



D 2.7 – Open data Ireland

WP2 – Research and Implementation assessments

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Open data Ireland

Regulatory sources and aims pursued

Ireland is one of the leading European Member States in adopting, managing and controlling the publication of Open Data. The most recent European Commission's *'Analytical Report'* commended Ireland's adoption of a sophisticated open data regime, which promotes the publication of *'high-quality datasets, using real-time access to data'* through the *'compliant transposition of the EU Directives and adoption of appropriate and practical policies.'* The key source of open data legislation is *'The European Communities (Re-Use of Public Sector Information) Regulations 2005'* (as amended by SI 103/2008 and SI 525/2015). The PSI Regulations establish a statutory framework for the re-use of existing information held by public sector bodies in a pre-existing format or language.¹ Business and citizens under the Regulation can request a public body to release existing information. Public bodies are required to respond to such requests within 20 days of receiving the request, this can be extended to 40 days in certain circumstances.² The soft-law *'Circular 12/2016: Licence for Re-Use of Public Sector Information'* supports the effective implementation of the Regulations by requiring that all data-sets are at a minimum associated with the *'Creative Commons Attribution'* (CC-BY) standard licence. This licence allows for re-users to use and distribute the available datasets once the user acknowledges the *'originator for the original creation.'* A number of specific soft-law and guidance documents further support public bodies in meeting their obligations set out under the Regulations.³ One specific Circular sets out criteria for charges that may be applied by certain categories of public bodies in permitting re-use of information.⁴

Alongside the implementation of the PSI Regulations, a national *'Open Data Strategy'* was adopted with the aim to make data held by public bodies available and easily accessible online. The Strategy was adopted in 2017 post the completion of a public consultation and built on the 2015 *'Foundation Document for the development of the Public Service Open Data Strategy.'* The Strategy aims to promote the publication of datasets in an open format for use by businesses and citizens. The Strategy sets out a series of ambitious goals under the following seven strategic themes. The Strategy aims to;

- 'broaden the range of public bodies actively engaged in the Open Data initiative;
- broaden the scope of the Initiative and improve the quality, quantity and range of datasets available on the national Portal data.gov.ie;
- continued engagement with stakeholders and encourage the use of Open Data;
- support and encourage various groups of Open Data Users,
- the provision of a framework to support and train public bodies in their Open Data activities;
- evaluation of the impacts and benefits of the Initiative; and
- ensuring that effective governance structures are in place to implement the Strategy.⁵

¹ The Regulations are only applicable to public bodies. European Communities (Re-Use of Public Sector Information) Regulations 2005. Regulation 2(1)

² This normally occurs when the request is considered complex and difficult.

³ See Guide for Public Bodies on the Re-use of Public Sector Information Regulations.

⁴ See Circular 16/15: Re-use of Public Sector Information.

⁵ The Open Data Strategy 2017-2022.



The Strategy sets out specific actions for public bodies, including; requiring public bodies to draft open-data publication plans and submit datasets to be published on a national platform (data.gov.ie). Public bodies are required to carry out data-audits before submitting datasets for publication. The Strategy sets out measures to assist public bodies in identifying suitable datasets, such as encouraging public bodies to nominate an ‘*Open Data Liaison Officer*’ and offering training supports for public sector employees. Some of the broader aims of the Strategy include;

- ‘Broadening the scope of the initiative over time to include other publicly funded organisations and other bodies such as semi-state bodies;
- Carry out and publish an evaluation of the impact, benefit and risks of Open Data;
- In the longer term a move to ensure that all newly created datasets are ‘open by default’ as a matter of course;
- Improving the quality and range of services provided through the national Open Data portal;
- Broadening the scope of the initiative over time to include other publicly funded organisations and other bodies such as semi-state bodies;
- Carry out and publish an evaluation of the impact, benefit and risks of Open Data;
- The nomination of an Open Data Liaison Officer within each public body.’⁶

The aims of this Strategy are supported by the ‘*Open Data Technical Framework*’ published in 2015, which provided the initial recommendation for the publication of datasets on the national Open Data portal in line with agreed standards thus facilitating re-use and interoperability.

