

Title: Impact Assessment on providing a "right to datasets" Lead department or agency: Cabinet Office Other departments or agencies: Ministry of Justice	Impact Assessment (IA)
	IA No:
	Date: 18/10/2010
	Stage: Development/Options
	Source of intervention: Domestic
	Type of measure: Primary legislation

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?
 The government has made a public commitment to releasing more information to the public and organisations. This will help the public and organisations to hold government to account; redirect and shape public services to reduce the deficit and deliver better value for money in public spending; and to realise significant economic benefits by enabling business and not-for-profit organisations to build innovative applications using public data. The government's intent is therefore for public authorities to publish datasets as available for re-use and where, practicable, in a re-useable format, whether in response to requests or as part of a publication scheme. The Freedom of Information Act 2000 (FOIA) currently provides for the release or publication of the recorded information held by public authorities covered by the Act but makes no provision for re-use at the point of publication or release. It only requires the provision of the information requested which means that repeat requests have to be made over a period of time to gain sets of information or data. There is also no obligation for public authorities to provide such data in a format which promotes re-use, for example machine-readable or open, standard format.

What are the policy objectives and the intended effects?
 The Coalition Agreement set out the government's commitment on transparency and setting government data free. They promised 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" and to "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 key policy intention is that when datasets are published it is mandatory for them to be available for re-use – under the Open Government Licence or other licence as prescribed by the Controller of HMSO; and where reasonably practicable, they are published in a re-usable format.

What policy options have been considered, including any "alternatives to regulation". Please justify the preferred option below.
 Option 1: To take no action - maintain the status quo.
 All options were considered at a meeting of the Transparency Board on 15 September 2010. [This meeting is chaired by the Minister for the Cabinet Office.] The Minister and Transparency Board decided against option 1 because it failed to deliver the Coalition Commitments on transparency and accountability.
 Option 2: Publish Administrative Guidance for public authorities on transparency and publishing datasets
 Option 3: Amend FOI Act and underpin with changes to Section 45 FOIA Code of Practice.
 The Minister and Transparency Board considered that a package made up of option 2 and 3 would contribute to the delivery of the Coalition Commitments.

Will the policy be reviewed? It will be reviewed	If applicable, set review date 12/2014
What is the basis for this review? duty to review	
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes (see Evidence Base page 10).

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, a) it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister: 

Date: 14 February 2011

Summary: Analysis and Evidence

Preferred Policy Option

Description: Right to Datasets

Price Base Year 2011	PV Base Yr 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £215.6m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£4.2m	£0m	£4.2m
High	£8.4m	£0m	£8.4m
Best Estimate	£6.3m	£0m	£6.3m

Description and scale of key monetised costs by 'main affected groups'

There may be some very minimal costs to public authorities. This is not about creating new datasets for publication, but about getting datasets which are already available published for re-use and in a re-useable format, so this should have minimal impact on public authorities. Some initial interest in the publication of previously unpublished datasets may mean those datasets require extra preparation prior to publication, but this is likely to decrease as publication becomes part of business as usual.

Other key non-monetised costs by 'main affected groups'

The Information Commissioner's Office (ICO) will face initial one-off costs to prepare and educate public authorities prior to commencement of the legislative and administrative amendments. There may also be a very slight increase in the number of appeal cases which escalate to the ICO. Both of these costs are likely to be negligible.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0m	£23.3m	£221.9m

Description and scale of key monetised benefits by 'main affected groups'

The main affected group are public authorities as defined in the Schedule 1 to the FOIA (such as government departments and local authorities). Publication of datasets by public authorities will allow the external development of new electronic services which may be beyond the capacity of the public services themselves to fund. Additionally, the proposals will have an advantageous impact on individuals and organisation, as making the datasets available for re-use generates increased economic value.

Other key non-monetised benefits by 'main affected groups'

The proactive, regular publication of datasets through FOI publication schemes is expected to lead to a reduction in the number of ad hoc requests by individual requesters for these data sets. Public authorities will consider including unpublished datasets in their schemes not only on their own initiative, but when asked to do so by a requester. The proposals are a key element supporting culture change in public authorities and increasing transparency and accountability.

