

## **DCLG consultation on data transparency**

### **Purpose of report**

For decision.

### **Summary**

This report sets out the key issues raised by the Government's consultation on a proposed code of practice for local authorities on data transparency, and a proposed LG Group response for the Board's approval.

### **Recommendation**

That the Board approves the response to the consultation which is summarised in the main paper and set out in full in **Annex 1**.

### **Action**

Subject to Board's approval, officers will pursue this with officials and seek a politician led meeting with Baroness Hanham, and potentially, with Minister for the Cabinet Office, Francis Maude MP.

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## **DCLG consultation on data transparency**

### **Background**

1. DCLG have consulted on a proposed code of recommended practice for local government transparency.
2. The context is government's thrust towards public sector transparency as a means to foster both improved accountability to citizens, and wider scrutiny of public sector activity and expenditure. Behind this lies a philosophy that transparency and making public sector data and information openly available will also contribute to:
  - 2.1 Enabling 'Big Society';
  - 2.2 Fostering innovation in services to citizens that rely on information; and
  - 2.3 Stimulating economic activity given the value of information.
3. To further this, Government is:
  - 3.1 Extending coverage of existing Freedom of Information legislation through the Ministry of Justice;
  - 3.2 Promulgating a Protection of Freedoms Bill through the Home Office: this includes an extension to Freedom of Information legislation to effectively create a general legal presumption in favour of openness in all public sector data and information, with accompanying public sector guidance; and
  - 3.3 Proposing this specific local government code through DCLG: it will have legal – or quasi legal - status under the Local Government Act 1980.

### **The issues**

4. This proposal creates more difficulties than benefits because:
  - 4.1 There is no clear policy framework behind increasingly piecemeal legislation;
  - 4.2 The proposed code and other proposed legislation in this area, add to already confused legislation around public sector data and transparency;
  - 4.3 It is 'anti localist' and inconsistent with DCLG policies;

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- 4.4 The proposal is too prescriptive: there are better alternatives; and
- 4.5 It would create legal or quasi legal requirements that are more prescriptive and burdensome for local government than those required of the public services more widely: citizens should expect an equal measure of transparency in the activities of Whitehall and in other local public services.

**Legal Inconsistency**

- 5. There are existing inconsistencies in national (and EU) legislation around data and transparency; for example, access to data under the Freedom of Information legislation and for inspection under the Environmental Information Regulation is generally free, but other legislation (e.g. the EU INSPIRE regulation and therefore national legislation) allows charging for online access and reuse of data when provided in large quantities or when frequently requested.
- 6. Such questions are not simply matters of detail or solely problematic for local government. Policy is unclear where public sector data and information should be open and free for use, and re-use, or where public sector intellectual property rights are a source of return for the taxpayer, or at least, where offering data or information can be subject to recovering the costs of providing it.
- 7. It is therefore undesirable to have more piecemeal legislation. Rather, what is needed is agreement to the principles and objectives for public sector data policy behind a general presumption in favour of transparency which we would support. Any new legislation on this basis should be accompanied by a commitment to consolidate and rationalize the current and confusing legislative situation.

**The Implications for localism**

- 8. If the legal basis for transparency is to be extended, it should be enacted through a fit for purpose and workable legal presumption across the public sector that public sector data is open, subject to caveats about personal data and any necessary provision for confidentiality.
- 9. Beyond that, it should be for local authorities to understand what data they hold, what communities want and release it in a way that allows others to use and benefit from it. In doing this, it is important that public sector presentation of data is helpful and accessible to citizens directly: it is unrealistic to assume that all citizen needs will be met through armchair auditors or similar.

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10. Detailed legislation or statutory guidance is not desirable. Instead, we propose that there should be a collaboration between local government, the data 'developer community', data 'customers' and government to determine how the Local Government Group can help local authorities and others through practical help. This has inherent benefits in being flexible and responsive. The Local Government Group organised collaboration to produce and agree practitioner help in publishing spending data, contracts and salaries as an example of how this can work, and were warmly received.
11. This approach is also consistent with DCLG Minister Greg Clark MP's announcement on 7 March 2011 that the Government is to review statutory duties placed on local authorities by central government to remove red tape and regulation: it avoids the proposed code of practice adding further control from the centre.

**Technical Challenges**

12. The proposed code is also problematic in relation to some of the more technical aspects of open data and transparency where a more flexible resource of help and support is much more appropriate than a legalistic approach to practicalities.
13. In some cases the draft code is unclear or urges technical approaches that are little understood or are at a research and development stage. The aspiration to move realistically towards what is known as 'linked data standards' which is the most flexible way of presenting data is welcome, but to move in this direction will take time and development, and will need to avoid being unduly burdensome. It is not therefore appropriate to a code with a degree of statutory backing, not least because it is clear that many of our member councils are worried about the resource implications of going down this route.
14. What is required is a collaborative approach that generates enthusiasm not a culture of compliance with rules.

**Conclusion and next steps**

15. There is no clear rationale for a specific local government code. Subject to Improvement Board approval, we propose to submit the response set out in **Annex 1**. At official level, we are in discussion with DCLG, Cabinet Office and other relevant departments, and are seeking a politician led meeting Baroness Hanham and potentially, Minister for the Cabinet Office, Francis Maude MP.

