How to apply for non-commercial exception to marginal cost pricing assessment

Open Government Licence terms

July-August 2015
1. Introduction

1.1. This document is intended to guide departments Crown bodies in submitting applications for exceptions to marginal cost pricing Open Government Licence terms [LINK] on a non-commercial basis for the re-use of public sector information. It should only be used by bodies needing to apply terms that are more restrictive than those contained in the Open Government Licence, but not requiring a charge to be made for licensing the re-use.

1.2. This process concerns authority being granted to licence Crown copyright material on non-commercial terms. Successful applicants will also need to ensure that they comply with the Re-use of Public Sector Information Regulations 2015 in licensing the information. Successful completion of this application process does not imply compliance with the Regulations.

1.3. This process should not be used by Crown bodies wanting to charge for licensing the re-use of their information they should refer instead to the separate Exceptions to Marginal Cost Pricing process [LINK].

1.4. Government policy has been, and remains, that most public sector information will be made available for re-use at marginal cost (effectively for free where it is made available electronically). For Crown public sector bodies, this policy is further embodied in the Re-use of Public Sector Information Regulations SI 2015/1415 [LINK] (the Regulations). In 2010, developing Government policy encouraged the publication of government datasets for free re-use through the data.gov.uk website, in re-usable format where possible, and by preference as linked data. This agenda is now being taken forward by the Cabinet Office’s Public Sector Transparency Board.

1.5. Crown Departments and agencies should only consider applying for an exception to marginal cost pricing Open Government Licence terms where they have already discussed the proposed application with staff in the Standards team of The National Archives, and where there are genuine and pressing exceptional reasons which make it both appropriate and necessary to charge at above marginal cost impose non-commercial terms on the re-use of their information. The intended terms must be compliant with the Regulations.

1.6. Applications for exceptions to marginal cost pricing Open Government Licence terms for non-commercial purposes will be measured against the published criteria [LINK]. These are intended to test the merits of the application, and The National Archives will refuse applications that do not adequately meet the criteria. In line with current government policy, the presumption is that information should be provided for re-use without charge, or at marginal cost, and without restrictive terms and conditions, so departments submitting applications should be aware that only properly supported cases will be approved.

2. How the criteria work
2.1. There are 10-2 criteria against which all applications will be measured. Of these, 6-2 are mandatory criteria, and these are shown in **bold** on the application form. For an application to succeed, it must meet (or partially meet) all of these criteria.

2.2. Meeting all the mandatory criteria does not automatically mean that the application will succeed. A successful application, as well as meeting (or partially meeting) each of the mandatory criterion, must also show in response to the other criteria why it is necessary and appropriate to charge apply non-commercial licence terms to the re-use of this information.

2.3. A mandatory criterion may be partially met if that criterion applies to part, but not all, of the information being applied for. So, the information in a single database, most of which is publicly funded, but part of which is privately funded, may partly meet the funding criterion. Where it is felt that for a partially-met mandatory criterion, the element which meets the criterion does not include the significant part of the information to be re-used, then the application will be deemed not to have met that criterion.

2.4. An application can fail to meet some of the non-mandatory criteria but will still succeed if its overall assessment, from mandatory and non-mandatory criteria, is that it is both appropriate and necessary to charge apply non-commercial terms for the re-use of the information.

3. Making an application

3.1. To make an application, departments or agencies must complete the standard template form. The completed form should be sent either direct to the member of Standards team Information Policy Department staff with whom prior discussions about the application have been held, or to the standards@nationalarchives.gsi.gov.uk e-mail account.

3.2. Applications will only be accepted where they are submitted electronically on the standard template form.

3.3. The template form allows space for applicants to give detailed answers to the questions for each criterion, and in most cases simple 'yes' or 'no' answers will not provide enough information to allow the application to be assessed.