Key assumptions/sensitivities/risks (%)	Discount rate	3.5%
<p>The most conclusive estimate of the costs of implementing FoI found that the annual cost was approximately £35.5million across the public sector. This is based on a total of 121,000 requests per annum at £293 per request (2005 terms). By updating this analysis and estimating the increased flow of requests resulting from providing an enhanced “right to datasets”; the costs have been calculated for the <i>transition phase</i>. The high cost scenario estimates that FoI requests <i>increase by 20%</i> as a result of this change in 2012; the low cost scenario assumes a <i>10% increase</i> and the best estimate is that there is single year (2012) <i>increase of 15%</i> that tails away as periodic publication of these datasets become absorbed into business as usual. The benefits of broadening access to public data are also calculated by updating comprehensive analysis commissioned by the Office of Fair Trading in 2006. This analysed social (consumer and producer), surplus and consumer detriment from the current set up of Public Sector Information to estimate that increased competition in this sector could benefit the UK economy in the region of £400m per annum.</p> <p>However, it is unrealistic to apportion this entire value as benefits of this proposal. As a conservative approach we assume greater transparency and availability of data will increase competition and reduce unduly high prices faced by customers. This is estimated in literature by comparing the social surplus under current pricing relative to lower competitive pricing. It assumes there is an increase in data usage under the competitive price taking into account the price responsiveness of customers to price changes.</p> <p>Using this method, the benefit of competitive pricing was on average at £20m per annum and in itself just under 4% of the total benefits that could be realised by commercial exploitation of public information. Even this very narrow definition of the benefits is more than sufficient to offset the expected administrative costs associated with introducing a “right to datasets”.</p>		

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure classified as
Costs:	Benefits:	Net:	Yes/No	IN/OUT

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		England and Wales			
From what date will the policy be implemented?		After Royal Assent, 2012			
Which organisation(s) will enforce the policy?		The Information Commissioner's Office			
What is the annual change in enforcement cost (£m)?		Already funded			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		No			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A	Non-traded: N/A		
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs: N/A	Benefits: N/A		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ <u>Statutory Equality Duties Impact Test guidance</u>	No	See Annex
Economic impacts		
Competition <u>Competition Assessment Impact Test guidance</u>	No	
Small firms <u>Small Firms Impact Test guidance</u>	No	
Environmental impacts		
Greenhouse gas assessment <u>Greenhouse Gas Assessment Impact Test guidance</u>	No	
Wider environmental issues <u>Wider Environmental Issues Impact Test guidance</u>	No	
Social impacts		
Health and well-being <u>Health and Well-being Impact Test guidance</u>	No	
Human rights <u>Human Rights Impact Test guidance</u>	No	Please see ECHR memorandum of the Bill.
Justice system <u>Justice Impact Test guidance</u>	No	
Rural proofing <u>Rural Proofing Impact Test guidance</u>	No	
Sustainable development	No	
<u>Sustainable Development Impact Test guidance</u>		

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	Freedom of Information Act 2000
2	Data Protection Act 1998
3	Re-Use Regulations 2005
4	Environmental Information Regulations 2004
5	INSPIRE Regulations 2009
6	Statistics and Registration Services Act 2007
7	"The Commercial Use of Public Information", OFT, December 2006
8	"Independent Review of the impact of the Freedom of Information Act", Frontier Economics, Oct 2006

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	6.3									
Annual recurring cost										
Total annual costs	6.3									
Transition benefits										
Annual recurring benefits	23.3	23.3	23.3	23.3	23.3	23.3	23.3	23.3	23.3	23.3
Total annual benefits	23.3	23.3	23.3	23.3	23.3	23.3	23.3	23.3	23.3	23.3

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

1. Problem under consideration

- 1.1 The Freedom of Information Act 2000 (FOIA) currently provides for the release or publication of the recorded information held by public authorities covered by the Act but makes no provision for re-use at the point of publication or release. It only requires the provision of the information requested which means that repeat requests have to be made over a period of time to gain sets of information or data. There is also no obligation for public authorities to provide such data in a format which promotes re-use, for example machine-readable or open, standard format. There is also no obligation for public authorities to provide such data in a format which promotes re-use, for example machine-readable or open, standard format. There is a lack of clarity over the licence for re-use. Generally, requesters who want to re-use the information must first request the information from the public authority and then apply separately for a licence to re-use that same information.
- 1.2 This current approach contrasts strongly with, and undermines, the government's commitment to transparency. In 'The Coalition: our programme for government', the government set out its commitment on government transparency and setting government data free and promised in particular –
- “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 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.”
- 1.3 In developing these proposals, we have consulted with the Transparency Board, the Information Commissioner, central government departments, The National Archives, and the devolved administrations.

