



membership resources

APSE briefing 12-38

August 2012

To all APSE main contacts in England and to Wales, Scotland and Northern Ireland for information

Open Data White Paper

Key Issues

- The Open Data White Paper sets out a detailed vision of how data should be made available to the public to inform them of public service performance and cost.
- The paper also sets out a series of action plans, some of which are open for consultation including a new 'right to data'.
- The issue of the form in which data is released is also covered within the paper and this is also a matter recently considered by the Public Accounts Committee.

1. Introduction

Following the May 2010 General election the Coalition Government published its programme for Government. Within section 16 of that programme for Government the coalition set out their policy on Government Transparency. It used the following terms: *'The Government believes that we need to throw open the doors of public bodies, to enable the public to hold politicians and public bodies to account. We also recognise that this will help to deliver better value for money in public spending, and help us achieve our aim of cutting the record deficit. Setting government data free will bring significant economic benefits by enabling businesses and non-profit organisations to build innovative applications and websites.'*

It also specifically committed to a number of action points that directly relate to the public sector and within that to local government:-

- We will create a new 'right to data' so that government-held datasets can be requested and used by the public, and then published on a regular basis.
- We will require all councils to publish meeting minutes and local service and performance data.

- We will require all councils to publish items of spending above £500, and to publish contracts and tender documents in full.
- We will ensure that all data published by public bodies is published in an open and standardised format, so that it can be used easily and with minimal cost by third parties.

The Open Data White Paper is a further step towards the aims outlined in the coalition agreement.

2. The Open Data White Paper

In response to its earlier policy commitment, and on-going work on data transparency, the Government has published the 'Open Data White Paper: Unleashing Potential'. The white paper is themed around four themes:

- The Government's vision for a transparent society
- Enhanced access
- Building trust (in data use and sharing)
- Smarter use of data including 'data mashing' to inform public policy and decision making

This briefing considers each theme in turn but also assesses the impact for local government of this white paper.

3. Government's vision

The Government believes that transparency is already radically changing the way people live their lives and run businesses within the UK. They cite examples of this being the release of transport data, to enable mobile phone applications that provide live timetable information to passengers, and the use of crime map data, following release of statistical information from the Home Office. As well as these examples however the Government is mindful that Public Sector Information (PSI) is not linked and is often disjointed, making it difficult to navigate and understand.

The white paper argues that, through better data use, public service improvements, and outcomes, can be driven by enabling people to make better choices about the public services they use and to hold government to account on spending and outcomes. Government refers to data as being the 'new raw material' and that this level of open data, from all parts of government, will help to develop innovative new business ventures and for public service professionals it will act as a tool to improve their performance.

Each government department has now published its first ever 'Open Data Strategy' setting out how new data will be published over the next two years. Departments have also been asked how they will stimulate a market for its use and all new data will be accessible through a completely overhauled www.data.gov.uk site. There will also be a review of how Public Sector Information (PSI) is used and re-used.

The white paper states that there is no intention to offer one single legislative response to the issues of Open Data but that existing laws such as the Freedom of Information Act and a 'presumption to publish' and other policy matters highlighted in the paper would be sufficient. The paper also recognises that for some organisations and public bodies there will be a culture change needed that will not happen quickly and that that will require time to develop.

The cost of data is considered to be hugely influential in determining whether people access it or not so the paper restates that the general principles, for the use of PSI, is that the data should be provided free 'wherever appropriate and possible' but it does not rule out charges. The white paper also says that the public should also expect that changes to data need 'only happen once' and that that information is shared with other agencies, regardless of whoever initially receives that information. This will be an important point for councils to note as they are often in 'first receipt' of information, for example on council tax, where there is a change of address.

4. Enhanced access

For the purposes of demonstrating the enhanced access to data the white paper references a number of initiatives including:-

- The Cabinet Office will increase transparency on grant funding by publishing data on which organisations receive public money from civil society programmes;
- The Department for Work and Pensions will release statistics on job outcomes and sustainment payments of the Work Programme from autumn 2012;
- HM Treasury will produce (in machine-readable format) data relating to the management and use of EU funds in the UK. An improved statement will be ready for release for the financial year 2013/14. This will improve accountability and encourage better financial management of EU funds.
- Sport England has for a number of years maintained a database of sports facilities – 'Active Places' – which it uses primarily to support a number of business-to-business applications to guide new investment into, and rationalisation of, sports facilities. The Fitness Industry Association working with Sport England is developing a project utilising Active Places to drive forward change in the market place.

