

Norfolk County Council's Response to the Government's Consultation 'Making Open Data Real' Consultation

Section 1 questions

1. Do the definitions of the key terms go far enough or too far?
 - Make clear throughout that personal data is excluded, even in anonymised form.
 - Remove cross references (footnotes)
 - Include a definition of Data. Suggest:
"Facts and statistics used for reference or analysis" (*Oxford English Dictionary*)
 - Definition of Dataset is unsatisfactory. Suggest using the definition in the amendment to Section 11 of the Freedom of Information Act, as set out in the Protection of Freedoms Bill:
"Information comprising a collection of information held in electronic form where all or most of the information in the collection -
 - a. has been obtained or recorded for the purpose of providing a public authority with information in connection with the provision of a service by the authority or the carrying out of any other function of the authority,*
 - b. is factual information which -*
 - i. is not the product of analysis or interpretation other than calculation, and*
 - ii. is not an official statistic (within the meaning given by section 6(1) of the Statistics and Registration Service Act 2007), and*
 - c. remains presented in a way that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded."*
 - Definition of Open Data is confusing. A suggested alternative is 'Data that is made available for re-use without licence'
 - Replace "Public Services", with the term 'Public Task' (which is already used in legislation) and provide a definition for it that will also serve in respect of the Re-Use of Public Sector Information Regulations 2005
 - No definition provided for 'Transparency'. The terms should not be used interchangeably (Section 3, footnote 5)
2. Where a decision is being taken about whether to make a dataset open, what tests should be applied?
 - Those for which there is already provision in existing legislation: Freedom of Information Act, Environmental Information Regulations, and with particular reference to the Re-Use of Public Sector Information Regulations and the supporting guidance to

- those Regulations issued by the Office For Public Sector Information.
 - Key factors should be: Nil additional cost to the public authority; the authority's duties of confidentiality and protection of personal data; and an assessment of the balance of the public interest, including the local public interest.
3. If the costs to publish or release data are not judged to represent value for money, to what extent should the requestor be required to pay for public services data, and under what circumstances?
 - As prescribed in Regulation 15 of the Re-Use of Public Sector Information, i.e. to cover the cost of collection, production, reproduction and dissemination of the data, and yield a reasonable return on investment.
 4. 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?
 - By reference to Schedule 1 of the Freedom of Information Act
 5. What would be appropriate mechanisms to encourage or ensure publication of data by public service providers?
 - Within existing legislation. Where there is no statutory requirement, a public authority should have discretion to publish by reference the contribution that publishing data will make to improving service delivery to its constituency and value for money in delivering services.

Section 8 questions

1. Enhanced right to data

1. How would we establish a stronger presumption in favour of publication than that which currently exists?
 - Encourage an ethos of openness in those places where it still does not prevail (outside central government these are fewer than the consultation assumes)
 - Amendment to existing legislative provisions, as is already happening with the Freedom of Information Act under the Protection of Freedoms Bill
2. Is providing an independent body, such as the Information Commissioner, with enhanced powers and scope the most effective option for safeguarding a right to access and a right to data?
 - Possibly, provided that the ICO 'knows its stuff', i.e. fully understands the circumstances of public authorities and their duties, and is consistent in its advice and decision-making. However, the capacity of the ICO to adjudicate on intellectual property is problematic.

- The anomalous situation regarding appeal under the Public Sector Information Regulations should be addressed, in order that appeals can proceed seamlessly to the First Tier Tribunal.
3. Are existing safeguards to protect personal data and privacy measures adequate to regulate the Open Data agenda?
 - No. While the Data Protection Act, Supported by Sections 40 and 41 of the Freedom of Information Act and Regulations 12(5)(f) and 13 of the Environmental Information Regulations will largely suffice, the Open Data agenda must be clear and explicit that personal data, even where anonymised, is outside its scope.
 4. What might the resource implications of an enhanced right to data be for those bodies within its scope? How do we ensure that any additional burden is proportionate to this aim?
 - The scope as enunciated in the consultation paper is wide and the burden in prospect is huge and disproportionate. It would require additional human, and therefore financial, resources.
 - Public authorities are sensitive to the fact that the Freedom of Information Act was initially deemed cost neutral but, notwithstanding improvements to records-keeping systems and publication schemes, this has not proved to be the case.
 - The resource demands in respect of appeals have not been addressed.
 5. How will we ensure that Open Data standards are embedded in new ICT contracts?
 - This can't be contemplated until there are tried and tested standards that are feasible in the context of ICT specifications, and the issues around ICT procurement in the public sector have been resolved.
 - Public authorities procure ICT solutions to carry out their public task more effectively, delivering better service and better performance at lower cost. Those are the priorities. 'Public Data', as distinct from good management information, is a by-product, albeit one that may in itself enhance service delivery and performance in some cases.

