a stated period of time. HM Treasury confirmed that it did not hold any information within scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, HM Treasury does not hold the requested information.
3. The Commissioner does not require HM Treasury to take any steps as a result of this decision notice.

Request and response

4. On 4 February 2022, the complainant wrote to HM Treasury and requested information in the following terms:

"I would like to request the following information via the Freedom of Information Act and the Environmental Information Regulations, (EIRs) and I would be grateful if you could forward this request onto the most appropriate person within the department.

Please note that I am only interested in information generated between 1 January 2020 and 1 January 2021.

Please note that the Duke and Duchess have now agreed not to use their HRH titles. They also do not carry out any official duties on behalf of the royal family and or the Crown and or the British government. It therefore follows that disclosure cannot have any toxic or detrimental effect on any public or diplomatic work.

Please note that the reference to the Duke and or Duchess of Sussex in the questions below should include either and or both those individuals. It should also include any legal representative writing and or communicating on behalf of the Duke and or Duchess. It should also include any press and publicity representative writing and or communicating on behalf of the Duke and or Duchess. It should also include any member of the Duke and or Duchess's private office writing and or communicating on behalf of the Duke and or Duchess. It should also include any representative and or employee of the couple's Archewell Foundation writing and or communicating on behalf of either the Duke and or Duchess of Sussex.

Please note that the reference to correspondence and communications in the questions below should include all traditional forms of correspondence such as letters and or faxes and or memos. It should also include all emails irrespective of whether they were sent and or received via official and or private accounts. It should also include all Gmail messages. It should also include all telephone text messages. It should also include all messages sent through encrypted messaging services including but not limited to WhatsApp. It should include all communications sent through diplomatic channels.

Please note that I would like to request actual copies of the [sic] correspondence and communication rather than just excerpts from that correspondence and communication. In the case of any letters can you provide a copy of the letter complete with any letterheads, other design features and signatures. If you feel information should be redacted, can you redact it where it appears in the letter. That way I will be able to judge the location and extent of the redaction.

Please note that the reference to the Chancellor in the questions below should include the Chancellor himself and or anyone in his private office able to correspond and communicate on his behalf

Please note that I am interested in all correspondence and communication irrespective of the title and or form of address used by the Duke and or Duchess of Sussex. eg. The Duke may refer to himself as Prince Harry. Alternatively, he may adopt a military title/rank.

I have confined my request to a particular time frame to try and ensure it remains within the time and cost constraints laid down by the

relevant access regimes. But can you let me know if you hold relevant information outside this time frame. I will then submit another request for that.

1...During the aforementioned period have the Duke and or Duchess of Sussex written to and or communicated with the Chancellor. This correspondence and communication will include but will not be limited to applications for funding for themselves and or any of the foundations, trusts and charities they have established. It will also include but not be limited to how the Duke and or Duchess and or their various foundations and trusts might be able to work on behalf of the UK government and Commonwealth. Please note that I am interested in all correspondence and communication irrespective of the subject matter.

2...If the answer to question one is yes can you please provide copies of this correspondence and communication.

3...During the aforementioned period did the Chancellor write to and or communicate with the Duke and or Duchess of Sussex.

4...If the answer to question three is yes can you please provide copies of this correspondence and communication.

5...If information relevant to this request has been destroyed can you state what has been destroyed. eg. Was it a letter and or an email and or a Gmail message? In the case of each piece of destroyed documentation can you identify the author (s) and the recipient(s). Can you state when the material was destroyed and why. If destroyed information continues to be held in another form, can you, please provide that information."

5. HM Treasury responded to the request on 4 March 2022, as follows:

"Following a search of our records, we can confirm that HM Treasury does not hold information within the scope of your request.

For the avoidance of doubt, we can also confirm that we have no records of any correspondence or communications within the terms of your request ever taking place. This includes destroyed records (your question 5).

We do not consider it necessary to provide a response under the Environmental Information Regulations 2004. There is nothing in your request to indicate what environmental information is being requested. We draw your attention to paragraphs 90 and 91 of an Information Commissioner Decision Notice. We believe the same considerations apply in the present case."

6. The complainant requested an internal review of HM Treasury's handling of the request, to include why it had not been considered under the Environmental Information Regulations (EIR). HM Treasury provided its internal review outcome to the complainant on 7 April 2022, in which it upheld its original position and confirmed that it was:

"satisfied that reasonable searches of our records were carried out at the initial FOI stage and these searches enabled us to conclude and confirm that we did not hold information within the scope of your request.

I can confirm that as part of our internal review, we have conducted fresh searches for the information you have requested, and can confirm that the Treasury does not hold information within its scope.

We can confirm that we hold no records of any correspondence or communications within the scope of your request under the FOI Act and/or the EIR's ever taking place. This includes destroyed records."

Scope of the case

7. The complainant wrote to the Commissioner by post on 26 April 2022, to complain about the way their request for information had been handled and stated:

"I do not accept that the Treasury does not hold information relevant to my request.

I am also concerned that the department has chosen not to consider any documentation held via the Environmental Information Regulations."

8. The Commissioner considers the scope of the investigation is to determine if, on the balance of probabilities, HM Treasury holds the requested information and whether it has complied with section 1(1) of FOIA.

Reasons for decision

9. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled, under subsection (a), to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
10. The Commissioner has sought to determine whether, on the balance of probabilities, HM Treasury holds the requested information.
11. From the information provided, the Commissioner can see that HM Treasury has explained, in both the original response to the complainant and in the internal review, that it does not hold any information within scope of the request. HM Treasury confirmed that it conducted a further search for information as part of the internal review but that there were "no records of any correspondence or communications within the scope of your request under the FOI Act and/or the EIRs ever taking place. This includes destroyed records".
12. The Commissioner is satisfied that HM Treasury has made appropriate reasonable searches for information within the scope of the request. The Commissioner determines that, on the balance of probabilities, information is not held by HM Treasury and, therefore, it cannot be provided, under either FOIA or the EIR.
13. HM Treasury has complied with its obligations under section 1(1) of FOIA in this case.

Right of appeal

14. 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

15. 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.
16. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
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SK9 5AF