

**Transparency and Open Data Principles: Why They Are Important and How They  
Increase Public Participation and Tackle Corruption**

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## INTRODUCTION

The recent civic technology (technology for better civic and public life) developments in the world heavily rely on data. Data helps us better understand the reality we function within, informs fact-based policies and when well analyzed allows us to see patterns, irregularities and intersections we would never think of. When analyzing civic technology for transparency and accountability, we shouldn't forget about the open data system in the given country. Law provides the framework within which working with data is possible. Law is a structure of power. Analyzing and influencing legal system is one of the duties of the civil society.

### **The Intertwine**

Freedom of Information (FOI) is commonly understood as a mechanism which contributes to anti-corruption struggles and ideas for enhancing public participation. FOI is a way in which we can obtain data. But what about the data itself? Open public data is a powerful tool and also a derivative of FOI. Without FOI, open data cannot deliver what it promises: the true freedom of information.

That is why this publication starts with Freedom of Information and then never lets it go. Because public open data and FOI are intrinsically related to each other. Even if FOI can exist (and often does) without open data, public open data in democracies, cannot exist without FOI. Together with the author of this publication we stand on the position that it is not just another e-service provided by the public bodies, but a next step in pursuing a fundamental human right to obtain and disseminate information, especially public information and data produced with public money.

In this publication we're talking about the public open data only, as our main focus comes from transparency and accountability activists' point of view. Open data held by public institutions is closely linked to open government, which is a wider term. It includes public participation and overall interactions with citizens (not only on-line). Yet again in this case when it comes to open government, open data is a natural thing to build upon.

Public open data (or open government data) as described by the Organization for Economic Co-operation and Development (OECD) definition<sup>1</sup> is any data and information produced or commissioned by public bodies; Open data are data that can be freely used, re-used and distributed by anyone, only subject to (at the most) the requirement that users attribute the data and that they make their work available to be shared as well.

When we think public data we think documents, reports, registries, other databases, calendars, maps (geospatial information), timetables, real-time data about public transport and so on. But it's also data on what is available and in what form including detailed meta-data.

### **The Definitions**

Open Public Data it's even more than data itself. It embraces legal and technical openness, which following the Open Definition<sup>2</sup> is:

Legal openness: being allowed to get the data legally, to build on it, and to share it. Legal openness is usually provided by applying an appropriate (open) license which allows free access to and reuse of data or by placing data into the public domain.

Technical openness: there should be no technical barriers for using data. For example, providing data as printouts on paper (or as tables in PDF documents) makes the information extremely difficult to work with. The Open Definition has various requirements for "technical openness," such as requiring that data would be machine readable and available in bulk.

This way, a truly open public data is a data set that is basically ready for anybody to take it and do whatever they want with it.

### **For Whom**

When meeting with activists and reformers in public bodies, the discussion about open data tends to avoid specifics, focusing on the general assumptions. With this publication we're aiming at fulfilling the gap between general information and very specific, legally or technically oriented publications and websites, trying as much as possible to avoid jargon and giving examples, so the reader can easily find information where to start reforming the law or advocating for its reform.

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<sup>1</sup> <http://www.oecd.org/gov/public-innovation/opengovernmentdata.htm> (Accessed November 3, 2015)

<sup>2</sup> <http://blog.okfn.org/2013/10/03/defining-open-data/> (Accessed November 3, 2015)

We hope this will allow everybody, who is thinking about opening data in a public institution to have a checklist of where to start and where to head. We don't speak of technical issues here, as they are secondary to the readiness and also a general openness strategy of a public institution.

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Krzysztof Izdebski is a Polish lawyer providing legal consultations on access to public information and re-use of public sector information, drafting legal opinions and representing NGO's and other clients in court proceedings. He is also specialized in the legal aspects of the prevention of corruption. Currently he is a Local Research Correspondent for Poland in the European Commission Anti-Corruption project (Anti-Corruption report) that aims to improve anti-corruption policies in the member states. He is also a trainer in the field of combatting and preventing corruption. Author of publications on freedom of information, conflicts of interest, corruption and ethical standards of NGO's. He is also taking active role in the Coalition for the Open Government - informal body that is acting toward Poland's participation in the Open Government Partnership. He was one of the authors of the report of the Coalition that describes where Poland is on its way to the Open Government.

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# TRANSPARENCY AND OPEN DATA PRINCIPLES: WHY THEY ARE IMPORTANT AND HOW THEY INCREASE PUBLIC PARTICIPATION AND TACKLE CORRUPTION

## 1. Introduction

Open data is characterized by three factors:

- Open access, which means that everyone can obtain data without being discriminated against for any reason
- Database format, which means that data is accessible in bulk and within compatible sets of data
- Freedom of reuse, which means that everyone can use, reuse, mix, or redistribute data without bureaucratic obstacles<sup>3</sup>

There is common agreement that open data must be implemented, supported, and promoted. It is a responsibility of governments and their agencies, civil society organizations (CSOs), and the business sector. The involvement of the latter seems obvious: according to estimates, the open data market is worth €40 billion to €140 billion annually.<sup>4</sup> Meanwhile, citizens and CSOs are interested in better and more effective access to the information that is produced and held by public authorities and agencies. Access to information improves the operational capacity of CSOs.