Additional protections are set out in:

- Data Protection Legislation
- Freedom of Information (FOI) Legislation

While the PSI Regulations and the Open Data Strategy encourage and facilitate access to public sector information, Data Protection and FOI legislation place obligations on public bodies to release information upon receiving permissible requests.

Areas of disclosure of public data

The Open Data Strategy 2017 – 2022 sets out high expectations for Irish public bodies. Data gathered by public bodies is considered ‘*open by default*’ and should routinely be made available online for citizens and business to re-use and re-distribute. Public bodies are encouraged to publish the data on the national ‘*Open Data Portal*’. Data gathered on the Open Data Portal is used to drive policy, governance and innovation. If a public withholds data, the body is required to publish the reasons for the non-disclosure. The Open Data Portal aims to ensure interoperability by applying proportionate standards, formats, metadata and licences.

According to the Foundation Document for the development of the Public Service Open Data Strategy, all appropriate data should be published as Open Data. Data that should be published first, in view of a continuous publication of all data, are the high-value data, which can be defined as data that increase responsibility, improve public awareness, promote the mission of the public body or create economic opportunities. There are many ways an organisation can identify high-value datasets to prioritise for Open Data publication. These include considering:

⁶ The Open Data Strategy 2017-2022.



- datasets that are of high-value internally, i.e. they are used frequently, or by multiple business units,
- direct dataset requests that have been received from the public, e.g. through parliamentary questions or freedom of information requests,
- datasets that are included in, or are sources for, reports, surveys or other public documents that have been published by the organisation, and
- datasets that are sources for ‘*Key Performance Indicators*’ used within the organisation.

It is important to note that some data will never be appropriate to publish as Open Data, for example, data publication that would lead to a violation of the fundamental right to privacy under data protection legislation, or data that may be classified for security reasons. The Central Statistics Office can also provide support on the statistical anonymisation of data for publication purposes. Further information and guidance on anonymisation is available on the website of the Office of the Data Protection Commissioner.

The Government Reform Unit of the Department of Public Expenditure and Reform manage the ‘Data.gov.ie’ Open Data Portal. The Portal gathers available public sector data and provides easy access to public datasets, and the information is free to use, reuse and redistribute. The Open Data listed in data.gov.ie is published by Government Departments and Public Bodies. Many datasets are individually published and updated by public organisations. Other datasets are harvested daily from existing, domain-specific data catalogues. Data.gov.ie currently harvests data from:

- The Irish Spatial Data Exchange
- Dublinked
- Central Statistics Office's StatCentral.ie
- Ordnance Survey Ireland
- Health Service Executive
- Cork City
- Galway City Council
- Galway County Council
- Roscommon County Council
- Department of Housing, Planning and Local Government

Public bodies can submit a request to the Open Data Unit of the Department of Public Expenditure and Reform to publish the data on the Portal. The public body is firstly tasked with completing an internal data audit to identify the reliability and need of the data offered. A data audit provides a mechanism to discover what datasets an organisation holds. This enables improved knowledge management, data sharing and evidence-based decision-making. It also helps identify data that is unnecessary and utilising resources, or data that could be improved. The aim of a data audit is to identify:

- the extent and range of datasets that exist within an organisation,
- whether these datasets are maintained,
- the ranking of datasets in terms of their importance to the delivery of the organisation’s objectives,
- the perceived gaps in useful data that might help the delivery of these objectives,
- the potential for sharing datasets within the organisation and the wider public sector, and
- the potential for publication and making available for re-use.



