

8 November 2011

**Item 6**

## **Transparency and the Emerging Data Policy Issues for Local Government**

### **Purpose of report**

For discussion and direction.

### **Summary**

This report outlines the key developments in data transparency which have implications for local government. Members are asked to give a political steer on the extent to which the LGA should engage and allocate resources to this work.

### **Recommendation**

Members' views are invited on the priorities for the work of the LGA on behalf of the sector in relation to transparency.

### **Action**

Officers to pursue as appropriate in the light of members' views.

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## Transparency and the Emerging Data Policy Issues for Local Government

### Background

1. This report outlines the key developments in data transparency which have implications for local government. A political steer is needed on the extent to which the Local Government Association (LGA) should engage and where the LGA could best add value. To date, we have contributed to a number of policy issues ranging from lobbying around emerging legislation and challenging the single data list through to preparing practitioner help for councillors in publishing spend data.
2. This government has established transparency as one of its core policies, in order to improve accountability and democratic processes and drive growth through innovation from the opening up of public sector data. Open data is one of the cornerstones of this government's transparency policy. Initially, local government was required to publish spend over £500, senior salary details and contract details. However, the agenda is extending through various policies including the recent consultation on *Making Public Data Real* and the *Code of Recommended Practice for Local Authorities on Data Transparency*.
3. While there is no question that the opening up of data makes government more transparent and fosters localism, there are questions about the extent to which this genuinely benefits the citizen and taxpayer as currently expressed rather than the private sector. A raft of new policies, legislation and codes of practice are emerging. Not all are coherent, some elements are actually in conflict, and the various departments involved are not 'joining up'.
4. This is not simply a UK phenomenon: it is international, driven by Tim Berners Lee and the Open Data Foundation, seeking to open up data on the web for reuse. However, the drive for all data to be open is out of synch with legislation that permits charging for data in certain circumstances (for example, to cover the costs of making it available) and, in addition, concerns have been raised about the privacy and affordability of making extended datasets openly available. In addition, local government is arguably already one of the most open and transparent sectors: councils have published their reports and decisions for many years, and a range of other data including details of allowances paid to members, data within the annual statements of accounts, etc.

8 November 2011

Item 6

Key issues

5. Key current developments and issues are:
  - 5.1 emerging legislation through the current Protection of Freedoms Bill which will create a 'right to data' subject to safeguards about personal data. This includes amendments to the Freedom of Information Act so that current obligations by public sector bodies to give access to information will be extended to make the information available for reuse – this may have cost implications for councils to make data available in this way, but may also prevent them from charging for the reuse of data permitted under the Regulation for Public Sector Information and so lose a revenue stream;
  - 5.2 extensions to the scope and coverage of Freedom of Information legislation (including potential inclusion of the Local Government Association);
  - 5.3 the *Making Public Data Real* consultation, which is a cross-public sector code of practice for transparency and open data prepared by Cabinet Office (see **Annex 1** for our response to this, **attached**). It requires us to assess the possible impact on local authorities in respect to affordability, skills, and change in scrutiny and accountability and a general culture change in the presumption for open data;
  - 5.4 the single data list, which is a list of all data returns that local authorities must make to central government in a year – we estimate it contains well over 43,000 items, and government has invited the sector to:
    - 'challenge' the items and datasets and any new additions
    - develop the principles on which requests for data might be made
    - establish the process by which the sector ensures that the list undergoes continued review;
  - 5.5 the *Code of Recommended Practice for Local Authorities on Data Transparency*, which was published at the end of September despite the fact that the *Making Public Data Real* consultation is underway and the Department for Communities and Local Government (DCLG) had given us assurances that it would not be published until after this – the Improvement Board supported robust opposition to this Code as it was not in line

8 November 2011

Item 6

with current practice for the sector to decide what meets local needs. We also understand there may be a further consultation on whether specific datasets should be published on a mandatory basis;

- 5.6 in relation to the publication of open data, we have received a number of requests from DCLG to help the sector by developing guidance on publishing data, as we did for the first wave of transparency requirements (that is, the LG Group guidance on standards and definitions for data on senior salaries, spend over £500, and tender and contracts – so that the data is more useful to the sector as well as the public). At the Improvement Board Lead Members Meeting on 19 October, it was agreed that the LGA would develop two sets of guidance on recording community and voluntary sector spend, and capital assets. This was on the basis that it is better to be involved and develop something workable for the sector than have something inappropriate imposed;
- 5.7 potentially far-reaching requirements embedded in the Open Public Services White Paper (echoing the *Making Public Data Real* consultation) with a basic premise that public sector data should be available to citizens to help them make informed choices and drive up standards to, for example, help citizens or the voluntary sector ‘pitch’ to run services or take over public assets:
- a commitment to offer ‘standardised’ performance and user satisfaction data for all ‘sectors’ with implications for our self-regulation and improvement programme as well as for every council
  - proposals around setting ‘minimum standards’ for services whether outsourced or not which also has implications for data that have yet to be worked through;
- 5.8 the continuing development of EU requirements around safety and environmental regulations: this includes the INSPIRE Directive, which requires authorities to publish certain data which contains location/geographical information to specific standards which are likely to have cost implications;
- 5.9 the Public Sector Mapping Agreement (PSMA), with a single commissioning contract with Ordnance Survey. Currently this is DCLG funded but, from April 2013, councils in England may be asked to pay as will be the case in Wales. We have yet to

8 November 2011

**Item 6**

establish how local government is to be represented on steering arrangements given that the PSMA is central government driven and managed. A similar agreement with Royal Mail for postcode address files is still to be agreed.

5.10 the complex, technical but important issues around who can access, use or reuse data (important in an era of 'Big Society'); and when public data should be free and when it is legitimate to charge. Under the Freedom and Information and Environmental Information Regulation, access to data is generally free while the regulation for public sector information and INSPIRE permit the charging of data for reuse (for example, to cover the cost of maintaining and publishing the datasets). The open data initiative challenges all this and lobbies for the free use of all public data. This affects the sector in both ways:

- the Local Government Association is a partner in Geoplace, a joint venture between the Ordnance Survey and local government with the remit to maintain a national address database from local authority and Ordnance Survey data. Revenue from charges pays for the maintenance and publishing of the datasets
- but also the sector suffers because current licensing and other complexities limit councils' ability to make data openly available, use or share data if third party intellectual property rights are involved;

5.11 in relation to this there was also recently a Cabinet Office consultation on the establishment of a *Public Data Corporation*, the aim of which is to tackle the charging/free data issue. Up until now it has been challenging to input into this area of work, as it is driven by the Transparency Board which does not have our direct input (rather, we have membership of the Local Public Data Panel, who's chair sits on the Transparency Board).

6. Clearly, all these developments and issues in relation to transparency raise questions about:

6.1 the capacity of councils to deliver on these agendas and at what cost or sensible timescale;

6.2 the extent to which new policies and legislation dictate to councils in detailed technical terms what it is they have to deliver, rather than leaving it to councils to ascertain what data meet local needs;

8 November 2011

**Item 6**

- 6.3 the extent to which the LGA should offer practical support to the sector, for example, by developing practitioner help as we did for the first wave of transparency requirements; and therefore
- 6.4 what level of leadership, lobbying and representation the LGA wishes to provide in response to this area of policy and practice.

**Financial implications**

- 7. With the reorganisation of the Local Government Association there are reduced resources to handle data policy and guide the sector. Clearly, data policy and transparency potentially have a huge impact on local authorities, if specifications are dictated by central government and add extra burden but do not deliver local accountability, value for money and service improvement. It is especially important in these early days to work collaboratively with the sector, central government developers and suppliers to develop policy and guidance that meets sector needs.

**Key decisions**

- 8. We seek a steer from members on the focus and extent to which the LGA should engage and allocate resources in these areas. Should it be helpful, the Research and Information Team can work with the new lead member for transparency, to engage with the sector and come back with some recommendations to the Improvement Programme Board.

## **Annex 1: LGA Response to ‘Making Public Data Real’ and ‘Data Policy for a Public Data Corporation’ Consultations**

### **Summary**

1. Local government has embraced the open data agenda. Basic changes are already well embedded, such as the publication of spending data and senior salaries in line with the local government code of practice on transparency. However, more important are local initiatives in which councils have been engaging with citizens and local partners to open up data and to make better use of it. Some authorities have led the way, transforming the way in which they do business with the public by creating unparalleled access to data stores and new public service applications. The consultation documents highlight, for example, the work of the London Borough of Redbridge. Through this, local government is realising some real benefits from opening up data helping to provide a more cost effective service through the comparison of spending, improving contracts and tenders based on best practice examples, and helping local people to access, choose and evaluate local services.
2. Local government supports a presumption in favour of publishing data. However, local authorities have also expressed some key concerns. It is essential that these are addressed in the development of the proposed policy:
  - Local authorities are a part of the structure of democracy in this country. They are responsible for the provision of a wide range of public services in which local choice and local accountability are of paramount importance. It is therefore vital that, in determining policies applicable nationally, local democratic accountability is respected. The government has, rightly, abolished the national indicator set and significantly cut down on requirements for local authorities to provide data and information in common form to the centre. Open data policies must not become a back door route to burdensome central prescription over data, imposing additional costs on local residents who pay through their council tax to maintain their part of the public data infrastructure. Central direction of policy should, therefore, be confined to setting out principles to be followed, not detailed technical requirements that provide little value to those who pay for local public services.
  - Transparency requires cultural change and an organisational commitment through senior level responsibility. As local government is already demonstrating, this is best achieved through incentives, encouragement and peer support rather than legislation.

8 November 2011

**Item 6**

- Technical, contractual and skill issues hinder the opening up of data. We propose a collaborative approach to address some of the barriers.
  - The government should address the issue of the current confused legislative landscape. This lacks clear ownership and creates significant difficulties for public service users, both in relation to licensing and charging and also on privacy issues.
  - Local authorities have rights both to raise revenue through council tax and through trading and charging for services. Local authorities also have responsibilities for the maintenance of key parts of the data infrastructure of this country, such as address data. It is essential that the government's policies avoid placing unfunded new burdens on council tax payers and allow key high quality and frequently changing datasets to be maintained. It is also vital that local authorities preserve the right to decide on the balance between charging for local services, and providing services free of charge out of local taxation revenue.
  - The consultation paper on the Public Data Corporation correctly distinguishes between data collected as a by-product of public service provision, and data that is an essential part of the public infrastructure. Local authorities are deeply involved in both kinds of data collection and, in relation to the latter, it is vital that high standards of quality and accuracy are maintained.
3. The LGA's general responses to the issues raised in the Making Open Data Real and the Data Policy for a Public Data Corporation consultation documents are provided below. A response to the individual questions of the Making Open Data Real consultation is included in the appendix which reflects views from local authorities<sup>1</sup>.

## **Making Open Data Real**

### **Meeting local transparency needs**

4. Local authorities support the presumption in favour of open data. A decision in the way to open up data and whether to provide advanced features should be taken at a local level proportional to demand, local needs and affordability.
5. Prescribing centrally what has to be published locally will often not meet the needs of local people. The single data list should be the only agreed list to determine what needs to be collated and published nationally. The process should be agreed and endorsed through a rigorous process of mutual agreement. The publishing of all other data should be decided locally.

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<sup>1</sup> <http://www.local.gov.uk/open-data-consultation>



8 November 2011

**Item 6**

6. Publishing open data in its rawest form is of little value to the local citizen and taxpayer, particularly if the data is incomplete, inaccurate or inconsistent. Feedback in Kent suggests that 50% of citizen responses indicated that improving the quality of existing open data is more important than releasing new open data. Another 80 % said that local public services should provide tools that make it easier for citizens without technical expertise to look inside open datasets. Part of this approach is to encourage and increase the awareness of citizens about their new right to data and their understanding of how it can be used by them. An important aspect is to work within councils and with partners and local business to gain a better understanding what the data can tell us with high quality analysis and visualisation.

**Culture change and corporate responsibility**

7. The opening up of data requires a change in culture and understanding within organisations about how to make best use of open data and to meet transparency principles while protecting privacy. Local authorities are starting to embrace this new world and realise some of the benefits through the opening of data. There are some laudable examples by Bristol B-Open<sup>2</sup>, Redbridge You Choose<sup>3</sup>, Lichfield District Councils: Build your stuff with our stuff<sup>4</sup> London data store<sup>5</sup> and Open Kent<sup>6</sup>. These and other councils proactively engage with their citizens and not only make data openly available but use data to provide services to the citizens based on local suggestions.
8. However, local authorities have reported some cultural and organisational hurdles to meet openness and to address a better understanding of privacy requirements while being transparent. The most effective way to address such issues is not through legislation or central prescription but through local improvement, driven by raising awareness of good practice, peer support (in which the LGA plays a key role) and pressure from local people.

**Working collaboratively**

9. Aside of cultural barriers there are technical, contractual and skills hurdles to overcome. We would propose a collaborative approach of working together with local authorities, government departments, suppliers and

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<sup>2</sup> Bristol B-Open: <http://www.bristol.gov.uk/page/bristols-b-open-datastore>

<sup>3</sup> Redbridge YouChoose: <http://youchoose.yougov.com/redbridge>

<sup>4</sup> Lichfield District Council – Build your Stuff with our Stuff: <http://www2.lichfielddc.gov.uk/data/>

<sup>5</sup> London Data Store: <http://data.london.gov.uk/>

<sup>6</sup> Open Kent: <http://www.openkent.org.uk/>

8 November 2011

**Item 6**

contractors to develop good practice that can then be readily promoted and shared.