2. Rationale for Intervention

- 2.1 The government has announced its intention to make more information available to the public to help them to hold government to account; reduce the deficit and deliver better value for money in public spending; and realise significant economic benefits to enable business and not-for-profit organisations to build innovative applications and websites using public data. The FOIA was not designed to facilitate and prioritise the proactive and regular release of datasets and make them available for re-use in a re-usable format. The government's intent is therefore for public authorities to publish datasets as available for re-use and where, practicable, in a re-usable format, whether in response to requests or as part of a publication scheme.

3. Policy objective

- 3.1 The government publicly set out its commitment on openness and transparency in the Coalition Agreement. These proposals would contribute to the delivery of the government's commitment. In summary, the policy objective is that when datasets are published –
- it is mandatory for them to be available for re-use at the point of release – under the Open Government Licence or other licence as prescribed by the Controller of HMSO; and
 - that where reasonably practicable, they are published in a re-usable format.

When a person receives a dataset, they should immediately be able to see that they can re-use the information and on what terms. No one should have to apply, as they currently do, to OPSI or the copyright holder for the public authority, to find out whether and how they can re-use the information.

These are the intentions whether the dataset is published in response to an FOI request or as part of a publication scheme.

- 3.2 The objective is also to encourage and require public authorities, through their publication schemes, to proactively publish datasets, available for re-use, which will help to promote transparency throughout the public sector. Making this explicit in FOIA will strengthen the ability of the public and businesses to obtain the datasets they need.
- 3.3 FOIA is considered the appropriate statutory regime to implement the policy because, in addition to being the established channel for obtaining information from public authorities (and the same authorities which are to be subject to these new proposals), it provides an exemptions and enforcement regime which it is proposed would apply equally to datasets. When considering requests for datasets, the policy intention is for public authorities to apply any relevant exemptions to the information, in accordance with FOIA, and (if and when releasing datasets) to release datasets having redacted any exempt information. In relation to the enforcement regime, the Information Commissioner's Office will have an important role to play in respect of datasets, as it does for all information, both in promoting proactive release of datasets and in ensuring compliance with the statutory code of practice, on which it must be consulted.

4. **Description of options considered (including do nothing)**

- 4.1 We have considered 3 options:
Option 1 – Do nothing
Option 2 – Publish Administrative Guidance for public authorities on transparency and publishing datasets
Option 3 – Amend FOIA and underpin with changes to Section 45 FOIA Code of Practice

5. **Costs and benefits of each option**

Option 1 – Do nothing

The base case for this IA is to "do nothing" i.e. public authorities are not directed or compelled to publish datasets for re-use or in a re-useable format.

The model publication scheme is currently available for download from the ICO website and every public authority should have a scheme which has been approved by the ICO. However, without encouragement or obligation, it is unlikely that public authorities (and particularly those outside of central government) would pro-actively publish datasets for re-use and in a re-useable format. Questions of re-use are unlikely to be raised unless a requester applies for a licence.

Individuals, non-profit organisations and businesses who want to access and use datasets – whether to hold public authorities to account or to generate economic or social value - will continue to have to first request the dataset then, if copyright is applied, request a licence to re-use. Public authorities will not be required to consider whether a requested dataset should be available for re-use and on what terms at the point of request for the dataset.

Option 2 – Administrative guidance for public authorities on transparency and publishing datasets

Administrative guidance can be produced fairly quickly. It is useful to identify and highlight best practice. It can cover standards and definitions, be flexible and responsive to local needs and to changes.

While administrative guidance can be fairly prescriptive for central government, it is less so for local and other public authorities. It cannot require public authorities to give proper consideration to issues of re-use and re-usability.