The Open Data Unit has designed a universal data audit method which can be easily used by all forms of public bodies. Firstly, the public body is asked to identify the organisation's activities and information systems that collect, create or manage data. Secondly, the public body is asked to review the data sources and identify specific datasets. Once the public body has completed these steps, the body is thirdly asked to describe each dataset using the metadata schema recommended in the 'Technical Framework'. Once the public body has identified relevant and appropriate data to publish, it can forward on the datasets to be published on the Open Data Portal. If the data is published on the public body's separate website, the Open Data Portal can harvest this information directly. Information is harvested daily by the Portal.

The portal publishes data gathered from all forms of public bodies in the areas of:

- Environment
- Society
- Health
- Economy
- Government
- Housing
- Transport
- Science
- Education and Sport
- Energy
- Agriculture
- Arts
- Towns
- Crime

Public procurement:

The EU Directives and implementing Regulations require the transparent advertisement of tender competitions and contract award notices on national and EU advertising platforms. The purpose of these requirements is not for open data purposes, but to enhance competition in public contracts. However, the publication of contract information is used by the OGP (Office of Government Procurement) to analyse procurement spend and tender techniques. The OGP routinely publish analysis papers, which have yet to be published on the Open Data Portal. Limited information on public procurement is currently available on the Portal. There are approximately 32 datasets relating to procurement spend on the Portal.

There is limited interaction between the OGP and the Open Data Portal. However, the OGP is looking to improve this situation. There are two ongoing framework contracts concluded by the OGP on Open Data Technical Assistance and Open Data Training Services. Furthermore, the Department of Public Expenditure and Reform recently published a soft-law Circular promoting the use of environmental and social considerations in public procurement.⁷ The Circular requires all government procurers to demonstrate how it intends to include environmental considerations in their Corporate Procurement Plan. The procurers must complete an annual report outlining their progress to the Department of Communications, Climate Action and Environment. It is a pivotal time for the OGP to assess how it plans to comply with the Open Data publication requirements. The OGP not only has the ability to

⁷ Circular 20/2019: Promoting the use of Environmental and Social Considerations in Public Procurement.



improve the wider public sector's understanding of public sector expenditure but importantly, the OGP can help map the economic, social and environmental impact of the expenditure.

Publication requirements and data standardization. Personal data protection.

There are certain circumstances where public bodies should not make datasets public, for example, in cases where the publication of data would breach provisions of the data protection legislation. If a public body withholds data, the body is required to publish the reasons for the non-disclosure. If the public body has valid reasons for not releasing all datasets but still believes that the datasets can support the efficient and transparent operation of public bodies, the Central Statistics Office can in certain circumstances publish anonymised statistical information. Personal data is protected by separate Data Protection legislation.

Under Irish law, data protection is governed by;

- *Data Protection Act 1988*, as amended by the *Data Protection (Amendment) Act General Data Protection Regulation (GDPR)*
- *Data Protection Act 2018*
- the 'Law Enforcement Directive' (*Directive (EU) 2016/680*) which has been transposed into Irish law by way of the *Data Protection Act 2018*
- the *Data Protection Acts 1988 and 2003*
- the 2011 "ePrivacy Regulations" (*S.I. No. 336 of 2011 – the European Communities (Electronic Communications Networks and Services) (Privacy And Electronic Communications) Regulations 2011*)

Data protection legislation applies to organisations both public and private sector organisations that control personal data. GDPR applies by default to the majority of personal data processing and came into force on 25th May 2018. The Law Enforcement Directive is transposed into Irish law by the Data Protection Act 2018, in Part 5 and Part 6 of that Act and concerns the processing of personal data by data controllers who are competent for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. The Data Protection Acts 1988 and 2003 (as amended by the repeals and revocations in section 7 the Data Protection Act 2018) apply to the ePrivacy Regulations 2011 (SI No 336 of 2011)_deal with data protection for phone, e-mail, SMS and Internet use. They give effect to the EU e-Privacy Directive 2002/58/EC (as amended by Directive 2006/24/EC and 2009/136/EC).