3.4. **Guidance on what information to include** is given below at paragraphs 3.5-3.10. The aim of the published criteria is to ensure that applications have been fully thought through and that the applying public sector body is convinced of the need to apply for non-commercial exception to marginal-cost pricing Open Government Licence terms. If in answering any of the criteria, particularly the five mandatory criteria, the applying organisation is uncertain as to the soundness of the case being argued, that should be taken as a sign to halt the application. Full explanations, if necessary referencing attached documentation to back up the case being made, should be included.
3.5. **Context and setting of the information:** Criteria 1.1-1.4 are designed to provide an explanation of the context in which the information concerned was created and how it, or its constituent parts, is available. Answers to these questions should detail the reasons why the information is created or collected in the first place, what the information is used for and how it is, or is to be, made available, and particularly the reasons why Open Government Licence terms are not appropriate in this case.

3.6. **Funding/costs of production:** Criteria 2.1-2.5 look at how production or collection of the information is funded, how the costs of that work are or could be covered, and how the information is made available for re-use. Answers to these questions should include information on costs and recovery of costs, expected rate of return and so on.

3.7. **Availability from other sources:** Criteria 3.1-3.2 are concerned with whether or not the same or similar information is available from other sources. Applicants should give full details of any other or competing information providers that they know about and, if they feel that their information has special status or authority because it is issued by government, should specify the reasons for that special status or authority including how users of the information view the information.

3.8. **Market conditions:** Criteria 4.1-4.2 explore the state of the market place for this information. No applications should be made unless the applying public sector body can show that it has assessed the market place and has an understanding of the existing level of competition for this information.

3.9. **Effects of charging:** Criteria 5.1-5.4 are concerned with ensuring compliance with the Re-use Regulations and with discovering the impact of applying charges for the information under consideration not just on the market place and users of the information, but also on the public sector body making the charge. The application should demonstrate how it is intended that the charge should be administered, and should show how charging for this information fits with other relevant government policies and objectives.

3.10. **Business tests:** Criteria 6.1-6.2 considers the readiness of the public sector body to comply with the Information Fair Trader Scheme (willingness to join the Scheme is a condition of applications being approved) and the relevant Treasury standards. Applications should show clearly the relationship between the costs of developing and providing the information and the proposed licensing fee that the applying body, if not already an IFTS member, has understood the scheme and is ready to join.
### Glossary and examples

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial product</td>
<td>A public sector body information product developed for the purpose of making profit. An example might be an information product originally produced to be used as a tool by various public sector bodies, which with further work can be turned into a product that could be sold commercially to non-public sector users.</td>
</tr>
<tr>
<td>Essential information</td>
<td>Criterion 1-2? mentions information “essential to the relationship between citizen and state”. This does not mean information about things which the ordinary citizen would consider essential - such as the location of local health service providers. Rather, it refers to the information that provides to the citizen knowledge about how he interacts with the state - an example might be information about the application of building regulations to householders, so something which explains how the law or a government policy directly affects a citizen considering modifying his property.</td>
</tr>
<tr>
<td>HM Treasury standards</td>
<td>The Treasury is responsible for standards and guidance on charging for information, covering such aspects as rates of return on investment. If an application for exception to marginal cost pricing is to be successful it must show that proposed fees or charges are in line with applicable Treasury standards. See <em>Managing Public Money, Chapter 6 Fees, Charges and Levies</em>, and particularly annex 6.3, Charging for Information.</td>
</tr>
<tr>
<td>IFTS</td>
<td>Information Fair Trader Scheme (IFTS) - A system for setting and assessing standards for PSIHs, operated by The Office of Public Sector Information, part of The National Archives.</td>
</tr>
<tr>
<td>Marginal cost</td>
<td>The Cambridge Report (see references) defines marginal cost as 'setting a price equal to the marginal cost of supplying data (that is, simply the cost of actually transmitting the data to someone). For information in electronic format, the marginal cost is usually zero, or almost zero.</td>
</tr>
<tr>
<td>Monopoly producer/supplier</td>
<td>Where a public sector body is the only one that collects or produces a set of raw or unrefined information, and it does this as a core part of its business, then it is a monopoly or sole supplier. The information cannot be substituted directly from other sources.</td>
</tr>
<tr>
<td>Other government objectives</td>
<td>Decisions on charging for information should not be taken in isolation. Public sector bodies must have regard to other legislation and government policies and objectives when considering their options. Examples would include access to information legislation, public rights to data and the transparency agenda promoted by the Public Sector Transparency Board.</td>
</tr>
<tr>
<td>PSIH</td>
<td>Public Sector Information Holder</td>
</tr>
<tr>
<td>Raw data</td>
<td>See upstream and downstream activities</td>
</tr>
<tr>
<td>Re-use</td>
<td>Use by a person of a document held by a public sector body for a purpose other than the initial purpose within that public sector body’s public task for which the document was produced.</td>
</tr>
<tr>
<td>Sole producer</td>
<td>See monopoly producer/supplier</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------------------------</td>
</tr>
</tbody>
</table>
| Upstream and downstream activities | **Upstream**: Activities which produce or collate information which cannot be substituted directly from other sources. This relates to a PSIH's monopoly activities, where competition is very unlikely. This data is sometimes referred to as raw or unrefined data. Once a PSIH does something with the data which could be performed viably in a commercial market by the private sector it becomes a downstream activity producing refined information.

