Ministry of Defence

FOI2019/09032

E-mail: Navyscr-foimailbox@mod.gov.uk

19 December 2019

Dear [Name],

Release of Information

Further to our letter of 26 November 2019, I am now able to respond in full to your request for the following information:

'1. Between the dates June 3rd 2019 and August 1st 2019, did the Ministry of Defence have any contact with the Dutch Cultural Heritage Agency and/or Dutch Ministry of Education, Culture and Science regarding allegations that Sovereign Immune Royal Navy wrecks have been subjected to illicit salvage by divers and/or vessels and/or trawlers?
2. If such communications have taken place what was the result of the contacts?
3. Between the dates June 3rd 2019 and August 1st 2019, please supply any records in any medium which mention, HM Submarines E3 and/or E5 and/or E26 and/or D2 and/or illicit salvage by Dutch divers and/or vessels and/or trawlers.'

Your enquiry has been considered to be a request for information in accordance with the Freedom of Information (FOI) Act 2000.

As explained in our interim response, a search was completed within the Ministry of Defence (MOD) and it was confirmed that some information in scope of your request that is held may fall within the scope of the qualified exemptions under Section 27(1)(a) (International Relations) and Section 31 (Law Enforcement) of the FOI Act.

Under S27(1)(a), information is exempt if its disclosure under the Act would, or would be likely to, prejudice relations between the United Kingdom and any other State. Under S31(1)(a) and (b) information is exempt if its disclosure would, or would be likely to, prejudice the prevention and detection of crime, the apprehension or prosecution of offenders and/or the administration of justice. As these are both qualified exemptions, the decision to withhold the requested information is subject to a Public Interest Test. This has
been conducted and it may assist you to understand our decision if I outline the factors that were considered.

While it is recognised that there is a long-standing high level of public interest in the management and preservation of our underwater heritage, divulging some of the information in scope of your request could impact on the UK's relationship with another State and has the potential to make the wrecks sites vulnerable to criminal activities. Consequently, it has been concluded that public interest balance favours some information being withheld under these exemptions.

The information that the MOD can provide relating to all parts of your request can be found enclosed with this letter. I should advise, however, that, as some of the information was designed for internal purposes only and not intended for public distribution, the enclosed documentation has been redacted to remove any personal information in accordance with Section 40(2) of the FOI Act. Section 40(2) applies to personal data relating to third parties. The release of personal information relating to other individuals would contravene the principles of the Data Protection Act 2018.

If you have any queries regarding the content of this letter, please contact this office in the first instance.

If you wish to complain about the handling of your request, or the content of this response, you can request an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk). Please note that any request for an internal review should be made within 40 working days of the date of this response.

If you remain dissatisfied following an internal review, you may raise your complaint directly to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not normally investigate your case until the MOD internal review process has been completed. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website at https://ico.org.uk/.

Yours sincerely

Navy Command Secretariat - FOI Section
From: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Sent: 03 July 2019 13:59
To: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx:
Cc: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx:
Subject: RE: Meeting yesterday

Dear xxxxx:

Thank you for your email. The meeting on the recovery of artefacts from UK wrecks was held here at the Embassy yesterday. There will be minutes archived from the meeting which you will be able to obtain through the regular FOI process from the MOD (NAVYSEC-FOIMAILBOX@mod.gov.uk). However I thought you might be interested in a quick update.

In the meeting the Dutch have agreed to review your evidence of illegal activity. To date, 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I look forward to hearing about their public display in due course.

Yours aye,

xxxxxxxx

xxxxxxxx

xxxxxxxx

Defence Attaché
Lange Voorhout 10
2514ED The Hague
The Netherlands

Tel: xxxxxxxxxxxxx
Mob: xxxxxxxxxxxxx
Email xxxxxxxxxxxxxxxxxxxxx
Follow us on Twitter @UKDefenceNL and @ukinnl

OUT OF SCOPE
Please see the attached. I tidied up the July update.

we should be accurate for the DNB.

