

# Guidance on Information Access Legislation and Ordnance Survey data in relation to the PSGA<sup>1</sup>

## 1 Purpose of this Guidance

Ordnance Survey has produced this Guidance to assist PSGA members in responding to requests to provide Ordnance Survey Licensed Data (including data created using such Licensed Data) under the current information access legislation.

Section 3 of the [Code of Practice](#) issued under Section 45 of the FOIA (and section 7 of the [Code of Practice on the Discharge of Functions by Scottish Public Authorities](#) issued under section 60 of the FOISA) specifically refers to the fact that public authorities should consult with others who have an interest in the data which is the subject of a Disclosure Request. This Guidance document explains the circumstance in which Ordnance Survey is happy for its Licensed Data (or data derived from it) to be released, thereby saving both PSGA members and Ordnance Survey time which would otherwise be spent looking at requests on an individual basis. The Guidance also sets out those areas where Ordnance Survey may have concerns about its information being disclosed.

The Code, which is referenced in the PSGA Member Licence (in clause 12.4, which is reproduced at Appendix 2 of this Guidance), states that in some cases, such consultation is to enable the authority to determine whether any FOIA (or, in relation to the Scottish Code, FOISA) exemptions apply. Whilst, under the FOIA or FOISA, it is for the party receiving the Disclosure Request to determine whether or not such information should be disclosed, if a Member discloses Licensed Data in circumstances where an exemption should have been invoked, Ordnance Survey may suffer commercial (or other) prejudice; such a disclosure could also comprise a breach of the Member Licence.

(Note that the term Licensed Data has the same meaning in this Guidance as in your PSGA Member Licence.)

## 2 Freedom of Information Act 2000 (“FOIA”) and Freedom of Information (Scotland) Act 2002 (“FOISA”)

2.1 In general terms, [FOIA](#) applies to information held by English, Welsh and UK public authorities and [FOISA](#) applies to information held by Scottish public authorities. This Guidance assumes that you are subject to FOIA or FOISA.

Our guidance as to the approach to be taken following a request under FOIA or FOISA is different depending on the type of Licensed Data requested.

Note that this Guidance is specifically aimed at Ordnance Survey Licensed Data, and the factors and exemptions which Ordnance Survey considers will be relevant. Other factors and exemptions may be relevant to your data, and these are not addressed in this Guidance.

### 2.2 Ordnance Survey Licensed Data without additional information overlaid or added – hard copies, raster and vector data

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The contents of this Guidance are based on Ordnance Survey’s understanding of the law as it stands and may be revised as legislation is interpreted, reviewed and updated. This is not legal advice to you and should not be relied upon as such. Moreover, nothing in this Guidance is to be interpreted as any form of permission or licence from Ordnance Survey to use its mapping or data; use of Licensed Data is covered by formal licences including the PSGA Member Licences.

Note that to the extent that you are requested to provide data that has been created using an Addressing dataset, this is likely to include Royal Mail data, and this Guidance assumes that any such data constitutes “Cleansed Data” (as defined in Appendix 3 Part A of the PSGA Member Licence). Where this is not the case, please contact the PSGA Helpdesk ([psga@os.uk](mailto:psga@os.uk)).

If a request is made for Ordnance Survey Licensed Data (whether in hard copy, raster or vector format) (**Base Data**), that has not had any additional information added or overlaid by you, that request should be refused.

The Base Data is reasonably accessible to the applicant by other means, for example direct from Ordnance Survey or our licensed distributors, and is therefore exempt from the general right of access in accordance with [Section 21](#) of FOIA or [Section 25](#) of FOISA. The applicant may be directed to the Ordnance Survey website at [www.os.co.uk](http://www.os.co.uk). Note that information can be reasonably accessible notwithstanding that payment is required. (The refusal may also be justified on the basis that the mapping is exempt because its disclosure would, or would be likely to, prejudice Ordnance Survey's commercial interests (see [Section 43](#) of FOIA or Section 33 of FOISA)).

### 2.3 **Data created using Ordnance Survey Licensed Data – all formats excluding vector format**

If a request is made for data created by you using Licensed Data (which may include environmental information as defined in the [Environmental Information Regulations 2004 \(EIR\)](#) or [Environmental Information \(Scotland\) Regulations 2004 \(EISR\)](#) – see section 3 below), then the first consideration is to determine the relevant terms on which Ordnance Survey licenses the relevant datasets to you.