Regarding additional questions posed by the Local Government Group (LGG):

What is your opinion of the proposal to amend the current fees regulations and cost limits under to FoIA (currently set at £450/18 hours' work for local authorities)?

The consultation paper suggests a higher cost limit for datasets. It doesn't make clear if this means information derived from datasets or information presented to the requester in the form of a dataset, but drawn from information resources which are not themselves datasets. The question arises as to how this idea squares with the Environmental Information Regulations, where the cost can be passed on regardless of how much or how little time was spent on locating, retrieving and collating data?

Overall, the proposal is unlikely to affect the amount of information released – Norfolk County Council rarely refuses a request in its entirety on cost grounds and the requester has the opportunity under the law to break a demanding request down into separate requests which fall below the cost limit, so, statistically, there may be fewer requests.

What is your view of setting a statutory time limit for internal review?

We've adopted a single stage review process with a timescale of 20 working days, extendable to a maximum of 40 days, to accommodate both Freedom of Information and Environmental Information requests, as a measure to improve service quality and reduce the cost of dealing with appeals.

2. Setting Open Data Standards

1. What is the best way to achieve compliance on high and common standards to allow usability and interoperability?
 - Define standards that are simple and feasible to apply
 - Cross-refer to these standards, as appropriate, in legislation and codes of practice for areas where public dissemination or central collation of data is a requirement, e.g. statistical returns
 - Ensure faster publication of data by government, so that the effectiveness of the standards can be measured and deficiencies addressed promptly.
2. Is there a role for government to establish consistent standards for collecting user experience across public services?
 - Yes, to assure meaningful data consistently presented
 - Common design to ensure easy-to-use and logically structured portals.
3. Should we consider a scheme for accreditation of information intermediaries, and if so how might that best work?
 - On balance, No
 - This would interpose walls between public and data and could result in the public paying to access data after all
 - Accreditation will be interpreted as meaning recommendation
 - It is anti-competition, and appears to conflict with the spirit of Regulation 14 of the Re-Use of Public Sector Information Regulations
 - More likely to stifle than promote innovation
 - Certain to generate high administrative costs

But we can see, in favour:

- Revenue from accreditation fees that would be fed to public authorities to help offset the cost of Open Data compliance
- Accreditation could be a way of dealing with rogue trader activity, e.g spurious data validation services.

Regarding additional questions asked by the LGG:

Government proposes a five star model for publishing data to given standards. Is this achievable and useful?

Star ratings are open to challenge, and this could be unfair to small authorities. There would obviously be a new administrative cost.

Government implies that data should be made available free for reuse under the Open Government Licence. What is your view?

There is already a statutory framework governing the extent to which public authorities can charge for re-use. We should continue to work within that. We do not distinguish, when applying charges, between datasets and information presented in other forms, e.g. personal search forms, and fuel storage reports.

Would you agree with a monitoring process for monitoring compliance, for example by extending the publication schema and asset register?

The ICO already monitors publication schemes. We foresee difficulties in policing asset registers, the value of which we question in any case.

3. Corporate and personal responsibility

1. How would we ensure that public service providers in their day to day decision-making honour a commitment to Open Data, while respecting privacy and security considerations?
 - Make clear that Open Data excludes personal data
 - Make reference to the Freedom of Information Act, Environmental Information Regulations and Re-Use of Public Sector Information Regulations, and sector-specific legislation, e.g. the Local Government Acts, and associated codes of practice and official guidance, as defining obligations in respect of Open Data
2. What could personal responsibility at Board-level do to ensure the right to data is being met include? Should the same person be responsible for ensuring that personal data is properly protected and that privacy issues are met?
 - Defined roles and responsibilities in these areas, at Board level, are now commonplace in the public sector. It is addressed, for instance, in the Codes of Practice issued under the Freedom of Information Act, in ICO guidance in respect of the Data Protection Act, in government guidance on managing information risk, and in the prescriptions for information governance in respect of Health and Social Care.
 - Yes, there should be integration of responsibility for both protection of data and public rights of access to it. This is what is generally recommended. It is the policy in this authority and is proving effective.
3. Would we need to have a sanctions framework to enforce a right to data?
 - We already have this in the powers of the Information Commissioner, the First Tier Tribunal and the higher courts.

