

Victoria Watkins

From: Victoria Watkins
Sent: 16 August 2017 10:43
To: Victoria Watkins
Subject: FW: Releasing Tree Preservation Data Under FOI ref: CS-26485-K9S5M5 CRM:0257747

Victoria Watkins
Directorate Governance Officer
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-----Original Message-----

From: PSMA [mailto:xxxx@xx.xx]
Sent: Tuesday, August 08, 2017 4:03 PM
To: Ceris Jones <xxxxx.xxxxx@xxxxxxxxxxx.xxx.xx>
Subject: RE: Releasing Tree Preservation Data Under FOI ref: CS-26485-K9S5M5 CRM:0257747

Hello Ceris,

Thank you for your email regarding the Request for Information you have received.

In the first instance some guidance can be found here:

<http://www.ordnancesurvey.co.uk/docs/licences/freedom-of-information-guidance.pdf>

In regards to FOI requests, the "right to data" provisions within the FOIA will generally not apply to Ordnance Survey material as Crown copyright and database right materials are excluded from the definition of 'relevant copyright work (s11A(8) of FOIA)'. This therefore removes the obligation to make "relevant copyright work available for re-use by the applicant in accordance with the terms of the specified licence". In addition, the right to data provisions only apply where "the public authority is the only owner of the relevant copyright work" (s11A(1)(c) of FOIA); where a PSMA Member has used Ordnance Survey data to create derived data, then the Member will not be the only owner.

Also exceptions under FOIA apply; in particular, s43 (prejudicial to commercial interests) and section 21 which permits the refusal of a request where information is reasonably accessible by other means (i.e. via a licence of one of the products under a standard licence and charges). Ordnance Survey Licensed Data held by PSMA members should not be provided under a FOI request, as the members do not have the rights to waive the IP rights to our data. Neither does the member have the right to waive IP rights for other third party data as you have correctly assumed.

There is useful guidance available here:

https://ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/intellectual_property_rights_and_disclosures_under_the_foia.pdf

Derived Datasets that have been granted an exemption status under OS OpenData terms and data you have released under 'Presumption to publish' are different, as these terms enable this data to be made available for reuse for either commercial or non-commercial purposes, as long as the OS OpenData licence terms continue to be applied when it is reused (and the correct acknowledgements are used).

In this document (page 47 and 48), there are some examples of TPO datasets where the spatial data has been allowed under Presumption To Publish.

<https://www.ordnancesurvey.co.uk/docs/public-disclosures/presumption-to-publish-guidance-march-2015.pdf>

As a reminder, the Public Sector Mapping Agreement (PSMA) Member Licence enables members to make datasets available for public viewing via the Internet or in hard copy format, for non-commercial purposes in support of their core business (see clauses 4 and 12 of appendix 1 to the Licence. The same appendix also details how they can make the data available, where appropriate, via the PSMA End User Licence, the PSMA Contractor Licence and Public Sector Data Sharing terms.

I trust this goes someway to helping provided a formal response to the requestor.

Kind regards

Kate Noss

Customer Service Adviser

PSMA Helpdesk, Customer Services, Ordnance Survey

[<https://www.ordnancesurvey.co.uk/images/ui/os-logo.png>]

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----- Original Message -----

From: Ceris Jones

Received: Mon Aug 07 2017 11:06:37 GMT+0100 (GMT Daylight Time)

To: Geo Information Manager; Geo-Information Manager2; Principal Contact; PSMA

Subject: Releasing Tree Preservation Data Under FOI

Hello,

We have been contacted by someone under FOI asking for our Tree Preservation Data in raw vector format. The data is available online

<http://map.n-somerset.gov.uk/dande.html>

and we have directed the requestor to this webpage, however they have said that this data format does not meet their needs.

In my opinion as the primary contact with OS for the PSMA we can legitimately refuse the requestor's request as we have used TopoLine to create the data and the data is available elsewhere. However it seems that the Council requires further confirmation of this from the OS. I am told that under FOI we cannot ask the requestor what they are going to use the data for so there is no opportunity to sign them up with an End User Licence. All we know is that the requester has asked for the information to be re-used under the Open Government Licence

We have all been referring to your document attached below, however it has been requested that I get direct advice from OS regarding this so please can you help.

Thanks

Ceris

Ceris Jones (pronounced Keris, Miss)
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business intelligence : intelligent business

[Picture (Device Independent Bitmap) 1.jpg]

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Care Connect: for all adult social services enquiries visit www.n-somerset.gov.uk/careconnect<<http://www.n-somerset.gov.uk/careconnect>>

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Thank you for your cooperation.

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