

Freedom of Information Act 2000

Decision notice

Date: 24 May 2017

Public Authority: National Museum of the Royal Navy
Address: HM Naval Base (PP66)
Portsmouth
PO1 3NH

Decision (including any steps ordered)

1. The complainant requested information from the National Museum of the Royal Navy (the NMRN) under the Freedom of Information Act 2000 (the Act). The NMRN did not comply with the request on the grounds that it did not consider itself a public authority within the meaning of the Act.
2. The Commissioner's decision is that the NMRN is not a public authority as defined within section 3(1) the Act. No steps are required.

Request and response

3. On 25 October 2016 the complainant wrote to the NMRN and made a request for information under the Act. The Commissioner does not have a copy of the text of that request, but does not consider it necessary as the content of the request is immaterial for the purposes of her decision.
4. The NMRN's solicitors responded to the complainant on 30 November 2016 and stated that the NMRN is a private charity and a private limited company and not a public authority. It stated that this meant it was not caught by the provisions of the Act and had no obligation to respond to requests made under that enactment.

Scope of the case

5. The complainant contacted the Commissioner on 8 December 2016 to complain about the way his request for information had been handled.

Specifically, he considers that the NMRN is a public authority and should handle his request under the terms of the Act.

6. The Commissioner considers the scope of the case to be whether the NMRN is a public authority under the terms of section 3(1) of the Act.

Reasons for decision

7. The definition of a public authority is provided in section 3(1) of the Act. This states:

3. Public authorities

(1) In this Act "public authority" means –

(a) subject to section 4(4), any body which, any other person who, or the holder of any office which –

(i) is listed in Schedule 1, or

(ii) is designated by order under section 5, or

(b) a publicly-owned company as defined by section 6

8. Section 4(4) of the Act provides the two conditions when a body or office ceases to be a public authority, and so it is not relevant for this decision. Instead, the test for the Commissioner to determine whether the NMRN is a public authority is:

- Whether the NMRN is listed in Schedule I of the Act.
- Whether the NMRN is designated by order under section 5 of the Act.
- Whether the NMRN is a publicly-owned company as defined by section 6 of the Act.

9. The Commissioner will address each part of the test in turn.

Schedule I of the Act

10. Schedule I lists public authorities that must comply with requests under the Act. It has various sections which states the sort of bodies that are public authorities – such as all central government departments – or lists of general public bodies which specifically name the relevant public authorities.

11. The NMRN is an executive non-departmental public body, sponsored by the Ministry of Defence.¹ The Ministry of Defence – as a central government department – is contained within Schedule I. All of its executive non-departmental public bodies² except the NMRN are also listed independently in Schedule I. As the NMRN is not listed within Schedule I it is not a public authority by virtue of section 3(1)(a)(i) of the Act.

Section 5 – designated by order

12. Section 5 of the Act states:

5. Further power to designate public authorities.

(1) The Secretary of State or the Minister for the Cabinet Office may by order designate as a public authority for the purposes of this Act any person who is neither listed in Schedule 1 nor capable of being added to that Schedule by an order under section 4(1), but who –

(a) appears to the Secretary of State or the Minister for the Cabinet Office to exercise functions of a public nature, or

(b) is providing under a contract made with a public authority any service whose provision is a function of that authority.

13. Schedule I of the Act can be amended through order by a Secretary of State or the Minister for the Cabinet Office. Since the Act achieved royal assent a number of public bodies have been added to Schedule I so that they are public authorities for the purposes of the Act.
14. The Commissioner has checked the most up-to-date version of Schedule I and there is no mention of the NMRN. The Commissioner is satisfied that the NMRN is not a public authority pursuant to an order issued under section 5 of the Act.

¹ <https://www.gov.uk/government/organisations/royal-naval-museum>

² See Ministry of Defence section – <https://www.gov.uk/government/organisations>

Section 6 – publicly-owned companies

15. Section 6 of the Act states:

6. Publicly-owned companies

(1) A company is a “publicly-owned company” for the purposes of section 3(1)(b) if –

- (a) it is wholly owned by the Crown,*
- (b) it is wholly owned by the wider public sector, or*
- (c) it is wholly owned by the Crown and the wider public sector.*

(2) For the purposes of this section –

(a) a company is wholly owned by the Crown if, and only if, every member is a person falling within sub-paragraph (i) or (ii) –

- (i) a Minister of the Crown, government department or company wholly owned by the Crown, or*
- (ii) a person acting on behalf of a Minister of the Crown, government department or company wholly owned by the Crown,*

(b) a company is wholly owned by the wider public sector if, and only if, every member is a person falling within sub-paragraph (i) or (ii) –

- (i) a relevant public authority or a company wholly owned by the wider public sector, or*
- (ii) a person acting on behalf of a relevant public authority or of a company wholly owned by the wider public sector, and*

(c) a company is wholly owned by the Crown and the wider public sector if, and only if, condition A, B or C is met.