The above-mentioned reasons are also truly important for governments. It is the role of public institutions to simplify the life of citizens, contribute to the work of CSOs, and support the business sector, which, in return, will support the state with significant revenue.<sup>5</sup>

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<sup>3</sup> This definition inspired by *Towards a European Strategy to Reduce Corruption by Enhancing the Use of Open Data. National Research: United Kingdom*. Available at [http://www.tacod.eu/wordpress/wp-content/uploads/2015/04/National\\_Research\\_UK\\_def.pdf](http://www.tacod.eu/wordpress/wp-content/uploads/2015/04/National_Research_UK_def.pdf) [http://www.tacod.eu/wordpress/wp-content/uploads/2015/04/National\\_Research\\_UK\\_def.pdf](http://www.tacod.eu/wordpress/wp-content/uploads/2015/04/National_Research_UK_def.pdf). (Accessed October 1, 2015.)

<sup>4</sup> Vickery, G., 2013. Review of Recent Studies on PSI Re-use and Related Market Developments. *Information Economics*. Paris.

<sup>5</sup> A report by Deloitte for the Department for Business, Innovation and Skills in the UK estimated the annual value of time saved to customers through Transport for London's open data (i.e., access to real-time travel information) at up to £58 million. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/198905/bis-13-743-market-assessment-of-public-sector-information.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198905/bis-13-743-market-assessment-of-public-sector-information.pdf). (Accessed October 1, 2015.)

Governments also need to implement transparency, which is guaranteed by law in more than 100 countries worldwide<sup>6</sup> and by a large number of international conventions and treaties. Governments also need to be held accountable for their actions and decisions. But one can understand the full potential of open data only when realizing its direct and indirect impact on the mode of governance and the trust of citizens. The effective and democratic state shares its aggregated knowledge on public matters, involving citizens in decision-making processes,<sup>7</sup> and being open to their feedback. The effective and democratic state counters and fights corruption<sup>8</sup> by staying open, transparent, and ready to engage citizens and CSOs in actions that lead to scrupulous management of public funds.

Therefore "openness," "open data," or "open government" must not be associated only with its technological aspects. It should be primarily understood as the will of the government to widely disseminate information on issues that may be controversial and in such a manner that society can form its own judgments. A municipality that disseminates the data on the time schedules of buses has not demonstrated much of a commitment to transparency or democracy, but if it publishes the results of public procurement or statistics on the effectiveness of police activities, it has shown that commitment.

It has to be emphasized that *technology can make public information more adaptable, empowering third parties to contribute in exciting new ways across many aspects of civic life. But technological enhancements will not resolve debates about the best priorities for civic life, and enhancements to government services are no substitute for public accountability.*<sup>9</sup> However, one has to bear in mind that *while ICT [information and communication*

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<sup>6</sup> At <http://www.rti-rating.org/country-data>, one can find the details and rating of freedom of information legislation in 102 countries worldwide. (Accessed October 1, 2015.)

<sup>7</sup> For this study, participation in decision-making processes means: "the involvement of citizens in a wide range of policymaking activities, including the determination of levels of service, budget priorities, and the acceptability of physical construction projects in order to orient government programs toward community needs, build public support, and encourage a sense of cohesiveness within neighborhoods." See <http://www.unpan.org/DPADM/ProductsServices/Glossary/tabid/1395/language/en-US/Default.aspx>. (Accessed October 1, 2015.)

<sup>8</sup> International documents do not generally include a definition of corruption. For the purpose of this study, corruption is defined as "the abuse of public office for private gain," which is a definition proposed by the World Bank. See <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm#define>. (Accessed October 1, 2015.) A more expanded definition can be found in the GRECO 1999 Civil Law Convention on Corruption, which is available at <http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm> (accessed October 1, 2015), where it is stated that "'corruption' means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behavior required of the recipient of the bribe, the undue advantage or the prospect thereof."

<sup>9</sup> Yu, Harlan, and Robinson, David G., 2012. The New Ambiguity of "Open Government." 59 *UCLA L. Rev. Disc.* 178.

technologies] *is not a magic bullet when it comes to ensuring greater transparency and less corruption ... it has a significant role to play as a tool in a number of important areas.*"<sup>10</sup> Being transparent, opening data, and constructing the necessary technological infrastructure to support transparency and accountability should show an honest commitment. The Organization for Economic Co-operation and Development (OECD) warns that *"the challenge is not to introduce digital technologies into public administrations; it is to integrate their use into public sector modernization efforts."*<sup>11</sup>

## 2. Legal background

Open data is also a legal issue. When trying to define open data, it is also necessary to refer to the legal documents that have established the contemporary viewpoint that considers freedom of information to be part of human rights protection system. The unique nature of the right to information as a human right was already highlighted during the first session of the United Nations in 1946. In Resolution No. 59 on Convening an International Conference on the Right to Information — adopted on December 14, 1946 — delegates stated that *"Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the United Nations is consecrated."*<sup>12</sup>

This means that someone who wants to exercise the right to education should be able to access data on the effectiveness of schools in the region. The same might apply to exercising the right to health by having access to data on sanitary conditions in specific hospitals.

The U.N. resolution also stipulates that freedom of information is primarily understood as the right to receive information and as the consequence to distribute it freely. This principle regarding distribution of information is also adopted in the International Covenant on Civil and Political Rights.<sup>13</sup> It confirms that open data is not only about granting open access, but also about allowing people to distribute the data to an unlimited number of people. It is not enough to have access to raw crime statistics. Those statistics will be even more useful if someone communicates them in a way that can be better understood by the general public, for example, by visualizing them using a map.

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<sup>10</sup> Strand, C., 2010. Introduction. In C. Strand (Ed.), *Increasing Transparency and Fighting Corruption through ICT: Empowering People and Communities* (Vol. 8). SPIDER. doi:10.1016/0083-6656(66)90013-4.

