

Satswana FOIA Guide

This document complements our Satswana Exemptions Guide, concentrating solely on a response to Freedom of Information Act requests. It is designed to give you an overview, but above all, please call us so that we can support you in your reply.

1 Should you accept an FOIA request in the first place?

For the reasons stated below, you may not; some of this information will also be in the exemptions document.

DPA 2018 actually requires that GDPR provisions apply to FOI data. Whilst at the date of publication it is the best information that we have to hand, please be aware that case law, precedents, and decisions of the Information Commissioners Office will mean continuous change to actual practice. Please reconfirm any statements made or positions suggested with us before relying on them.

It is important to consider the requested information under the right legislation; this is because a disclosure under FOIA/FOISA or the EIR/EIRs is to the world at large – not just the requester. A Subject Access Request is for the attention of the individual. If personal data is mistakenly disclosed under FOIA/FOISA or the EIR/EIRs, this could lead to a personal data breach. It is recommended that you generally default to treating an access request as a SAR.

If you do reject an FOIA request on the basis that it would be subject to the disclosure of personal information (quoting Section 40), you nevertheless have to formally respond to the request under Freedom of Information legislation. That may seem to be bizarre, and the ICO guidance is not definitive on the matter, but Satswana were criticised by one Officer for not doing so, to the delight of the complainant. So even if you can answer none of the questions you must advise that you cannot answer any of them within your response to them under FOIA. You should advise that you will be treating their request as a Subject Access Request and will reply to their questions there. If you can answer questions that do not contain personal data, then you should do so. Sorry, nobody makes this easy!

2 Marketing?

It seems that every benefit to society, such as the transparent right of access that was behind the Freedom of Information Act, will be abused, so you may well find that marketing scams are dressed up as requests – thus anything mentioning a specific product name, or consumable (such as your energy use) should be regarded with great suspicion. If you do not consider it to be bona fide we recommend totally ignoring the request, since even replying would confirm that your email address is “live”, and that is data that is sold on the Dark Net.

3 Campaign websites?

Satswana recommends refusing to respond to requests from websites that exist to make their founders money through facilitating access requests for two reasons. First because to promote their interest and to request donor funding they will publish your answer and your name – without consent, which we believe could potentially expose you to further public attention. (Whatdotheyknow.com is an example).

Second, because you have the right to know that you are dealing with a properly identified natural person, and you have no way of knowing if they are using their true name and identity on these platforms, indeed it is often obvious that they are not. Be careful not to use a personal email address when replying, but tell them that if they write from their own email address, confirming their identity, then you will be happy to consider their request further.

4 Section 40 FOIA – just to be clear.

Personal information.

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a) It constitutes personal data which does not fall within subsection (1)

5 Responding to the Request

In general terms it is appropriate to respond to a request, that is why the legislation exists in the first place, but in doing so there are three “defences” that will save you time.

- a) The first is that you are only obliged to answer a question where you have the information stored in a form that enables you to provide an answer. If you do not record “how many milk bottles Year 6 broke in 2017” then you can legitimately reply that you “hold no information on that subject”, or similar words.
- b) Similarly if it requires research or further calculation from existing data to derive a specific answer, then you are entitled to reply that you “do not hold information in that form”.
- c) Finally, if they ask a question where you already provide the information in a public forum (as a consequence of compliance with the Publication Scheme)

then all you need to do is to point them to where the information can be found, you do not have to reproduce the answer.

6 Section 16

It is possible that an experienced applicant (often a journalist) will anticipate rejection and include the following text in their application

“If it is not possible to provide the information requested due to the information exceeding the cost of the compliance limits, please provide advice and assistance as to how I can refine my request, as is mandated under Regulation 9 of the EIRs and Section 16 of the FOIA.

If some parts of this request are unobtainable due to cost limitations, but others constitute easily obtainable data, please respond to as much of the request as possible.”

Indeed they may go further and quote ICO decisions which will seek to ensure you answer, and broadly speaking you should do so. Our purpose is not to dispute the rights of applicants under FOIA, but to ensure in the first place that they have used the correct act, that they are properly identified as individuals and that you reply based on information that you have a record of.