**Downstream**: Activities in relation to the information which could be carried out or provided by another organisation should that organisation have access to the relevant upstream information. This is where raw or unrefined information is enhanced, manipulated and/or added to other inputs to create a retail product for businesses or consumers. The process of extracting and/or refining information can be undertaken by a PSIH, or viably in a commercial market by the private sector.

Therefore the information falling into these categories will be variable over time as technology, public demand and the market advance.

See the Cambridge Report, footnote 4, p.57 and the CUP1 Market Study report, especially the glossary at pp.179-80.

For reference see:

Office of Fair Trading (OFT), *Commercial Use of Public Information (CUPI)* Market Study report, 2006

Application template
Non-commercial Exceptions to Open Government Licensing

Public sector bodies wishing to apply for permission to licence Crown copyright information on non-commercial terms rather than the preferred Open Government Licensing terms must complete this application form and send it along with any annexed reference documents to the Information Policy team at The National Archives (either by saving this form and sending it once completed to the named individual with whom they have been in discussion about this application, or by sending it to the Standards in-box).

Applicant public sector bodies are strongly advised to refer to the “How to apply” guidance and to discuss the detail of their potential application with a member of staff in the Information Policy team before attempting to complete and submit this application form.

August 2015

Name of Public Sector Body: Valuation Office Agency

Information applied for: all information that is held for its rating list functions that either directly identifies a person or enables their identity to be deduced

Applicant contact name: 
Applicant contact e-mail address: @voa.gsi.gov.uk
Applicant contact phone number: 03000 502

1 Context and setting of information

1.1 Is there a “public good” or public task reason for not using the Open Government Licence to make this information available? If so, please provide details.

The VOA is an Executive Agency of HMRC. Our functions include the valuation (assessment) of property for tax purposes, these include rating and council tax lists for the whole of England and Wales and statutory valuations such as capital gains and inheritance tax.

This request for an exemption from publishing information under an OGL relates to Rating List information. More specifically, the information comprises the rating list, showing the rateable value (RV) for each property and a detailed breakdown of the component parts on which the RV was based.

Rating list information is held by VOA in connection with its functions and as such is protected by a strict duty of confidentiality, which is the bedrock of tax administration. The confidentiality provisions are set out in section 18 of the Commissioners for Revenue and Customs Act 2005 (CRCA). Section 19 provides a criminal sanction for wrongful disclosure of this information when it is either identifying or enables a person’s identity to be deduce. This was introduced to address parliamentary concerns raised during the bill’s passage through parliament that confidentiality may be ‘diluted’ by the merger of the Inland Revenue and Customs and Excise departments to form HMRC. The measure helps to ensure the confidentiality of information held will be maintained as a priority.
This information is exempt from release under section 44 (1) (a) of FOIA 2000 by virtue of section 23 of CRCA where the information:

(a) would specify the identity of the person to whom the information relates, or
(b) would enable the identity of such a person to be deduced

In this context "person" means legal or natural. The rating list information is address based. These addresses often contain an individual ratepayer or firm’s name as part of the address. Addresses can very easily be linked with other available information in order to deduce the identity of a person. VOA’s application of section 44 FOIA has been upheld by the Information Commissioner’s Office (ICO)

Section 18 (2) (a) (i) of CRCA allows VOA to disclosure information for the purposes of its functions which are set out in section 10 and section 7 of CRCA.

