

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 April 2018

Public Authority: Her Majesty's Treasury (HMT)
Address: 1 Horse Guards Road
London
SW1A 2HQ

Decision (including any steps ordered)

1. The complainant has requested information from HMT about the proceeds from unclaimed wrecks in accordance with section 243 of the Merchant Shipping Act 1995. HMT stated that it did not hold information within the scope of the request.
2. The Commissioner's decision is that on the balance of probabilities, HMT does not hold the requested information and it has complied with the duty set out at section 1(1) of the FOIA.
3. The Commissioner does not require HMT to take any steps.

Request and response

4. On 16 August 2017, the complainant wrote to HMT and requested information in the following terms:

"Section 243 of the Merchant Shipping Act 1995 states that;

Disposal of unclaimed wreck.

(1)Where, as respects any wreck found in the United Kingdom or in United Kingdom waters and in the possession of the receiver, no owner establishes a claim to it within one year after it came into the receiver's possession, the wreck shall be dealt with as follows.

(2)If the wreck is claimed by any person who has delivered the statement required by section 242 and has proved to the satisfaction of the receiver his entitlement to receive unclaimed wreck found at the

place where the wreck was found, the wreck shall, on payment of all expenses, costs, fees and salvage due in respect of it, be delivered to that person.

(3) If the wreck is not claimed by any person in accordance with section 242, the receiver shall sell the wreck and pay the proceeds as directed by subsection (6) below, after making the deductions required by subsection (4) below and paying to the salvors the amount of salvage determined under subsection (5) below.

(4) The amounts to be deducted by the receiver are—
(a) the expenses of the sale;
(b) any other expenses incurred by him; and
(c) his fees.

(5) The amount of salvage to be paid by the receiver to the salvors shall be such amount as the Secretary of State directs generally or in the particular case.

(6) The proceeds of sale (after making those deductions and salvage payments) shall be paid by the receiver for the benefit of Her Majesty—
(a) if the wreck is claimed in right of the Duchy of Lancaster, to the receiver-general of the duchy or his deputies as part of its revenues;
(b) if the wreck is claimed in right of the Duchy of Cornwall, to the receiver-general of the duchy or his deputies as part of its revenues;
and
(c) in any other case, into the Consolidated Fund.

Could you please provide a detailed account of all such proceeds from these sales that have been paid into the Consolidated Fund since 1995."

5. HMT responded on 12 September 2017 and disclosed a table of figures.
6. Following an internal review on 6 October 2017, HMT wrote to the complainant and advised that the information it had disclosed was in relation to the Marine and Aviation (War Risks) Act 1952. It apologised, setting out that it does not hold information in relation to Section 243 of the Merchant Shipping Act 1995. It pointed out that the Department of Transport is responsible for policy related to the Maritime sector.

Scope of the case

7. The complainant contacted the Commissioner on 11 October 2017 to complain about the way his request for information had been handled.

He asserted that it is the duty of HMT to manage and record the accounts of the consolidated fund. He has set out that if money has been paid in to the Consolidated Fund, HMT should account for it and if no money has been paid in it should say so. The complainant also asked that the Commissioner request HMT to answer what is a very simple request.

8. The Commissioner considers that the scope of her investigation is to determine whether HMT, on the balance of probabilities, holds information within the scope of the request.

Reasons for decision

9. Section 1(1) of the FOIA states that:
"Any person making a request for information to a public authority is entitled-
 - (a) To be informed in writing by the public authority whether it holds information of the description specified in the request, and*
 - (b) if that is the case, to have that information communicated to him."*
10. In scenarios where there is some dispute between the public authority and a complainant as to whether the information requested is held by the public authority, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of proof - i.e. on the balance of probabilities in determining whether the information is held.
11. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
12. HMT has set out in its submission to the Commissioner that it is provided under the Marine and Aviation Insurance (War Risks) Act that any deficiency in their fund shall be met out of monies provided by Parliament and that any excess over the amount likely to be required to meet liabilities of the fund shall be paid into the Consolidated Fund. In other words, any excess of receipts over payments after settlement of approved claims is surrendered to the Consolidated Fund.