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**Financial Implications**

16. There are no immediate financial implications for the Group. However, as noted above, a prescriptive code is potentially burdensome on local government and has potentially significant resource implications if enacted.

## **Draft**

# **Code of Recommended Practice for Local Authorities on data transparency**

## **Local Government Group Response to the DCLG consultation**

### **Overview**

1. Local government is committed to the philosophy and practice of transparency both as means to improve accountability to local people, and to enrich local democracy by better informing and involving citizens in shaping their localities and services.
2. This commitment is reflected in the overwhelming sector response to the Secretary of State's request that council spending data over £500 be published. It is also demonstrated through a growing number of councils embracing the challenges of the open data agenda more widely, with councils such as Lichfield and Redbridge leading the way for public sector transparency.
3. However, we are concerned about the proposed code of recommended practice on the basis that giving it some force of law through the 1980 Local Government Act is likely to create more difficulties than benefits. These revolve around:
  - This proposal adding to already confused legislation (or proposed legislation) and policy around public sector data and transparency, not least the proposed Protection of Freedoms Bill extension of Freedom of Information legislation to make data publically available;
  - The implications for localism; and
  - Technical issues where legislation will create difficulties and where alternative approaches will deliver a better result.
4. Underpinning this, we believe that it is inconsistent and wrong to create legal or quasi legal codes for transparency and open data that are more prescriptive and detailed for local government than those required of the public services more widely. Citizens should be able to expect an equal measure of transparency in the activities of Whitehall and in other local public services.

### **Legislative and Policy Clarity**

5. Government is proposing to:

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- Extend coverage of existing Freedom of Information legislation through the Ministry of Justice;
- The Home Office is promulgating a Protection of Freedoms Bill that will include extending the scope of Freedom of Information legislation that effectively introduces a general legal presumption in favour of openness in all public sector data and information and, we understand, a proposal for guidance to the whole of the public sector; and
- We have this proposed code through DCLG specifically for local government.

6. The situation is further complicated by existing inconsistencies in national (and EU) legislation around data and transparency that are not being addressed. For example, access to data under the Freedom of Information legislation and for inspection under the Environmental Information Regulation is generally free, but other legislation (e.g. the EU INSPIRE regulation) allows charging for online access and reuse of data when provided in large quantities or when frequently requested.

7. Such questions are not simply matters of detail or solely problematic for local government. Your introduction to the consultation uses terminology such as 'transparency through open and reusable data'. Policy and legislation needs to be embedded in clear and agreed principles that establish the extent to which transparency with free and open data is the priority, and therefore bring clarity to the currently confused situation, exemplified by:

- The Open Government License Framework widely promoting open and free data for reuse, yet public sector intellectual property rights in public sector data are a source of return for the taxpayer; and
- The position of Ordnance Survey as a trading fund. Much local government data (possibly up to 80%), includes a reference to a location plotted on an Ordnance Survey map. Ordnance Survey licensing of third party use of that data mainly prohibits free reuse. This is not theoretical because it is impacting on current policy to identify, map, and make openly available, information on public sector assets.

8. It is therefore undesirable to have more piecemeal legislation. Rather, what is needed is agreement to the principles and objectives for public sector data policy behind a general presumption in favour of transparency which we would support. This should underpin a more coherent approach to legislation. We understand that there is growing recognition of the need for this in Cabinet Office, and the Local Public Data Panel has also highlighted the problem. So, if legislation is to extend the commitment to transparency, then it should be accompanied by a commitment to consolidate and rationalize the current and confusing legislative situation.

### **The Implications for localism**

9. If the legal basis for transparency is to extend requirements beyond current Freedom of Information legislation, we believe that this should be enacted through a fit for purpose and workable legal presumption across the public sector that public sector data is open, subject to caveats about personal data and any necessary provision for confidentiality.

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10. Beyond that, we broadly agree with the thrust of paragraph 8 of the draft code which states that: 'local authorities should understand what data they hold, what communities want and release it in a way that allows others to present it in new ways that make its meaning more apparent'. We would add, that in doing this, it is also important that public sector presentation of data is likewise helpful and accessible to citizens directly as it is unrealistic to assume that all citizen needs will be met through armchair auditors or similar.

11. This challenges the need for detailed legislation or statutory guidance. For example, the jury is out on the extent to which the 'www.data.gov' model is genuinely helpful for most citizens as opposed to the data enthusiast or researcher (ref. Paragraph 11 of the draft code). This is important because the original driver for publishing raw data formats was so that the external market could create useful applications where councils or other public sector bodies don't have capacity or skills to create them. So following this route alone will not generate effective local scrutiny or benefit the citizen: as the draft suggests, this is best done in response to local circumstances and needs.

12. We therefore propose that instead of a local government code of practice backed by statutory or quasi statutory force, there should be a collaboration between local government, citizens, the data 'developer community', and government to determine how we can help local authorities and others working locally through practical help. This has inherent benefits in being flexible and responsive. The Local Public Data Panel is an example of this collaborative working: the practitioner guides produced jointly for publishing spending data, contracts and salaries were warmly received.

