



Ministry
of Defence

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30 September 2015

Dear [REDACTED]

Release of Information

I am responding to your emails to the Ministry of Defence (MOD) – to both Navy Command and direct to the Rt Hon Michel Fallon, Secretary of State for Defence – about HMS Victory 1744, which have been considered to be requests for information in accordance with the Freedom of Information (FOI) Act 2000 (“the Act”).

The delay in responding was, in part, to allow the Judicial Review process and the Ministry of Defence Police investigations to conclude.

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

- s22 (Information intended for future publication)
- s40(Personal Data)
- 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.

Section 22(1)(b) states a public authority is exempt from the duty to communicate information where the information is already held with a view to such publication at the time the request for the information was made.

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 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.

I can confirm that the MOD holds information in scope of your requests and the specific questions you raised are dealt with below.

Did you know and/or work with the then Sir Robert Balchin while you were a Schools Minister between 1990 and 1992?

Can you confirm that you attended a party at the Conservative Party Conference in 1995, hosted by the then Sir Robert Balchin at the time you were looking for a fresh Parliamentary seat and Sir Robert was Chair of the South East Region of the Conservative Party?

Did Sir Robert Balchin recommend you, or in any other way, formally or informally, support your campaign to be adopted as PPC for Sevenoaks prior to the 1997 General Election.

This information is not held.

Did you declare this longstanding political relationship with Sir Robert Balchin Lord Lingfield, to officials when you became SoS for defence and took on responsibility for the HMS Victory 1744 decision?

Section 7.2 of the Ministerial Code says:

It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, taking account of advice received from their Permanent Secretary and the independent adviser on Ministers' interests.

There was, and is, no conflict of interest, and no action was necessary.

When did you first discuss the HMS Victory 1744 Project with Lord Lingfield, either formally or informally?

Did you ever discuss HMS Victory 1744, and/or the Maritime Heritage Foundation and/or Odyssey Marine Exploration with Lord Lingfield at any other time, including the time prior to your becoming Secretary of State for Defence? If so when and what was the nature of the discussion and please release any records held relating to such discussions?

Was your letter to Lord Lingfield of 13 August 2014 in response to a letter or other communication from Lord Lingfield? If so what was that letter or communication and when was it sent? [Please release the entire correspondence]

The first occasion on which the subject of HMS Victory 1744 was brought to Mr Fallon's attention was the letter of 20 July 2014 from Lord Lingfield. A response was sent on 12 August 2014, and this was followed by two further letters on 6 September 2014 and 27 February 2015. Copies of all four letters are attached. Note: the letter of 6 September erroneously refers to the previous letter as having been sent on 13 August. Lord Lingfield's letter of 20 July has necessarily been redacted for certain information which is withheld under the section 43 exemption of the Act covering Commercial Interests. Disclosure of certain information would be likely to adversely affect the commercial interests of one or more parties.

Have you attended any Conservative Party, or other non Governmental or Private events at which Lord Lingfield was also present within the last two years? If so which events and when did they take place?

This information is not held.

Have you, MOD Ministers or MOD Civil Servants ever discussed or been in receipt of any communication of any kind, formal or informal, regarding the HMS Victory 1744 Project from either the Prime Minister, and/or the Prime Minister's Office, his political or civil service staff and/or the Cabinet Office? If so when and in what form did those communications take place and what was their nature? [Please release any records of such communications]

A thorough search has not located any records.

Has the Ministry of Defence discussed the accessioning of the HMS Victory 1744 Cannon and other items with the National Museum of the Royal Navy [NMRN]?

Has the NMRN agreed to take items recovered from HMS Victory 1744?

Has the NMRN agreed to take the entire HMS Victory 1744 archaeological archive of Crown and non Crown items without exceptions in order to keep it together as a single entity, as is required by the archaeological principles of the Annex to UNESCO Convention on the Protection of the Underwater Cultural Heritage?

