

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 July 2023

Public Authority: Maritime and Coastguard Agency
Address: Spring Place
105 Commercial Road
Southampton SO15 1EG

Decision (including any steps ordered)

1. The Commissioner's decision is that 'Receiver of Wreck' information that the complainant has requested is exempt from disclosure under sections 41(1) and 43(2) of FOIA. This is because it's both information that was provided in confidence and commercial information.
2. It's not necessary for the Maritime and Coastguard Agency to take any corrective steps.

Request and response

3. The complainant made the following information request to Maritime and Coastguard Agency (MCA) on 27 February 2023:

"All items/material, including but not limited to shipwrecks, reported to the Receiver of the Wreck since 1st January, 2016, by:

Ocean Infinity, or
Advanced Marine Services, or
Maritime Archaeology Consultants

Please include:

The name of the casualty / shipwreck. If the material reported was a component or item at the site of a shipwreck, please include the name and details of both the component/item and the shipwreck at which it was found.

Whether the material has been claimed and returned to a party deemed to be its original owner

If all or part of the material was successfully claimed by a party, or parties (including but not limited to, the salvor), please name the claimant(s) to whom any claim was granted

If the material was left unclaimed, whether the salvor has been granted ownership

Please make clear any material of which the Crown / UK government has been granted ownership"

4. The MCA's final position was that the relevant information it holds is exempt from disclosure under sections 41 and 43 of FOIA.

Reasons for decision

5. The Commissioner's reasoning focusses on whether MCA is entitled to withhold the information the complainant has requested under sections 41 and 43 of FOIA.

Section 41 – information provided in confidence

6. In its submission to the Commissioner, MCA has explained that it's an executive agency of the Department for Transport and is responsible for His Majesty's Coastguard and the Receiver of Wreck (ROW). The ROW deals with cases of voluntary salvage wreck material across the UK and makes sure that the interests of both salvor and owner are taken into consideration.
7. If you recover wreck material, you must report it to the ROW. Wreck material includes things found on the seashore or in tidal water that have come from a ship, aircraft or hovercraft. This could be parts of the vessel, its cargo or equipment.
8. The ROW team processes incoming reports of wreck. This involves:
 - researching ownership of wreck material
 - working with the finder and owner
 - working with other interested parties, such as archaeologists and museums

9. To help maintain accurate lawful reporting of wreck material some information such as the person or company finding and declaring it remains confidential.

Section 41 – information provided in confidence

10. Under section 41(1) of FOIA, information is exempt from disclosure if (a) it was obtained by the public authority from any other person and (b) disclosing it would constitute an actionable breach of confidence. Section 41 is an absolute exemption and not subject to the public interest test.
11. MCA's submission goes on to say that the information it holds had been reported by the named third party with an expectation that this report will be treated as in confidence. Breaching this confidence would be detrimental to both the third party and to the reputation of the MCA and UK Government.
12. To maintain the legal requirement to report wreck material, MCA says, it's essential that those reporting are able to do so with confidence that their information will not be disclosed. Any breach risks the operation of this reporting mechanism continuing, which risks losing valuable heritage or legal salvage.
13. MCA says that in its extensive experience of dealing with salvors, it has found that most will provide it with information because they are obliged by the Merchant Shipping Act 1995 (MSA95) to do so. They provide that information with the expectation that it's used for the execution of that statutory obligation and nothing more.
14. In this case, MCA is content that the information provided by the finder was given with the expectation of confidentiality and that there is a real possibility that a breach of confidence would be actionable by the salvor (for information other than that provided under the terms of section 238(2) of the MSA95).
15. The Commissioner is satisfied, first, that MCA obtained the requested information from another person, the body that reported wreck material to it.
16. The Commissioner has next considered whether disclosing the information would constitute an actionable breach of confidence. To do this he considers four tests.
17. First, he is satisfied that the information has the necessary quality of confidence because it is not trivial – concerning as it does, wreck material reported to the ROW – and because it is not otherwise

accessible. If it were otherwise accessible, the complainant would not need to request it from MCA.

18. Second, was the withheld information imparted in circumstances importing an obligation of confidence?
19. In its submission to the Commissioner, MCA noted that the MSA95 requirement relates to the wreck in the Receiver's possession, it does not include details of the salvor. This is either because the requirement for salvor confidentiality was recognised when the legislation was drafted or because it was thought not to be relevant information that others might have a reason to know. Either way, the very bit of legislation that's designed to manage salvage did not see fit to make the identity of the salvor something that others specifically have a right to know.
20. MCA provided the Commissioner with further explanation on that point. It said that there's a reasonable assumption for privacy when someone declares wreck. This could be to do with anything from "salvor in possession", to commercial sensitivity, to people just not wanting their details shared. So there could be a range of repercussions for MCA if it were to disclose the requested information. These include poor stakeholder relations, to litigation with salvage companies. MCA says that salvors tend to be very protective over finds and wreck locations to prevent looting of historical materials or to protect their commercial interest.
21. In their complaint to the Commissioner the complainant has said that the MSA95 requires that a record of a wreck is sent to Lloyd's in London "in some conspicuous position for inspection" and be kept for "inspection by any person". The complainant therefore disputes that the information they've requested is confidential.
22. Section 238 of the MSA95 concerns the notification of a wreck, placing the above obligations on the receiver (ie the ROW) and the chief executive of Lloyds, in cases where the ROW's opinion is that a wreck has a value of more than £5,000.
23. Section 520 of the MSA95 discusses the notice of wreck that the receiver must give. It states that the receiver must post a description of the wreck they have received at the nearest custom house and, if in their option the value of the wreck exceeds twenty pounds, transmit a similar description to Lloyd's in London where it must be posted in "some conspicuous position for inspection."