The paper however stresses that it is not always possible to predict, with any degree of certainty, how data is being used or how it is stimulating growth and innovation. Therefore as well as promoting better, flexible and more intelligent IT systems, supported by transparent contracts, Government states that '*we need to have a clear engagement strategy with those third parties that are often our primary data users.*'

Interestingly the paper states that groups such as individual developers, SMEs, citizens, academics and large companies will all be users of government data and that there should be collaborative working, to ensure these groups are aware of what datasets are being released and in what timeframes. This may cause a degree of chagrin in local government circles where conversely the private sector have fiercely guarded the release of what they regard as 'commercially sensitive' data, even where this data would help hold such companies to

account when operating on public sector contracts. It would be difficult to justify the continued denial of this type of data being made available to the public, particularly given recent public and media furore over contract compliance on, for example, contracts such as that of G4S on Olympic security.

Accessibility of public data is criticised in the white paper for being too low for effective use and often lacking in common standards. Equally, the paper states, intermittent publication, and a lack of common standards, can act as barriers that make it difficult for users to scrutinise activity or generate added value.

Access to data rights will or already have been strengthened by enhanced use of the Freedom of Information Act (FOIA) 2000 and the Environmental Information Regulations (EIRs) 2004. The FOIA and the EIRs provide the public with the framework to access information from a public authority and, providing the request is not covered by an exemption (including the public interest test where relevant) or ministerial veto, the information is released. The FOIA is currently undergoing post-legislative scrutiny by the Justice Select Committee to explore whether it works effectively. The Datasets Section of the Protection of Freedoms Act, which received Royal Assent in May 2012, enhanced access to data. This new section pushes public authorities to consider disclosing data that is not already routinely published and sets out what is meant by a dataset – the raw, factual or source information behind a public function – to allow for a better understanding between the person requesting the dataset and the public authority holding the data of what is being sought.

The new section means that, where the FOIA requires release of a dataset, a public authority will now have a responsibility to release the dataset in a form that can be used and re-used by specifying the licence it can be used under and, where reasonably practicable, in a re-usable format. In addition the Datasets Section in the Protection of Freedoms Act, has amended Section 45 of the FOIA. The accompanying Code of Practice is expanded specifically in relation to the new Datasets to give guidance to applicants and public authorities on how to deal with requests such as:-

- Giving permission for datasets to be re-used
- The release of datasets in an electronic form which is capable of re-use
- The making of datasets available for re-use in accordance with the terms of a licence;
- Standards applicable to public authorities in connection with the disclosure of datasets; and
- Other administrative issues related to making datasets available for re-use.

The information commissioner will be used to ensure compliance. It is also acknowledged that charging structures for public data are an emotive issue and that any changes to existing arrangements must also take cognisance of the most appropriate use of public funds.

5. Building trust

Openness about the factual evidence that underpins advice used by policy makers they receive is considered in the white paper. Whilst the FOIA protects policy advice to Ministers from disclosure (to ensure that it is robust, open, honest and constructive) the white paper argues that the need to maintain a safe space for policy advice should not be used to prevent

the maximum possible openness to new thinking or the gathering of evidence from external experts. The Government states that its objective is to achieve the right balance between transparency and confidentiality, whether to protect the formulation of government policy or commercial interests where their protection is also in the public interest. This is a point equally in local government where of course certain data, if released, may jeopardise 'best value' principles, particularly if it is service or supply information that is opened to procurement or commissioning processes. There are also many references to the need to protect individuals' rights to privacy and the confidentiality of the data held.

Forms of consultation as part of the Open Data approach found that despite the protections offered by existing legislation and regulation, and guidance produced by the Information Commissioner's Office (ICO), there remains public concern that ill-thought-through transparency can erode trust and compromise privacy. This is a particular issue on health and care records; this again will be of concern to local government practitioners, especially with public health duties falling to local government. Whilst better access to health based data may help in the delivery of this function it could also create frustrations as to what data could reasonably be shared. The European Commission recently published new proposals concerning the protection of personal data.

The white paper recognises that releasing greater quantities of anonymised data raises complex questions about how to guarantee that privacy is protected; particularly as increasing the availability of anonymised data has the potential to increase the possibility of identity disclosure through the 'mosaic effect', which, albeit unintentionally, could reveal identity.