<sup>11</sup> Recommendation of the Council on Digital Government Strategies.

<sup>12</sup> Available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/IMG/NR003310.pdf?OpenElement> (Accessed October 1, 2015.)

<sup>13</sup> Available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. (Accessed October 1, 2015.)

The U.N. Human Rights Committee explicitly specified<sup>14</sup> that access to information must be understood in this context as access to public information held by public authorities and other entities performing public functions, regardless of the format and the source of the information. The manner in which the information is released has significant meaning for phenomenon of the "open data." It is the responsibility of the state to deliver information in a proactive way. The Council of Europe's Convention on Access to Official Documents<sup>15</sup> states that "*at its own initiative (...), a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.*"

This general commitment is followed by numerous, more precise, directions. The Open Government Partnership Declaration<sup>16</sup> obliges its members to "*systematically collect and publish data on government spending and performance for essential public services and activities*" and "*to pro-actively provide high-value information (...).*" The G8 Open Data Charter<sup>17</sup> notes that "*people expect to be able to access information and services electronically when and how they want.*" The need for proactive delivery of the information was also recognized by the European Union,<sup>18</sup> which harmonizes legal systems, therefore enabling EU member states to improve the reuse of public information. To facilitate quick access to quantitative and qualitative data, public institutions have to agree that "*all official documents are in principle public,*" as the Council of Europe's (CoE) Convention on Access to Official Documents states.

Access to data does have some exceptions. The CoE Convention allows governments to restrict access only on the basis of the "*protection of other rights and legitimate interests*<sup>19</sup>." Access to data is similar to other human rights: It should be exercised freely unless it may negatively affect other rights or public interests. Opening datasets with information on political parties'

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<sup>14</sup> General Comments No. 34 of the Human Rights Committee on Art. 19 of the International Covenant on Civil and Political Rights. Available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>. (Accessed October 1, 2015.)

<sup>15</sup> Available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/205.htm>. (Accessed October 1, 2015.)

<sup>16</sup> Available at <http://www.opengovpartnership.org/about/open-government-declaration>. (Accessed October 1, 2015.)

<sup>17</sup> Available at <https://www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex>. (Accessed October 1, 2015.)

<sup>18</sup> Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information. Available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:02003L0098-20130717>. (Accessed October 1, 2015.)

<sup>19</sup> Preamble of the Council of Europe Convention on Access to Official Documents



financial supporters might interfere with protecting the right to privacy. Access to data on public expenditures must sometimes yield to the fact that information might be protected by trade secrets, copyrights, or national security interests. But except for the consideration of the impact upon other human rights, only the sky is the limit.

### **3. Principles of open data and their implications for countering corruption and fostering public participation**

There are a large number of documents that describe the standards of open data. Some are examples of the soft-law<sup>20</sup> that guides how public authorities should develop open data policies (for example, in the G8 Charter or Open Government Partnership Declaration), while some can effectively impose responsibilities on public authorities (such as the EU Directive on the Reuse of Public Sector Information). The general principles in this study follow those articulated in the G8 Data Charter with references to other more specific principles.

- Open by default and permissible restrictions

"Open by default" means that governments should aim for maximum disclosure. The EU Directive on the Reuse of Public Sector Information recommends that *"making public all generally available documents held by the public sector — concerning not only the political process but also the legal and administrative process — is a fundamental instrument for extending the right to knowledge, which is a basic principle of democracy."* This is the core standard of any freedom of information legislation.

Such legislation should define information (sometimes referred also as a document) broadly, which in practice means that every piece of information developed or received by a public authority in connection with performing public tasks should be considered "open."<sup>21</sup> Although there are many examples of legislation that order the release of information as open data,<sup>22</sup> it

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<sup>20</sup> In this publication the soft law is understood as: referring to rules that are neither strictly binding in nature nor completely lacking legal significance. In the context of international law, soft law refers to guidelines, policy declarations or codes of conduct which set standards of conduct. However, they are not directly enforceable. (<http://definitions.uslegal.com/s/soft-law> (Accessed October 1, 2015.))

<sup>21</sup> Art. 3 of the Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council, and Commission documents define "document" as "any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility." Available at [http://www.europarl.europa.eu/RegData/PDF/r1049\\_en.pdf](http://www.europarl.europa.eu/RegData/PDF/r1049_en.pdf). (Accessed October 1, 2015.)

<sup>22</sup> For example, the Polish Act on Access to Public Information commands central administration bodies to transfer selected data to the Central Repository of Public Information — [www.danepubliczne.gov.pl](http://www.danepubliczne.gov.pl). In the

has to be emphasized that making data open is rarely the decision of lawmakers but is up to the public officials whose ambition is to become reformers. For inspiration, look at the activities of G8 governments as described in the Review of Progress on the Open Data Charter.<sup>23</sup>

According to *The Public's Right to Know: Principles on Freedom of Information Legislation*,<sup>24</sup> the principle of maximum disclosure "*establishes the presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances.*" The European Convention of Human Rights expressed in article 10.2 that exercising the freedom of information "*may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society.*" Similarly, the International Covenant on Civil and Political Rights includes the rule that freedom of information "*may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary*". The signatories of the Council of Europe's (CoE) Convention on Access to Official Documents, in article 3, have agreed that "*limitations shall be set down precisely in law, be necessary in a democratic society, and be proportionate (...).*" This means that when analyzing which document can be released, a public official should consider whether some restrictions need to be imposed because of the potential harm to third parties or the public interest, and if there is no other means to protect those rights and interest besides restricting access to the document.