Kind Regards
It should be fine yes – there’s no password on it.

xxxxx

xxxxxxx)
Head of Exhibitions and Collections
T: xxxxxxxxxx Ext:xxxxx
M:xxxxxxxxxxxxx
W:www.nmrn.org.uk

We are proud to announce that HMS Caroline has been shortlisted for
Art Fund Museum of the Year 2019. HMS Caroline, the First World War light cruiser
docked in Belfast since 1924 reopened as a museum following an £18m restoration.
The prize is regarded as the most prestigious museum accolade in the world.
The annual award celebrates innovation and exceptional achievement in museums
and galleries across the UK. Bravo Zulu!

xxxxx

Our MOD system won’t let us access the pictures. If I forward the link to Receiver of Wreck, will they have
the permission to access?

Kind Regards

xxxxx

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NXNAVY SEC-1 Charities and Heritage  Navy Command Headquarters  MP 1.4, Leach Building  Whale
Island  Portsmouth  Hampshire  PO2 8BY XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
Hi xxxxx

Further to recent correspondence, please find (slightly late, sorry) a WeTransfer ink to images of the items we have already received. I have also attached the list we were sent, ticked and signed. Hopefully these will allow you to complete the Receiver of Wreck Form. thank you very much for doing this for me.

We would definitely take the £3 bell and periscope, for sure. I’m around tomorrow as well, albeit briefly – it might be good to catch up. I am tied up 0900-100 and 1230 – 1500,

Best regards,

xxxxxx

Head of Exhibitions and Collections
T: xxxxxxxxxxxxxxxxxxxxxx
M: xxxxxxxxxxxxxxxxx
W: www.nmrn.org.uk

We are proud to announce that HMS Caroline has been shortlisted for Art Fund Museum of the Year 2019. HMS Caroline, the First World War light cruiser docked in Belfast since 1924 reopened as a museum following an £18m restoration. The prize is regarded as the most prestigious museum accolade in the world. The annual award celebrates innovation and exceptional achievement in museums and galleries across the UK. Bravo Zulu!

From: WeTransfer [mailto:noreply@wetransfer.com]
Sent: 24 June 2019 10:06
To: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Subject: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxsent you files via WeTransfer

we

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

sent you some files

19 items 284 MB in total - files be deleted on 1 July 2019
OUT OF SCOPE

From: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Sent: 27 June 2019 11:50
To: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Subject: Evidence for looting and continued issues including missing artefacts

Dear xxxxxxxxxxxxxxxxxxx

Attached you will find the information you were seeking for the meeting with the Dutch agencies. There is a letter from me - 1 file, plus supporting documentation - 9 files.

I hope this provides you with a good sound basis with which to hold your discussions regarding:
1. Missing artefacts
2. Continued activity after June 2018
3. Current concerns and activities.

Apologies for the length of the letter. However, this is the information you will need when meeting in July.

Please confirm receipt of this email and your success in opening the zipped file.

Many thanks.

Kind regards

xxxxxxxxxxxxxxxx
This email is intended for the addressed(s) only. All messages sent and received by the Foreign & Commonwealth Office may be monitored in line with relevant UK legislation.
OUT OF SCOPE

From: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Sent: 28 June 2019 17:05
To: xxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxx>
Subject: 20190628-E3 Artefacts

Good afternoon:xxxx:

We discussed the periscope and bell of E3, there now also appears to be an engine plate.

In relation to the bell, it was apparently in the 'Lauwersoog' display (cafe). According to one source: xxxxxxxxxxxxx (previous NMRN Director General) was in touch with the diver who had the E3 bell. An arrangement was reached to hand it over. The diver changed his mind when his demands were not met (source - NMRN Curator) This must have been at least before 2012, do you know anything about this?

Thanks
Kind Regards

xxxxxxxxxx

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xxxxxxxxxxxxxxxxxxxxx NAVY SEC-1 Charities and Heritage  Navy Command Headquarters  MP 1.4, Leach Building  Whale Island  Portsmouth  Hampshire  PO2 8BY  xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
OUT OF SCOPE

From: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Sent: 02 July 2019 09:03
To: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Cc: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Subject: RE: 20190627 - Outstanding Items

Dear xxxx,

We looked into it and found the following:

- The wooden chest, drip-pan and switchboard casing are indeed missing. Also missing is another item from the E3, a small lamp. We contacted the divers and they will look into what went wrong. They will inform us shortly if and when these items can be handed over.
- The fuel switchboard (E5) is already in your possession. Something was lost in translation. This is the same as “plate with inscription” (HMSE3-008).
- The oil can/oil feeder is also already in your possession; this is the combination of the items “Hand wheel”, “Grease pot” and “Light” (HMSE26-003, HMSE26-004, HMSE26-005)

As to the periscope and bell from the E3, these items have never been officially reported to our heritage agency. We have no knowledge who could have taken these items of the wreck and in whose possession they are now, if taken. The divers indicate that if these items were taken to the surface this has probably been done by members of the xxxxxxxx that are no longer connected to them. If you or perhaps xxxxxxxxxor xxxxxxxxxx have more information we would be happy to further investigate this matter.