10. Significant inconsistencies in legislation and fragmentation of responsibility between government departments are a major barrier. This leads to a lack of understanding amongst council members, officers, citizen and business about what is and is not possible, or required. This has in the recent past resulted in the promotion by various government departments of policies in the area of access to information and data that have subsequently been found to be unlawful, leading to substantial unnecessary costs being incurred by local authorities. It is therefore essential that new policies about open data are clear and simple, and fully address the issue of how the costs of assembling and maintaining high quality open datasets are to be funded. Conflicts between different legislative measures, particularly in the area of charges for information, need to be resolved. The government role should be to clearly state high level principles of open data, aiming for consistency of regulation across the public sector and appropriate local discretion in areas of local accountability for public services.
11. Better collaboration between councils, community and voluntary groups, suppliers and government, fully involving bodies such as the LGA, will help to improve understanding of local data needs, develop guidance and case studies to support local authorities and increase the skill level within councils to ensure that open standards can be met.
12. The Local Public Data Panel plays an important role as a board for handling transparency matters for local government. In addition, local government representation would add value to specific sector boards to evaluate open data needs at a local level.

**Consistent coherent legislation, licensing and charging**

13. We welcome the Government's consultation on a range of measures to address the inconsistencies of data access and reuse legislation. However, we are concerned that the consultation should adequately address the issues and complications exemplified by:
  - The Open Government Licence Framework widely promoting open and free data for reuse, yet failing adequately to distinguish those public sector intellectual property rights in public sector data that are a source of return for the taxpayer, funding the maintenance, improvement and publishing of high quality data: this is a particularly important issue in relation to data gathered by local authorities that is properly regarded as part of the national public infrastructure.

8 November 2011

**Item 6**

- Adding a location element to open data could potentially add a requirement to comply with the INSPIRE regulation. INSPIRE would make the data compliant with a detailed technical standards framework. At the same time INSPIRE would allow for charging of some data, potentially coming into conflict with the rule that access to the data under the Freedom of Information legislation and for inspection under the Environmental Information Regulation is generally free
  - Third party licensing issues. Much local government data (possibly up to 80%), includes a reference to a location plotted on an Ordnance Survey map or a reference to a Royal Mail Address. Ordnance Survey and Royal Mail licensing of third party use of that data mainly prohibits free reuse. This impacts, for example, on current policy to identify and map public sector assets in a comprehensive and openly available way. It is recognised that licensing needs to strike a balance between the interests of users and the need of the data provider to cover costs: it should also be recognised that licensing terms can give rise to a knock-on impact limiting users' ability to maximise value from data.
14. As an example of the current incoherence of policy across government, it is noted that the Department for Communities and Local Government has published a code of practice on transparency with some worryingly detailed prescription and a proposal for further detailed data guidance while the open data consultation is still ongoing.
15. It is undesirable to have the current piecemeal development of policy and legislation. What is needed is agreement to the principles and objectives of public sector data policy behind a general presumption in favour of transparency which we would support. The current open data proposals do not appear to address these issues sufficiently, leaving a risk that the current confused landscape might continue into the future.
16. We would also welcome for one government department to taking ownership of all data access and reuse regulation and policy to avoid further confusion and to strengthen the role of the Information Commissioner with additional regulatory powers for all data regulations including Reuse of Public Sector Information Regulation (RPSI) and data transparency. We value some of the guidance provided by the Information Commissioner on data sharing and data protection and by the National Archive on the Government Licence Framework and would welcome development of a more coherent, but minimal, guidance suite.

8 November 2011

**Item 6**

**Affordability and financial impact**

17. Local government encourages the opening up of public data. However, the maintenance and publishing of data is not cost-free. Whilst embracing transparency, it is clear that many of our member councils are worried about the resource implications that might arise if future policy has the effect of limiting councils' current ability to determine charges for the services they provide. Any change in policy that creates additional costs for local authorities will, of course, require full funding from the sponsoring government department in accordance with the government's New Burdens Doctrine. We do not believe that this should prevent a commitment to the journey, but we strongly urge that the more ambitious elements of this transition should not be unrealistically enshrined in legislation, given the consequences for the public purse at a time when reduction of the deficit is the government's over-riding priority.
18. Furthermore, the maintenance of key datasets, particularly those that are in effect part of the national public data infrastructure, will not be sustainable without additional funding, given the impact of economic growth and the development of ever more diverse local communities. Local authorities currently charge for some of the dataset to offset costs and drive improvements. The consultation makes general references to greater provision of free of charge open data reducing costs in other areas, for example FOIA requests, or generating wider economic benefit. However it fails to provide a clear and evidenced impact assessment of the costs and benefits of change. We are particularly interested in the cost/benefit impact at a local level. As costs are real but benefits and savings appear, at best, highly speculative, it is essential that policy change both keeps to a minimum and fully funds the implications of new requirements on local authorities to make data more freely available.
19. In accordance with INSPIRE legislation, local authorities may be permitted to charge for the maintenance of key datasets which frequently change are of large volume and meet required standards in line with proposed Public Data Corporation (PDC) guidance. Local authorities rely on income generation to keep datasets up-to-date and decisions about fee levels need to be taken locally to minimise burdens on the generality of council tax payers.
20. However, efficiency savings through the joined up management and publishing of data should be encouraged as is exemplified through GeoPlace for local gazetteers and the publication of some INSPIRE datasets through national portals.

