

FOI, practically speaking Part 2— game, data set and match

In the second instalment in a series of articles dealing with the practical challenges confronted by FOI Officers, Paul Gibbons, FOI Man and Information Compliance Manager, SOAS, University of London, discusses data sets and proactive publication

Not long after the 2010 general election, the Prime Minister proclaimed that his new government wanted to be the “most open and transparent government in the world”. And depending on your opinion as to what denotes transparency, they have indeed made some progress in that direction.

Of course, David Cameron is no great fan of the Freedom of Information Act. Here’s what he had to say to the Liaison Committee last year:

“Real freedom of information...is the money that goes in and the results that come out... [FOI is] furring up the arteries [of government]”.

Now you and I may well disagree with Mr Cameron’s definition of freedom of information, but it is clear that the Coalition government is firmly wedded to the concept of pro-active disclosure, and in particular on what is widely known as ‘open data’. Public authorities have been nudged, shamed and coerced into publishing more and more over the last two and a half years, whether they, or indeed the public, wanted to or not.

This author had his first taste of this approach two years ahead of the 2010 general election when Boris Johnson entered London’s City Hall on a promise to improve the transparency of the administration he inherited (interestingly, he didn’t once ask his Freedom of Information Officer how that might be achieved). One of his very first acts was to order that all spending over £1000 (later £500 and now £250) be published on the Greater London Authority’s website on a monthly basis. So it wasn’t a tremendous shock when Eric Pickles started making similar demands of local authorities shortly after being made Local Government and Communities Secretary.

The growth of pro-active publishing

So what do public authorities now have to publish pro-actively? It depends on the kind of public authority. Central government has been set all kinds of new targets for publishing data by the Coalition government, and

senior civil servants, for example, can expect to see their names, job titles and salaries published. Local government, which has long been targeted by governments wanting to enhance accountability, has for a while now been expected to make minutes of meetings available and to allow the public access to accounts once a year. Now they also have to publish their expenditure over £500 and give advance notice of private meetings.

All of the above goes beyond the obligations imparted by the Freedom of Information Act (‘FOIA’) and the Environmental Information Regulations. The latter requires public authorities to ‘progressively make the [environmental] information [they hold] available to the public by electronic means which are easily accessible’. Very little is heard of this requirement and the Information Commissioner accedes to general practice in stating that this should be met by including environmental information in the organisation’s publication scheme under FOIA.

The obligation to produce publication schemes is set out at section 19 FOIA. Back in the early days, we all frantically produced detailed publication schemes and sent them to an increasingly frazzled Information Commissioner’s Office for approval. Then the Information Commissioner had the idea of using his powers in section 20 FOIA to establish a single model publication scheme that all public authorities were expected to follow. So now we all have to publish information under the following headings:

- who we are and what we do;
- what we spend and how we spend it;
- what our priorities are and how we are doing;
- how we make decisions;
- our policies and procedures;
- lists and registers; and
- the services we offer.

To back this up, the Commissioner publishes ‘definition documents’ setting out the kinds of information that public bodies are expected to make available, usually via their websites.

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Recently, the Commissioner has started revising these, so FOI Officers need to ensure that their organisation's publication scheme is updated to include any additions to the definition document applying to their sector. Amongst the most recent additions, most public authorities will now be expected to publish significant detail relating to employees' salaries and expenses claims.

The latest changes also reflect the biggest change in emphasis that the Coalition government has brought to transparency and openness.

The rise of open data

For a number of years before the last election, *the Guardian* newspaper had been leading calls for the public sector to make its data open. The Conservative Party — perhaps surprisingly — took up that call as part of its technology manifesto. Once in power, the Coalition ran with it. Francis Maude, the Minister for the Cabinet Office, has led on this since the start. It is very clear that he sees the transparency agenda (which excludes FOIA, oddly, as that remains the responsibility of the Ministry of Justice) as being about boosting the economy. Mr Maude said in October 2010:

“Thousands of commercial and social entrepreneurs have been frustrated by their inability to obtain and reuse datasets. I'm sorry to say that some councils spend time and money deliberately making data unusable to anyone else.”

So the open data agenda is about addressing the concerns of these entrepreneurs. They might use this data, for example, to create the kind of applications that are starting to make life easier for smartphone users, such as realtime bus and train timetables.

What is open data?

So what are open data? Open data are basically data that are made available in a reusable format, in that they may be copied, pasted and manipulated as the receiver sees fit. Importantly, the user is allowed to use or republish without further permission or expense. So open data represents the coming together of freedom of information, copyright and technology.