Kind regards,

xxxxxxx

Van: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Verzonden: donderdag 27 juni 2019 9:59
Aan: xxxxxxxxxxxxxxx
Onderwerp: 20190627 - Outstanding items
Hi

I look forward to meeting you next Tuesday. I have a question before then.

The original list (dated 01 FEB 2019) contains items that were not handed back in May. Could you clarify where these outstanding items are, please? I have attached the list of items received for your cross reference.

The list of outstanding items is as follows:

- Wooden Chest (E3)
- Drip-pan (E3)
- Switchboard Casing (E3)
- Fuel Switchboard (E5)
- Oil can/oil feeder (E26)

Also, the periscope and bell from the E3, do you have knowledge of where they are? (xxxxxxxxxxxxxxxxxxxxxxx have said that they are still in the possession of the divers?)

Kind regards,

xxxxxxxx

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx | Military Assistant to the Defence Attaché | British Embassy | Lange Voorhout 10, 2514 ED Den Haag, The Netherlands | xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

OUT OF SCOPE
Meeting on the recovery of artefacts from sunken wrecks

Subject: Meeting between representatives of United Kingdom and the Netherlands
Date and time: June 5 2018, 10:00-11:30
Location: Ministry of Defence, room A7

1. Participants
United Kingdom
- [redacted], Defence Attaché
- [redacted], Foreign and Commonwealth Office
- [redacted], Ministry of Defence, HQ RN
- Alison Kentuck (dialed in) Receiver of Wrecks

Netherlands
- [redacted], Cultural Heritage Agency
- [redacted], Ministry of Education Culture and Science
- [redacted], Ministry of Foreign Affairs
- [redacted], Ministry of Defence
- [redacted], Ministry of Defence

2. Introduction and Context
The purpose of this meeting was to exchange information on how the Netherlands and the UK deal with the recovery of artefacts from sunken
wrecks and the protection of wrecks in general. Furthermore, ways to improve the collaboration on this subject were discussed.

3. Main topics

The new law is very strict. Key is: “look, don’t touch”. This makes it sometimes difficult to identify unknown wrecks and to rescue objects that are threatened by erosion. A pilot was therefore started to experiment with a broader interpretation of the law. The pilots were executed around Texel, the North Sea and the Zeeland Delta. One dive (from the North Sea pilot) took place to the E5 by diving club the Zeester. Artefacts were taken from the E5 and E26.

stressed that this is UK property and it should not have been taken up.

emphasized that we learned from the pilots that we should have consulted the flag state of the wrecks beforehand. Another outcome of the pilot phase is that for military wrecks the rule should always be “look, don’t touch”. No exceptions.

Nevertheless within the pilots that were carried out the basic rule was that objects can only be taken up in very special cases: if it is really necessary for identification or if there is a direct threat for the object. In one case the amateur divers did not obey this rule. They were strongly told this was against the agreement.
Alison Kentuck explained that if someone brings an artefact up, they should contact the Receiver of Wreck at the Maritime and Coastguard Agency. The Receiver will try to track down the owner and contact them to see what arrangements should be made.

• Another meeting will be scheduled to work out procedural policies and to see how we can help each other on protection of wreck sites.
explained all letters sent to the Dutch parliament and meetings in the parliament are public documents which can be found online.

All participants agree on keeping each other updated.
Dear Sirs, Ma’am’s, all,

Please see below the agenda for this meeting on the 2nd July 2019. Also, find the report from last year’s meeting attached.

1. Update on progress since last meeting on 05 Jun 2018.
2. Plans for the recovery of outstanding items (for example: bell & periscope from E5).
3. Deterrence proposals for future violations (engagement with divers, legal action, prosecution).
4. Any other business.