The New General Data Protection Regulation

The Data Protection Act 2018 amends the Data Protection Acts 1988 and 2003 to comply with the new GDPR. The Data Protection Act 2018 replaced the Data Protection Authority with a new Data Protection Commission. The Commission is the Irish supervisory authority responsible for monitoring the application of the GDPR. The GDPR introduces stringent rules for non-compliance. For serious breaches of the rules, organisations can be fined up to 4% of their annual global turnover or €20 million, whichever is greater. There has been a noticeable increase in the number of Irish data protection court decisions. Within the last few years, there have been a number of cases of the right to be forgotten⁸, data retention⁹ and data access requests.¹⁰

⁸ *Savage v DPC* [2018] IEHC 122

⁹ *Dwyer v Commissioner of An Garda Síochána* [2018] IEHC 685; [2019] IEHC 48

¹⁰ *Nowak v DPC and Price Waterhouse Coopers* [2018] IEHC 117; *Nowak v DPC and Institute of Chartered Accountants in Ireland* [2018] IEHC 118; Case Study 4 of the DPC's Annual Report for January - May 2018



The new GDPR regulates the processing by an individual, a company or an organisation of personal data relating to living individuals in the EU. The GDPR is concerned with the processing of data. The regulation sets out two categories of data, '*personal data*' and '*special category personal data*.'

Personal Data is information:

- a) which can identify a person
- b) which can together with other information identify a person
- c) Examples include; referring to a person's name, an identification number, location data, a PPS number or a bank account number.

Special Category Personal Data is information which is considered sensitive to a person. There are specific categories of such data including;

- a) Racial or ethnic origin;
- b) Political opinions;
- c) Religious or philosophical beliefs;
- d) Trade union membership;
- e) Genetic data; and
- f) Biometric data (where processed to uniquely identify someone; such as the use of fingerprints or facial recognition to identify a person).

The processing of such data is prohibited unless permission has been given by the person, a '*data subject*.' A data subject is the individual to whom the personal data relates. '*Data processors*' or '*data controllers*' are organisations which process the personal data, and in some circumstances the special category personal data. The new rules place enhanced processing obligations on data processors or data controllers. In carrying out their duties processors or controllers must uphold the principles of; fairness; purpose limitation; data minimisation, accuracy; storage limitation, and security. Processors and controllers must be able to show that the only data necessary to carry out a set activity was used, monitored and correctly disposed of when the action was completed.

Specific obligations placed on processors include;

- The obligation to keep records – this obligation applies to organisations which has more than 250 employees, or that processes sensitive information. Such organisations are required to keep a record of;
- The name and contact details of the controller
- The purposes of the processing
- A description of the categories of data subjects and personal data
- Categories of recipients of the data
- Any transfers of data to third countries and that country's data safeguards
- Time limits for erasure of data
- A description of the data security measures in place
- The obligation to keep data secure – this requires the anonymisation or encryption of data and restoring or backing up stored data.
- The obligation to report data breaches – processors or controllers must report a personal data breach to the Data Protection Commission within 72 hours of becoming aware of the breach.



Data accessibility

The Open Data Strategy aims to make data held by public bodies available and easily accessible online for reuse and redistribution. Citizens can freely and easily access the information available on the Open Data Portal. It is hoped that the efficient use of the Portal will reduce the need for citizens and businesses to request data that has not been published. However, if existing public sector datasets is not made available online, a person or business may make a request to a public sector body to release documents for re-use under the PSI Regulations. Public bodies are required to respond promptly to requests. If the requests are refused, the person making the request can appeal the decision to the *Office of the Information Commissioner*.