24. In both cases, the MSA95 doesn't oblige the ROW (and Lloyds) to publish **who** notified the wreck, simply that a wreck has been notified and a description of the wreck.
25. The Commissioner is therefore satisfied that the requested information was imparted to MCA in circumstances importing an obligation of confidence.
26. Third, the Commissioner has considered whether unauthorised disclosure of the information would cause a specific detriment to either the party which provided it or any other party. The Commissioner has noted that the approach taken by the courts in some cases is that detriment is not always a pre-requisite to an actionable breach of confidence.
27. MCA has said in its submission that disclosing the information would detriment the salvor's commercial interests. This is because of the nature of wreck material and the likelihood that they would not be selected to operate in similar historical salvage settings if those employing their expertise couldn't be satisfied that its salvage operations would remain confidential.
28. MCA also said that disclosure would undermine its relations with stakeholders. The Commissioner understands that this would be through lessening salvors' willingness to report wreck material to the ROW. This would frustrate the ROW's ability: to research ownership with a wreck and reunite the legal owner with their property; and to work with the finder, owner, archaeologists, museums, and other interested parties.
29. MCA also says that disclosure would potentially involve it in litigation with salvage companies.
30. In terms of detriment, the Commissioner accepts that unauthorised disclosure of the information would cause a detriment to the confider (the salvor) and another party (MCA and ROW), for the above reasons.
31. Finally, with reference to the three tests discussed, the Commissioner is satisfied that, with regard to the salvor, disclosing the information would constitute a breach of confidence. This is because of the salvor's reasonable expectations of confidentiality and what MCA has described as the very specialised and competitive nature of the salvage industry.
32. But for section 41 to apply the breach must be actionable. This means that there must be a good chance of such an action succeeding because the public authority wouldn't have a valid defence to such a claim.
33. A public authority can defend itself against an action for a breach of

confidence if it can establish a public interest defence – that the breach of confidence was necessary in the public interest. The Commissioner isn't satisfied that such a defence would be viable here.

34. In their request for an internal review and complaint to the Commissioner the complainant didn't put forward any public interest arguments for disclosing the information. There is, however, a strong public interest in salvors remaining prepared to report wreck material to the ROW. This helps to ensure that owners are reunited with their property for example, or that research can be carried out on any heritage wrecks.
35. In the absence of a public interest defence, the Commissioner is therefore satisfied that it would be an actionable breach of confidence for MCA to disclose the requested information under FOIA and, as such section 41(1) applies.
36. The Commissioner has found that the requested information is exempt from disclosure under section 41(1) of FOIA. However, for the sake of completeness he will also consider MCA's application of section 43(2) to the same information.

Section 43 – commercial interests

37. Section 43(2) of FOIA states that 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.
38. In its internal review response MCA explained that disclosing which salvor reported what wreck material to the ROW would be likely to have a detrimental impact on the salvor's ability to conduct their business as they currently do. MCA said that disclosure would be likely to impact negatively on their ability to realise future commercial gain in the salvage industry if they were forced to reveal details of their salvage operation[s].
39. The Commissioner is satisfied first that the harm MCA envisages relates to commercial interests; principally those of the salvor, but also of MCA if disclosure were to result in litigation. Second the Commissioner accepts that a causal link exists between disclosure and commercial prejudice. In its submission to him, MCA has explained to the Commissioner that commercial salvage is a highly specialised industry with only a small number of companies, vessels and equipment capable of salvaging property from depths such as in this case. This means that there is a high level of secrecy in the industry and commercially valuable information is fiercely guarded. Disclosing the information would give other salvors an unfair insight into the operations of the salvor named in

the request. Disclosure could also lead to those who employ the salvor's expertise being less willing to work with that salvor in the future. This would again be likely to prejudice the salvor's commercial interests.

40. With regard to MCA, if it was necessary to enter into litigation proceedings with a salvor as the result of MCA disclosing the requested information, that would have a negative commercial impact on MCA. In other words, disclosure would also be likely to prejudice MCA's commercial interests.
41. Finally, the Commissioner accepts MCA's position that the envisioned prejudice would be likely to happen ie it is more than a remote, hypothetical possibility. The Commissioner's decision is therefore that MCA is entitled to apply section 43(2) to the withheld information, and he will go on to consider the associated public interest test.
42. The complainant has not put forward any specific public interest arguments for the information's disclosure but there is a general public interest in public authorities being open and transparent. In the Commissioner's view, there is minimal wider public interest in which organisation reported what wreck material to the ROW. There is, however, wider public interest in their being a choice of salvage operators working in this specialist marketplace and in those organisations being able to compete for work fairly. The public interest in transparency is met through the information that the MSA95 requires MCA and Lloyds to make available. MCA had also explained to the complainant the sort of information it **could** disclose. On balance therefore, the Commissioner finds that the public interest favours maintaining the section 43 exemption in this case.

Right of appeal

43. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

44. 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.
45. 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

Cressida Woodall
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