Kind regards,

Military Assistant to the Defence Attaché | British Embassy |
Lange Voorhout 10, 2514 ED Den Haag, The Netherlands | xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

This email is intended for the addressee(s) only. All messages sent and received by the Foreign & Commonwealth Office may be monitored in line with relevant UK legislation.
General Lines

- Under International Law naval warships and associated artefacts enjoy protection through Sovereign Immunity. Sovereign Immune vessels cannot have salvage services conferred upon them without the consent of the Flag State.

- The UK is of the view that unless expressly relinquished or abandoned, the Sovereign Immunity of the wreck of any Crown vessels remains in place, regardless of where in the world the wreck in question is located.

- A military wreck should remain undisturbed and those who lost their lives onboard should be allowed to rest in peace.

- It should be appreciated that, given the vast locations of Royal Navy wrecks around the world, there are limitations on what protection we can provide, but we will continue to work with host governments and partners to prevent inappropriate activity on the wrecks of Royal Navy vessels.

E-Class Submarines

- We consider the E-Class submarines to be the final resting place of our servicemen who made the ultimate sacrifice for their country.

- In the last year, Foreign and Commonwealth Office and Ministry of Defence (MOD) officials have engaged with the appropriate authorities in The Netherlands to ensure that our position has been made clear over the desecration of these sites.

- Officials from the UK have received a number of artefacts retrieved from the submarines from the Dutch authorities. In accordance with the Merchant Shipping Act 1995, all wreck material brought into the UK from both UK waters and from outside of UK territorial waters must be reported to the Receiver of Wreck.

- Once ownership is confirmed with the Receiver of Wreck the artefacts will be transferred to the National Museum of the Royal Navy in Portsmouth for conservation and potential display.

- The Ministry of Defence is grateful for the cooperation of all involved to ensure that these artefacts will be conserved as a lasting legacy to commemorate those sailors who lost their lives on the E-Class submarines in World War One.
Follow-up meeting on the recovery of artefacts from sunken wrecks

a. **Subject:** Follow-up meeting on the recovery of artefacts from sunken wrecks
b. **Date:** 02 JUL 2019
c. **Time:** 1000 – 1130 (UTC+2)
d. **Location:** British Embassy, Lange Voorhout 10, 2514 ED, The Hague, NL
1. Participants

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2. Context

The purpose of this meeting was to consolidate progress on the recovery of artefacts salvaged from UK wrecks, to discuss the effectiveness of current deterrents and to agree a sustainable pathway to deal with artefacts in future cases.

3. Main topics

Introduction: There was an introduction by all parties present and a brief catch-up on what has happened since the last meeting (5th June 2018). Some artefacts that had been salvaged by divers were returned to the UK in May 2019.

Correction to last meeting minutes: There was a correction to the record of the last meeting, within point ‘3. Main Topics’ it states that ‘both UK-law and Dutch law do have an age limit’, this has been corrected and should state ‘both UK-law and Dutch law do not have an age limit’.

Java Sea: Both the Netherlands and UK have conducted surveys on their wrecks in the SE Asia Region, both countries are working with regional authorities to ensure adequate protection is in place.

Reporting UK artefacts: When an artefact is landed in the UK the Receiver of Wrecks (RoW) should be contacted, RoW staff can be contacted through the generic email address: row@mcca.gov.uk

Summary of progress on returning UK artefacts: The group was brought up to date on the recent recovery of UK artefacts (14) with some items still outstanding. Having contacted the National Museum of the Royal Navy (NMRN), it will not be possible to recover all outstanding artefacts to the UK. It requires resource for the transportation, storage and conservation. Some artefacts require urgent intervention and there is finite resource, others are of very limited historical or emotional significance. MOD policy is that Naval artefacts should be offered to NMRN in the first instance. The NMRN have agreed that in future they would be willing to consider items of provenance. When artefacts are recovered by Dutch authorities, the British Defence attaché to the Netherlands should be contacted in the first instance by the DCHA and they will decide on their future on a case by case basis.
**Progress with divers:** Over the past year, the Dutch Cultural & Heritage Agency (DCHA) has continued to have a good relationship with diving groups. The divers that attend meetings with the DCHA are said to be very receptive to information on, and show respect for, the Heritage law and sovereign immunity principle on warships. It was also remarked upon that more divers are undergoing responsible archaeology courses and the DCHA now has more resources to continued education of the divers than it had last year.