The *Freedom of Information Act 2014* affords members of the public access to information, which is stored by public bodies irrespective of the manner in which the information is stored (this contrasts with Data Protection laws which apply to both public and private sector bodies; note however that 'public bodies' is widely defined). The purpose of the Act is to enable the public to obtain access to information in the possession of public bodies to the greatest extent possible, provided that this is consistent with the public interest and the right to privacy. The previous *Freedom of Information Act 1997* established the office of Information Commissioner. A person who is dissatisfied with the decision of a public body in relation to a request for information can refer the matter to the Information Commissioner who can make a legally binding decision, including ordering the body to produce the records in question. A record is broadly defined and includes information stored in electronic or other form, but the act only applies to records held by public bodies. Every person has a right to any records held by a public body subject to the restrictions imposed by the 2014 Act. The reason why a person might seek access to records is irrelevant. The person seeking the information must write to the head of the relevant body. The public body is entitled to charge a small fee to cover the cost of the search for and retrieval of the record concerned.

The 2014 Act provides the following fees regime;

- There is a minimum threshold of €101 below which no search, retrieval and copying fees can be charged. Once the charge reaches €101, full fees apply;
- There is a cap on the amount of search, retrieval and copying fees that can be charged of €500;
- There is a further upper limit on estimated search, retrieval and copying fees at €700 above which an FOI body can refuse to process a request, unless the requester is prepared to refine the request to bring the search, retrieval and copying fees below the limit;
- The fee for internal review under Section 21 is now €30 (€10 for medical card holders and their dependants)
- The fee for appeals to the Information Commissioner under Section 22 is now €50 (€15 for medical card holders and their dependants).

The person is entitled to seek access to any records and records relating containing personal information of the person requesting access. The 2014 Act requires that the public bodies must produce guidelines outlining the manner in which the bodies will approach an application. These guidelines are available to the public. The public body normally has four weeks in which it must decide on the application. The right of access is not absolute. Requests to access records may be refused for any of three reasons:

1. The record is exempt under Part 4 of the Act- Part 4 sets out a series of related measures to protect information relating to key areas of Government activity, parliamentary and court



matters as well as third party information of a personal, commercial or confidential nature. These exemptions are subject to 'general principles' so that information is only withheld subject to, for example, a 'harm or injury' or 'public interest' test.

2. The record is excluded under section 43 - this lists specific exemptions, to which the general principles above do not apply. These include a record held or created by the Attorney General or Director of Public Prosecutions or their respective Offices (other than a record relating to general administration); a record relating to a review or investigation carried out by the Information Commissioner; a record relating to an audit, inspection or examination carried out by the Comptroller and Auditor General; a record relating to an investigation carried out by the Ombudsman, the Ombudsman for Children and the Pensions Ombudsman; a record relating to the President.
3. Refusal for administrative reasons (section 15):
 - the record does not exist or cannot be found;
 - the request does not include sufficient details to identify the record sought;
 - the request is of a voluminous nature;
 - the information requested is likely to be published within 60 working days;
 - the request is frivolous or vexatious or forms part of a pattern of manifestly unreasonable requests;
 - a fee or deposit for a previous or current request has not been paid

The Freedom of Information Act 2014 also provides people with other rights including the correction of a record where the record is in some way incomplete, incorrect or misleading. The Act was amended previously in 2003 to provide that information concerning can be sought by parents or guardians of a person and persons in relation to a deceased person. The Minister was empowered to proscribe regulations in relation to the parents, guardians and class of persons. The 2003 regulations provided that a parent or guardian of an individual who is affected by an act of a public body and has a material interest in a matter affected by the act of a public body or to which it relates and the individual belongs to a child under 18 or who is over 18 who has a mental condition, or a mental incapacity, or a severe physical disability, the incidence and nature of which is certified by a registered medical practitioner and who, by reason thereof, are incapable of exercising their rights under the Freedom of Information Act. The opinion of the head of the public body must conclude, having regard to all the circumstances and to any guidelines drawn up and published by the Minister, that access would be in the child's best interests.

There is a right of appeal against the decisions of a public body to the Information Commissioner. The Act encourages bodies to establish internal review procedures. When the internal appeal is denied, a person may appeal to the Information Commissioner. The Commissioner can: -

- (i) Decide that the public body's refusal was justified; or,
- (ii) Compel the public body to give more information.