Central government bodies have already published vast quantities of open data (see www.data.gov.uk). Similarly, local authorities have established repositories of open data, the best example probably being the London Datastore, run by the Greater London Authority, which provides access to all sorts of data about health, crime, housing and other issues

affecting London. In the higher education sector, the most advanced is Southampton University, which is the home of the government's chief advisers on this issue: Professor Nigel Shadbolt and Professor Sir Tim Berners-Lee (famous for inventing the world wide web).

The latter has developed a five star

rating system for open data.

- **1 star:** available in any format (for example, pdf) on the web (but with an open licence).
- **2 stars:** available as machine-readable structured data (for example, excel spreadsheet).
- **3 stars:** as for 2 stars, but in a non-proprietary format (for example, csv).
- **4 stars:** all of the above, plus using open standards to identify individual records within the data so that it can be linked to by others.
- **5 stars:** all of the above, plus the data are linked to data elsewhere to provide context.

A Transparency Board, chaired by Francis Maude, monitors central government departments' progress in making open data available. Part of this monitoring looks at how data are made available according to the star rating system above.

Freedom of Information Act amendments

In 2012, the Protection of Freedoms Act was passed. Amongst other things, this legislation amended FOIA in the following ways:

- section 11 FOIA now requires public authorities to disclose information in a re-usable format if asked to do so 'so far as is reasonably practicable';
- a new section 11A requires that, where copyright in the information is held by the public authority, it should be issued under a licence set out in the section 45 Code of Practice;
- section 11A also allows an authority to charge a fee for re-use;
- section 11B empowers the Secretary of State for Justice to set out in regulations how much that fee can be;
- section 19(2)A-F require public authorities to include datasets they have disclosed in their publication scheme, and keep published datasets up to date;

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and

- section 45 now requires the Secretary of State to publish a Code of Practice for datasets.

At the end of last year, the Ministry of Justice published its draft Code of Practice for datasets under the amended section 45 for consultation. It included three possible licences as options under section 11A which, if adopted, will allow public authorities to allow re-use:

- without conditions (the open government licence);
- for non-commercial use; and
- for a fee (charged).

The Open Data User Group, a body set up by the government to represent users of open data, has already made it clear that it considers the second and third options a backward step. Therefore, whether these will be open to public bodies to adopt is unclear. In terms of fees for re-use, no draft regulations have yet been published, so it remains unclear whether public bodies will — as some have suggested — be able to profit from allowing re-use.

How to comply with the amendments

The effect of the above changes is that if public authorities have not yet established an open data repository, they will have to in future, if only for data that are requested under FOIA.

To some, this task will appear daunting. Talk of datasets, star ratings, and licences are a little outside the FOI Officer's comfort zone. However, there are a number of reasons why this need not be something to fear.

Firstly, most authorities will find that they are already publishing re-usable data. RSS feeds made available on public bodies' websites are in a format that is re-usable, are one example.

Secondly, making information available in a re-usable format just means providing requested data in a spreadsheet rather than in a pdf document. Most datasets will start out as part of a database and can easily be export-

ed to a csv file. If data are made available in csv format, they can be disclosed as 3 star data — which most requesters interested in obtaining open data will be satisfied with.

Thirdly, the easiest way to licence data is for authorities to adopt the Open Government Licence. This just means a statement on a page of the authority's website that all data available via that page and that was created by the authority is available for re-use in line with the Open Government Licence, providing a link to the licence (available on the National Archives website). The licence allows anyone who wants to re-use the data to do so free of charge as long as they acknowledge the authority, and do not use the data to bring it into disrepute.

The biggest challenge for FOI Officers will be keeping published datasets up-to-date. However, it is worth FOI Officers or others responsible for maintaining the dataset section discussing this with their Heads of IT. In some cases, it may be a simple matter of establishing a live feed from the database that contains the data, so that the dataset will be automatically updated every time a change is made to the source database. Even where this does not prove possible, there is no specific requirement for how often datasets must be updated. If datasets need to be updated manually, refreshed data could be published once a month or even once a year, especially if there is little pressure from those using the data for more regular updates.

So FOI Officers just need to set up a section within their publication scheme for datasets. Once this is in place:

- place a statement on the page allowing re-use of datasets in line with the Open Government Licence;
- provide links to RSS feeds and other re-usable data already published;
- provide datasets to requesters in machine-readable format;
- publish those datasets in the same format in the dataset section of the publication scheme;
- add any additional datasets that are identified that could be made

available;

- talk to IT about live feeds to keep data refreshed; and
- have a regular programme of updates in place for datasets that need to be updated manually.

There is no need to fear the new FOI amendments, or indeed the rise of open data. Taking simple steps like those above will ensure not just compliance, but will improve transparency with a minimum of effort. And it might even help someone catch a bus.

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