



Ein cyf/Our ref ATISN 13320

11 September 2019

Dear

**Complaint in respect of Request for Information – reference ATISN 13320**

We wrote to you on 22 August in response to your e-mail of complaint of 15 August.

I have conducted an internal review in accordance with the procedure outlined in the [Welsh Government's Practical Guide for Making Requests for Information](#).

I note you submitted a formal complaint to the Welsh Government regarding consultation with The Prince of Wales and his staff about Government bills which may have implications for him as The Duke of Cornwall and or his Duchy of Cornwall estate. Our response to your FOI requested dated 13 August stated any communications in respect of the Prince of Wales are exempt from release under Section 37 of the Freedom of Information Act 2000 and that Section 37 is an absolute exemption and is not subject to the public interest test. Some information related to your request was publically available, including the Assembly procedures, Welsh Government guidance on the process, and the Bills submitted for this purpose between 1 January 2014 and 1 January 2016. This information was set out in the response.

In your complaint, you stated that although Section 37 does apply to the Prince of Wales it does not apply to the Prince in respect of his position as Duke of Cornwall. You also stated that The Prince is not exempt (either as The Prince or the Duke of Cornwall) from the Environmental Information Regulations.

I have noted your original request, our response and your subsequent complaint.

Firstly, I have considered the first part of your complaint in relation to Section 37.

Section 37 of the FOI Act 2000 states:

- (1) Information is exempt information if it relates to—
    - (a) communications with the Sovereign,
    - (aa) communications with the heir to, or the person who is for the time being second in line of succession to, the Throne,
    - (ab) communications with a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne,
    - (ac) communications with other members of the Royal Family (other than communications which fall within any of paragraphs (a) to (ab) because they are made or received on behalf of a person falling within any of those paragraphs), and
    - (ad) communications with the Royal Household (other than communications which fall within any of paragraphs (a) to (ac) because they are made or received on behalf of a person falling within any of those paragraphs), or
  - (b) the conferring by the Crown of any honour or dignity.
- (2) 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).

In terms of the requested information being exempt, our response to your original request specified Section 37 (1)(a) and (1) (aa), and explained that Section 37 is an absolute exemption and is not subject to the public interest test.

The exemption in Section 37(1)(aa) applies to the heir to, or the person who is for the time being second in line of succession to, the Throne. It does not specify specific titles, such as The Prince of Wales or the Duke of Cornwall, but rather the individual irrespective of the capacity in which they are acting.

I am therefore satisfied that this exemption applies to the information requested, as the exemption does not distinguish between The Prince of Wales and the Duke of Cornwall.

The second part of your complaint relates to the application of the Environmental Information Regulations, which relate to the disclosure of environmental information.

Regulation 2(1) of the Environmental Information Regulations 2004 states:

In these Regulations— [...]

“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 the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

I am of the view that the withheld information is not captured by the definition of environmental information, as set out in the Environmental Information Regulations. Whilst the Bills themselves might be regarded as environmental information, the withheld information relating to the mechanics of the seeking and provision of the consent of Prince Charles is, in itself, I believe not environmental information. In reaching this decision I have taken note of the Information Commissioners Office's guidance on "What is environmental information?". In this guidance the ICO is clear that "environmental information" should be seen as *Information that would inform the public about matters affecting the environment or enable them to participate in decision making, and help to achieve that purpose is likely to be environmental information, even if the information itself does not directly mention the environment.*

The actual decision of the Prince of Wales might be regarded as environmental information, but these decisions are already a matter of public record, a link to which was provided in the original response. However, the information captured by this request and which is being withheld does not provide any clarity on matters affecting the environment, nor would it allow greater public participation in the decision making process.

Swyddfa'r Prif Weinidog  
Office of the First Minister

To conclude, I do not uphold your complaint for the reasons outlined above and am satisfied that the information was correctly withheld from release under Section 37 of the Freedom of Information Act 2000.

If you remain dissatisfied with this response you also have the right to complain to the Information Commissioner at:

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

Tel: 01625 545 745  
Fax: 01625 524 510  
Email: [casework@ico.gsi.gov.uk](mailto:casework@ico.gsi.gov.uk)

Also, if you think that there has been maladministration in dealing with your request, you have the option to make a complaint to the Public Services Ombudsman for Wales who can be contacted at:

Public Services Ombudsman for Wales  
1 Ffordd yr Hen Gae  
Pencoed  
Bridgend  
CF35 5LJ

Telephone: 0845 6010987 (local rate)  
Email: [ask@ombudsman-wales.org.uk](mailto:ask@ombudsman-wales.org.uk)

Yours sincerely

**William Whiteley**  
**Head of Cabinet Division**