Permissible restrictions are generally covered by provisions that regulate the access to information. The most popular one is the need to protect intellectual property (copyright), trade secrets (economic secrets), and privacy and national security (state secrets). If your local access to information legislation does not permit the release of a document, the same rules would also mean that document could not be published or disseminated using open data standards.

✓ Intellectual property

The concept of "intellectual property" entails the need to protect authors or inventors from the exploitation of their works and discoveries. However, for the purpose of access to information, intellectual property rights are commonly understood as copyrights, which means they exclude

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Slovak Republic, thanks to the Act No. 546/2010 Coll., all public contracts (with some exemptions) must be published online. Those that are not published are unenforceable.

<sup>23</sup> <http://www2.datainnovation.org/2015-open-data-g8.pdf>

<sup>24</sup> Available at <https://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>. (Accessed October 1, 2015.)

"documents covered by industrial property rights, such as patents, registered designs, and trademarks"<sup>25</sup> as those are protected by specific regulations. Very often, copyright protects not only the specific information held in the document, but also the whole dataset or database.<sup>26</sup>

In practice, a restriction might apply to the access to detailed research data that was provided by external experts on an evaluation of the public education system. When a government holds rights to any of its documents, it should permit access and reuse. Only when the intellectual property rights belong to a third party should a restriction be considered. Governments should follow the general approach that everything that was funded publicly (such as reports, analyses, and opinions contributed by the external authors) should be available for the public. The importance of this approach is expressed in the Hague Declaration on Knowledge Discovery in the Digital Age,<sup>27</sup> which was signed by representatives of public and nongovernmental cultural and educational institutions; it describes how to make data open without harm to the legitimate interests of the data's authors.

It is worth noting that the United Kingdom has introduced the Open Government Licence, which limits the restrictive Crown Copyright and enables citizens to freely use and reuse governmental data.<sup>28</sup> Public officials should be also inspired by the UK Government Licensing Framework,<sup>29</sup> which has built a policy around preparing and releasing open data. It is worth to carefully check what possibilities are allowed by local regulations.

✓ Trade secrets

Trade secrets — also referred to as commercial confidentiality or economic secrets — can also be a reason for restricting access to information. Restricting access is explicitly allowed by the EU Directive, CoE Convention, countries' legislation, and soft-law, including the CSOs'

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<sup>25</sup> Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information.

<sup>26</sup> According to the Glossary of Public Sector Information and Open Data Terminology, a dataset is a collection of data, usually presented in tabular form, presented either electronically or in other formats. Available at [https://data.gov.uk/glossary#letter\\_d](https://data.gov.uk/glossary#letter_d). (Accessed October 1, 2015.)

<sup>27</sup> Available at <http://thehaguedeclaration.com/the-hague-declaration-on-knowledge-discovery-in-the-digital-age/>. (Accessed October 1, 2015.)

<sup>28</sup> <http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/licensing-for-re-use/what-ogl-covers/>

<sup>29</sup> <http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/licensing-for-re-use/ukqlf/>

recommendations. While in some countries, legislation provides a legal definition of a trade secret,<sup>30</sup> in others it refers to different legal acts and is developed in practice.<sup>31</sup>

A company that manages a local public transport system could claim as a trade secret the number of passengers using specific connections. As with any other restriction, it is the responsibility of the specific entrepreneur to clearly state which parts of its information are confidential. It is also important that public administration should consider each time whether such qualification of the information is appropriate given the principle of the maximum disclosure. Such consideration is also called a proportionality test.

✓ National security

National security — or the broader term, a state secret — is another example of a restriction explicitly expressed in numerous documents, including the international and European human rights conventions and soft-law such as the Tshwane Principles on National Security and the Right to Information elaborated upon by 22 NGOs and academic centers.<sup>32</sup> The latter states that *"no restriction on the right to information on national security grounds may be imposed unless the government can demonstrate that: (1) the restriction (a) is prescribed by law and (b) is necessary in a democratic society (c) to protect a legitimate national security interest (...)"* For example, reuse of the information concerning locations of police closed-circuit television cameras can be fairly restricted. In most countries, the definition of state secrets is quite similar and involves weighing the conflict between releasing specific information and its impact on the country's internal and external security.<sup>33</sup>

✓ Privacy

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<sup>30</sup> As in article 1 of the Law on Commercial Secrets in the Republic of Moldova. Available at <http://lex.justice.md/index.php?action=view&view=doc&id=312792>. (Accessed November 25, 2015.)

<sup>31</sup> For the example of Ukraine, see the expertise of A. Polikarpov. Available at [http://www.ligue.org/uploads/documents/cycle%202015/Cycle%202015/Rapports%20B/2015rapportBukrainie\\_n.pdf](http://www.ligue.org/uploads/documents/cycle%202015/Cycle%202015/Rapports%20B/2015rapportBukrainie_n.pdf). (Accessed November 25, 2015.)

<sup>32</sup> Available at <https://www.fas.org/sgp/library/tshwane.pdf>. (Accessed October 1, 2015.)

<sup>33</sup> For example, the Law of Georgia on State Secrets defines a state secret as "information available in the areas of defense, economy, foreign relations, intelligence, national security and law enforcement, the disclosure or loss of which can prejudice the sovereignty, constitutional order, political and economic interests of Georgia or of any party to the treaties and international agreements of Georgia and which, according to this Law and/or treaties and international agreements of Georgia, is predetermined as classified or deemed to be a state secret, and is subject to state protection." Available at <https://matsne.gov.ge/en/document/view/2750311>. (Accessed November 25, 2015.)

