

Russell Group response to the Cabinet Office's consultation on 'Making open data real'

Do the definitions of the key terms go far enough or too far?

Where a decision is being taken about whether to make a dataset open, what tests should be applied?

How do we get the right balance in relation to the range of organisations (providers of public services) our policy proposals apply to? What threshold would be appropriate to determine the range of public services in scope and what key criteria should inform this?

Russell Group universities are committed to openness, accountability and transparency, and we understand the importance of these values in maintaining our credibility with students and the broader public. Universities are organisations built on the generation and sharing of knowledge, and Russell Group universities have been involved in developing the technologies to enable the open data revolution to be possible, and helping the Government develop this world-leading initiative.

However, an appropriate balance must be struck so the UK's leading research-intensive universities can ensure an appropriate level of transparency, whilst protecting our unique and invaluable contribution to the UK's society and economy.

The consultation covers how public bodies and providers of public services might be held to account for delivering open data. It is unclear whether there is an intention for universities to be included in this definition.

Universities are not classified as public sector entities; most are exempt charities under the Charities Act 1993 with 18 as registered charities. As such universities are obliged to comply with charities law, including the duty to preserve assets and the duty to provide a public benefit, including timely publication of research. Universities are responsible for their own governance and cannot have trustees imposed on them by Government.

It is important to recognise that unlike many other entities classified as public authorities universities are autonomous, separate legal corporate bodies, not public sector entities, and operate in a competitive environment both domestically and globally. It is a common misperception that universities are entirely publicly funded. Although almost all UK universities continue to receive public funds, the proportion of higher education income from public sources is declining, and far reaching cuts to higher education spend in England will mean the proportion declines further. Universities receive income from many sources nationally and internationally, and increasingly, are not dependent solely or even mainly on public funding - private sources of funding include funds from commissioned research, technology transfer and commercialisation, consultancy, and additional services such as conferencing and catering. The Minister for Universities and Science, David Willetts said in Parliament that: "all universities are, strictly speaking, private institutions; they are not public sector bodies. Government Members believe in maintaining their autonomy. We wish to see

a greater range of universities but all sharing the same feature—that they are not part of the public sector.¹

The consultation says that open data, through benchmarking, will help to create competition between public bodies and therefore drive up quality and reduce waste. It is important to note that much competition already exists in the higher education sector in the UK:

- The UK's leading universities compete head-to-head with **leading global universities** – public and private – in the USA, Australia, Europe and China. Our world-class research-intensive universities compete for the world's best students and researchers. They also compete with institutions in other countries for research funding from the EU and other international funding organizations.
- The UK's universities also **compete domestically**, for undergraduate and postgraduate students, for public funding, and for a wide range of private sector partnerships and investments. Public funding is highly contested: Research Council funding is allocated entirely through competitive processes, the competition is fierce for quality-related research funding, and income from the Higher Education Innovation Fund is allocated on the basis of performance metrics. In addition, funding for teaching is about to become almost entirely market driven.
- Universities compete with one another **to attract industry and business partners** in relation to both research and teaching activities. This competition between universities is strong and likely to grow, particularly with the Government's commitment to a more diverse and competitive higher education sector, the growth of new, privately-funded, providers, and as universities increasingly seek to diversify their sources of income, beyond reliance on public funding.
- The UK's leading universities also **compete with private companies**. Increasingly, they face competition from private providers of education and training courses. Universities also seek private sources of funding from commissioned research, technology transfer and commercialisation, consultancy, and additional services such as conferencing and catering. In many of these cases, universities are competing not only with other UK universities, but with universities overseas and with private companies.
- Universities also **compete for philanthropic donations**. Here there is competition not just from other universities, but also from other sectors seeking to attract donor funding and support.

Therefore, UK universities already face a significant degree of competition, and have clear commercial interests. These commercial interests have been recognised by the Information Commissioner. In particular, the research data and teaching materials of universities are valuable assets and fundamental to each institution's competitive position:

- The ability to control research data and the way it is disseminated affects an institution's competitiveness in securing research funding (both from public and private funds), and an institution's ability to exploit research commercially.
- The ability to protect teaching materials is fundamental to a university's market position and ability to compete with other UK universities, private providers, and international competitors.

If universities were included in the Government's drive for open data, and classified as a 'public body' or 'provider of public services,' this would raise significant issues over what is

¹ Hansard, 28 June 2011, Column 783.

defined as ‘a public service.’ Universities undertake a wide range of activities, including teaching, research and commercial ventures, much of which is not funded from the public purse. The definition of ‘public service’ should be defined narrowly in scope to ensure a university’s ability to compete is not compromised. The definition of ‘data set’ also needs to be clarified – including research data and teaching materials in this definition would have a detrimental effect on a university’s ability to compete.