The purpose for which VOA is publishing this information is to:

- enable anyone to exercise their right to view rating assessments in the compiled rating lists
- permit a user who is an interested person or a relevant authority to:
  - review the valuation (where shown) of assessments they have an interest in
  - view the valuation of other assessments they consider to be comparable when reviewing the assessment of properties they have an interest in

This is required to ensure that the system is fair and transparent and provides an opportunity for taxpayers to address potential anomalies with their rating list entry.

VOA seek to redress the contradiction of holding information under a duty of confidentiality, and which is exempt from release under FOIA, with placing the information in the public domain with free access, use and re-use. We would like to do this by restricting the use of the information to the purposes set out above.

By doing this we would increase taxpayers’ trust in the VOA of our ability to maintain the confidentiality of their affairs and only release information for specific purposes in connection with our functions.

VOA relies on information supplied by taxpayers and any loss of confidence by the public could result in an unwillingness to provide the necessary information.

A restriction on the use of this information will enable the VOA to challenge wrongful use of the information should this come to light.

1.2 Is it essential to produce the information as part of government’s core duties and therefore vital to the workings of government?

Production of some of the information is a core duty of the VOA and must be carried out to enable the assessment of property for both national and local taxation. This being the production of rating lists for the billing authorities. Transparency and accountability in the publication of the lists is necessary for the development of a fair and accurate list.

See 2.1 for more detail.
1.3 Does the information explain government policy or set out how the law, in both UK and EU, must be complied with? Information is essential to the relationship between citizen and state.

No

2 Funding / costs of production

2.1 Is the information directly funded by the taxpayer, either through it being collected for the purposes of government or produced with the objective of informing the public?

The information is funded by the taxpayer as it is collected for the purposes of valuing properties for the assessment of national and local taxation.

The objective for producing the local taxation element is to inform a section of the public, being those who are the ratepayer or a party with an interest in the property. This is all done to enable their understanding of their own assessments and thereby generate trust in the VOA and its valuation of property for local taxation purposes.

2.2 Is the information produced under a statutory duty or by command of Parliament?

The VOA is under a statutory duty to produce the current rating lists. This is set out in sections 41 and 52 of the Local Government Finance Act 1988. All other information enables those statutory duties to be carried out.

2.3 Is the Department or Agency currently adding value to the information? If so:
   - would this activity be maintained if non-commercial re-use were not allowed?
   - could this activity be carried out by others?

No. Our public task is to compile and then maintain rating lists. The information we produce is to allow us to do this.

3 Availability from other sources

3.1 Is the Department or Agency the sole producer of the information or can the information be obtained from other sources? If the Department or Agency is the sole producer, please explain the circumstances of this position.

VOA is the sole producer of this information. Where this information is passed on in connection with our functions, the confidentiality provisions of CRCA are also passed on through the use of Information sharing protocols and agreements. For example VOA has a statutory duty to supply rating lists and council tax lists to billing authorities.

3.2 Does the information derive special status and authority because it has been issued by government?

Yes. The information is produced solely by the VOA and is the basis of the property based local taxation system.

4 Market conditions
4.1 Is the information, or a commercial product derived from it, available in competition with other similar information products in the market place?

No

5 Effects of licensing

5.1 Is the Department or Agency able to confirm that the proposed licensing model for this information complies with the requirements of the Re-use of Public Sector Information Regulations 2015?

Yes. We are confident that the licensing model we are using is appropriate as the information does not fall to be available for re-use under RPSI Regs 2015. We consider that the exclusion at section 7 (a) applies as the information is exempt from publication under FOIA 2000.

5.2 Is the Department or Agency able to confirm that it is compliant with those parts of the Re-use of Public Sector Information 2015 relating to format of documents, imposing conditions, non-discrimination, exclusive arrangements, charging and information to be published (Regulations 11-16)?

