

## Response to the consultation on 'Making Open Data Real'

### General comments

1. Ofsted is committed to the principle of increasing transparency in public services. For this reason we welcome the government's drive to raise the profile and importance of transparency across the public sector.
2. Transparency is central to how we approach inspection and regulation. We consult widely on all new inspection frameworks and engage the sector in development and piloting. We publish each inspection framework as well as our evaluation schedules so that everyone can see our process and the criteria our inspectors use to make their independent judgements. This enables providers to consider and evaluate their own performance with reference to national standards; something we actively encourage. We enter into a dialogue with providers during inspection to talk them through how we are coming to judgements and to give them immediate feedback on what we have seen. Following each inspection visit we publish a report on our findings and recommendations for improvement. Our reports are widely used. For example, 68% of parents tell us they review our reports before choosing a school for their child, and 83% of local authorities review our reports before placing a child or young person in a children's home.
3. Ofsted also carries out a range of thematic survey work and publishes the results on our website, which receives in excess of 900,000 unique visitors a month. In March 2011, Ofsted started publishing case studies of best practice observed during survey visits in an easily accessible way, including downloadable information and videos, to help drive improvement.
4. Ofsted is now rolling out an extensive programme of official statistics releases, designed to release provider-level datasets about inspection and regulation activity as well as summary statistics and key findings to help users understand what the data are telling them. Although all judgements are already published within inspection reports, the datasets bring the judgements together in a more accessible format for analysis and were introduced in response to demand. Positive feedback has been received on these new releases, showing the public appetite for further transparency and use of open data.
5. Our reports are regularly cited as authoritative in both parliament and in the media, as well as being a trusted source supporting public choice. We therefore place a very high importance on the accuracy and objectivity of the evidence we report.

6. In this response we address each of the broad themes within the consultation. We address particular questions where we feel it is relevant and appropriate to do so, though all questions are addressed generally under each theme as a whole.

### **Glossary of key terms**

#### Questions:

- a) Do the definitions of the key terms go far enough or too far?
- b) Where a decision is being taken about whether to make a dataset open, what tests should be applied?
- c) 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?
- d) 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?
- e) What would be appropriate mechanisms to encourage or ensure publication of data by public service providers?

7. It would be helpful to be more specific about whether a 'dataset' could include qualitative information as well as quantitative information as this is not clear in the proposed definition. It is also not sufficiently clear where statistics fit, as these could be both a dataset and information. It would be helpful if the two groups were mutually exclusive. The relationship between these definitions and official or national statistics needs further exploration to ensure the concepts and definitions being introduced here are compatible with those already in existence.
8. It is very important to be clear about whether 'public service providers' extends to private companies providing a service under contract and on behalf of a public authority. For example, much of Ofsted's inspection activity is contracted out to Inspection Service Providers. It is vital that there is clarity about the government's expectations in relation to private companies.
9. It is Ofsted's view that decisions about whether to publish a dataset, should be considered on a case by case basis, taking into account some common considerations but avoiding any situation where inflexible tests might replace sound judgement. Considerations of privacy should be given high importance, and the process of determining the impact of publishing data can be complex. For example, a dataset, which, if published whole, would seriously breach trust and clearly identify personal information about individuals, could

be published with slight redaction to significantly lesser detriment. In our experience the balance of privacy and transparency can cause significant debate and needs creativity, sensitivity and a deep understanding of the issues involved to be able to find a satisfactory and proper resolution. Decisions about the publication of data can attract similar levels of public interest and concern as policy decisions. They should therefore be subject to the same level of scrutiny and consultation at a level appropriate to the significance and sensitivity of the dataset in question.

10. Other important factors in the decision about whether to make a dataset public, or determining the priority order for release, should include the cost to the organisation of doing so on an ongoing basis, the level of demand for the dataset and whether the data are already available elsewhere.

**An enhanced right to data:** how do we establish stronger rights for individuals, businesses and other actors to obtain, use and re-use data from public service providers?

Questions:

- a) How would we establish a stronger presumption in favour of publication than that which currently exists?
- b) 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?
- c) Are existing safeguards to protect personal data and privacy measures adequate to regulate the Open Data agenda?
- d) 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?
- e) How will we ensure that Open Data standards are embedded in new ICT contracts?

11. It is important that the right to data is not overly bureaucratic or costly either for public service bodies to comply with or for the public to exercise. Simple is better, therefore it may be desirable to consider a single, simple and clear framework, building on existing good practice, rather than try to adapt and improve the existing framework to achieve the policy aim.

12. The areas of privacy and personal data need significant additional work. Whilst each individual dataset may be appropriately anonymised to prevent the identification of individuals, the combination of datasets represents a much more powerful tool where traditional anonymisation techniques may no longer be sufficient. There is a risk that effective

anonymisation might require such significant redaction of information that the dataset becomes costly to produce and provides insufficient value.

13. For example, within the children's social care sector which Ofsted regulates, it is essential that details about the location of secure training centres and children's homes remain confidential to safeguard the privacy and security of these using these services. Ofsted also manages RAISEOnline, the national database of pupil performance data, where cross-referencing of some of the tables about pupil performance across different groups could potentially reveal information about identifiable individuals (including special educational needs and exam performance). Ofsted can ensure that confidentiality is maintained in any information we release, but it is important that a combination of data made available by a range of organisations does not allow identification to take place. Very clear guidance is required to ensure responsibility for this lies clearly with a single organisation. Assigning responsibility under open data is likely to be much more complex than within existing arrangements and needs further consideration.
14. The security implications of holding data online (paragraph 8.7) also need close investigation to minimise the risk that sensitive data could not be accessed or released accidentally.
15. In requiring public service bodies to comply with open data, the cost to the individual organisations and the system as a whole should be considered in some depth. In a time of reducing budgets, when difficult decisions are being made about how to continue delivering high quality and effective services, it is right that open data should be open to the same scrutiny and cost-benefit analysis. Costs will include infrastructure within departments to allow data to be accessed, processed and released, and the quality assurance of datasets and information to ensure misleading information is not released. Costs will also depend on the complexity and volume of datasets and information an organisation is being asked to release: a small volume of more complex datasets could be as costly to deliver as a large volume of relatively straightforward datasets.
16. Given the limited and diminishing resources within public service bodies to respond to the open data initiative, it is important that they are able to plan and prioritise effectively and not simply react to requests for a new dataset or information where resources allow. This will go some way towards ensuring that the datasets or information which generate most demand are released first, with other datasets following. One way of managing this could be to use a process similar to the official statistics schedule of release, where each department sets out its plan for the coming six month period, indicating what will

be released in each month. The dates of release are then advertised at least one month prior to release. This would ensure departments could plan and prioritise, based on cost and demand, the order in which datasets were released. Departmental Business Plans could be a mechanism for monitoring this, and some external scrutiny would be helpful to challenge the prioritisation and ensure it meets public demand. The forward plan would be available to the public who could provide feedback on it and help to shape the next plan.

17. With regards to embedding Open Data into new ICT contracts, we would expect to follow wider civil service practice as it develops. A standard clause inserted into every contract, much like the current OGC contracts do for other items such as data security, would be useful to us in this regard.

**Setting open data/transparency standards:** what would standards that support an enhanced right to data among public service providers look like?

Questions:

- a) What is the best way to achieve compliance on high and common standards to allow usability and interoperability?
- b) Is there a role for government to establish consistent standards for collecting user experience across public services?
- c) Should we consider a scheme for accreditation of information intermediaries, and if so how might this best work?

18. Ofsted agrees that there is a role for government to establish consistent standards for data across public services. The work undertaken by the GSS Harmonisation Group exemplifies this approach, with government departments working together to agree definitions and data standards. We believe similar work is done by the Systems Interoperability Framework (SIF), which is being adopted by many local authorities, and by the Information Authority which was set up in October 2006 to set data standards and govern data collection and use for further education and training provision in England and is funded by the DfE. Some clarification of the distinct roles of the different systems and organisations would be beneficial.

19. Harmonisation of data standards has resource implications where organisations are using different standards and the imposition of new standards requires system or process change. It is therefore important to consider an appropriate time-frame for setting any new data standards and maintain an appreciation that departments may not be able to apply these without sufficient resources.

20. Ofsted already carries out a number of post-inspection surveys to gather user feedback about inspection, and uses this to evaluate where things are working well or where improvement is needed. Response rates to these can be very high: over 80% in some areas of our work. Given there is evidence that people are more likely to respond to surveys if they feel something will be done as a result, it seems appropriate for Ofsted to gather its own feedback on performance than for this to be centralised. We are looking to develop greater on-line capability to listen to customer views, at times to suit them.

**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?

Questions:

- a) How would we ensure that public service providers in their day to day decision-making honour a commitment to Open Data, whilst respecting privacy and security considerations?
- b) 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?
- c) Would we need to have a sanctions framework to enforce a right to data?
- d) What other sectors would benefit from having a dedicated Sector Transparency Board?

21. Evidence from inspection suggests that some form of scrutiny is a good mechanism for driving improvement. For example, when Ofsted first started inspecting the effectiveness of self-evaluation in maintained schools in 2005/06, 65% of providers were judged to be good or outstanding for this aspect. By 2008/09, the last year in which this was explicitly judged on inspection, the proportion of good or outstanding practice seen had increased to 76%. The fact that a judgement was made about self-evaluation seems to have driven improvement; now that this practice is largely embedded across the sector there is no need to continue explicitly judging self-evaluation although it remains an integral part of effective leadership and management. This evidence would support some level of scrutiny and challenge, using a transparent process and publishing the outcomes, to encourage public service providers to move towards embedding the principle of open data in their day to day decision making.

22. Ofsted agrees that one way to encourage public service providers to proactively work towards greater transparency is by assigning responsibility at a very senior level within the organisation. At present, the current approach to Departmental Business Plans includes the identification of a senior executive to act as the named lead on

transparency. We also have a Senior Information Risk Officer who is accountable for all of the risks around data and information. There is also currently a further role for information asset owners, which is a role defined under the Security Policy Framework. There may be advantages in making a clear distinction between the senior lead that acts as a champion within the organisation for greater transparency, and the senior lead who manages the associated risks. Alternatively, a single lead responsible for both may provide greater focus within the organisation and externally. On balance, the most important outcome is a clear and consistent accountability at a sufficiently senior level.

23. Given that Sector Transparency Boards have not yet been fully established, it would seem sensible to evaluate their effectiveness before deciding whether to extend the principle more widely.

**Meaningful open data:** how should we ensure collection and publication of the most useful data, through an approach that enables public service providers to understand the value of the data they hold and helps the public at large know what data is collected?

Questions:

- a) How should public services make use of data inventories? What is the optimal way to develop and operate this?
- b) How should data be prioritised for inclusion in the inventory? How is value to be established?
- c) In what areas would you expect government to collect and publish data routinely?
- d) What data is collected 'unnecessarily'? How should these datasets be identified? Should collection be stopped?
- e) 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?

24. The principle of ensuring datasets and information are meaningful and accessible is important, and should be considered more fully. Feedback from parents and users of Ofsted inspection reports very clearly indicates that it is our responsibility to ensure the reports are user-friendly and understandable for the range of users. This principle similarly appears in the Official Statistics Code of Practice, which is clear that the owner of the dataset or information has a responsibility to ensure the data are accessible to a range of users. 'Accessible' encompasses not only physical accessibility as a download or printed document, but also clear, easy to use and understand, provision of appropriate metadata, identifying poor quality information and taking steps to improve it and educating users. Ofsted has improved the accessibility of its official statistics releases by providing key findings.

This means that individuals unable to analyse the dataset themselves can still have access to the information provided within context.

25. There are significant risks associated with the release of poor quality information and datasets. For example, incorrect conclusions may be drawn by those unable or unwilling to understand the limitations of poor quality data, or decisions may be made on the basis of flawed data which is not fit for purpose. Lower quality datasets may be appropriate for one purpose but not for another; once they are released it is difficult for the owner of the data to influence how the data are used. How can we, as data owners, help people decide whether they have the right data to answer their question? These risks need to be well-understood and thought given to how they can be actively managed particularly where data are used for commercial purposes. Clarity about public bodies' potential liabilities should we publish inaccurate data in good faith, would be welcome.
26. It is not immediately clear whether open data will improve the quality of data held across government, particularly if the focus is on releasing data 'as is' rather than improving quality. Assuming resources are static or reducing, it is possible that resources that would have been deployed on improving the quality of data may be diverted to the process of releasing datasets.
27. Ofsted believes that open data should not lead to a wide range of new data collections. It is important that any data collected places a proportionate burden on those providing the data or information, and that it is collected for a clear business reason. This equally applies to data collections within government. We have seen some evidence of government agencies, such as Government Procurement, restricting the scope of their data collections to large departments in recognition of the resource implications for smaller departments such as Ofsted. This practice should become the norm wherever practicable.
28. The primary focus of open data should be to release data already held by government. Ofsted makes use of the DfE 'Star Chamber' process for assessing whether the benefit of a data collection outweighs the cost to the respondent, and this effectively ensures that only business critical data can be collected.



**Government sets the example:** in what ways could we make the internal workings of government and the public sector as open as possible?

Questions:

- a) 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?
- b) What factors should inform prioritisation of datasets for publication, at national, local or sector level?
- c) Which is more important: for government to prioritise publishing a broader set of data, or existing data at a more detailed level?

29. Ofsted is committed to transparency in how we make our decisions: decisions that lead to the development of our inspection frameworks, the decisions about performance that are made by our inspectors, and decisions about Ofsted as an organisation.

30. Given that decisions about how we develop our frameworks are often only of interest to those who are immediately impacted by our inspections, there seems limited value in publishing this kind of information on a central portal. There is very high interest among the general public about the outcomes of our inspection work, but this does not usually extend to interest in the mechanics of inspection work, except at a high level and certainly not highly detailed background data. Organisations and individuals who are likely to be subject to inspection do have an interest in detailed background data, and they are also very familiar with Ofsted and visit our website. Our case to retain a separate website has been previously supported by government.

31. We support the example provided of using past Freedom of Information requests to guide our understanding of the demand for information, thereby reducing the cost of facilitating requests for information over time. Rather than centrally determining whether breadth or depth should be prioritised, we would advocate a 'horses for courses' approach based on the evidence of public appetite and demand. In such a case we would expect to be guided by our own experience of the nature of the demand for the particular information we hold, rather than any cross-government priorities for either broader or more detailed information. This would be, of course, excepting possible future requests under the provisions of the Protection of Freedoms Bill, should it be passed into law.

**Innovation with open data:** to what extent is there a role for government to stimulate enterprise and market making in the use of Open Data?

Questions:

a) 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?

32. We are open to the idea of government stimulating enterprise and innovation in the use of Open Data and would be happy to consider how Ofsted, as a regulator might contribute to this. Our core business is inspection and regulation compatible with our primary responsibilities. We would be concerned if a role was defined which broadened our responsibilities stretched further our resources and thereby diluted our clear focus on inspection and regulation.

33. That said, we are committed to seeing the data we produce as a result of our inspection and regulation was being used widely, particularly where this contributes to driving up standards in the sectors in which we operate.