#### 2.3.1 *Minimal restrictions on disclosure*

**OS OpenData** - if the data has been created using only OS OpenData™, you will be able to provide this data to any applicants under FOIA or FOISA without restriction, save only that you must acknowledge the source of the data as indicated in the [Open Government Licence \(OGL\)](#).

**Licensee's Data** - in the event that your created data does not incorporate or infringe any IPR in, and can be used independently of, the Licensed Data, such data will not be subject to the terms of your Member Licence (see clause 2.3 of the PSGA Member Licence) and can be provided to applicants without restriction.

**Free to Use Data** - if your data falls within the definition of Free to Use Data it can be provided to applicants with minimal restrictions (see clause 2.4 of the PSGA Member Licence).

**Open Release of Derived Data/Presumption to Publish** – if your data has been released under the provisions relating to Open Release of Derived Data (also known as the Presumption to Publish), it can be provided to applicants under FOIA or FOISA without restriction, save only that you must acknowledge the source of the data as indicated in the [Open Government Licence \(OGL\)](#) (see clause 2.5 of the PSGA Member Licence).

**Exempted Dataset** - if the relevant dataset has been granted an exemption pursuant to the Exemptions process (see clause 2.6 of the PSGA Member Licence), you will have been informed of more relaxed terms which apply to your dataset (likely to be based on the Open Government Licence).

#### 2.3.2 **Release of data<sup>2</sup> subject to Public Sector End User Licence**

Where none of the circumstances outlined in paragraph 2.3.1 above apply, the applicable licensing terms will be those set out in your Member Licence, in which case our guidance as to the appropriate response is as follows.

First, you should consider whether the requested data is reasonably accessible to the applicant by other means, which would make it exempt from the general right of access in accordance with [Section 21](#) of FOIA or [Section 25](#) of FOISA. In particular, have you made the data available for public viewing on the internet (see paragraph 4.2.7 of Appendix 1 of the PSGA Member Licence)? If so, you should refuse to grant access to the data on this basis.

If the data is not reasonably accessible by other means, then there is a possibility that, where disclosure would be likely to prejudice Ordnance Survey's commercial interests, you would be entitled to refuse to disclose the data based on [Section 43](#) of FOIA or [Section 33](#) of FOISA.

However, in the interests of ensuring open access to information, Ordnance Survey is happy for you to provide a single copy of the data to the applicant, provided the following requirements are fulfilled:

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<sup>2</sup> Please note that this paragraph does not apply in relation to Gazetteer Datasets created by you using any Licensed Data. Due to the increased risk to us and our Licensed Partners in relation to Gazetteer Datasets, we would request that you contact us wherever a request is received for the release of a Gazetteer Dataset.

- 2.3.2.1 the applicant must enter into a Public Sector End User Licence (as defined in Appendix 1 of the PSGA Member Licence) prior to receiving the data. The Public Sector End User Licence must be entered into either by signature of a hard copy or by click accepting the terms online (in which case, you must ensure that you retain relevant details of the licensee). (For the avoidance of doubt, Ordnance Survey agrees that, in respect of the definition of End User Purpose, your Core Business shall include responding to specific requests under FOIA or FOISA.)
- 2.3.2.2 the map must be supplied in hard copy paper form or in a raster format and you must use your reasonable endeavours to prevent third parties from being able to edit the map or from extracting Licensed Data from the map;
- 2.3.2.3 the map must be of an appropriate scale on which to view the requested information, preferably on no larger than A4 paper size, and must, so far as is practicable, only show the area requested; and
- 2.3.2.4 you must comply with all obligations in your PSGA Member Licence relating to End User Licensing, including, in particular, the map must contain the appropriate Crown copyright and database right acknowledgement and licence number.

Note that, when giving access to information under FOIA or FOISA, you cannot place any conditions or restrictions on that access, including for example requiring the requester to sign an agreement (such as the Public Sector End User Licence) before they are given access to the data. As such, the approach suggested under this paragraph 2.3.2 is, technically, a combination of (i) a refusal to disclose the requested data under FOIA or FOISA (relying on one of the exemptions, such as [Section 43](#) under FOIA or [Section 33](#) under FOISA), and (ii) offering to provide access via an alternative route, namely, the Public Sector End User Licence, in accordance with [Section 16](#) of FOIA or [Section 15](#) of FOISA (Duty to provide advice and assistance).

