

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 December 2023

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

Address: Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested a copy of correspondences between the then Prince of Wales and John Gummer from the Department for Environment, Food & Rural Affairs ("DEFRA").
2. The Commissioner's decision is that, on the balance of probabilities, DEFRA does not hold the requested information.
3. The Commissioner does not require further steps.

Request and response

4. On 2 August 2023, the complainant wrote to DEFRA and requested information in the following terms:

"My request concerns correspondence and communications of Prince Charles (the then Prince of Wales) and John Gummer who was both Minister for Agriculture, Fisheries and Food and the Secretary of State for the Environment during the relevant period.

Please note that I am only interested in that correspondence and communication generated between 1 January 1993 and 31 December 1993.

1. During the aforementioned period did Prince Charles write to or communicate with John Gummer. Please note that I am only interested in that correspondence and communication which mentions or in any way relates to the following. If the answer is yes, can you, please provide copies of the correspondence and communication.
 - (a) Organic farming.
 - (b) The environmental and or economic and or social and or agricultural benefits to be derived from organic farming.
 - (c) The environmental damaged caused by the use of pesticides and or chemicals and or non-organic farming methods.
 - (d) Financial assistance for those farmers or landowners either involved in and or actively considering a switch to organic farming methods.
 - (e) The conversion of the Prince's Highgrove estate to organic farming methods.
2. During the aforementioned period did Mr Gummer write to or communicate with Prince Charles. Please note that I am only interested in that correspondence and communication which mentions and or in any way relates to the matters listed in question one. If the answer is yes, can you, please provide copies of this correspondence and communications.
3. Does the department keep records of documents transferred to the National Archives or any other external archive.
4. Has the department transferred the correspondence of Prince Charles and Mr Gummer to the National Archives and or any other external archive. Please note that I am only interested in the correspondence and communications of the kind outlined in question one and two. If the answer is yes, can you identify the archive. Can you provide the reference numbers and titles of the transferred documents. If you hold copies of the transferred material, can you, please supply those copies."
5. DEFRA responded on 8 August 2023. It stated that the requested information was not held.
6. Following an internal review DEFRA wrote to the complainant on 25 August 2023. It stated that it was upholding its original position.

Scope of the case

7. The complainant contacted the Commissioner on 21 September 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of his investigation is to consider whether, on the balance of probabilities, DEFRA holds the requested information.

Reasons for decision

Is the requested information environmental?

9. Regulation 2(1) of the EIR defines environmental information as being information 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)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

10. Although he has not seen the requested information the Commissioner believes that it is likely to be information on the state of the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 12(4)(a) – information not held

11. Regulation 12(4)(a) of the EIR 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”.
12. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.

DEFRA position

13. DEFRA advised the Commissioner that during the requested period (1 January 1993 to 31 December 1993) Defra did not exist. John Gummer was both Minister for Agriculture, Fisheries and Food and the Secretary of State for the Environment during that time. The environment portfolio was merged with Ministry of Agriculture, Fisheries and Food (MAFF) in 2001 to form Defra.
14. DEFRA explained that it carried out searches within the its Private Office.
15. DEFRA stated that all individuals searched their inboxes, covering sent and received emails. Shared depositories where electronic files could be stored were also checked within the Private Office.
16. The search terms used by DEFRA were “Prince of Wales”, “Prince Charles” and “John Gummer”. As the information was historical it also consulted Defra’s Record’s Management Team to search physical paper records using the same search terms.
17. Copies of any electronic data relevant to the request would not have been made and held in other locations to that which it had already searched.
18. DEFRA advised that no information had been located within the scope of the request.

19. DEFRA advised that if the requested information were held, it could be held in either electronic or manual records. DEFRA advised it had consulted with the physical records team, who also confirmed that there was no record of information within the scope of the request being destroyed.
20. DEFRA does have a formal records management policy which states that general correspondence should be stored for seven years from the date it is last modified and then deleted. It also stated there is no business purpose or statutory requirements for which such information, if it were held, should be retained.
21. The complainant advised that they believed DEFRA was highly likely to hold the requested information on behalf of its predecessor departments or would at least hold details of files transferred to the National Archives. DEFRA explained that it did not locate any records of such files being transferred to the National Archives.
22. The Commissioner has determined that, on the balance of probabilities, DEFRA does not hold the requested information.
23. The Commissioner does not require DEFRA to take any further action regarding this matter.

Right of appeal

24. 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

25. 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.
26. 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

Michael Lea
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF