



Consultation Response to: 'Making Open Data Real: A Public Consultation'

Date: 31st October 2011

The Office of Communications ('Ofcom') is a supporter of open provision of data and information and has sought to comply with both the letter and the spirit of the Freedom of Information legislation ('FOIA'). Not all the consultation is relevant to Ofcom's activities but Ofcom has clear views on a number of the questions raised.

Exploring whether the current fees regulations and cost limits under the FOIA should be amended to facilitate the release of more data:

1. Ofcom does not believe that the current fees regulation and cost limits hamper the appropriate release of data. Ofcom receives around 500/600 requests for information annually and supplies, on average, around 80% of the information requested. Often the reason for withholding information is due to the confidential nature of the information requested-very rarely is it due to the time provision being considered. Specifically, with regard to the 18 hour time limit, we always encourage requestors to come back with a narrower request in the first instance before applying section 12 of the FOIA. We do not think this provision should be removed or that a higher cost provision should be enforced. Ofcom has received 3800 requests for information since the legislation came into effect and has used this 18 hour provision in 2% of the cases (70 in total). In those cases we have tried to assist the requester by encouraging them to modify the request so that the time limit was not breached. One recommendation which may help make the process more transparent to the public and keep them informed, would be to oblige public bodies to offer the opportunity to clarify requests in the first instance. This is because in some cases, members of the public may not necessarily be aware of the time it can take to gather the information needed to respond to a request. There is also the risk that introducing a new higher cost limit will disadvantage those authorities currently getting it right and will not impact on those which currently do not. From Ofcom's perspective, this is unlikely to provoke the release of substantially more data.
2. In terms of charging under the FOIA for provision of material, Ofcom sees no merit in revisiting the amount that can be charged. It is very rarely used as most requesters seek information to be provided in electronic form. Ofcom has only recently begun charging for material (April 2011) and has only done so twice since then (and each time the requester was happy to pay without question).
3. We understand the need for, and importance of, open data but we think this can be achieved by encouraging more publication in the first instance. At Ofcom we have made considerable efforts to publish more and more information and operate a policy of publishing wherever possible, unless legal or commercial confidentiality restrictions apply.
4. Although not raised in the question, Ofcom has concerns at the ease with which requests can be made, and then appealed, at no cost to the requester. Although the vast majority of requests are appropriate under the FOIA, we are concerned that a number of requests are not appropriately utilising the legislation as it is intended and can be designed to inconvenience the public body concerned for no public benefit. We consider that a small charge should be applied to FOI requests, to try to limit the number of repeat requests that place an unreasonable and disproportionate administrative burden on staff.

Corporate and personal responsibility: how would public service providers be held to account for delivering Open Data through a clear governance and leadership framework at political, organisational and individual level?¹

5. The message regarding information storage and personal responsibility for emails sent should be reinforced. At Ofcom we frequently take all Ofcom staff through guidance on 'personal governance'-which includes being aware that all documentation prepared by them, and all e-mails written by them (to external or internal recipients), may be publishable. All groups in Ofcom (and indeed in all organisations) should always have the FOIA in mind when commissioning research/outsourcing contracts etc.
6. Organisations are driven by incentives. Ofcom is not convinced that the Information Commissioners' Office (ICO) has sufficient powers to enforce compliance; higher fines for non-compliance are an option. We would also encourage closer working between the ICO and public sector bodies, so that they are aware that in many cases the body/organisation is not deliberately trying to withhold information but it is merely a matter of having a different interpretation of the law. We would welcome the ability to seek informal guidance from the ICO on complex requests rather than having to wait to deal with the ICO only when a formal complaint has been made.

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?²

7. Government may wish to consider the cost implications to themselves in opening up the FOIA further in terms of staff and time. Ofcom has three full-time staff doing FOIA work (co-ordinating the requests) with many others (out of a total staff of 730) putting substantial time into the process. It may be the case that increased pressure to provide information does not necessarily lead to better record keeping. From our experience, the bulk of the time taken to deal with requests is often spent on retrieving and checking e-mail correspondence-which are always going to be less easy than documentation to file. Furthermore, there are potentially unforeseen risks associated with an enhanced right to data – for example, the restrictions a greater access to information would place on public sector bodies would make policy formulation difficult when added to the increased resource implications. For this reason, we are not convinced that the burdens imposed by an enhanced right to data would be proportionate to the government's intended aims, particularly as we are not aware of evidence that, in Ofcom's case, the public believes they should have access to more information than is currently available.

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?³

8. Care should be taken not to create more information by 'polishing' what is stored. We need to provide information as it is, or proactively publish the correct information. Polishing information will lead to bad record management.
9. The consultation says - at present the reality for citizens is that getting access to meaningful data about their public services can still be difficult and is sometimes

¹ Page 29 onwards

² Question 4 page 25

³ Question 5 Page 32

impossible.⁴ This paragraph also goes on to say 'equally for enterprise, particularly start-ups and SMEs, getting access to data that helps grow their business may be difficult or close to impossible'. Ofcom has always had a difficulty in supplying some information as it is restricted by other legislation from making information about its stakeholders available to third parties. Ofcom does give out information freely to help anyone, and treats requests as purpose blind, but is not able to help under FOIA where commercial interests would be affected. Applying re-use will change the way we have to respond to requests and consider the way information will be used - therefore making the request no longer purpose blind.

10. As a final comment, we think that legislation to provide statutory time limits for internal reviews could be enforced. As an organisation we deal with internal reviews as speedily as we can and we are aware of the ICO's guidance on timing and do our best to comply.

⁴ Paragraph 4.7