Yes. The information available on the website can be downloaded as two datasets. Each is a ASCII text file comprising variable length fields delimited by an asterisk.

5.3 What would be the licensing mechanism (bespoke licence or the UK Government Licence Framework Non-commercial Government Licence) for providing this information for re-use, and what would be the administrative impact of this mechanism for the Department or Agency and for the re-user?

For downloads of list information this would be a bespoke license in the form of terms and conditions covering use and re-use. As the information is available on the internet, a user would check a box to confirm that they agree to the terms and conditions which are displayed on the page before they download the datasets. Reference to the same terms and conditions will also appear in the footer of each page hosting information and in a disclaimer notice on the landing page. This means that there would be very limited administrative impact to VOA.

5.4 Will restricting re-use to non-commercial re-use only run counter to the spirit or intention of other government objectives?

We are seeking to publish as much information as possible within the constraints of CRCA. This assists the government’s aim of making more information available.

5.5 What are the resource costs to the Department or Agency of restricting the re-use of the information to non-commercial in terms of licensing activity and legal support?

Negligible
<table>
<thead>
<tr>
<th><strong>6 Business tests</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>6.1</strong> Is the Department or Agency able to provide a statement of commitment to Information Fair Trader principles signed by its Permanent Secretary or Chief Executive?</td>
</tr>
<tr>
<td>Yes. The Chief Executive will commit to the IFT principles on behalf of the VOA. DN Append commitment email from CEO</td>
</tr>
</tbody>
</table>
This is to be linked to from disclaimers, footers and internet announcements.

Licence

1. Publication of this information and its use is restricted to Non Domestic Rating (NDR) purposes only and these are set out in 2.

2. The use for NDR purposes is to:
   • enable anyone to exercise their right to view rating assessments in the compiled rating lists
   • permit a user who is an interested person or a relevant authority to:
     • review the valuation (where shown) of assessments they have an interest in
     • view the valuation of other assessments they consider to be comparable when reviewing
       the assessment of properties they have an interest in

3. For these terms the user is hereby defined to include:
   • An interested person, defined as the occupier of the property, or any other person who has a
     legal estate or an equitable interest entitling them to possession of the property or any part of
     it, and any person having a qualifying connection with them, and the Crown Estate
     Commissioners.
   • Relevant authority, defined as the local authority in whose area the hereditament is situated.
   • An authorised representative of an interested person or relevant authority for the stated
     purposes
   • A person or company providing an interested person or relevant authority or their authorised
     representative with services or information for the stated purposes

4. These terms and conditions do not cover the use of:
   • the information other for than for the purposes stated above
   • personal data in the Information;
   • information that has neither been published nor disclosed under information access legislation
     (including the Freedom of Information Acts) by or with the consent of the Information Provider;
   • departmental or public sector organisation logos, crests and the Royal Arms except where
     they form an integral part of a document or dataset;
   • third party rights the Information Provider is not authorised to license;
   • information subject to other intellectual property rights

5. All users should ensure:
   • that they do not use the Information in a way that suggests any official status or that the
     Information Provider endorses them or their use of the Information;
   • that they do not use the information in a way which is likely to mislead others or
     misrepresent the Information or its source;
   • that their use of the Information does not breach the Data Protection Act 1998 or the Privacy
     and Electronic Communications (EC Directive) Regulations 2003

6. Onward disclosure to a third party is prohibited except where the third party’s use is for the uses
   stated above.

7. The user will delete this information when they no longer have a business need associated with
   the stated purposes to hold the information.

8. The Information is licensed 'as is' and the VOA excludes all representations, warranties,
   obligations and liabilities in relation to the Information to the maximum extent permitted by law.
   The information is held by the VOA in connection with its own functions the user should ensure
   themselves of its quality and its ability to meet their use of the information.

9. The VOA is not liable for any errors or omissions in the information and shall not be liable for any
   loss, injury or damage of any kind caused by its use.
10. This Agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England and the parties agree to submit to the exclusive jurisdiction of the English courts.