**Permission to dive wrecks:** It was clarified that the Heritage Law in the Netherlands means that nobody is allowed to pick up items from the seabed within 24NM of the Dutch coast without possessing a research certificate. It was explained that – awaiting formal regulations – if a diving group wishes to dive a restricted wreck they must first apply in writing and meet qualifying criteria. Warships are off limits for salvaging without permission from the flag state, however, divers may still dive under the 'look but don't touch' principle. When asked about when such permission would be granted, it was stated that salvage or survey of a wreck would be authorised for certain types of research but only with the input from proper archaeologists and the flag state. This permission would only be granted for a limited amount of time and only to diving groups (not individuals). Complaints from divers in the past have been that the DCHA has been too busy to assist with their requests; this is no longer expected be an issue with the increased funding and staffing of the DCHA.

**Violations of the law:**

**Using amateur divers:** Both countries agree that responsible amateur divers can work with government agencies to achieve mutually beneficial results. In the UK, it is unfeasible to monitor the UKs 5000+ wrecks, divers can provide insight to the condition of the wrecks.

**E3 Bell & Periscope:** The DCHA has no formal knowledge of their whereabouts, they have asked the Zeester diving group and they have said they do not know either. The diving group has indicated to the DCHA that it could have potentially been a former member at their club, and even that it could have been salvaged 20/30 years ago. It was stressed that the Zeester diving group is a very informal membership. The NMRN has indicated that it would be interested receiving the Bell and Periscope, as these are considered significant and symbolic items. When asked how the DCHA previously acquired the artefacts for return to the UK they indicated that they simply asked the divers to cooperate, which they did.

**Outstanding items:** The DCHA agreed to go back to the divers to request the return of rest of the items not already returned. This is a list of 4 items in total. The NMRN has expressed an interest in all items on that list.
Coastguard & salvage company involvement: Asked about the coastguard’s involvement in diving exhibitions, the DCHA stated that there was a dive along a shipping lane in which the coastguard was asked to assist for safety reasons. Salvage companies are aware that they must ensure that they are very careful not to disturb shipwrecks when salvaging shipping containers from the seabed. As a result of the shipping container salvaging by the salvage companies, there now exists a detailed seafloor map of certain areas off the coast which have potentially allowed historic shipwrecks to be discovered. The DCHA have access to these maps and have offered to share data with the UK MOD.

Future artefact recoveries: In future, a description of recovered artefacts should be provided by the DCHA to the UK Defence Attaché to the Netherlands to decide if the item is of significance, if so the MOD will contact the NMRN to firstly see if the museum is interested and then to take possession and return to the UK. The UK will not pursue minor items recovered but expects the Netherlands to uphold its Heritage Law. It was explained that UK artefacts are in legally ambiguous place as there is no requirement for the Netherlands to hold them, the same is true of artefacts found in the ground. It is for the UK to decide, as the rightful owner, what happens to UK-owned artefacts. The DCHA will consider the most appropriate and efficient way in future to address this issue in liaison with international Defence Attachés to the Netherlands. Ideally, items should never be lifted in the first place.

Future prevention of salvaging: Dutch Heritage law is clear, it is a criminal offence to take items from the seabed. The DCHA also has access to marine tracking data from the Coastguard and when they suspect illegal diving activities, they request the Coastguard to investigate with aircraft/boats etc. Sovereign Immunity - Activity: The UK consider that all naval warships, state vessels, aircraft and associated artefacts, of any state and wherever in the world they lie, are Sovereign Immune unless afforded additional protection. They can be dived on a ‘look but don’t touch’ basis. Divers do not have to request permission from the UK to look at our wrecks, they would only require permission if they wanted to do anything other than that (i.e. activity) such as salvage, tampering with, damaging, moving, removing or unearthing the remains, or entering any hatch or other opening in the remains.

Summary: Any evidence of past, present or future violations of the Heritage law should be submitted to the DCHA who in turn will present to prosecutors should there be sufficient evidence. The UK MOD wishes to seek a return of significant items to the UK to be gifted to museums. In future if the DCHA has significant UK-
owned items, the UK Defence Attaché to the Netherlands should be notified and appropriate arrangements should be made to return them to the UK.

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