



Ministry  
of Defence

2014-06466

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21 January 2015

Dear [REDACTED]

Release of Information

Thank you for your correspondence dated 28 October 2014 requesting information for the period 1 February 2014 to 24 October 2014 which originate from or mention:

1. The Maritime Heritage Foundation [including its chair Sir Robert Balchin, Lord Lingfield],
2. Odyssey Marine Exploration,
3. Wreck Watch International [Dr Sean Kingsley]
4. HMS Victory 1744.

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

This letter is to inform you that the MOD holds information that falls within the scope of your request. As requested a schedule of those documents we are able to release is attached at Annex A.

However, we believe that some of the information falls within the scope of the following qualified exemption(s):

- s21 (Information reasonably accessible to the applicant by other means),
- s36(2)(b)(i) and 36(2)(b)(ii) (Prejudice to effective conduct of public affairs),
- s40(Personal Data),
- s41 (1) (Information Provided in Confidence),
- s42(1) (Legal Professional Privilege),
- s43(2) (Commercial Interests).

As such it is necessary for us to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

In respect of s21, some of the information held by the Department that falls within the scope of your request is readily available via various external links, links to these are included in Annex A, attached. 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 s36(2)(b)(i), information is exempt if, in the reasonable opinion of a qualified person, disclosure would inhibit the free and frank provision of advice. It is likely that some of the information falls within the scope of s36(2)(b)(i) to the extent that disclosure may harm the frankness and candour of such advice in future.

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) 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.

Under s41(1), information is exempt if its disclosure would be an actionable breach of confidence, an action for breach of confidence can be brought to prevent disclosure of commercial, personal and official information of a confidential nature. A public authority will not only be under an obligation of confidence where it has accepted information on the express understanding that it will remain confidential – as is the case in respect of this information. It will also be bound by an obligation of confidence where the circumstances in which it receives information suggest that the information is to be held confidentially.

Under s42(1), a public authority is exempt from the duty to communicate information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. It is likely that some of the information may comprise confidential communications provided to the Department by a solicitor or in-house lawyer which is protected by legal professional privilege.

The balance of public interest will usually weigh in favour of public disclosure only in exceptional cases. In this instance, there is no compelling or specific justification for disclosure to outweigh the obvious interest in protecting communications between lawyer and client, which the client supposes to be confidential.

Under s43(2), information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). It is likely that some of the information may contain commercially sensitive material which, if disclosed, may prejudice the current and future commercial interests of the Department.

In relation to Odyssey Marine Exploration (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, 1<sup>st</sup> Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail [CIO-FOI-IR@mod.uk](mailto: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.