11. The user will be responsible for the provision of the necessary software telecommunications lines and equipment to enable the user to retrieve the information.

12. The VOA does not guarantee the supply of the information but will use all reasonable endeavours to keep the Service in operation. However the VOA’s supply will be suspended if and for so long as any circumstances occur which prevent it from delivering the Service.

13. The VOA reserves the right to alter at will the contents or manner of presentation of the Service and to remove any file or any of its contents within the Service either temporarily or permanently.

14. The Database and Data are protected by Crown Copyright and Crown Database rights.

15. The user acknowledges that its permission to use those copyright works is limited to the rights expressly conferred by these terms and conditions.
Application template

Non-commercial Exceptions to Open Government Licensing

Public sector bodies wishing to apply for permission to licence Crown copyright information on non-commercial terms rather than the preferred Open Government Licensing terms must complete this application form and send it along with any annexed reference documents to the Information Policy team at The National Archives (either by saving this form and sending it once completed to the named individual with whom they have been in discussion about this application, or by sending it to the Standards in-box).

Applicant public sector bodies are strongly advised to refer to the “How to apply” guidance and to discuss the detail of their potential application with a member of staff in the Information Policy team before attempting to complete and submit this application form.

August 2015

Name of Public Sector Body: .................................................................

Information applied for: .................................................................

Applicant contact name: .................................................................

Applicant contact e-mail address: ...................................................

Applicant contact phone number: ...................................................

1 Context and setting of information

<table>
<thead>
<tr>
<th>1.1</th>
<th>Is there a “public good” or public task reason for not using the Open Government Licence to make this information available? If so, please provide details.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>1.2</th>
<th>Is it essential to produce the information as part of government’s core duties and therefore vital to the workings of government?</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>1.3</th>
<th>Does the information explain government policy or set out how the law, in both UK and EU, must be complied with? Information is essential to the relationship between citizen and state.</th>
</tr>
</thead>
</table>

2 Funding / costs of production

<table>
<thead>
<tr>
<th>2.1</th>
<th>Is the information directly funded by the taxpayer, either through it being</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>collected for the purposes of government or produced with the objective of informing the public?</td>
<td></td>
</tr>
<tr>
<td>2.2</td>
<td>Is the information produced under a statutory duty or by command of Parliament?</td>
</tr>
</tbody>
</table>
| 2.3 | Is the Department or Agency currently adding value to the information? If so:  
• would this activity be maintained if non-commercial re-use were not allowed?  
• could this activity be carried out by others? |
| 3 Availability from other sources |   |
| 3.1 | Is the Department or Agency the sole producer of the information or can the information be obtained from other sources? If the Department or Agency is the sole producer, please explain the circumstances of this position. |
| 3.2 | Does the information derive special status and authority because it has been issued by government? |
| 4 Market conditions |   |
| 4.1 | Is the information, or a commercial product derived from it, available in competition with other similar information products in the market place? |
| 5 Effects of licensing |   |
| 5.1 | Is the Department or Agency able to confirm that the proposed licensing model for this information complies with the requirements of the Re-use of Public Sector Information Regulations 2015? |
| 5.2 | Is the Department or Agency able to confirm that it is compliant with those parts of the Re-use of Public Sector Information 2015 relating to format of documents, imposing conditions, non-discrimination, exclusive arrangements, charging and information to be published (Regulations 11-16)? |
| 5.3 | What would be the licensing mechanism (bespoke licence or the UK Government Licence Framework Non-commercial Government Licence) for providing this information for re-use, and what would be the administrative impact of this mechanism for the Department or Agency and for the re-user? |
| 5.4 | Will restricting re-use to non-commercial re-use only run counter to the spirit or intention of other government objectives? |
| 5.5 | What are the resource costs to the Department or Agency of restricting the re-use of the information to non-commercial in terms of licensing activity and legal support? |

### 6 Business tests

| 6.1 | Is the Department or Agency able to provide a statement of commitment to Information Fair Trader principles signed by its Permanent Secretary or Chief Executive? |