

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 January 2024

Public Authority: Department for Culture, Media and Sport
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant requested information about the Rooswijk shipwreck. The Department for Culture, Media, and Sport ('DCMS') said it did not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, DCMS does not hold the information requested by the complainant.
3. No steps are required as a result of this notice.

Request and response

4. On 22 June 2023, the complainant wrote to DCMS and requested information in the following terms:

"Please send me:

1. Between the dates January 1st 2007 and February 28th 2007, please supply any records in any medium concerning the designation of the Dutch East India Company ship Rooswijk as a protected wreck (SI 2007/61).
<https://www.legislation.gov.uk/uksi/2007/61/made>
2. Between the dates January 1st 2000 and February 28th 2007, please supply any records in any medium which mention Dutch East India Company ship Rooswijk...".

5. DCMS responded on 6 July 2023. It said that it did not hold the requested information.
6. The complainant requested an internal review on 20 July 2023 in which they submitted a document from within the period 2005-2006 as evidence. The complainant argued:

“It seems the search wasn’t properly executed, as I have evidence that the DCMS does have or should have records/documents concerning the Dutch East India Company ship Rooswijk within the scope of my request!”
7. Following an internal review, DCMS wrote to the complainant on 16 August 2023 and maintained its original position. DCMS explained that “government departments manage their information estate in accordance with the legal framework. However, the majority of records are destroyed after a set period of time”.

Scope of the case

8. The complainant contacted the Commissioner on 24 September 2023 to complain about the way their request for information had been handled. The complainant submitted the following:

“On July 20, 2023, I submitted an appeal by email to the DCMS decision of July 6, 2023. I attached a document which was recently released by the Dutch government containing a reconstruction over the period 2005-2006 concerning the Dutch East India Company ship Rooswijk. In the document I marked DCMS in blue. It clearly shows correspondence from and with DCMS concerning the Dutch East India Company ship Rooswijk within the scope of my request. On July 21, 2023, I received a response from DCMS by email. DCMS will not be able to commence the review until I provided a copy of the attached document in English. On July 23, 2023, I sent the translated document to DCMS by email.

On August 16, 2023, I received the internal review from DCMS by email. DCMS upholds the previous decision, that there was no information held in response to my request. The records that have been requested date back to 2000-2007. Government departments manage their information estate in accordance with the legal framework. However, the majority of records are destroyed after a set period of time.

In the internal review is stated: the majority of records are destroyed after a set period of time. The majority means not all, and this is highly unbelievable because these documents haven't reached the 20/30 year rule at this time. In fact the Information Commissioner's Office has previously investigated another Freedom of Information request submitted to DCMS concerning the Rooswijk shipwreck (Decision Notice from 15 December 2008, reference: FS50178057)¹."

9. The complainant also argued that, in their view, both the Dutch government and DCMS, have been stalling requests about this ship, stating:

"A Dutch Freedom of Information request issued by me revealed an interesting document (decision 12 July 2023). This document is originally written in Dutch language, but I also attached a translated version for you. In the document is stated: 'This is an extensive file with many international relations. Negotiations with Historic England about the return of artefacts are ongoing. The sensitivity therefore lies mainly in the moment of publication and possible consequences for the ongoing negotiations'."

10. It should be noted that the Commissioner can only consider the complainant's concerns relating to DCMS.
11. In this case, the Commissioner has considered whether, on the civil standard of the balance of probabilities, any recorded information is held in respect of the request.
12. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA.
13. FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2008/455532/FS_50178057.pdf

Reasons for decision

Section 1 – general right of access

14. Section 1(1) of 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.”

15. The Commissioner is mindful that when he receives a complaint alleging that a public authority has stated incorrectly that it does not hold any further requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the ‘balance of probabilities’ whether more information is held.

16. The Commissioner will consider the complainant’s evidence and arguments. He will also consider the actions taken by the public authority to check whether any further information is held and any other reasons offered by the public authority to explain why no further information is held. He will also consider any reason why it is inherently likely or unlikely that additional information is not held. For clarity, the Commissioner is not expected to prove categorically whether any further information is held; he is only required to make a judgement on whether further information is held on the civil standard of proof of the balance of probabilities.

17. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, DCMS holds any recorded information within the scope of the request. Accordingly, he asked DCMS to explain what enquiries it had made in order to reach the view that it did not hold any information.

18. In reply, DCMS said:

"I can confirm that the relevant policy colleagues within the heritage team searched the Google drive and emails using the keyword 'Rooswijk' and - separately - the phrase 'Dutch East India Company', and that they found nothing within the specific date ranges set out in the FOI request.

This is, perhaps, not surprising as it's possible that all of the documentation we retained from that period in relation to the designation of wreck sites under the terms of the Protection of Wrecks Act 1973 was held on paper files. These days we maintain electronic case folders relating to the designation of wreck sites under the 1973 Act, and the earliest of these folders dates from 2008.

As you can see from the attached screenshots, designation documents for the wreck were held with a destruction date in 2019 (in line with the then departmental retention schedule this was then actioned by an external provider). Subsequently the retention period was elongated to 15 years for these types of records."

19. DCSM attached two screenshots illustrating the destruction date as set out above.

Conclusion

20. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed the information that a complainant believes it must hold, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.

21. Having considered the explanation provided by DCMS, whilst taking account of the points raised by the complainant, the Commissioner is satisfied, on the civil standard of the balance of probabilities, that no recorded information within the scope of the request is held.

Right of appeal

22. 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

23. 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.
24. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF