



Ministry
of Defence

Secretariat
Defence Infrastructure Organisation
Kingston Road
Sutton Coldfield
B75 7RL

E-mail: diosec-parli@mod.uk

www.gov.uk/DIO

[REDACTED]
[REDACTED]
3 July 2017

Ref. FOI2017/05744

Dear [REDACTED]

Thank you for your email of 7 June 2017 requesting the following information:

'.....We request the Ministry of Defence, DIPR and all agencies involved with this registration, to make available all available documents, for example, but not restricted to, records of meetings, minutes, applications, electronic or paper-based, and information within the public domain, which cannot be classified as 'restricted' or subject to any other Act preventing public disclosure.

Firstly to answer the question, how the MOD, and The Secretary of State for Defence, was able to register the name 'Operation Nightingale' as their own when the name was not an original title conceived by the MOD; they technically do not hold the Intellectual Property. In addition, and to the best of our informed knowledge from enquiries undertaken, why did they not consult 3rd parties with a vested interest in its usage?

We understand the confidentiality of 3rd parties within the MOD or its agencies may need to be protected as part of your response to our enquiry, but in relation to the first part of our enquiry, can you state, who initiated the request and why?

Secondly, if the Defence Archaeology Group has to the best of our knowledge, and from information gained at official meetings at which this has matter has been raised, been disbanded. Who in effect is operating the current programme, which appears from media publicity by all parties concerned to be directed by [REDACTED] and one [REDACTED] Breaking Ground Heritage Ltd., and Wessex Archaeology.

As [REDACTED] has a vested interest of the Company held by [REDACTED] a former Royal Marine, as a signatory to the company charter, and thus a member; is it acceptable contracts are being made to said company for excavations on MOD properties, if this interest has not been declared?

Secondly, would it be possible to clarify under this FOI request, from documents held, in form of meetings, formal request for registration of trade mark etc., if the intention is to extend the copyright to the programme as a whole, not just in name?

We understand the name 'Operation Nightingale' can be copyrighted and protected by the MOD, also we agree there must exist satisfactory protection for serving personnel and WIS, Veterans, and a similar programme could be subject to scrutiny and or official safeguards being required.

However, the MOD must be aware that under IP law, a concept, cannot be copyrighted nor can any derivative work, and this could include the current proposal in Scotland.

In conclusion, we request the following information to be made available, where it meets the guidelines of the FOI Act. Why and by who's instigation and subsequent authority was the name 'Operation Nightingale' registered as an official Trademark, and for what purpose, either to be operated as an 'official' MOD programme or prevent non-MOD related programs involving Veterans or WIS personnel and under what new authority or agency? Furthermore, under what guidelines surrounding IP law, other than by partial use of a name or similarity, for example, 'Operation Nightingale Heritage' can the MOD lodge an objection to said name(s) with the Intellectual Property Office'. Finally, does the registration of the trademark, extend to the underlying 'concept' of the programme, and would this subsequently prevent an organisation, in a charitable or non-commercial (considering Breaking Ground Heritage Ltd.) capacity, using the social model as the basis for a similar programme to support veterans?

Acknowledging the above request contains a lot of factual information, and consists of two parallel enquiries, we give the MOD the regulatory time period to respond to our request, and reserve the right to seek further action should any unnecessary delays occur in your response.'

I am treating your correspondence as a request for information under the Freedom of Information Act 2000 (FOIA).

A search for the information has now been completed within the Ministry of Defence (MOD) and I can confirm that some information in scope of your request is held, but some of the information falls within the scope of a qualified exemptions provided for at Section 42 (Legal Professional Privilege) of the FOIA and has been withheld.

Section 42 is a qualified exemption and is subject to a public interest test which means that the information requested can only be withheld if the public interest in doing so outweighs the public interest in disclosure.

Section 42(1) has been applied because some of the information has been provided by lawyers in confidence as legal advice. The outcome of the balance of the public interest test concluded that whilst release would promote openness, transparency and a further understanding of government processes in decision making. It has been necessary to weigh the factors favouring disclosure on a case by case basis against the strong public interest in protecting the Legal Professional Privilege which has been recognised by the courts and the Information Tribunal. The balance of the public interest therefore lay in withholding this information you desire.

The information you have requested can be found enclosed, below:

- 1) Firstly to answer the question, how the MOD, and The Secretary of State for Defence, was able to register the name 'Operation Nightingale' as their own when the name was not an original title conceived by the MOD; they technically do not hold the Intellectual Property. In addition, and to the best of our informed knowledge from enquiries undertaken, why did they not consult 3rd parties with a vested interest in its usage?

Operation Nightingale as a programme has been a defence programme from the outset. An initial meeting on this subject between Defence Archaeology Group (DAG) and Defence Infrastructure Organisation (DIO) Environmental Support and Compliance agreed that the Operation Nightingale "brand" should be protected for defence use. MOD officials were present and representing DAG at this meeting. Registration of the Operation Nightingale brand for defence was unanimously agreed by those present. Subsequently a meeting was held with major stakeholders where registration of the brand for defence was also approved.

- 2) *We understand the confidentiality of 3rd parties within the MOD or its agencies may need to be protected as part of your response to our enquiry, but in relation to the first part of our enquiry, can you state, who initiated the request and why?*

The request was initiated by DIO Environmental Support and Compliance as agreed at a meeting with DAG, to protect the brand from mis-use and to ensure that any activity delivered under the Operation Nightingale banner met the required standards.

- 3) *Secondly, if the Defence Archaeology Group has to the best of our knowledge, and from information gained at official meetings at which this has matter has been raised, been disbanded. Who in effect is operating the current programme, which appears from media publicity by all parties concerned to be directed by [REDACTED] and one [REDACTED] [REDACTED] Breaking Ground Heritage Ltd., and Wessex Archaeology.*

DAG has not disbanded. The current programme of Operation Nightingale activity is delivered by a number of partner organisations in agreement with DIO who grant use of the Operation Nightingale title.

- 4) *As [REDACTED] ' has a vested interest of the Company held by [REDACTED] a former Royal Marine, as a signatory to the company charter, and thus a member; is it acceptable contracts are being made to said company for excavations on MOD properties, if this interest has not been declared?*

No contracts or financial payments have been granted to Breaking Ground Heritage by the MOD.

- 5) *Secondly, would it be possible to clarify under this FOI request, from documents held, in form of meetings, formal request for registration of trade mark etc., if the intention is to extend the copyright to the programme as a whole, not just in name?*

This information has been withheld under Section 42 (Legal Professional Privilege) FOIA.

- 6) *We understand the name 'Operation Nightingale' can be copyrighted and protected by the MOD, also we agree there must exist satisfactory protection for serving personnel and WIS, Veterans, and a similar programme could be subject to scrutiny and or official safeguards being required. However, the MOD must be aware that under IP law, a concept, cannot be copyrighted nor can any derivative work, and this could include the current proposal in Scotland.*

MOD has not copyrighted a concept. Trade mark does apply to the Operation Nightingale programme but does not apply to anyone else undertaking community archaeology under a different name.

- 7) *In conclusion, we request the following information to be made available, where it meets the guidelines of the FOI Act. Why and by who's instigation and subsequent authority was the name 'Operation Nightingale' registered as an official Trademark, and for what purpose, either to be operated as an 'official' MOD programme or prevent non-MOD related programs involving Veterans or WIS personnel and under what new authority or agency?*

This was initiated by DIO and was authorised and undertaken by the MOD. The purpose was to protect the name 'Operation Nightingale' and to ensure that any activity undertaken under this banner met suitable standards to protect MOD.

- 8) *Furthermore, under what guidelines surrounding IP law, other than by partial use of a name or similarity, for example, 'Operation Nightingale Heritage' can the MOD lodge an objection to said name(s) with the Intellectual Property Office'.*

The full list of the grounds for objecting to the registration of a trade mark is set out in sections 3 and 5 of the Trade Marks Act 1994.

- 9) *Finally, does the registration of the trademark, extend to the underlying 'concept' of the programme, and would this subsequently prevent an organisation, in a charitable or non-commercial (considering Breaking Ground Heritage Ltd.) capacity, using the social model as the basis for a similar programme to support veterans?*

Anyone can undertake similar programmes as long as the naming of such programme cannot be confused or associated with the Operation Nightingale brand or purport to be officially endorsed or linked to MOD.

Under Section 16 of the Act (Advice and Assistance) you may find it helpful to note that there is no intention of opposing any organisation/group undertaking community archaeology with or without WIS/veterans unless there is inference that it is being undertaken under the MOD registered Operation Nightingale trade mark or as an MOD supported activity.

MOD officials are unaware of any evidence of bullying or harassment by MOD staff. If there is a complaint you wish to raise, please visit <https://www.gov.uk/government/organisations/ministry-of-defence/about/complaints-procedure> for further information on our complaints process.

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact me in the first instance. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.org.uk>.

Yours sincerely,

DIO Secretariat