It is worth noting here that access to information under FOIA/FOISA (or EIR/EISR) would not give an automatic right to re-use that information, even in the absence of a Public Sector End User Licence. Most information supplied will be subject to copyright and/or database right, which gives the owner of that copyright and/or database right control over the copying, issuing to the public and publishing of that information. However, since our business is wholly dependent on the licensing of data, we are unable to rely solely on the protection afforded by copyright/database right law, and require the greater protection of the Public Sector End User Licence.

You may, of course, in addition to the above, allow inspection at your premises.

If, following your adoption of the above approach, the applicant is unsatisfied, please contact the PSGA [Helpdesk](#) with the details, as further guidance may be available.

## **2.4 Data created using Ordnance Survey Licensed Data – vector format**

Firstly, note that under FOIA or FOISA, in general the applicant requests and has a right to “information”, rather than information in a particular format (i.e. digital or hard copy). [Section 11](#) of FOIA/FOISA states that the public authority shall so far as reasonably practicable provide the information in the form requested, but can take into account all the circumstances of the request.

However, it is likely that in some cases an applicant will specifically request that Ordnance Survey Licensed Data (including data you have created using Licensed Data) be provided in a digital format. Such requests should generally be refused, and instead an offer be made to provide the information in an alternative (i.e. hard copy or raster) format.

The reason for the refusal of requests for data in a digital format is that the provision of data in digital form would potentially prejudice Ordnance Survey’s commercial interests and therefore be exempt under [Section 43](#) of FOIA or [Section 33](#) of FOISA. This is because the nature of vector data allows it to be relatively easily exploited. Such exploitation could substitute data provided by Ordnance Survey or our licensed partners, and therefore undermine our revenues.

However, if you believe that the nature of the data is such that its disclosure would be unlikely to prejudice Ordnance Survey’s commercial interests, or that disclosure would be supported by particular public interest considerations, and therefore that the [Section 43](#) exemption under FOIA or [Section 33](#) under FOISA should not apply, you may seek further specific guidance by contacting the PSGA [Helpdesk](#).

Ordnance Survey requests that you do not disclose any vector data without the prior written approval of Ordnance Survey. As noted in section 1 above, whilst, under the FOIA or FOISA, it is for the party receiving the Disclosure Request to determine whether or not such information should be disclosed, if a Member discloses Licensed Data in circumstances where an exemption should have been invoked, Ordnance Survey may suffer commercial (or other) prejudice, and such a disclosure could also comprise a breach of the Member Licence.

## 2.5 Amendments to FOIA made by Protection of Freedoms Act 2012 – datasets

In September 2013, a number of changes to FOIA (made by the [Protection of Freedoms Act 2012](#)) came into effect. Amongst other changes, new Sections 11(1A), 11(5), 11A and 11B were introduced, all concerning access to “datasets”.

None of these changes impacts the guidance set out above. This is because any data you create using Ordnance Survey data will be unlikely to fall within the definition of dataset in Section 11(5) of FOIA. In addition, note that Section 11A only applies (i) to datasets which are a “relevant copyright work” as defined in Section 11A(8), and (ii) where the relevant public authority is the only owner of the relevant copyright work; the relevant data is unlikely to fulfil either of these conditions.

## 3 Environmental Information Regulations 2004 (“EIR”) and Environmental Information (Scotland) Regulations 2004 (“EISR”)

3.1 You may be requested to provide information to applicants under the EIR or EISR. This legislation confers on relevant public bodies a duty to make certain environmental information available to the public on request.

### 3.2 Base Data

We believe that Ordnance Survey Base Data will not generally fall within the definition of environmental information. Our mapping states the location of an object within the environment and what that object might constitute; it does not provide information on “the state of the elements of the environment” or “factors, such as substances, energy, noise, radiation or waste” (see [Section 2\(1\)](#) of the EIR or EISR). For example, an Ordnance Survey map will show the position of a river but will not state whether it is polluted or not. Therefore, a request for Base Data under the EIR or EISR will not usually fall within the scope of the legislation, and should be refused.