Option 3 - Amend FOIA to make it explicit that datasets are a subset of information and provide for proactive release of datasets (for re-use and in a re-useable format), including under the publication scheme and amend Section 45 FOIA Code of Practice

Individuals, non-profit organisations and businesses can currently request datasets through the FOIA which is independently regulated by the Information Commissioner. FOIA provides a familiar mechanism for access to information, including datasets, held by public authorities and requesters seeking access to unpublished datasets will understand that. Public authorities understand how to apply FOI exemptions

which is particularly important since many datasets will include exempt material, eg personal information. This will create a one-stop shop for datasets available for re-use and in a re-usable format. Public authorities will be required to consider whether a requested dataset should be available for re-use and on what terms at the point of request for the dataset. The Information Commissioner will, where appropriate, provide independent oversight to ensure compliance. Proactive publication of datasets will reduce the number of complaints referred to the Information Commissioner and on to the Tribunal.

Cost and time issues could attach to the use of FOIA, but public authorities can manage those issues through proactive publication of datasets which will in turn reduce the number of individual requests. The definition of datasets will be critical. An absolute requirement to release a dataset in a re-usable format may create practical difficulties for certain public authorities in relation to costs and IT difficulties. The policy therefore, is to mitigate the burden on public authorities, to require the release in a re-usable format where it is reasonably practicable to do so. We will give more guidance on these issues in the Code of Practice.

6. Direct Cost and Benefits to business calculations

The changes will not result in any additional burdens on business, rather it should provide opportunities for business and not-for-profit organisations to use the datasets which are published to generate economic benefits. For instance, it should enable businesses and not-for-profit organisations to build innovative applications and websites using public data.

We have chosen to quantify these benefits in a narrow sense, notably the reduction in asymmetrical information that leads to inefficient pricing. By making more information available we anticipate that these pricing distortions will be removed yielding benefits for business estimated at £20m per annum.

7. Risks and assumptions

Assumptions - transparency will enable the public to hold public authorities to account for the way that they carry out their functions and spend public money. It is a good thing in and of itself and is an obligation of public authorities - the objective is to make public data public. The FOIA has already demonstrated the value of transparency in the way it has galvanised the public to challenge the conduct and spending of public authorities.

Sensitivities -ensuring that the information published or released does not include material which should not be published eg personal information which could identify someone - and which could leave organisations and people open to fraud.

Risk - there could be an initial surge of requests for the most popular datasets which could have an impact on public authorities. There is also a risk of inconsistency in application by local authorities.

8. Wider impacts

The changes being suggested would only apply to England and Wales as this is the jurisdiction of FOIA. Therefore any amendment we make to the legislation will extend to Wales.

For Scotland, FOI is a devolved matter under the Scotland Act 1998. The Freedom of Information (Scotland) Act 2002 is broadly similar to FOIA. Although Scotland does not currently make provision in line with our public data set proposals, Sections 31 and 32 of the Public Services Reform (Scotland) Act 2010 imposes new duties on the Scottish Government and listed public bodies to publish information on expenditure and certain other matters as soon as is reasonably practicable after the end of each financial year. These duties come into force on 1 October 2010 by virtue of The Public Services Reform (Scotland) Act 2010 (Commencement No. 2) Order 2010 (SSI 2010 No 321).

Freedom of Information is a transferred matter in Northern Ireland under the Northern Ireland Act 1998. FOIA extends to Northern Ireland and it would therefore be necessary to obtain the consent of the Northern Ireland Assembly by way of a legislative consent motion before any amendments to FOIA could extend to NI.

9. Summary and preferred option with description of implementation plan

Our preferred options are 2 and 3. The amendments to the FOIA will require public authorities, when releasing or publishing datasets in response to a request or in their publication schemes, to make them available for re-use under a licence prescribed by the Controller of HMSO. In addition, public authorities will be required, where reasonably practicable, to release or publish datasets in a re-usable format. Amendments to the statutory Code of Practice (under s45 of the FOIA) and administrative guidance will provide support and guidance to public authorities responsible for implementing the changes.

10. Post implementation review

Public authorities FOI performance is monitored by the regulator, the Information Commissioner. The operation of the FOIA in central government is monitored and performance statistics are published on a regular basis. The legislation will be supported by further on strengthening and embedding the “right to data”. Additionally, the Government announced it’s intention to ask Parliament to undertake post legislative scrutiny to see how well the Act is working in practice and whether there are any further changes to be made.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. *If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date.* A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review , or there could be a political commitment to review (PIR)];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p>