

From Andrew Tranham



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CIO-CI-Information Access Review

AIT: 21-03-2011-154548-001

Our Ref: D/CIO/3/18/1/526

Via email: request-63377-f9d66f5e@whatdotheyknow.com

4 May 2011

Dear Mr. Elibank,

FREEDOM OF INFORMATION ACT 2000 INTERNAL REVIEW

1. I am writing in response to your email of 15 April 2011 in which you requested an independent internal review of your request under the Freedom of Information Act (the Act) made on 20 March 2011 as you were dissatisfied with the response you received.
2. In order to respond to these complaints I have now completed a full independent review of the handling of your request and substance of the responses you received. The purpose of the internal review is to consider whether the requirements of the Act have been fulfilled. The scope of the review is defined by Part VI of the Code of Practice under section 45 of the Act, which can be found at: <http://www.justice.gov.uk/guidance/dpcs/foi-section45-code-of-practice.pdf>.

Handling of your Request

3. In conducting my review of the handling of your request I have focused on the following requirements and sections of the Act:
 - a. Section 1(1)(a) which, subject to certain exclusions, gives any person making a request for information to a public authority the entitlement 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;
 - b. Section 10(1) which states that, subject to certain provisions allowing extensions of time, the public authority must comply with the requirements of Section 1(1) promptly, and in any event not later than the twentieth working day following the date of receipt;
4. Your initial request for information was received by the MOD on 21 March 2011; a substantive response was therefore due no later than 17 April 2011. You received a

substantive response dated 15 April 2011; within the twenty day timeframe set out in the Act. This request was made after a previous request regarding the MOD Logo guidelines, case reference 25-02-2011-105743-003.

5. The substantive response explained that section 21 had been engaged and gave a brief explanation of the reason for this. You were informed that if you were unhappy with this response, you should contact the Directorate Media and Communication (DMC) unit in the first instance to attempt an informal resolution. At this stage however, you initiated an internal review.
6. The substantive response also requested that you explain why the information that had been provided to you was not suitable and why you needed high resolution images. It also reminded you that the MOD logo is protected by and controlled through copyright and trademark law and that a licence is normally required for commercial use. Having read the guidance and discussed the issue with DMC however, a licence is required in all circumstances for the external use of the MOD logo. I apologise that this was not made clearer in your substantive response. It was however, clearly addressed in the guidance where it provided the process for applying for a licence (see page 14 of the Guidelines).
7. You were informed of your rights to appeal and in other aspects your review was handled in accordance with the Act.

Substance of your Request

8. The following exemptions are relevant in this case:
 - a. Section 21(1) which states that, information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information;
 - b. Section 31(1) which states that, information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice (a) the prevention or detection of crime.
9. Your request for information made on 20 March 2011 requested the following information:

"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."
10. In the course of this review, I have analysed the use of section 21 and identified the potential engagement of section 31(1). Section 31(1) is a qualified exemption and therefore a Public Interest Test (PIT) was required and was completed during the review. The arguments made in this PIT are explained below in paragraphs 16 and 17.

Section 21

11. Section 21 was engaged as the guidelines that were provided to you contained images and details of the MOD's logos. You were therefore told that high resolution .ai images would not be released to you and that if the images you had were not suitable you should explain why this was the case. It was also pointed out that a licence is normally required for commercial use of these images. However, as I explained in paragraph 6 above, a licence is always required for copies of the high resolution images.

12. In your request for an internal review you stated that “the high-resolution files contain further information such as precise colour shades, graphical construction details and so on which the low-res versions you have made available within the guidelines simply cannot do”. This is 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.
13. Furthermore, you state that the “High-resolution artwork can be obtained from DGM C DefPR...” and “that one need apply for it separately, as I did indeed do”. However, the guidance clearly indicates that you cannot simply apply for release of the images to you, but for a licence allowing the use and release of the images to you. I have quoted the passage below to illustrate this point:

“The MOD badge is a trademark and must not be displayed inappropriately and/or without our permission (which would weaken the brand’s impact and integrity). Therefore every use on a communication that does not originate from within MOD (i.e. externally-produced, externally-facing communications) need to be licensed by the Directorate of Intellectual Property Rights (D/IPR) at Abbey Wood. This licence takes the form of an email, and outlines the circumstances in which the badge can be used. It can then be used in this way only (i.e. the licence cannot be transferred).”

Having spoken to DMC and referred to the guidelines above, I can confirm that the MOD do not provide high resolution images of the MOD badge to anyone without a licence. Therefore, as you have not applied for a licence or demonstrated a need for the high resolution images, the substantive response was correct to withhold this information under section 21, as you already hold these images in an appropriate format for an individual who does not have a licence to publish them. Where the format of requested information provides the requester with information that would enable that individual to publish authentic images without a licence, the information is also exempt under section 31(1) because it would prejudice the prevention of crime. Section 31(1) is qualified exemption and subject to a test of the public interest, the results of which are described below.

Section 31 – Public Interest Arguments

14. The public interest argument for the release of the information is that the Act places an emphasis on the release of information and this is met because the images are already in the public domain. There are no public interest arguments in favour of releasing images in higher resolution formats to an individual who does not have a licence to use them.
15. The arguments against the release of the high resolution images to an individual who does not have a licence to use them are that consideration about disclosure under FOI is not considered to be a release to one individual but to the public at large. Disclosure of images outside of the licensing regime would make protecting the MOD’s copyright of the images very difficult and may lead to illegal abuse of the images. The only possible benefit from possessing the high resolution image is to allow the manufacture of high quality reproductions of the image. Without a licence this action infringes the MOD’s copyright and may prejudice the ability to prevent or detect fraudulent behaviour or crimes. Without suggesting for a moment that your reasons for requesting the information are anything other than lawful, in considering that disclosure to you is disclosure to the public at large, we need to have regard to

the possibility that if an individual is trying to circumvent copyright by publishing without a licence it is conceivable that this is for illegal acts such as deception or fraud.

16. As a result, this review has found that the information in scope should also be exempted under section 31(1).

Conclusion

17. In conclusion I find that:

- a. The high resolution images were correctly exempted under section 21 and 31(1).

18. If any aspect of this review is unclear, I should be happy to explain it. If you are dissatisfied with the review, you may make a complaint to the Information Commissioner under the provisions of section 50 of the Act. Further details of the role and powers of the Commissioner can be found in his website at: www.ico.gov.uk. His address is Information Commissioner's Office, Wycliffe House, Water Lane, WILMSLOW, Cheshire, SK9 5AF. Fax: 01625 524 510.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. T. Tranter', with a horizontal line underneath.