



## MOD FOI/EIR Compliance Notes

### FOI Exemptions

#### CN19: Section 21 (Information Reasonably Accessible to the Applicant by Other Means)

##### *Document history*

<i>Version No</i>	<i>Reference</i>	<i>Date Issued</i>	<i>Review Date</i>
1	CIO-3-19-1-3	September 2012	September 2013

##### *What this is about:*

This note provides an overview on exemption section 21 of the Freedom of Information (FOI) Act – information reasonably accessible to the applicant by other means. It provides an outline of MOD compliance points to consider when engaging section 21 and other exemptions to consider.

##### *Detail:*

Section 21 exempts information that is already reasonably accessible to the applicant by other means.

- The information needs to be reasonably accessible to the person making the request
- Section 21 may apply even if a fee is charged for supplying the information.
- Where information is exempt under section 21, the FOI Act does not allow a public authority to 'neither confirm nor deny' that fact.
- Section 21 is an absolute exemption and is not subject to a public interest test.

##### *MOD compliance points:*

- You need to be alert to any attributes of an individual requester which may mean that information is more or less accessible to him or her than it is to the public at large.
- Checks should be made to see whether the requester already has the information or if the information is already in the public domain. If information is available on the internet, it is good practice to provide the link – not the information - unless you believe the requester has a particular need for this information to be provided or has requested it in a particular format. The information can then be exempt from disclosure under section 21. The information will not be reasonably accessible to an elderly or infirm requester if they tell you that they don't have access to the internet or a local library.
- FOI does not subsume other legal access rights, nor to give alternative routes for access where existing regimes are already available. Such information is deemed to be reasonably accessible to the applicant and therefore exempt. This includes information which is available only for inspection, either voluntarily or under another enactment. If the applicant makes it clear that accessibility poses problems, then you should consider any requested arrangements e.g. in Braille or a minority language. The FOI Act does NOT place an obligation to do this, only to consider doing so where it is "reasonably practical". ([See Section 1 - Initial Handling of FOI Requests: Identifying a Valid Freedom of Information Request](#))

## MOD FOI/EIR Compliance Notes

- A request for information or particular documents which are already available in published sources, or in The National Archives or other archives is also exempt. Just because MOD holds a copy of, or originated, the information, we do not have to supply a copy under FOI. It is sufficient to advise the applicant that what they seek is available in a public library or archive.
- Even when providing the information you should also say that section 21 applies; state where it can be found and explain that in this instance you are able to provide the information.
- Check if information is made available in accordance with the MOD Publication Scheme. Any payment required must be specified in, or determined in accordance with the Publication Scheme. [The Ministry of Defence Publication Scheme](#).
- You do not need to provide information that there would normally be a charge for just because it has been requested under the FOI Act. If there is a charge for the information, for example for a copy of a report, this is still covered by section 21.
- Even if information is exempt under section 21, you must state whether or not the requested information is held and to communicate that to the requester as required under section 1 of the FOI Act.

### *MOD Casework Example:*

- **MOD Badges** – A request was received for a copy of the MOD's logo guidelines, branding manual in electronic form. MOD provided a copy of "The Design Style Guide". A request was subsequently received for specific file versions of the MOD badges i.e. particular format, namely .ai Adobe Illustrator files that were referred to in the Guide. It was considered that this request was a repeat of the requester's previous request as a result of which MOD had already disclosed the images contained in the Guide. ICO found that although an applicant can ask for an electronic copy they are not entitled to specify down to the next level, the specific software format. The ICO view is that the seven "formats" of the MOD logo specified in the Guide appear to be one logo presented in seven different colour ways, each of which has a unique filename. The Commissioner noted that the colour shades used in the colour versions of the badge are contained in the information accessible to the complainant i.e. the Guide. See ICO decision notice FS50389827 dated 3 November 2011 at [http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs\\_50389827.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50389827.ashx)

For further information – see the ICO's detailed guidance:

[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/freedom\\_of\\_information\\_and\\_environmental\\_information.aspx](http://www.ico.gov.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information.aspx)