13. In order to identify any information falling within the scope of the request, HMT conducted searches of two systems, its current system which holds records from 2002 to the current date (ACME) and its previous system (TACSYS) which holds records prior to 2002. These finance systems hold details of all receipts and payments and, if held, would return information between 1995 and the date of the request
14. HMT has explained that the criteria for its search was to return all data for monies surrendered by Marine and Aviation Insurance War risks to the Consolidated Fund. This, HMT has asserted, is how any money paid into the Consolidated Fund would be recorded. HMT set a filter to locate all receipts containing the word 'Marine' for all periods to the date in question. This filter was appropriate as any payment would be received and recorded under this term for Marine and Aviation payments. This would include, but would not be limited to payments made as a result of the provisions set out in section 243 of the Merchant Shipping Act. This is due to the fact that receipts into the Consolidated Fund are usually transferred in bulk.
15. HMT has explained that this search was relevant and it was satisfied that it would produce all/any relevant information because all cash surrendered to the Consolidated Fund and any other transactions within that fund are recorded on the finance system. The searches did not return any information within the scope of the request.
16. After its initial search, HMT disclosed information to the complainant. However, upon receipt of a review request, HMT contacted the Maritime and Coastguard Agency (MCA) in order to confirm that the payments HMT had received, and therefore the information disclosed to the complainant, had been surrendered under section 243 of the Merchant Shipping Act 1995. The MCA confirmed that the wreck related payment was in respect of the Marine and Aviation Insurance (War Risks) Act 1952. HMT set out its position, at review, that it did not hold any information about proceeds received under section 243 of the Merchant Shipping Act 1995.
17. HMT has confirmed to the Commissioner that monies of this type paid into the consolidated fund are paid via bank transfer. The Department surrendering the money is required to complete a particular form (which the Commissioner has seen). The form requires a brief description of monies collected such as "*recovery of teak baulks*" from a particular vessel or monies from a particular contract. The description neither requires nor requests details of any particular Act under which any monies are surrendered. HMT has asserted that it is not therefore provided with information in relation to the specific Act under which monies are surrendered and that it is for the surrendering entity to record this information; HMT has no reason to record it.

18. The Commissioner considers that HMT has adequately explained that it does not receive the information falling within the scope of this request, the information cannot therefore be recorded by HMT, is not required by HMT and is not held by HMT.
19. HMT has confirmed that it has not held any information falling within the scope of the request which has been destroyed. It has explained that the records held on its current system, which has been searched, are not archived and that there are controls in place to ensure they are not deleted. HMT has also set out that there is no statutory requirement whereby it must retain the requested information.
20. The Commissioner considers that HMT has taken all the steps it can to identify information falling within the scope of the request and has been able to demonstrate why its searches would have returned relevant information were it held.
21. It has gone as far as contacting a different Agency in order to conduct a comprehensive review of its initial findings. The Commissioner notes that in order to identify the legislation under which monies to the consolidated fund were surrendered, HMT would have to contact the MCA.
22. The Commissioner considers that what is relevant to her decision here is the issue of recorded information. It is clear that information in relation to the consolidated fund is not provided to HMT in a way which includes the legislation under which monies are surrendered and therefore there is no option for HMT to record that information. As a request under FOIA is for recorded information, the Commissioner considers that she must find that, on the balance of probabilities, HMT does not hold recorded information within the scope of the request.
23. Whilst the Commissioner notes the complainant's position that this may be a very simple request, she accepts that this does not mean that HMT must hold information of the description specified. She is satisfied that HMT has taken every possible action to identify whether it holds information falling within the scope of the request and that on the balance of probabilities, it does not.

Right of appeal

24. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 7395836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Terna Waya
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