Very often, "privacy" is narrowly defined as protection of personal data<sup>34</sup>, but in some cases, it can be defined more widely. The European Convention of Human Rights expressed the need to protect everyone's private and family life.<sup>35</sup> However, this is also not an absolute exception to maximum disclosure standard. In the famous case of *Google vs. Gonzales*,<sup>36</sup> the Court of Justice of the European Union allowed for the interference with this fundamental right, stating that public activity of a person (such as a public official or anyone who is dealing with the management of public funds) justifies limiting the protection of their privacy. It is also accepted by the European Court of Human Rights that public officials or candidates to public posts are subject to reduced protection of the right to a private life.<sup>37</sup> This has also broader significance for releasing and reusing personal data that is part of national registries. In Poland, for example, the State Court Registry, which consists of data on company owners, is open and can therefore be reused.<sup>38</sup>

- Open data by default in the context of countering corruption and fostering public participation

The main goal of setting up a standard of maximum disclosure is closely connected with the nature of corruption, which usually happens in secrecy. One of the demands of the UN Convention against Corruption<sup>39</sup> is to oblige countries *"to develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency, and accountability."* The convention emphasizes the role of transparency in fighting corruption by regulating that central arenas in which a state operates

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<sup>34</sup> Which following the article 2 of the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data can be defined "as any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity"

<sup>35</sup> It has also been defined by the CoE in the Declaration on Mass Communication Media and Human Rights, contained within Resolution 428 (1970), as the right to live one's own life with a minimum of interference. Available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15842&lang=en>. (Accessed October 1, 2015.)

<sup>36</sup> "... it is justified by the preponderant interest of the general public in having (...) access to the information in question." Available at [http://curia.europa.eu/juris/document/document.jsf?text=&docid=152065&pageIndex=0&doclang=en&mode=\\_lst&dir=&occ=first&part=1&cid=70060](http://curia.europa.eu/juris/document/document.jsf?text=&docid=152065&pageIndex=0&doclang=en&mode=_lst&dir=&occ=first&part=1&cid=70060). (Accessed October 1, 2015.)

<sup>37</sup> *Lingens v. Austria* (1986), *Oberschlick v. Austria* (1991), *Thorgierson v. Iceland* (1992).

<sup>38</sup> This example is among others cited by the ePaństwo Foundation at <http://www.mojepanstwo.pl>.

<sup>39</sup> Available at [https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf). (Accessed October 1, 2015.)

— such as public procurement, managing public funds, or recruitment for public posts — should be transparent, and public officials in these arenas should be held accountable. Enabling data to be accessed by anyone and from anywhere allows for verification by CSOs, experts, and a large number of public officials. According to findings by the Research Centre on Security and Crime (TACOD project), about 7 percent of cases of corruption in the UK were detected thanks to open data.<sup>40</sup> This is a significant number of incidents, and the potential for additional open data development is promising as well.<sup>41</sup> Easy access to open data is also of great help to investigative institutions such as the police or prosecutors. For example, access to information about public procurements can facilitate the work of investigators by enabling quicker and more discreet access to information about public funds that are managed in a suspicious manner.<sup>42</sup>

Public participation can only be empowered by offering open access to official sources. This is recognized by the OECD, which, in its Recommendation of the Council on Digital Government Strategies,<sup>43</sup> emphasizes the role of new technologies in social inclusion and public participation. The Open Government Partnership Declaration states that countries should be *"making policy formulation and decision making more transparent, creating and using channels to solicit public feedback, and deepening public participation in developing, monitoring and evaluating government activities."* Proactive publication of official data will enhance the expertise of representatives of the general public, which is crucial for a sincere and effective public debate and the amount of feedback authorities receive regarding their actions. This point is supported by the G8 Data Charter, in which the authors wrote that *"open data (...) increase awareness about how countries' natural resources are used, how extractives revenues are spent, and how land is transacted and managed. All of which promotes accountability and good governance, enhances public debate, and helps to combat corruption."*<sup>44</sup> Obtaining and

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<sup>40</sup> Available at [http://www.tacod.eu/wordpress/wp-content/uploads/2015/04/National\\_Research\\_UK\\_def.pdf](http://www.tacod.eu/wordpress/wp-content/uploads/2015/04/National_Research_UK_def.pdf). (Accessed October 1, 2015.)

<sup>41</sup> Some interesting examples on the potential use of open data in fighting corruption can be also found in *How Open Data Can Help Tackle Corruption- Policy paper..* Transparency International. Available at [http://issuu.com/transparencyyuk/docs/policy\\_paper\\_-\\_how\\_open\\_data\\_can\\_he](http://issuu.com/transparencyyuk/docs/policy_paper_-_how_open_data_can_he) (Accessed October 1, 2015) and Davies, T., and Fumega, S., *Mixed Incentives: Adopting ICT Innovations for Transparency, Accountability, and Anti-corruption*. Available at <http://www.cmi.no/publications/file/5172-mixed-incentives.pdf>. (Accessed October 1, 2015.)

<sup>42</sup> *Towards a European Strategy to Reduce Corruption by Enhancing the Use of Open Data. National Research: Italy.* Available at [http://www.tacod.eu/wordpress/wp-content/uploads/2015/04/National\\_Research\\_IT\\_def.pdf](http://www.tacod.eu/wordpress/wp-content/uploads/2015/04/National_Research_IT_def.pdf). (Accessed October 1, 2015.)

<sup>43</sup> Available at <http://www.oecd.org/gov/public-innovation/Recommendation-digital-government-strategies.pdf>. (Accessed October 1, 2015.)

<sup>44</sup> Available at <https://www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex>. (Accessed October 1, 2015.)

reusing the data is supporting evidence-based law. Combining different statistical data with opinion polls can often bring solutions for burning problems that receive broad public support. You cannot implement a participative budgeting system if information on the budget is not widely spread.

- **Quality and Quantity**

Opening data is a long process that has to be prepared for carefully. The first step is usually to identify the datasets that are in the possession of the public entity. If a public authority intends to share its institutional knowledge with the general public, it has the responsibility to do it in an effective and productive manner. OECD recommends *"balancing the need to provide timely official data with the need to deliver trustworthy data."*<sup>45</sup> Open Government Partnership<sup>46</sup> members declare that they *"commit to proactively provide high-value information, including raw data, in a timely manner, in formats that the public can easily locate, understand and use, and in formats that facilitate reuse."* In the Czech Republic, the law asks for released data to be machine-readable and the format of data and metadata to satisfy most open-format standards.<sup>47</sup> European Commission guidelines on the reuse of public sector information<sup>48</sup> contain several tips to increase the quality and quantity of delivered datasets. They should be *"published online in their original, unmodified form to ensure timely release,"* and the public office should ensure their completeness. The timely release of data is very often the crucial factor that determines the interest of potential users. Citizens want to have access to educational statistical data at the time that they are considering signing up a child for a specific school and not after the child has finished the education process.

Because the greatest potential of open data lies in mixing different kinds of information with each other (such as spatial information with crime statistics), the public office should also guarantee the inter-operability of datasets. Therefore, the European Commission recommends

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<sup>45</sup> OECD Recommendation of the Council on Digital Government Strategies. Available at <http://www.oecd.org/gov/public-innovation/Recommendation-digital-government-strategies.pdf>.

<sup>46</sup> Available at <http://www.opengovpartnership.org/about/open-government-declaration>. (Accessed October 1, 2015.)

<sup>47</sup> Section 4b of the Amendment to the Act on Free Access to Information. Available at <http://www.senat.cz/xqw/webdav/pssenat/original/76610/64407>. (Accessed November 25, 2015.)

<sup>48</sup> *Guidelines on Recommended Standard Licences, Datasets and Charging for the Re-use of Documents*. European Commission Notice (2014/C 240/01). Available at <https://ec.europa.eu/digital-agenda/en/news/commission-notice-guidelines-recommended-standard-licences-datasets-and-charging-re-use>. (Accessed October 1, 2015.)

that agencies describe datasets in rich metadata formats,<sup>49</sup> which means to include the information on topics such as what the data content is, who collected or created the data and when, whether there were any changes or updates, and so on.

The EU Directive indicates that documents should be *"available in any pre-existing format or language, and, where possible and appropriate, in open and machine-readable format together with their metadata."* The pre-existing format is often a synonym for raw data, which is *"data collected which has not been subjected to processing or any other manipulation beyond that necessary for its first use."*<sup>50</sup>

This means that datasets should be published in the same form as that they were created in. The user decides how the data will be used and for what. One must remember that presenting data in an attractive format (like an infographic) does not make it open. What makes data "open" is that raw data can be freely reused by others.

- ✓ Quality and quantity of data in the context of countering corruption and fostering public participation

Public participation should begin at the earliest possible point after opening the data. Who else other than the potential user knows better what kind of data is most desired? Sometimes citizens can even have better knowledge of datasets in possession of public agencies than public officials themselves. The whole process of preparing datasets for publishing should be approached in collaboration with CSOs, businesses, and public sector employees because they are in daily contact with clients and are responsible for preparing data to be released.

The Open Knowledge Foundation, which promotes the idea of open data, recommends asking the people who will be accessing and using the data about different aspects of open data, starting with what datasets to publish.<sup>51</sup> Questions to ask can also include the most desirable formats, mode of licensing, and so on. Involving the public from the start creates the sense that they were heard, that they had influence on the process and that the released dataset is the one the

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<sup>49</sup> For more information on sufficient metadata, see [https://github.com/project-open-data/G8\\_Metadata\\_Mapping](https://github.com/project-open-data/G8_Metadata_Mapping) [https://github.com/project-open-data/G8\\_Metadata\\_Mapping](https://github.com/project-open-data/G8_Metadata_Mapping). (Accessed October 1, 2015.)

<sup>50</sup> Glossary of Public Sector Information and Open Data Terminology. Available at [https://data.gov.uk/glossary#letter\\_r](https://data.gov.uk/glossary#letter_r). (Accessed October 1, 2015.)

<sup>51</sup> Available at <http://opendatahandbook.org/guide/en/how-to-open-up-data/>. (Accessed October 1, 2015.)



public asked for. Therefore, the data will be used by the public more often. The Global Open Data Initiative, which helps governments and society implement open data policies,<sup>52</sup> supports the idea that *"private firms and NGOs that collect data which could be used alongside government statistics to solve public problems in areas such as disease control, disaster relief, urban planning, etc. should enter into partnerships to make this data available to government agencies and the public without charge, in fully anonymized form and subject to robust privacy protections."* Therefore, it is recommended that public institutions engage representatives of the general public to participate and develop new datasets together.

The ability of diverse datasets to work together (inter-operability) and a good way of describing the data (metadata) will have a direct impact on targeting potential cases of corruption. If users can access information on the companies that gain public contracts and compare it with the datasets concerning owners of companies or registries of gifts received by public officials, they can identify potential conflicts of interest (for example, hiring a company that is owned by a family member of a public official). The timely release of data concerning urban planning together with the names of persons submitting recommendations can not only engage citizens in the planning process, but also, in combination with publishing registries of lobbyists and calendars of public officials, can reveal potential corruption cases.

- **Usable by all**

Open data is about sharing with the world the knowledge that is usually kept hidden in internal computer networks or somewhere on the shelves of public offices. But open data is not just about publishing data online and waiting until someone will read it. Sharing means that users have the opportunity to do what they like with the data and use it for what will serve their community best. According to the G8 Data Charter, "usable by all" means that public authorities should release data *"without bureaucratic or administrative barriers, such as registration requirements, which can deter people from accessing the data."* The other important aspect is to release data free of charge and in open formats. The latter, according to the EU Directive, means that *"a file format that is platform-independent and made available to the public without any restriction that impedes the re-use of documents."* In practice, the open format is a digital

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<sup>52</sup> Available at "<http://globalopendatainitiative.org/declaration/>  
<http://globalopendatainitiative.org/declaration/>. (Accessed October 1, 2015.)

file standard that is free of charge and copyrights and that users can search, download, and use without buying special software.

One of the principles of open data is to include everyone in using and reusing the data. This means that data is released in machine-readable format, which means that it can be read, searched, and combined with other datasets mechanically. The other important aspect is to guarantee that data is easy to find. For example, in Bulgaria, public institutions must facilitate searching of public sector information introducing mechanisms for online access or by any other suitable means.<sup>53</sup>

According to the G8 Data Charter, open data also has a strong impact on innovation in the private sector. A Deloitte study<sup>54</sup> shows that opening data encourages a more open attitude in the business sector, which can use open data to inspire customer engagement. Without implementing open data principles such as open access, using machine-readable formats, and interoperability, this would not be possible.

- How to make data open by default, of high quality, and usable by all?

The EU Directive introduced some rules that support the implementation of open data standards. Although they are binding only for member states, the below principles need to be observed by every institution that wants to open its data.

- ✓ No charges, or only charges for the marginal costs of data reproduction, provision, and dissemination

Datasets that are in the possession of the public sector are collected and used thanks to the money of taxpayers. There is no reason why citizens should pay twice for the same information — the second time to use it and disseminate it more widely. The zero-cost method is recommended by the European Commission when documents are already digitized and are disseminated electronically. If a public institution is considering a charge for using open data, fees should not exceed *"the cost of collection, production, reproduction and dissemination,*

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<sup>53</sup> Art. 41d of the Decree No. 184.

<sup>54</sup> *Open Data: Driving Growth, Ingenuity and Innovation*. A Deloitte Analytics paper. Available at <http://www2.deloitte.com/content/dam/Deloitte/uk/Documents/deloitte-analytics/open-data-driving-growth-ingenuity-and-innovation.pdf> <http://www2.deloitte.com/content/dam/Deloitte/uk/Documents/deloitte-analytics/open-data-driving-growth-ingenuity-and-innovation.pdf>. (Accessed October 1, 2015.)

together with a reasonable return on investment.’<sup>55</sup> For example, the Slovenian legal framework<sup>56</sup> enables free-of-charge non-commercial reuse of information. In addition, it accepts some free commercial use, such as when the data is reused to ensure the freedom of expression, culture, and art or is reused by news media. The more money a public authority charges, the less people will use the data and, as a result, in the context of the economic value of open data less money will be funneled in the form of taxes to the public budget.

✓ Transparency

Whenever a public agency restricts data access by setting up charges or other conditions that users have to fulfill, the public entity should publish the appropriate information on its website. According to the 8 Principles of Open Government Data,<sup>57</sup> *“government information is a mix of public records, personal information, copyrighted work, and other non-open data; it is important to be clear about what data is available and what licensing, terms of service, and legal restrictions apply. Data for which no restrictions apply should be marked clearly as being in the public domain.”* Polish law provides the norm, stating that if there is no specific contrary statement published on the website, the reuse of released data is not subject to licenses or conditions.<sup>58</sup>

A public authority should not act arbitrarily and without control. Therefore, it should also establish measures to redress decisions and practices that negatively influence those who want to reuse the information. The user should have the right to appeal to an oversight body or to go to court. The exact means are usually based on the local access-to-information legislation. It is also important to make sure that the information about those means is widely disseminated and accessible by everyone.

✓ Nondiscrimination

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<sup>55</sup> A detailed description on how to count costs is available in the European Commission Notice (2014/C 240/01) entitled *Guidelines on Recommended Standard Licences, Datasets and Charging for the Re-use of Documents*. Available at <https://ec.europa.eu/digital-agenda/en/news/commission-notice-guidelines-recommended-standard-licences-datasets-and-charging-re-use> <https://ec.europa.eu/digital-agenda/en/news/commission-notice-guidelines-recommended-standard-licences-datasets-and-charging-re-use>.

<sup>56</sup> Art 34a of the Access to Public Information Act. Available at <https://www.ip-rs.si/index.php?id=324>. (Accessed November 25, 2015.)

<sup>57</sup> Available at <http://opengovdata.org/>. (Accessed October 1, 2015.)

<sup>58</sup> Art 23b of the Access to Public Information Act.

The EU Directive says that *"any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use."* Sometimes conditions are based on whether someone wants to reuse the information for commercial or non-commercial purposes. Commercial use may be more intense and could mean more work for public officials, but generally the reason behind reusing data should not determine how a user is treated. The other important aspect of non-discrimination is a general prohibition of exclusive agreements between a public institution and one or more users that would restrict access to data by anyone who is interested in it. This also concerns other public entities. For example, in Slovenia, if documents are reused by a public agency as input for commercial activities that fall outside the scope of its public tasks, the same charges and other conditions apply to the supply of the documents for those activities as apply to other users.<sup>59</sup>

- Usable by all in the context of countering corruption and fostering public participation

There is no question that transparent, non-discriminatory, and nonrestrictive conditions for using data will increase public participation. The more people have access to data, the more people will engage in establishing new services that will reach wider circles. Open access will also result in more interest in and increased credibility for official websites. Open data improves governance by giving more people the chance to engage in managing a state or municipality. But it should be also treated as a tool that will help public officials set up standards for the information they gather, resulting in a better ability to exchange information between public institutions locally, nationally, or even internationally. Getting feedback from CSOs is important, but it is also a good practice to discuss the issue with employers.

Corruption is a multilayer phenomenon. To fight corruption, governments have to engage a lot of sources, people, and tools. Allowing data to be open means that more experts can access the information (for example, on public procurement) and more risk factors can be identified. This will not only result in revealing cases of corruption, it will also enable the development of a system that can prevent corruption. According to the Research Centre on Security and Crime's report,<sup>60</sup> public authorities should educate citizens about which datasets are in their possession and try to develop methods for engaging the general public to monitor the available data in

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<sup>59</sup> Art 36 of the Access to Public Information Act.

<sup>60</sup> *Towards a European Strategy to Reduce Corruption by Enhancing the Use of Open Data. National Research: United Kingdom.* Available at [http://www.tacod.eu/wordpress/wp-content/uploads/2015/04/National\\_Research\\_UK\\_def.pdf](http://www.tacod.eu/wordpress/wp-content/uploads/2015/04/National_Research_UK_def.pdf). (Accessed October 1, 2015.)

order to identify potential corruption cases. It is also important to establish the possibility of following up when members of the public identify a corruption case by establishing clear ways for the public to communicate with specialized public bodies such as auditors. Only then will open data help win the fight against corruption.

- **Conclusions and recommendations**

Corruption likes secrecy. There are so many cases, in both the public<sup>61</sup> and private sectors,<sup>62</sup> in which access to data would help to prevent and fight corruption. Open data allows more people to engage in decision-making processes and to influence other important activities of public officials. There is evidence of that coming from different political systems.<sup>63</sup> Open data also enhances the effectiveness of governments. Public officials can use data for evidence-based legislation and are able to react in more efficient ways to signals sent by the general public.

To achieve these goals, public institutions have to prepare themselves to open their data. Below you will find some basic tips based on our analysis. They will help you to build open data policy in your public institution.

### Recommendations

Do's	Don'ts
Think open! Sharing information with citizens should be considered in every case for all data. Remember to check that there	Don't keep data to yourself. There is wisdom in the collective. Sharing data will increase a public institution's effectiveness and will allow it to develop evidence-based policies.

<sup>61</sup> An example is the military industry, as presented in Transparency International's report: *Classified Information: A Review of Current Legislation Across 15 Countries and the EU*. Available at [http://issuu.com/tidefence/docs/140911\\_classified\\_information](http://issuu.com/tidefence/docs/140911_classified_information). (Accessed October 1, 2015.)

<sup>62</sup> Jones, S., September 3, 2015. "'Web of Corrupt Activity' Costs Poorest Countries a Trillion Dollars a Year." *The Guardian*. Available at <http://www.theguardian.com/global-development/2014/sep/03/one-q20-cracking-down-corruption>. (Accessed October 1, 2015.) See also Houlder, V., October 31, 2013. "Company Register in UK to Remove 'Cloak of Secrecy.'" *Financial Times*. Available at <http://www.ft.com/intl/cms/s/0/f71fab54-417c-11e3-9073-00144feabdc0.html#axzz3x1wHL6OK>. (Accessed October 1, 2015.)

<sup>63</sup> IBM Center for the Business of Government. 2011. *Assessing Public Participation in an Open Government Era: A Review of Federal Agency Plans*. Available at <http://www.govexec.com/pdfs/082211jm1.pdf> (Accessed October 1, 2015.) See also Chiliswa, Z., 2014. *Investigating the Impact of Kenya's Open Data Initiative on Marginalized Communities: Case Study of Urban Slums and Rural Settlements*. Available at <http://www.opendataresearch.org/project/2013/jhc>. (Accessed October 1, 2015.)

aren't any legitimate exceptions that protect data from being released.	
Try to collect information about what data is available. Remember to engage citizens to get feedback on what else they need and employees to ask what data will help them to perform their duties.	Don't think that you know the best about what is interesting for citizens and helpful for your colleagues. Discuss what the need is.
Allow others to reuse the data without any restrictions. If copyrights apply, check the most open licensing standard.	Don't charge for the data or impose disproportionate bureaucratic restrictions. If the cost of delivery of the data is significant, charge as little as possible.
Publish information with rich metadata and in open and machine-readable formats. It not only increases the data's inter-operability, it also increases access for people who are visually impaired. Include the methods that were used to collect the data. Maybe someone will propose more efficient ones for the future.	Don't publish data before making sure that its format will be usable for anything. Scanned documents and non-reusable data will only load your servers.
Create, develop, and evaluate a strategy of opening the data in your institution that will engage a wide range of users and take into account the need to prevent corruption.	Don't think that something is better than nothing. Opening data is a systematic process. You can't expect that anyone will be happy if you publish random data that is useless for the public. Without a strategic approach, you will never know what people need.