

## Open Data Consultation

Submissions Date October 27<sup>th</sup> 2011

### 1. An Enhanced Right to Data

<b>Questions for consultation:</b>
1. How would we establish a stronger presumption in favour of publication than that which currently exists?
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?  <i>The response received to this was in general 'Yes'.</i>
3. Are existing safeguards to protect personal data and privacy measures adequate to regulate the Open Data agenda?  <i>No –A presumption of publication would lead to more challenges and, potentially, more incorrect decisions as to whether (or not) to release data.</i>  <i>Greater publication leads to the danger of unintended aggregation making individual's identifiable.</i>  <i>It is noted that individuals may not be given the opportunity to object to publication until data is already in the public domain.</i>  <i>Generally, the existing protections for personal data/privacy, via the Data Protection Act and Human Rights Act were considered to be sufficient.</i>

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 proposed presumption of publication could create a new administrative burden of listing the justification for not publishing a range of items which clearly should not be published.*

*We are particularly concerned with any requirement to publish historic data.*

*We are also keen to stress that the current cost limit on FOI requests is important in ensuring that the efforts of public servants are directed to delivering services and not responding to arcane questions.*

5. How will we ensure that Open Data standards are embedded in new ICT contracts?

*We note the frequency of failed ICT contracts at a national level, and are unsure whether saying that ICT contracts must contain X and Y will actually lead to them containing usable Xs and Ys.*

*Furthermore, there will be tensions between obtaining off-the-peg software inexpensively that doesn't meet new open data standards and obtaining expensive customised software which does. Is this really the priority for (local) government expenditure?*

#### Comments

- We are not sure that a balanced and persuasive case for this has been made in the consultation document. We are not convinced that stronger rights are necessary.*
- The general view was that a further statutory scheme for accessing/publishing data could create duplication and confusion. There could be duplication with the FOI requirements to maintain a publication scheme, and with the Re-Use Regulations. There could be inconsistencies and confusion, given that the Open Data agenda appears to envisage full, "free" re-use of public sector information, whereas the Re-Use Regulations explicitly permit charging to cover certain costs and "a reasonable return on investment".*

## 2. Setting Open Data Standards

<b>Setting Open Data/Transparency standards</b>
<b>Questions for consultation:</b>
<p>1. What is the best way to achieve compliance on high and common standards to allow usability and interoperability?</p> <p><i>Nationally agreed set standards with clear guidelines which can be used in practice.</i></p>
<p>2. Is there a role for government to establish consistent standards for collecting user experience across public services?</p> <p><i>Yes, if there will be a requirement for it to be published, as there is little point publishing it unless it is comparable with data from other organisations..</i></p>
<p>3. Should we consider a scheme for accreditation of information intermediaries, and if so how might that best work?</p>
<p><b>Comments</b></p> <p><i>It is vital to distinguish between</i></p> <ul style="list-style-type: none"><li><i>• collated statistical data</i></li><li><i>• personal information</i></li><li><i>• drafts / works in progress</i></li><li><i>• work which has resale value</i></li><li><i>• other information</i></li></ul> <p><i>There are dangers of “data” being defined so widely as to include, for example, unstructured email conversations. Even items such as policies, procedures, training materials developed in-house may not be currently traded, but do have value (for example would allow unfair competition if competitors could simply request and reuse such products).</i></p> <p><i>It was agreed that if a further access regime is to be created, then common standards as regards the type of data to be collected and published, and the quality and usability etc. of the data should be introduced so that there is consistency of practice between public bodies.</i></p>

## 3. Corporate and Personal Responsibility

<b>Corporate and Personal Responsibility</b> <b>Questions for consultation:</b>
<p>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.</p> <p><i>Clear standards and guidelines on this area need to be developed. Currently it feels a bit too vague and a lack of understanding could lead to breaches of privacy and security or a reluctance/inability to fully honour a commitment to Open Data.</i></p>
<p>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?</p> <p><i>Corporate responsibility at board level is would be important, although it would probably not be appropriate to make the same individual responsible for either the Open Data or FOI agenda, and also for the privacy/protection of personal data agenda.</i></p>
<p>3. Would we need to have a sanctions framework to enforce a right to data?</p> <p><i>Public sector organisations are under immense pressure to deliver excellent services in very challenging economic times. The concept of Open Data is a very good one but public sector organisations should be supported in this and there should be an appreciation of the enormity of the task associated with developing a smooth approach to Open Data</i></p>
<p>4. What other sectors would benefit from having a dedicated Sector Transparency Board?</p>
<p>Comments</p>

#### 4. Meaningful Open Data

<b>Meaningful Open Data</b> <b>Questions for consultation:</b>
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1. How should public services make use of data inventories? What is the optimal way to develop and operate this?

