

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

Date: 7 January 2023

Public Authority: Department for Environment, Food & Rural Affairs (Defra)

Address: Nobel House
17 Smith Square
London
SW1P 3JR

Decision

1. The Commissioner's decision is that, on the balance of probabilities, Defra does not hold the requested information about the former Prince of Wales' consent for the Environment Act 2021. Regulation 12(4)(a) of the EIR is therefore engaged. However, Defra did not comply with regulation 9(1) of the EIR as there was advice and assistance it could have usefully given to the complainant. That assistance has now been given, in effect, through this notice and therefore it is not necessary for Defra to take any further steps.

Request and response

2. On 25 October 2022 the complainant requested information about the former Prince of Wales' (now King Charles) consent for the Environment Act 2021, for the period 26 May 2020 to 26 May 2021.
3. Defra's final position was that it did not hold the requested information and regulation 12(4)(a) of the EIR was engaged.

Reasons for decision

4. This reasoning is focussed on Defra's reliance on regulation 12(4)(a) of the EIR. This states that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
5. In its correspondence to the complainant Defra advised that it had searched its records and discussed the request with its Private Office. Defra confirmed that any correspondence during this period [ie the period stated in the request] from the Royal Household would have followed the process in place and gone through the Principal Private Secretary for the Secretary of State. Defra advised it had searched its electronic filing systems, both within the Private Office and the relevant policy team using key words and it had not found any relevant information.
6. In a submission to the Commissioner, Defra confirmed that the key words it used to search its electronic records included 'Charles', 'Prince', 'Clarence', 'consent' and the email domain '@royal.uk'. Defra also advised that the requested information is unlikely to be held because the former Prince's consent was granted in 2019 (ie before the period specified in the complainant's request). Defra acknowledged that it could have provided this detail to the complainant, in view of the duty under regulation 9 of the EIR to provide advice and assistance to an applicant.
7. In their complaint to the Commissioner the complainant has indicated that Defra would hold the information they have requested because it is their understanding that Defra was the sponsoring department for this Bill/Act. They also understand that all government departments are required to seek the Prince's and or Queen's [now King's] Consent for legislation.
8. The Commissioner considers that Defra carried out adequate and appropriate searches for any relevant information. He accepts, on the balance of probabilities, that Defra does not hold information within scope of the request and the timeframe specified in that request. The Commissioner's decision is therefore that regulation 12(4)(a) of the EIR is engaged. As Defra has noted, although regulation 12(4)(a) is a qualified exception, the Commissioner's position is that it is not necessary to consider the public interest test as to do so would be illogical; the public interest cannot favour disclosing information which is not held.

9. The Commissioner agrees with Defra that it could have advised the complainant that the former Prince of Wales granted his consent in 2019, not between May 2020 and May 2021. He therefore finds Defra did not comply with regulation 9(1) of the EIR which concerns advice and assistance.

Right of appeal

10. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

11. 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.
12. 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