

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 November 2011

Public Authority: The Ministry of Defence
Address: Main Building
Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant requested specific file versions of Ministry of Defence badges.
2. The Commissioner's decision is that the Ministry of Defence was correct to refuse the request by relying on the section 21 exemption of the Act.
3. The Commissioner requires no steps to be taken.

Background

4. Prior to the request for information at issue in this case, the complainant had made another request for information to the Ministry of Defence (MOD). Amongst other things, as part of that request the complainant asked to be provided with a copy of the MOD's logo guidelines, branding manual or equivalent document in an electronic form. The MOD provided him with a copy of "*The Design Style Guide*".
5. There are illustrations in that MOD publication of the seven formats of the MOD Badge. Each illustration is named in two ways, one of these being the name of the relevant graphic file, eg MOD_badge_new_cmyk.ai (.ai being the filename extension used by Adobe Illustrator). The Joint Services Badge is also illustrated and reference is made to high resolution artwork for the badge.

Request and response

6. The complainant wrote to the Ministry of Defence (MOD) on 21 March 2011, requesting a copy of specific graphical files and artwork. These were referred to in a document provided to him in response to a previous request for information about the MOD logo.

7. His request in this case was:

"Thank you very much for your helpful response. Now that I have had a chance to read the supplied guidance, I would like to also request a copy of the graphical files referred to in the document. Specifically all of the .ai Adobe Illustrator files mentioned, plus the high-resolution artwork of the Joint Services badge which apparently exists".

8. The MOD responded on 15 April 2011. It stated that it considered this request to be a repeat of the complainant's previous request as a result of which it had disclosed information to him. It therefore cited the exemption in section 21 of the Act (information accessible to the applicant by other means). The complainant requested an internal review on 15 April 2011.

9. Following an internal review the MOD wrote to the complainant on 4 May 2011. It upheld its citing of section 21 and additionally cited section 31(1) (law enforcement).

Scope of the case

10. The complainant contacted the Commissioner on 6 May 2011 to complain about the way his request for information had been handled.

11. The Act provides a right of access to information rather than copies of documents. In the Commissioner's view, a request for a particular document should generally (unless the context makes clear that this is not the case) be interpreted as a request for all of the information recorded in that document.

12. The Commissioner considers the scope of his investigation to be the MOD's citing of the exemptions in sections 21 and 31. In the circumstances of this case, the Commissioner has also found it necessary to address section 11 (means by which communication to be made).

Reasons for decision

Section 11 Means by which communication to be made

13. Section 11 of FOIA concerns the means by which information should be made available. It enables the complainant to express a preference for communication: for example, provision of a copy of the information, the right to inspect the information or to receive a digest or summary of the information. In this case, the complainant asked to be provided with a copy of the requested information.
14. Section 11(1)(a) refers to a copy of the information in a "*permanent form or in another form acceptable to the applicant*". The Commissioner reads section 11(1)(a) as providing the applicant with the right to a copy of the information and to have that copy in the form that they prefer – for example, hard copy (paper/printed), electronic copy, audio tape, or video tape.
15. Similarly, the First-tier Tribunal (Information Rights) ("the tribunal"), recently found that the meaning of section 11 is clear and that on a straightforward reading it does not include the ability to express a preference for the electronic format in which information should be provided. The tribunal's view is that the distinction made in section 11 is one between "*permanent form*" or "*another form*" (ie paper or electronic forms).
16. In this case, the complainant requested some of the information in a particular format, namely .ai Adobe Illustrator files. The Commissioner's view is that there is a distinction between the form in which a piece of information is communicated (eg an electronic form), and how the data is arranged within that form (ie the specific software format). In short, although an applicant can ask for an electronic copy they are not entitled to specify down to the next level, the specific software format.
17. The Commissioner notes that the information in relation to the earlier request was provided in electronic form. The focus of the Commissioner's investigation in this case has therefore been on whether all of the requested information is accessible to the complainant or whether additional information exists which falls within the scope of the request.

Section 21 Information accessible to applicant by other means

18. Section 21 states that a public authority does not need to provide information under section 1 of the Act if that information is reasonably accessible to the applicant by other means.

19. As a result of an earlier request, the MOD had provided the complainant with a copy of its publication known as "*The Design Style Guide*". It therefore told the complainant that it considered the request in this case was a repeat of the earlier request because:

"the files you have requested contain images that are included within the information that you have already received in a permanent form".

20. The complainant argued that:

"My first request was for a copy of the MOD's branding guidelines which do (obviously) contain graphic images of the MOD logo. The copy you sent me contained exceptionally low-resolution images.

The guidelines specifically refer to high-resolution Adobe Illustrator files of the logo. It is these that I requested the second time. Section 21 cannot apply because at no time have the Adobe Illustrator files been available to me.

Why would the guidelines state 'The MOD badge is available in seven formats' and 'High-resolution artwork can be obtained from..' if that material was itself contained in the document? No, that material is clearly separate, hence the note that one need apply for it separately, as I did indeed do".

21. The question the Commissioner must decide in this case therefore is what, if anything, is the difference between the information accessible to the complainant and the information requested? In other words, do the .ai files and the high-resolution artwork contain information over and above the information accessible to the complainant as a result of his earlier request?

22. The complainant argued that:

"The high resolution files contain further information such as precise colour shades, graphical construction details and so on which the low-res version you have made available within the guidelines simply cannot do".

23. The MOD responded, telling him that this statement:

"was not strictly true as the guidelines give specific information on the colours adopted in the MOD badge under formats 3 and 4 (page 10) plus general sizing guidance and font types. Therefore I am not sure what further information you expect to receive from the high resolution images which are not contained within the guidance".

24. The Commissioner notes that the complainant acknowledges that he has been provided with images of the MOD logo. The complainant has argued that the guidelines state that the badge is available in seven formats. Having considered the matter, the Commissioner's view is that these seven "*formats*" appear to be the one logo presented in seven different colourways, each of which has a unique filename. The Commissioner notes that the colour shades used in the colour versions of the badge are contained in the information accessible to the complainant.
25. The MOD told the Information Commissioner that the complainant:

"has the same information as that captured in the high-res images – it's just the format that is different".
26. Having considered the matter and having had sight of the information accessible to the complainant, the Commissioner is satisfied that section 21(1) of the Act is engaged.
27. Section 21 is not subject to the public interest test: if, as a matter of fact the information requested is accessible to the applicant by other means, then it is exempt.
28. As the Commissioner is satisfied that section 21 is engaged, he has not gone on to consider the MOD's citing of the exemption in section 31.

Right of appeal

29. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. 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.
31. 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

Steve Wood
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