13. Our proposed approach is also consistent with Greg Clark's announcement on 7 March 2011 that the Government is to review of statutory duties placed on local authorities by central government to remove red tape and regulation: it avoids the proposed code of practice adding further control from the centre.

## **Technical Challenges**

14. The proposed code is also problematic in relation to some of the more technical aspects of open data and transparency where a more flexible resource of help and support is much more appropriate. A legalistic approach to the practicalities described below is not the best solution.

### **Expenditure over £ 500**

15. This is already published by many authorities in the required format and we would expect pretty much every council to move to this over the coming months. The challenge is to enable wider comparability through adopting affordable and workable standards, for example by working in finance terms with CIPFA. This is not the role of statute.

### **Grants and payments to voluntary community and social groups**

16. We do not think that a code is the right way to achieve this: it is more about adopting the approach to standards identified in the previous paragraph to allow effective identification, and there are technical complexities where services that are outsourced may involve the voluntary sector.



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#### **Senior salaries**

17. Publication of local government senior salaries should be in line with existing legislation and not arbitrarily linked to civil servant pay-bands which have no meaning in local government. We are surprised to see this link resurrected after extensive discussion with DCLG about this and agreement to a practitioner guide that offered a more sensible and workable approach.

18. The reference point is the Accounts and Audit (Amendment No. 2) (England) Regulations 2009, SI 2009/3322. This defines senior as anyone earning over £150,000 per year or anyone earning over £50,000 per year who holds a “senior” position (what this means is defined in more detail in the legislation). Working on this basis would be far more sensible and would also allow comparisons across authorities.

19. The draft code suggests that individuals have the option of refusing consent for their name to be published. Information Commissioner advice is that consent is not required: individuals involved should be told about the disclosure. Clearly again there should be consistency across the public sector.

#### **Copies of contracts and tenders**

20. This has been the subject of extensive consultation and liaison with both DCLG officials and local government. We are close to finalizing the details of that subject to final sign off, and, if a code is to be pursued, it should cross refer to the practitioner guidance that is the subject of these negotiations. The result of that discussion aims to maximize benefits and clarity for citizens and businesses whilst offering councils a workable way to do so.

#### **Extending transparency to policies, performance, audits and key indicators on authorities fiscal and financial position / data of democratic running for the local authorities, including the constitution, election results, committee minutes, decisions-making processes and records of decisions**

21. Much of this is already in the public realm and subject to The Freedom of Information Act which requires that local authorities publish a publication scheme that describes information that is routinely published, including data held by the authority. Therefore, for this purpose, an inventory as required under paragraph 10 would duplicate that requirement without good reason.

22. We therefore question whether specifying an inventory by statute is the most helpful or constructive way of developing beyond the general presumption that public data is open. Rather we suggest a positive approach that fosters the sort of approach exemplified in pioneering work by Redbridge through their DataShare project.

#### **Defining Open and Publication Requirements**

23. We are unclear what is meant by the term “open” in this context: paragraph 13 of the draft code refers to license that allows open reuse. Do you mean open as in using open

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standards, or do you mean using open standards and making the data available for free. Our earlier point about data policy and legislative inconsistency is important here

24. The first three steps of the recommended five step journey to a fully open data described in paragraph 14 are achievable for most local authorities. However, final two are questionable: non-proprietary formats should not be solely linked to comma separated files, but should include other open formats such as Xml. The use of URIs is still little understood and only a small proportion of data have a URI associated with them, let alone, link them to external resources.

25. While an ambition to move towards linked data is desirable as an aspiration, linked data remains at research and development stage: considerable investment would be needed to build a linked data infrastructure. For example, there is a need for a spine of common references for URIs that can be consistently used. We are interested in the future of this for local government, however such an experimental approach has no place in a code that has some statutory force behind it.

26. The advice in paragraph 18 of the code on publishing 'un-cleaned' data is understandable, but again shouldn't be in a statutory code. We all appreciate that timely data can be more helpful than perfect data after the event; however, this must be a local judgment because equally, errors can lead to misconceptions, poor decisions and possibly even litigation.

### **Anti Fraud Measures (Appendix)**

27. The advice on anti-fraud measures to raise awareness and help councils to safeguard against fraudulent claims is generally helpful but is surely more appropriate to alternative routes for promulgation of what is essentially advice. And, as part of that advice, we continue to strongly recommend that internal supplier IDs are not released if they are used as the key identifier of suppliers within an authority.

### **Burdens**

28. Whilst embracing transparency, it is clear that many of our member councils are worried about the resource implications of going down this route. We do not believe that this should prevent commitment to the journey, but we strongly urge that the more advanced elements of this transition should not be unrealistically enshrined in legislation. The consequences of that will benefit no-one, least of all citizens.

29. What is required is a collaborative approach that generates enthusiasm not a culture of compliance with rules. We therefore suggest that together, we bring interested parties round the table at senior level to consider the issues raised in our response, and to work through how best to get where we all want to be.