If the NMRN has only agreed to accession a proportion of the material from HMS Victory 1744 what material has the NMRN agreed to take?

If the NMRN is to accession material from the HMS Victory 1744 archive by whom and how will this be funded?

Lord Lingfield's letter of 12 August shows that MHF is in discussion with more than one museum; no decisions have been taken. Arrangements between MHF and the chosen depository are a matter between the two parties but the wider aspects of curation have been discussed by the Advisory Group, of which the Director of the National Museum of the Royal Navy is a member.

Regarding the Completion Bond for the HMS Victory 1744 Project posted by Odyssey Marine Exploration and referred to in Parliament: is this Bond held separately and in addition to the Bond posted by Odyssey for the currently dormant HMS Sussex Project; or has the Bond posted for the HMS Sussex Project been withdrawn or reassigned to the HMS Victory Project?

I am withholding the details of the financial arrangements between MHF, OME and the Ministry of Defence under Section 22 – information intended for future publication though it should be noted that there is no requirement (in the UNESCO Convention on Underwater Cultural Heritage) for a financial bond to be in place.

Can you confirm reports I have received that the Secretary of State Mr Fallon, Navy Command, the MOD Police, the DCMS and the Receiver of Wreck amongst others, have received a signed communication from a member of the salvage industry making certain allegations regarding the conduct of Odyssey Marine Exploration and a Dutch salvage company, "Friendship Offshore" on the wreck site of HMS Victory 1744?

Can you also confirm that these allegations relate to a period prior to January 2012 when HMS Victory 1744 was still a Sovereign Immune vessel of the Royal Navy and that thus any misconduct on the wreck site, were it to be proven, would potentially constitute conspiracy to commit the theft of Crown property and conspiracy to submit false evidence to HMG and the Dutch authorities?

Given the seriousness of the allegations can you confirm that the MOD Police are investigating as a matter of urgency?

Can you also confirm that, because the allegations relate to the chosen contractor of the Maritime Heritage Foundation, Odyssey Marine Exploration, and that Lord Lingfield Chair of the MHF has a proven longstanding relationship with Odyssey, that any decision regarding the reinstatement of permission to recover material from HMS Victory will be postponed until the outcome of any Police investigation is known.

The MOD has previously confirmed that it was aware of allegations related to material being removed from the wreck site of Victory 1744 before 2012, and that those allegations were in the hands of the Ministry of Defence Police (MDP).

Consideration of MHF's Project Design was not linked with the investigation of those allegations.

The MDP now confirms that its investigation into the alleged theft of a cannon from the wreck of HMS Victory 1744 has concluded. The police investigation did not uncover any evidence or information which might affect the granting of licences or permissions to recover artefacts from the site. No other HMS Victory 1744 salvage or related investigations are underway.

All further enquiries should be directed to the MDP.

In the light of the recent loss of access to National Lottery funds by Northampton Council after it lost Museums Association Accreditation over the sale of Sekhemka statue in July 2014, has the Ministry of Defence considered

the effect on the ability of the National Museum of the Royal Navy to raise funds from sources such as the Heritage Lottery Fund, if it is seen to accession material from a project which breaches international conventions [the UNESCO Convention on the Protection of the Underwater Cultural Heritage and its Annex] and Government policy as the HMS Victory 1744 Project of the Maritime Heritage Foundation/Odyssey Marine Exploration does in a number of areas, not least, its lack of full funding, its dependence on the sale of non accessioned, non-crown artifacts and other areas and the current plan for NMRN not to accession the project archive of Crown and non Crown artifacts in its entirety?

The MOD has noted the decision of the National Lottery Fund, as has the National Museum of the Royal Navy, whose Director General is a member of the HMS Victory 1744 Advisory Group. The MOD and Maritime Heritage Foundation have stated that artefacts are to be managed and curated in line with the Associated Code of Ethics for Museums.

It is believed that this response addresses all the concerns you have raised. However, 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.org.uk>.

Yours sincerely

Navy Command Secretariat – FOI Section