### 3.3 Data Created by you using Licensed Data<sup>3</sup>

If a request is made under the EIR or EISR for data created by you using Licensed Data, you should:

- 3.3.1 first, consider whether the data may be made available with no or minimal restrictions, as outlined in paragraph 2.3.1 above;
- 3.3.2 if the circumstances outlined in paragraph 2.3.1 do not apply, you should consider whether the requested data is publicly available and easily accessible (albeit in another format) to the applicant (see [Section 6](#) of the EIR or EISR). If so, you should refuse to disclose the requested data;
- 3.3.3 if paragraph 3.3.2 does not apply, Ordnance Survey would not object to the supply of the data in hard copy or raster format on the same basis as set out in paragraph 2.3.1 to 2.3.4 above. In the case of vector data, you should refuse access for the reasons stated in paragraph 2.4 above, and offer instead to make the data available in hard copy or raster format (see [Section 6\(1\)\(a\)](#) of the EIR or EISR).

However, if you believe that the nature of the data is such that Ordnance Survey would not object to its being provided in vector format, and therefore insisting on providing the information in hard copy or raster format would not be reasonable, please contact the PSGA [Helpdesk](#) with the details, as further guidance may be available. Ordnance Survey may well be happy for the data to be released, or we may ask that you invoke Section 11(5)(c) of the EIR or 10(5)(c) of the EISR (if release of the information will adversely affect our intellectual property rights). In any event, Ordnance Survey requests that you do not disclose any vector data without our prior written approval. (As noted in relation to paragraph 2.4 above, whilst it is the Member’s responsibility to determine whether or not requested information should be disclosed, if a Member discloses Licensed Data in circumstances where an exemption should have been invoked, Ordnance Survey may suffer commercial (or other) prejudice, and such a disclosure could also comprise a breach of the Member Licence.)

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<sup>3</sup> As per previous footnote, this paragraph 3.3 does not apply in relation to Gazetteer Datasets created by you using any Licensed Data.

3.4 Note that this Guidance is specifically aimed at Ordnance Survey Licensed Data, and the factors which Ordnance Survey considers will be relevant. In relation to your own data you should also consider the general exceptions to your duty to disclose, which are contained in [Section 12](#) of the EIR and [Section 10](#) of the EISR, and which are not addressed in this Guidance.

3.5 You may, in addition, allow inspection of relevant Licensed Data at your premises.

#### **4 Re-use of Public Sector Information Regulations 2015**

4.1 The [Re-use of Public Sector Information Regulations 2015](#) (**PSI Regulations**) allow public sector information to be re-used for commercial purposes.

4.2 The PSI Regulations do not apply to information in which a third party owns relevant intellectual property. All Ordnance Survey data should be treated by you as third party intellectual property. Requests under the PSI Regulations for re-use of Ordnance Survey mapping and digital data or information containing such mapping or data should (save where the only relevant Ordnance Survey data is OS OpenData) therefore be refused in accordance with [Section 5\(1\)\(b\)](#) of the PSI Regulations and referred to Ordnance Survey.

If our views of the relevant legislation change then we may reissue this document. However, if you are in any doubt about the matters referred to above then we would suggest that you consult your legal advisers. Guidance is also available from the [National Archives](#) and the [Information Commissioner or the Scottish Information Commissioner](#).

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# Appendix 1 Examples of Requests for Disclosure under Public Access Information

The examples below have been compiled from typical enquiries submitted to Ordnance Survey by PSGA members. If you have any further examples of Requests for Disclosure that could be included in the next version of this Guidance, please forward them to the PSGA Helpdesk ([psga@os.uk](mailto:psga@os.uk)).

Q1. *A request to find out the boundary of a landscape policy area - would it be possible to provide hard copy or pdf of the derived outline (free to use?) against OS PSGA background mapping?*

A1 If you consider the derived data and the background mapping to be:

- OS OpenData
- Your Data
- Free to Use Data
- Derived Data you've previously you've openly via the Presumption to Publish process
- Exempted data

then you can provide the data with minimal restrictions. If not, then you can use the Public Sector End User Licence to supply the data in limited form, raster format or hard copy only. Paragraphs 2.3.1 and 2.3.2 give more details.

