
From: XXX
Sent: 19 July 2014 17:57
To: CIO-FOI (MULTIUSER)
Subject: Request for information

Dear Ministry of Defence,

By the Deed of Transfer dated 12 January 2012, the Secretary of State for Defence transferred to the Maritime Heritage Foundation the remains of HMS VICTORY, lost in 1744 and discovered in the English Channel in 2008 [<https://www.gov.uk/government/publications/hms-victory-1744-advisory-group>].

Under the Deed of Transfer the Secretary of State for Defence must give consent for the Maritime Heritage Foundation to disturb, remove from the seabed, sell, charge, lease, give, or otherwise dispose of anything transferred by the deed of transfer of 12 January 2012.

The HMS VICTORY (1744) Advisory Group was established by the Deed of Transfer. It has a duty to give advice to the Secretary of State for Defence advice in the form of reports by the Advisory Group's chairman, in respect of:

1. the acceptability of any actions proposed by the Maritime Heritage Foundation in respect of anything transferred to the Foundation under the Deed of Transfer,
2. any proposals by the Foundation which may have an impact on the site, and
3. the extent to which any actions proposed by the Maritime Heritage Foundation are consistent with the archaeological principles set out in Annex A to the UNESCO Convention on the Protection of the Underwater Cultural Heritage.

In the minutes of the first meeting of the Advisory Group (01 Feb 2012)

[<https://www.gov.uk/government/publications/hms-victory-1744-advisory-group-minutes>] it states that a Project Design was submitted by the Maritime Heritage Foundation.

In a debate in the House of Lords on 28 Nov 2012

[<http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/121128-gc0001.htm>] it was stated that the Advisory Group met in May 2012 and that they requested another Project Design from the Maritime Heritage Foundation, which was submitted in June 2012.

My requests are:

1. Has the Secretary of State for Defence given consent for the Maritime Heritage Foundation to disturb, remove from the seabed, sell, charge, lease, give, or otherwise dispose of anything transferred by the deed of transfer of 12 January 2012?
2. Has the Advisory Group submitted any advisory reports relating to the issues listed above? If so, could I please be provided with copies of the reports?
3. Could I please be provided with a copy of the Project Design referred to in the minutes of the first meeting of the Advisory Group?
4. Could I please be provided with a copy of the Project Design submitted in June 2012 referred to in the HoL debate of 28 Nov 2012?
5. Could I please be provided with any other similar Project Designs that have been submitted?
6. Could I please be provided with the minutes of the meetings of the Advisory Group that have not appeared on-line (01 Feb 2012 and 15 Feb 2012 are on-line), including the meeting of May 2012 referred to in the HoL debate of 28 Nov 2012?

I can be contacted by email atXXXXXXXXXXXXXXXXXXXXXXXXXXXX or by post at:

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Yours faithfully,

XXXXXXXXXXXXXXXXXXXXXXXXXXXX



Ministry
of Defence

Navy Command FOI Section
Navy Command Headquarters
MP 1-4, Leach Building
Whale Island
PORTSMOUTH
PO2 8BY

2014-03686

Telephone [MOD]:
Facsimile [MOD]:
E-mail:

18 August 2014

Dear

Request for Information

Thank you for your correspondence dated 19 July 2014 requesting the following information:

- Q1. Has the Secretary of State for Defence given consent for the Maritime Heritage Foundation to disturb, remove from the seabed, sell, charge, lease, give, or otherwise dispose of anything transferred by the deed of transfer of 12 January 2012?
- Q2. Has the Advisory Group submitted any advisory reports relating to the issues listed above? If so, could I please be provided with copies of the reports?
- Q3. Could I please be provided with a copy of the Project Design referred to in the minutes of the first meeting of the Advisory Group?
- Q4. Could I please be provided with a copy of the Project Design submitted in June 2012 referred to in the HoL debate of 28 Nov 2012?
- Q5. Could I please be provided with any other similar Project Designs that have been submitted?
- Q6. Could I please be provided with the minutes of the meetings of the Advisory Group that have not appeared on-line (01 Feb 2012 and 15 Feb 2012 are on-line), including the meeting of May 2012 referred to in the HoL debate of 28 Nov 2012?

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

In respect of your first question the Department can confirm that the Secretary of State has not given consent to the Maritime Heritage Foundation to disturb, remove from the seabed, sell, charge, lease, give, or otherwise dispose of anything transferred by the deed of transfer of 12 January 2012.

In respect of the subsequent questions I can confirm that the Department holds information of the description specified, but I have to advise you that, after careful consideration of your request and for the reasons set out below, it has been concluded that there is no obligation under the Act to disclose this information.

Under section 35(1)(a) of the Freedom of Information Act 2000, information held by a Government Department is exempt from disclosure where it relates to the formulation or development of Government policy. As the exemption under section 35 has to be qualified, the Department has considered where the balance of the public interest lies in disclosing or withholding this information.

Whilst it is recognised that there is a public interest in how the department develops UK maritime heritage policy, in particular in respect of Crown wrecks such as the HMS VICTORY 1744 that are located outside of the 12 nautical mile territorial limit, the disclosure of information must be weighed against the harm that would be caused to policy formulation or to the provision of advice to Ministers. It is a fundamental principle and in the public interest that there is the space to conduct a full and frank discussion of policy both within Government and with external stakeholders, with the intention of producing better quality policy decisions. There is a likelihood that officials will be constrained in future from offering free and frank advice to Ministers, whether on policy or on other matters, and that ministers would be denied sufficient freedom to consider it, if this advice were to be made public. Therefore, as Government Ministers are currently considering the options on the way ahead with HMS VICTORY 1744, it is felt that advance disclosure of the internal "deliberations" could prejudice or inhibit their ongoing considerations and ultimately affect the final decision on the development of this aspect of UK maritime heritage policy.

In addition to section 35, it is considered that section 22 (future publication) of the Act is also engaged in relation to some of the information requested. S22(b) provides that a public authority is exempt from the duty to communicate information where there exists the intention to publish at some point information already held at the time a request is made. It is recognised that there is a strong public interest in the transparency of the policy process and the Department is committed to disclosure in due course of the decisions made. To support this, I can confirm it is the intention of the Department eventually to publish information considered by the HMS VICTORY Advisory Group Committee. In the meantime, in considering whether the Department should disclose the information at this time, it is concluded that its early release would undermine Minister's full consideration of all the attendant issues. Therefore, on balance, it has been decided that the balance of public interest favours the information continuing to be withheld until the Department is ready to publish.

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,