The Commissioner's decision is legally binding. A decision of the Commissioner may be appealed on a point of law to the High Court. The Information Commissioner is also entitled to try a negotiated settlement. The onus or burden of proof is on the public body to show that its refusal was justified.

Drafting techniques

The 'Open Data Technical Framework' sets out a planned and structured approach to the publication of datasets as Open Data in the national portal.



It provides guidance on the following five key areas;

- [Open Data Licence](#); Data and metadata published on data.gov.ie must be associated with the Creative Commons Attribution (CC-BY) Licence, at a minimum.
- [Recommended Formats for Open Data](#); Data published on data.gov.ie must be machine-readable and in an open format (3-star Open Data), e.g. CSV, JSON or XML.
- [Recommended Metadata Schema for Open Data](#); Data published on data.gov.ie must be compliant with DCAT-AP, the international Open Data metadata standard.
- [Recommended Standards for Open Data](#); Data published on data.gov.ie should use national and international data-standards where possible.
- [Unique Resource Identifiers](#); Data published on data.gov.ie should use Unique Resource Identifiers where possible.'

Public Bodies, when considering publication of Open Data should take into account the value, potential for re-use, and contribution datasets can make to delivering better outcomes for citizens, business, and other public servants and to help improve evidence-based decision making by public bodies. Decisions on publication of Open Data will ultimately be a matter for individual public bodies, following Data Audits which will be conducted in all public bodies over time.

Benchmarking

The Open Data Portal is a repository of open government datasets and currently links to 9,595 public service datasets published by 111 public bodies in an open format. The Portal categorises the datasets and harvests information on daily basis. To ensure that the datasets support the overall objectives of the legislation and policy, namely the requirement to increase the transparency of public sector operations and to publish information which can be re-used and re-distributed, the Open Data Portal prioritises which data it will publish. High-value data will be published first, which is defined as data which *'increases accountability, improves public knowledge, furthers the mission of the public body, or creates economic opportunity'*. When public bodies are ranking the importance and relevance of the data, the public officers are encouraged to consider the use of the data internally and the potential use of the data by the wider public sector. Public bodies should consider how often the data is relied on internally, has the information been requested by the public or has the information been used in published reports, surveys other forms of public documents. The datasets published on the Open Data Portal have been subject to audit, review and ranking. The data published is considered to be relevant, complete and ready to be re-used and re-distributed by other public bodies.

Control authorities

The Open Data unit offers some level of control and support for the publication of open data. The unit offers financial incentives to encourage the re-use and re-distribution of public data, training and practical advice is additionally offered to public bodies wishing to generate or share datasets. A comprehensive guide for publishers is available freely online, which offers public bodies practical support on how to conduct a data audit and comply with the Technical Framework. Public bodies actions or non-actions are subject to review by an impartial body capable of making binding decisions. A *'re-user'* may take a review action against a public body in circumstances where a public body refuses to allow a requester to re-use a document; refuses to grant an exclusive right to a requester to re-use a document; allows the re-use of a document but subject to a proposed fee being paid which the requester believes does not accord with the requirements of the Regulations in setting the amount of the proposed fee; allows the re-use of a document subject to imposing conditions. A re-user may appeal to the public body's decision to the appointed Minister in writing. The appeal should be made no later than four weeks after the notification of the public body's decision. The Minister, upon



receiving the request, may decide to appoint an Appeals Commission or not. If an Appeals Commission is appointed to hear that appeal, the Commission will have the power to affirm or vary the decision or can annul the decision and recommend a decision which s/he considers adequate.

Sanctions

Public bodies are individually responsible for ensuring compliance with the legislation and policies. There are no specific sanctions for non-compliance with the open data legislation. The independent body, the '*Office of the Information Commission*' reviews FOI and PSI decisions. The independent appeals body has the power to affirm, annul or vary the public body's decision.