*We would suggest a minimum national standard, supplemented (or not) at the discretion of each authority. Cost should be a significant determining factor – care must be taken not to impose unnecessary burdens to complete “back office” tasks at the expense of front line services.*

2. How should data be prioritised for inclusion in an inventory? How is value to be established?

*Data which the public want and which is generally available should be prioritised. Government should conduct research into current FOI requests and responses to establish these areas. This would be in line with expressed public desire, and, generally, be available.*

*Care should be taken to give sufficient lead-in to allow authorities to start creating or storing data in the correct format. There is risk in requiring publication of historic information, which may not be (easily) available. Requirements should not be retroactively applied.*

3. In what areas would you expect government to collect and publish data routinely?

*Service usage statistics, statistical customer feedback, success/fail of interventions (where this can sensibly be defined), finance matters (income, expenditure, accounts), results against authority plans.*

4. What data is collected “unnecessarily”? How should these datasets be identified? Should collection be stopped?

*It is often the case that the statistical importance of data will not be clear until a significant body of data has been accumulated. Authorities should be allowed to collect data without any further restrictions.*

*In particular it is important to avoid populist prohibitions on collecting data about equality characteristics.*

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?

*Authorities will be held to account by the press and public on the basis of data. It should only be published if it is correct. There should not, however, be any requirement to provide “fancy” publications or contextualisation. .rft and. csv file formats should be sufficient to promote use of the data.*

*Data is of good quality if it is fit for purpose, the primary reason for the data should be to support the delivery of public services. If the data is of sufficient enough quality to do this then it is of sufficient quality to publish. If it isn't then this is something that should be addressed with the aim of supporting the delivery of services.*

#### Comments

*Although it's great to have easy access to data for benchmarking purposes, the fact that there are now so few national indicators means that if authorities publish performance data, it's unlikely to be directly comparable, and this could make it misleading not only for other authorities, but also for members of the public.*

- **5. Government Sets the Example**

#### Government sets the example

##### Questions for consultation:

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?

*The proliferation of numerous portals which could confuse should be avoided. One central portal, designed appropriately would seem the most logical approach.*

2. What factors should inform prioritisation of datasets for publication, at national, local or sector level?

3. Which is more important: for government to prioritise publishing a broader set of data, or existing data at a more detailed level?

*Broader. It is when we try to break down data that we begin to run into difficulties of detailed interpretation, and it becomes more difficult to accurately compare figures.*

## Comments

*As a legal point, any further developments in the Open Data agenda need to take account of the fact that certain “possessions” including copyright and various forms of intellectual property, and “valuable commercial confidential information” are now recognised as falling within the concept of “possessions” in article 1 of the first protocol of the ECHR (Court of Appeal in Veolia ES Nottinghamshire Ltd v Nottinghamshire County Council & Shlomo Downen), and so a human rights balancing exercise will be required. As a result, where this type of information is concerned any statutory presumption in favour of disclosure will be displaced (FTT in Staffordshire County Council v The IC & Sibelco (UK) Ltd).*

*As a further legal point, any further developments in the Open Data agenda should leave compliance at the discretion of the public authority where information would fall within an FOI or EIR exemption/exception, as the latest Code of Recommended Practice for Local Authorities on Data Transparency currently provides.*

## 6. Innovation with Open Data

### Innovation with Open Data

#### Question for consultation:

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?

*Access to data could stimulate innovation but only if it is published with context, with standards, in a usable format. The overall approach to Open Data needs to be extremely clear and supported by consistent standards.*

## Comments