



Ministry
of Defence

Navy Command FOI Section
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21 July 2014

Dear [REDACTED]

Release of Information

Thank you for your correspondence dated 2 July 2014 requesting the following information:

"I request a schedule of all the material you are holding which is deemed within the scope of this FOI request.

All material held in any medium relating to Odyssey Marine Exploration's use of MoD facilities on Gibraltar between 1 March and 31 October 2007, including berthing arrangements and communications regarding berthing arrangements and the loading and unloading of cargo and equipment by the vessels Odyssey Explorer and Ocean Alert operated by Odyssey Marine Exploration."

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

I can confirm that the Department holds information of the description specified in your request. Enclosed is a list of all the documents identified as falling within the scope of your request together with copies of some of that information. As you will see, however, some information has also been withheld either in full or in part as it is considered that it falls within the scope of the exemptions at sections 21 (Information reasonably accessible to the applicant by other means), 27(1)(a) (International Relations), 36(2)(b)(i) and (ii), 40(2) (Personal Data) and 43(2) (Commercial Interests). After careful consideration, and in reliance on these exemptions, it has been decided that there is no obligation under the Act to disclose this information.

In respect of s21, as previously explained, the majority of the information held by the Department that falls within the scope of your request is readily available via various external links, a list of which is attached at the Annex. As this information is already available to the public we have assessed your request falls under the absolute exemption at s21 of the Act. Consequently, we are not obliged to provide you with the information.

Under s27(1)(a), information is exempt if its disclosure would, or would be likely to, prejudice the interests of the UK abroad or the promotion or protection by the UK of its interests abroad. It is recognised that release of this information would allow the public to gain an understanding of the complexities of UK's relationship with Spain on the matter of Gibraltar. Conversely, a public debate initiated by the release of some of the redacted material could have a detrimental effect on the UK's relationship with Spain. The situation with Gibraltar is delicately balanced and it is for this reason that it has been concluded that the information should be withheld.

Under s36(2)(b)(i) and (ii), information is exempt if, in the reasonable opinion of a qualified person, disclosure would inhibit the free and frank provision of advice and exchange of views. I can confirm that a Minister has concluded that the information should be exempt under that section.

While there is a clear public interest in demonstrating openness and transparency about an issue which has provoked controversy, the release of the information would undermine working relationships between stakeholders or risk degradation in the frankness of advice provided by officials to Ministers. There is a likelihood that officials will be constrained in future from offering free and frank advice to Ministers and that ministers would be denied sufficient freedom to consider it, if this advice is made public. There is a strong public interest in maintaining the Department's private thinking space, particularly on sensitive matters such as this. On balance, it has therefore been concluded that the public interest balance favours the information being withheld.

Section 40(2) – an absolute exemption which does not require a Public Interest Test (PIT) - 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 1998, namely Principle 1 – personal data shall be processed fairly and lawfully and not unless certain specified conditions are met, and Principle 2 – personal data shall be obtained and processed only for specified and lawful purposes and not further processed in a manner incompatible with the purposes.

S43(2) exempts information from disclosure if its release would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it. In this instance, it has been determined that release of all the commercial information held would be likely to prejudice both the commercial interests of Odyssey Marine Exploration (OME) and Ministry of Defence.

In relation to OME, the balance was found to lie in withholding information in the interests of preserving the ability of a company associated with MOD to continue to remain competitive in the commercial sector. In relation to MOD, it is determined that the balance of public interest lies in MOD's ability to achieve future value for money, goods and services, maintain the confidence of commercial suppliers by treating commercially sensitive information with discretion, thus avoiding any reputational damage and/or lack of trust between MOD and its suppliers or contractors.

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact me in the first instance. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Information Rights Compliance team, 1st Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk). Please

note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.gov.uk>.

Yours sincerely

A solid black horizontal bar used to redact the signature of the sender.

External Website links to Relevant Information

<http://shipwreck.net/pr129.php>

<http://news.bbc.co.uk/1/hi/world/europe/6896645.stm>

<http://shipwreck.net/pr134.php>

<http://www.telegraph.co.uk/news/worldnews/1557370/War-at-sea-over-250m-sunken-treasure.html>

<http://shipwreck.net/pr140.php>

<http://shipwreck.net/pr141.php>

<http://shipwreck.net/pr142.php>

<http://www.telegraph.co.uk/news/worldnews/1566496/Stand-off-as-Spain-stakes-claim-to-golden-find.html>

<http://shipwreck.net/pr143.php>

<http://journalisted.com/article/13yh>

<http://shipwreck.net/pr144.php>

<http://shipwreck.net/pr145.php>

<http://shipwreck.net/pr147.php>

<http://shipwreck.net/pr148.php>

<http://news.bbc.co.uk/1/hi/world/europe/7049115.stm>