Q2. *A request to find out the boundary of all Example County Council (ECC) owned buildings - would it be possible to provide hard copy or pdf of the derived outlines (largely snapped to MasterMap buildings) against OS background mapping?*

A2. The data could be provided in hard copy or raster format under a Public Sector End User Licence, as set out in paragraph 2.3.2 above.

Q3. *A request for a copy of the dataset of all ECC landscape policy areas - would it be possible to provide the actual data?*

A3 We would require further detail about the data supply format to give a definitive response. Assuming the data is a map, if it is covered by any of the circumstances in paragraph 2.3.1 above, then you will be able to provide the data with minimal restrictions (again see paragraph 2.3.1 above). If not covered by any of the circumstances in paragraph 2.3.1, then you will be permitted to supply the data (in hard copy or raster format) under a Public Sector End User Licence, on the basis outlined in paragraph 2.3.2 above.

Q4. *A request for a copy of the dataset of all ECC owned buildings (largely snapped to MasterMap buildings) - would it be possible to provide the actual data?*

A4. We would require further detail on the form of the actual data to be able to give a definitive response. On the assumption that the data is in the form of a map, the data could be provided in hard copy or raster format under a Public Sector End User Licence, as set out in paragraph 2.3.2 above.

Q5. *A request for a list of postcodes within a designated area.*

A5. This information is available under OS OpenData or from other suppliers, and therefore the exemption in Section 21 of the FOIA (or section 25 of the FOISA) applies, and the request should be refused.

Q6. *A request for a list of addresses within a designated area.*

A6. Addresses are available from, inter alia, Royal Mail, Ordnance Survey, and a number of Ordnance Survey's licensed partners. Therefore, the exemption in Section 21 of the FOIA (or section 25 of the FOISA) applies, and the request should be refused.

Q7. A request for a dataset that indicates the centrelines of all the roads, along with additional attribution; such as the road name, its ID number, road class (e.g. A, B or C), status (i.e. 'Adopted' or 'Unadopted'), etc. either as a single supply or with regular updates.

A7 The concern with this example is that the road centreline geometry, and/or the attribution, may have been taken directly from the OS MasterMap Highways Road Network product (and/or its predecessor products ITNand/or OSCAR). If that is so, then you will be able to decline the request on the basis that the information is reasonably accessible to the applicant by other means, namely direct from Ordnance Survey or from our licensed partners; such information is exempt from the general right of access in accordance with Section 21 of the FOIA (or section 25 of the FOISA).

If the data were not exempt under Section 21 of the FOIA (or section 25 of the FOISA), we would ordinarily be happy for a raster or hard copy version of the data to be released under the terms of the Public Sector End User Licence. However, since such licence only permits use in support of the licensing council's Core Business, and expressly prohibits the end user from making the data available to third parties (without Ordnance Survey's express consent), it may be that the applicant may not want to take the data on such terms.

If the applicant specifically requests vector data, then Ordnance Survey's position is that this will substantially prejudice our commercial interests, and so the request should be refused under Section 43 of the FOIA (or Section 33 of the FOISA).

## **Appendix 2      clause 12.4 from the PSGA Member Licence**

Clause 12.4 of the PSGA Member Licence provides as follows:

*“Subject to the application of any relevant exemption(s) and, where applicable, the public interest test, both parties further acknowledge that the other may be obliged to disclose information pursuant to ... a Disclosure Request. Where a party consults the other in accordance with section IV<sup>4</sup> (consultation with third parties) of the code of practice issued under [Section 45](#) (or [60](#) in relation to the Freedom of Information (Scotland) Act 2002) of the FOIA (or, as the case may be, any code of practice issued under powers contained in the Environmental Information Regulations), each party hereby agrees to respond to any such consultation promptly and within any reasonable deadline set by the other party. Each party acknowledges that it is for the party receiving the Disclosure Request to determine whether or not such information should be disclosed.”*

Disclosure Request is defined as a request for information relating to the Licence pursuant to the FOIA or the EIR.

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<sup>4</sup> Note that this reference is incorrect, and should refer to section 3. (In the Scottish code, the relevant section is 7.)