If the ability of the UK’s leading universities to exercise control over its core assets of research data and teaching materials was compromised, the UK’s ability to conduct leading edge teaching and research would be seriously jeopardised. Consequences would include:

- Private sector and international partners would become more reluctant to work with UK researchers, as they would lose their own data if they shared it with UK researchers, with consequential damage to the UK economy and to UK universities if sponsors transferred their research funding overseas;
- UK researchers would lose the incentive to do empirical research themselves, if it meant they would have to share their data at an early stage of their research. Likewise, they would lose the incentive to innovate and create new teaching materials, if rivals were able to readily access these materials; and
- The world’s top researchers would no longer wish to live and work in the UK, as the loss of research data would make the UK much less attractive as a destination to conduct research. The quality of higher education teaching in the UK would suffer, and the world’s most talented students may no longer have an incentive to study here.

Therefore, in considering the balance in relation to the range of organisations the proposals for open data might apply to, we strongly urge the Government to consider the degree to which an organisation is operating as a private firm in a competitive environment. A key criterion should be the degree of commercial sensitivity attached to the data which the organisation holds. Due to the commercial environment in which a university operates, we believe that **universities should not be included in the definition of a public body or provider of public service** as it applies to open data.

It is important to keep in mind the existing regulatory burden on universities and the additional burden open data could create. The Government’s Higher Education White Paper gave a commitment to reduce further the regulatory burden placed on higher education institutions. Unnecessary regulation can limit the responsiveness and efficiency of universities, and ultimately their ability to compete with leading universities around the world.

It is also important to keep in mind that there are already many avenues by which universities publish data about their operations and performance, through bodies such as the Higher Education Statistics Agency and reports to the Funding Councils and Office for Fair Access. The Government has also already intervened on specific issues to ensure that data is available where required from universities (for example in relation to key information sets).

Our view is that in making a decision over whether to make a dataset open, the Government should take into consideration the exemptions that are currently included in the Freedom of Information Act, including personal data, national security, commercial interests, and the effective conduct of public affairs. We also support an additional exemption for research data, for the commercial reasons outlined.

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What would be appropriate mechanisms to encourage or ensure publication of data by public service providers?

As outlined in our answer on the definition of key terms, universities are autonomous, separate legal corporate bodies, not public sector entities or bodies, and operate in a competitive environment both domestically and globally. The vast majority of universities, including all members of the Russell Group, are independent educational charities advancing teaching and research for public benefit.

The FOI Act requires all public authorities to have an approved publication scheme, which is a means of providing access to information proactively. The scheme defines the types of information that must be published routinely, how it must be published, and what charges can be levied for it. Further definition of this information is provided by a definition document.

The ICO has been working with the higher education sector to update the definition document for universities, recognising that **universities are not the same as other public authorities** under the FOI Act. In the ICO's guidance to the higher education sector, they state:

“HEIs are unlike many other public authorities in certain aspects –most universities have charitable status; they are decreasingly funded by the public purse; parts of their income are derived from contracts to carry out privately financed research projects, often in partnership with commercial organisations.²”

The definition document requires the following information to be published:

- Who we are and what we do (organisational information, structures, location and contacts)
- What we spend and how we spend it (e.g., accounts, procurement, financial audit)
- What are our priorities and how we are doing (e.g., strategies, performance indicators, audits)
- How we make decisions (e.g., minutes of governing bodies)
- Our policies and procedures (including research policy and strategy)
- Lists and registers (e.g., asset registers, registers of interests, etc.)
- The services we offer (e.g., prospectuses, fee-based services, etc.)

We consider the ICO's model publication scheme to be an appropriate mechanism by which to ensure the publication of data by universities. While we believe that **universities should not be included in the definition of a public body or provider of public service** as it applies to open data, if the Government insisted on the proactive publication of data by universities, we would urge them to build on the ICO's existing system. This would be preferable to introducing an additional mechanism which would be overly burdensome on universities.

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² ICO, 2011, “Freedom of information legislation and research information: guidance for the higher education sector.”

Is there a role for government to stimulate innovation in the use of open data? If so, what is the best way to achieve this?

- 1.2 We note that the consultation mentions that open data has the potential to drive economic growth and quotes the view of the Royal Society's Working Group on open data, that the meta-analysis of the raw data from clinical trials is a fine example of the benefits of data-sharing (paragraphs A1.46 and A1.47).
- 1.3 However, we believe that open data sharing at too early a stage of research could actually harm, and be detrimental to, economic growth. It is meaningless to publish research data until it has been analysed and validated through a process of peer review, and disclosure at too early a stage could be harmful to the research. Public funders of research in universities (such as the Research Councils) have recognised that making research data available publicly is a complex issue and that it needs to be treated differently from other types of data.
- 1.4 Groundbreaking university research has resulted in far-reaching benefits which have been shared by the UK's businesses, government, taxpayers and society as a whole. The research at the UK's world-class universities drives enterprise and innovation, and we work in partnership with many UK and international companies to ensure their continued global competitiveness. As the UK's economic competitiveness becomes increasingly dependent upon high-tech industries and skilled graduates, our leading research-intensive universities are of crucial importance in tackling today's increasingly complex problems, and driving growth and prosperity. Sharing datasets for free commercial use by third parties jeopardizes the research that generates the data and removes any incentive for those having the most appropriate expertise, the universities themselves, to exploit their work.
- 1.5 The public has a clear interest in universities contributing to the UK's economic and reputational standing globally. Therefore, we would urge the Government to take note of the potential risks to economic growth in including research data as part of the Government's open data sharing policies.