(2A) In subsection (2)(c) –

(a) condition A is met if –

(i) at least one member is a person falling within subsection (2)(a)(i) or (ii),

(ii) at least one member is a person falling within subsection (2)(b)(i) or (ii), and

(iii) every member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii),

(b) condition B is met if –

(i) at least one member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii),

(ii) at least one member is a company wholly owned by the Crown and the wider public sector, and

(iii) every member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii) or a company wholly owned by the Crown and the wider public sector, and

(c) condition C is met if every member is a company wholly owned by the Crown and the wider public sector.

16. Section 6(1) provides the conditions for when a company can be considered a "publicly-owned company" for the purposes of section 3(1)b. Those conditions are then explained in sections 6(2) and 6(2A).

17. The difference between sub-sections (2) and (2A) is that the latter is easier to fulfil, as it only requires one member of a company to be wholly owned by the crown, the public sector, or the crown and the public sector. The former requires every member to be wholly owned by the crown, the public sector, or the crown and the public sector. For this reason the Commissioner has worked with the definition at section 6(2A).

18. The term "member" is not defined in the Act. However, in company law terms, a member is a person whose name is entered in the register of members of a company. A definition is provided in section 112 of the Companies Act 2006:

"(1) The subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration become members and must be entered as such in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company."

19. The NMRN's Trustees' Report and Consolidated Financial Statements 2015-16³ states the following on its members:

"The Trustees, who are also the Members and Directors of the National Museum of the Royal Navy for the purposes of company law...Overall control of the National Museum is the responsibility of the Board of Trustees."

20. Companies House states the NMRN is a Private Limited Company and provides a list of the "officers" at the NMRN.⁴ The Commissioner does not see the definition of officers as having any significant difference from members for the purposes of this decision. To the best of the Commissioner's knowledge, this list provides a list of private individuals; none of whom can be said to be a person acting on behalf of a relevant public authority or of a company wholly owned by the wider public sector.

21. The NMRN had its legal representatives provide the following on the legal structure of the NMRN:

"NMRN is established as a company limited by guarantee, and its governing document is its Articles of Association, which set out its charitable objects (i.e. its charitable trusts).

NMRN's organisational structure means that the members of the charity are not ministerial appointees, but are the individuals who are the members of the board of trustees from time to time. The trustees are not appointed by the MOD, or any other government department, or by any public authority or a company owned by the public sector.

...

The charity therefore operates at arm's length from the MOD and the Crown has no right to appoint or nominate trustees / members of the charity."

22. The NMRN's legal representatives argued that the NMRN is a private limited company, whose members are appointed by the private individuals who are on the board of trustees. As these members are acting as private citizens they cannot be said to be owned by the Crown, or by the public sector.

23. The Commissioner's view is that NMRN is not a public authority by virtue of section 6 of the Act. The Commissioner notes that the NMRN is a charity registered with the Charity Commission,⁵ and she also notes that

⁴ <https://beta.companieshouse.gov.uk/company/06699696/officers>

⁵ [Charity Commission webpage](#)

the NMRN is the only executive non-departmental public body sponsored by the Ministry of Defence that is not listed in Schedule I of the Act. Further, the information available through Companies House corresponds with the submissions from the NMRN's legal representatives, all of which strongly indicates that no member of the NMRM is a person acting on behalf of a relevant public authority or of a company wholly owned by the wider public sector. The Commissioner considers this demonstrates that the NMRN has a structure which means that it does not meet the conditions listed in section 6(2) or section 6(2A).

Commissioner's decision

24. The Commissioner's decision is that the NMRN is not a public authority by virtue of any of the tests that are specified within section 3(1) of the Act. As the NMRN is not a public authority it is not obliged to respond to the complainant's request within the provisions of the Act. No steps are required.

Right of appeal

25. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

26. 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.
27. 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

**Gerrard Tracey
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