8 November 2011

**Item 6**

## **Data Policy for a Public Data Corporation**

### **Local government position**

21. Local Government has a significant interest in the Public Data Corporation, both as a data provider and as a data user. For example:

- Local government is one of the main users of core datasets provided by Land Registry, Ordnance Survey and other third party providers such as Royal Mail. Much of the open data created by local government has a location element and is derived from Ordnance Survey or Royal Mail data. As noted above, the relevant licensing terms prevent free reuse of the data. This is impacting on current policy to open data with a location element: for example, the licensing terms are currently restricting attempts to identify and map public sector assets in a comprehensive and openly available way.
- Local government is a partner in GeoPlace, a joint venture with Ordnance Survey. GeoPlace creates a national address database from local authority gazetteers, Ordnance Survey and Royal Mail datasets and its data is as a core reference dataset, part of the vital public data infrastructure maintained to very high quality standards. GeoPlace has required substantial investment in order to bring together addressing data into a single coherent product and it is essential that the owners' investment can be fully recovered through a suitable mechanism for charging.
- Local authorities create other datasets to high quality standards and rightly need to charge for the data so that costs of collection, maintenance, improvement and publication can be covered without falling as an additional burden on the council tax payer.

### **Charging and licensing**

22. Our comments in paragraphs 17-20 above cover the local government position on affordability and financial impact in general terms.

23. We have no particular preference for any of the two charging options proposed that improve from the current status quo. However, under the Freemium business model, any of the options would need to support the sharing of data across a wide range of partners in particular the community and voluntary sector.

24. Any charging option needs to recognise that the creation and maintenance of data involves substantial costs in local authorities. We advocate a

8 November 2011

**Item 6**

consistent approach to licensing and charging. Local authorities rightly have the power to charge for services to recover their costs, and this should apply to datasets that are properly part of the public data infrastructure, in the same way as for trading funds or private sector organisations, for the reasons set out in 1.20-1.22 of the consultation paper. Situations in which private sector organisations add minimal value whilst charging for the same data which is provided for free by public sector organisations should be discouraged by ensuring that local authorities retain the ability to charge for data that is supplied as part of an essentially commercial service. The consequences of the alternative, that the council tax payer to provide a hidden subsidy to certain commercial organisations, must be avoided. Local authorities should therefore be permitted to compete in the same way as private sector organisations do for value added data and services.

25. In most instances, current practice in local government charges the end user for the data. However, as an alternative, local authorities may charge a fee at the point of a change request as is currently practice for planning applications. This model could be adapted to any change request including addressing, streets, regulation or management zones, service change, etc. In this case, it might be possible for end users to benefit from free access to data pending further service charges under INSPIRE.
26. Local government would prefer a simpler and harmonised charging and licensing option. The UK Government License Framework is a welcoming step in that direction as it distinguishes between three different licensing models: free for commercial reuse, free for non-commercial reuse and other special licence models where charges apply.
27. Within the licensing proposal we would welcome the ability to share and make data which includes third party intellectual property rights from trading funds more freely available especially to community and voluntary organisations for non-commercial use. Local government would welcome a presumption in favour that data with a location reference (point data) can be published openly and not limited by Public Sector Mapping Agreement (PSMA) licensing restrictions. Within the PSMA we welcome the ability to apply for exemption from third party restrictions to make data available for free-use, however, the process could be further simplified. It is recognised that changes such as these potentially impact on the commercial position of bodies such as Ordnance Survey, and could not be achieved without wider review of the licensing model.
28. With the widening of open data rights and regulations we would welcome a government independent regulator to with particular powers for regulating public and private sector data access and reuse. It would be helpful to

8 November 2011

**Item 6**

extend the role of the Information Commissioner to cover all information access and reuse regulation instead of the current split between different government departments.