4. What other sectors would benefit from having a dedicated Sector Transparency Board?
 - In the public sector, none. It would minimise cost and be sufficient to have a single Public Sector Transparency Board to steer the path generally. Creating additional sector-specific quangos appears to run counter to government policy.
 - However, we consider that the Open Data principles should be extended to the private sector (perhaps through changes to terms of reference of industry regulators to avoid a population explosion of quangos). Areas for consideration are:
 - Finance (banks and insurance companies)
 - Utility companies and railways
 - Media organisations, with re-consideration of the scope of exemption from the Freedom of Information Act in respect of editorial matters enjoyed by the BBC
 - Energy
 - Scientific research
 - Telecommunications
 - Arms industry
 - Property development

4. Meaningful open data

1. How should public services make use of data inventories? What is the optimal way to develop and operate this?
 - We question the value of these as separate entities. It would call for an additional staff, and therefore financial, resource allocation
 - In public authorities it is already becoming the practice to list and describe datasets in information assets registers, records inventories, and enterprise content management systems.
 - Datasets accessible to the public must, in any case, be listed in an authority's Publication Scheme under the Freedom of Information Act.
2. How should data be prioritised for inclusion in an inventory? How is value to be established?
 - Typically, inclusion of datasets in information asset registers is determined by a threshold monetary value, while records inventories will list everything held by an authority that is defined as a business record, i.e. information in tangible form and maintained for a business purpose.
3. In what areas would you expect government to collect and publish data routinely?
 - All areas where a public service is delivered or regulated by, or at the direction of, government.
4. What data is collected 'unnecessarily'? How should these datasets be identified? Should collection be stopped?
 - Person-level data

- Data not already held by public authorities, i.e. they should not be called on to create new datasets
 - Duplicated data, i.e. where the same, or broadly the same, data is collected and then published by different agencies
5. Should the data that government releases always be of high quality? How do we define quality? To what extent should public service providers 'polish' the data they publish, if at all?
- We do not believe in early dissemination of raw data. Data should be published once, and in good order
 - Public data should be checked for accuracy and quality before release
 - The data emanating from a public authority should be free from data input errors and duplications, and not 'spun', i.e. the mode of presentation should be as fine-grained and neutral as possible
 - Quality should be defined, by reference to why the data was obtained or created by the authority in the first place, and then by applying the Data Protection Act criteria: fit for purpose; appropriate; suitable; accurate.

5. Government set the example

1. How should government approach the release of existing data for policy and research purposes: should this be held in a central portal or held on departmental portals?
 - Publish government-held/collected data via Directgov, not separate departmental portals
 - Publish data much more quickly online, more consistently, and more systematically
 - More explanation is needed on where the Public Data Corporation's component bodies and the Office for National Statistics fit in.
2. What factors should inform prioritisation of datasets for publication, at national, local or sector level?
 - Public demand, e.g. by reference to frequency with which the data is asked for in freedom of information requests, public questions to ministers (or committees, in local government), and media enquiries
 - Completeness, i.e. to plug gaps in the mosaic of data published overall.
3. Which is more important: for government to prioritise publishing a broader set of data, or existing data at a more detailed level?
 - There are good cases for both. Broader coverage will identify to the public the full range and scope of Open Data and help to obtain feedback as to where there is greatest public interest, but existing data will be made more meaningful and usable if the degree of detail is finer.

6. Innovation with open data

1. 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?
 - Just lay out a level playing field. Individuals are much better at innovation than institutions
 - Ensure that the primary producer, i.e. the public authority publishing its data, gets a fair return, but one that won't inhibit innovation by the least well-funded entrepreneur
 - The consultation assumes that the domestic economy that will benefit but there is no evidence to support this. There is no territorial boundary defined in the proposals to access to the product and open licence to exploit it. Even if there were, it would be costly and slow to enforce
 - Fraudsters are, on current evidence, highly innovative, ingenious, and elusive. Moves to stimulate innovation through ready and free access to public data must be risk-assessed from the perspective of fraudulent use of data.