6. Smarter use

Transparency and Open Data are often grouped together as the end and the means respectively. The paper states that *'this Government believes strongly in the transformative impact of Open Data, but there are circumstances where sharing data between public bodies is in the public interest but Open Data is an inappropriate means to achieve it'*.

The paper therefore sets out that there should be:-

- ***Sharing data between public authorities and with research bodies under strict licensing and legal protections to guarantee privacy and confidentiality.*** Eg Where datasets are composed of anonymised personal data that are shared in a secure way to allow linking of records from different datasets to create some kind of aggregated dataset. For example sharing data on offenders, benefit claimants and employees to produce analysis of the employment and benefit outcomes for offenders; and
- ***Making personal data records available to the individual they relate to through a secure online portal.*** This is for example about using new technologies and techniques to analyse and access data safely and securely to provide smarter use of data.

The Law Commission announced that it will be taking a comprehensive look at the current legislative landscape for data sharing. It is expected to report in late 2013. The white paper makes it clear that the Government's view, regardless of any legislative changes needed, is that they will challenge *'outdated and unhelpful perceptions of data sharing in order to deliver*

better and more efficient public services. The benefits from making smarter use of Public Sector Information are too large to ignore.'

Personalisation of public services is also an area that it is considered could benefit from smarter use of technologies in data use. Comparisons are made to the use of data analytics to target the delivery of goods and services in private business, such as targeted advertising on website where a user has shown a particular interest in a type or range of products. The white paper suggests that for the public sector to reap such benefits in a personalisation context then it must consider the use of the latest technology to unlock the potential insight of data coming from multiple sources (in line of course with the latest guidance on the use of cookies). It is believed that this can best be achieved through the use of data 'safe havens' – a platform for data to be momentarily and securely linked without the need to create vast new databases.

Further points include consideration of:-

- Consistent application of access conditions and properly managed stewardship of data linkage centres
- The requirement for a consistent legal and ethical framework governing data sharing for research and policy purposes
- Issues of data anonymisation to protect individual confidentiality
- The importance of a sustained programme of engagement which brings the public into the decision making process, clarifying the purpose of data linkage and explaining safeguards

APSE analysis

The recognition that the ability to link data, and use data creatively, to help deliver better use of public resources and improvement in public services is welcomed by APSE. The ability for public data sets to be read across public services and for this data to be made available to developers, to help in the stimulation of development and economic growth, is a sensible but ambitious measure and is not without complexities.

Use of data for public service improvement has been a specialist area for APSE for over 14 years, with the development of [APSE performance networks](#) as the UK's premier model for benchmarking data and service improvement in frontline services.

However there are some concerns with the Open Data White Paper. For many authorities, faced with budget reductions, there will be a need to resource the development of existing datasets to ensure that they are compliant with new schemes such as the 'five star' scheme to identify the standards of compliance on data made available. Data currently collected may not be in machine readable format or capable of re-use and on an open licence basis. A move towards a '*presumption to publish*' is also difficult because again this will require resources to be made available for large amounts of data that would not necessarily be used or accessed.

Additional complexities will also include commercially sensitive data that could compromise best value principles or value for money being achieved on future contracting arrangements.

In addition, the proprietary issues around data ownership and re-use and intellectual property issues could create legal uncertainty that would again result in a need to obtain legal advice which could be specialist and thus expensive.

APSE is also concerned that the release of vast quantities of data does not simply lead to 'data dumping'. This is a matter also picked up by the Public Accounts Committee in a report published on the 1 August which criticised the release of data under the guise of greater transparency which is actually very difficult for the public to interpret. The PAC report also highlights the eight million UK citizens without access to the internet who would find accessing public data difficult yet who might benefit the most from access to data such as on the performance of health services or schools.

APSE would welcome the views of its members on this issue and the implications for public authorities. In addition if members would welcome further discussion, training or seminars around issues of compliance and gearing up for the changes including the changes made to the Freedom of Information Act please email mbaines@apse.org.uk.

APSE would suggest greater consideration should perhaps be given to a local 'dashboard' of key performance indicators that could be made available both online and republished in council newsheets, local press and in libraries, leisure centres, GP practices and so forth. Those member authorities that are already participating in performance networks will of course be in a good position to extrapolate and use for public information some of this data to inform the public on the cost, quality and satisfaction of local public services and again we would welcome your views on the types of formats that you feel would be useful to receive this information. Please email views to mbaines@apse.org.uk

Mo Baines

Principal Advisor