



Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic  
Clinique d'intérêt public et de politique d'internet du Canada  
Samuelson-Glushko

**THE PATH TO AN OPEN GOVERNMENT:  
RESPONSES TO THE GOVERNMENT OF CANADA'S "OPEN  
GOVERNMENT CONSULTATION"**

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## EXECUTIVE SUMMARY

CIPPIC applauds the federal government's pursuit of enhancing transparency and accountability to Canadians via the expansion of open government principles and policies. If the federal government continues to build upon its laudable initial efforts, which have included building an open data portal and embarking upon the present consultation process, there is promise for Canada to rise to the world forefront of efficient and effective democratic governance.

The present consultation process is timely. We are encouraged to see the Canadian government take steps to participate in the global movement towards "openness". Other countries, such as the United Kingdom and United States, recently signed onto the Open Government Partnership where they agreed, amongst other commitments, to increase the availability of information on government activities, support civic participation and increase access to new technologies that promote openness and accountability. Last year, the Honourable John Baird announced the Canadian government's intent to also join this partnership. CIPPIC is eager to see the Canadian federal government follow through on this announcement and to embrace and deliver upon the Open Government Partnership commitments.

In order for the federal government to expand the availability of its present open information and open data offerings, CIPPIC specifically recommends that the federal government:

- adopts a permissive Creative Commons license, or releases into the public domain, all data on data.gc.ca;
- mandates that each government department immediately releases at least several high-value datasets;
- creates a searchable full-text database of all responses to access to information requests;
- moves towards a practice of releasing all public sector data and information as the default policy (and holding back information only where there is a security or privacy risk); and
- places all released government information in a centralized repository and under an open license.

## I. Open Data

### Question 1: What could be done to make it easier for you to find and use government data provided online?

The searchable and commendable [data.gc.ca](http://data.gc.ca) interface to data is a great start to making public sector data accessible to Canadian citizens. However, this data portal imposes many licensing restrictions that create incompatibilities and hamper the usability of the data offerings.

Foremost, it is not easy – and often not possible – for users to combine datasets from different sources and still comply with the terms of the Government of Canada Open Data License Agreement. The license severely restricts users from merging and distributing the data retrieved from [data.gc.ca](http://data.gc.ca). For example, the present federal license terms only permit distribution under a near-identical license that is “consistent with” the federal license.<sup>1</sup> Thus, if another user wishes to use a dataset under a different license with even slightly different terms, such as a different choice of law clause, she or he will not be able to use the two datasets together.

The license restrictions make the federal data incompatible with many other sources. The data from [data.gc.ca](http://data.gc.ca) is not compatible with provincial data; for instance, data from the B.C. open data portal requires compliance with the “Open Government License for Government of B.C. Information”, but the federal data portals impose incompatible terms (such as a specific choice of law clause that all distributors must reimpose).<sup>2</sup> Likewise, datasets from municipal open data portals fall under yet other licenses, which again are not compatible with the federal license.<sup>3</sup>

These license issues do more harm than merely confuse users. At best, they make license compliance difficult; most often, they serve as an absolute barrier to combining and merging datasets in useful and

*Open data offers government data in more useful formats to enable citizens, the private sector and non-government organizations to leverage in innovative and value-added ways. This refers to Government of Canada data, which is information that is factual and usually statistical in nature, e.g. the number of people living in various regions of Canada.*

Government of Canada

1 Canada, “Government of Canada Open Data License Agreement”, online: Open Data <<http://www.data.gc.ca/>>.

2 British Columbia, DataBC, “Open Government License for Government of BC Information”, online: <<http://www.data.gov.bc.ca/>>.

3 See e.g. City of Ottawa, “Terms of Use”, online: Open Data <[http://www.ottawa.ca/online\\_services/opendata/](http://www.ottawa.ca/online_services/opendata/)> (clauses incompatible with the federal license include a prohibition from distributing with “any further restrictions of any kind” and a choice of forum in favour of Ontario courts).

innovative ways. The inability to combine datasets prevents comparative research with data from across different Canadian cities and provinces. It bars the creation of innovative applications that could otherwise make use of data from across our country.

One way to solve this unfortunate situation, maximize license compatibility, and achieve true data “openness” is to license all data under a widely-recognized international open license. To this end, the Australian open data portal ([data.gov.au](http://data.gov.au)) and the New Zealand open data portal ([data.govt.nz](http://data.govt.nz)), amongst others, already place their data under a Creative Commons Attribution license (CC-BY).<sup>4</sup> The U.K. government, which releases data under a custom “Open Government Licence”, releases data under a license that maintains full interoperable with CC-BY licenses.<sup>5</sup> If the Canadian federal government similarly adopts a CC-BY or CC-BY-compatible license, this step will go a long ways towards increasing license compatibility both internationally and within Canada.

The United States takes another viable approach that accomplishes an even better increase in compatibility between datasets from different sources.. The U.S. federal government’s data portal releases all data directly into the public domain (as copyright does not vest in works created by U.S. public servants). The Canadian federal government could immediately achieve a similar result by waiving all rights to the data it releases, using a fully permissive license such as the Creative Commons “CC0 1.0 Universal Public Domain Dedication” license.<sup>6</sup> Alternatively, Parliament could amend the *Copyright Act* to abolish Crown Copyright altogether. This would help Canadians to get more value out of their tax dollars in many ways.<sup>7</sup> Canadians would be able to make further use of any work produced by government actors. With no Crown copyright, whenever the government releases data, anyone could re-use the data in the widest possible range of business and non-profit scenarios.

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4 Australia, Data.gov.au, “Copyright”, online: <<http://data.gov.au/>>; New Zealand, Department of Internal Affairs, “Terms of Use”, online: <<http://www.data.govt.nz/terms-of-use/>>.

5 U.K., National Archives, “Open Government License for Public Sector Information”, online: The National Archives <<http://www.nationalarchives.gov.uk/>>.

6 Creative Commons, “CC1.0 Universal Public Domain Dedication”, online: Creative Commons <<http://creativecommons.org/publicdomain/zero/1.0/>>.

7 See generally Elizabeth Judge, “Enabling Access and Reuse of Public Sector Information in Canada: Crown Commons Licenses, Copyright, and Public Sector Information” in Michael Geist, ed., *From "Radical Extremism" to "Balanced Copyright": Canadian Copyright and the Digital Agenda* (Toronto: Irwin Law, 2010); see also Kent Mewhort, “Rethinking Crown Copyright” (SSRN, 2011), online: <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1952010](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1952010)>.

## **Question 2: What types of open data sets would be of interest to you?**

The public would benefit from all departments releasing more data to the [data.gc.ca](http://data.gc.ca) data portal. For all government departments, the open release of public sector data should be the rule, not the exception. Canadians have already paid for the creation of public sector data. The act of publicizing public data increases efficiency by enabling data re-use, thus creating economic opportunities surrounding it. It also importantly increases transparency, accountability and citizen engagement with government bodies.

In order for the government to release more data sets of interest to the public, the Canadian government should follow the approach of the U.S. federal government. When the U.S. established its own open data portal, the executive issued a directive mandating that each and every department and agency publish at least three high-valued datasets, within 45 days of the directive.<sup>8</sup> Further, the directive required each government department to develop a roadmap for further releases of data.<sup>9</sup>

Although many Canadian federal government departments have already taken the initiative to release datasets on [data.gc.ca](http://data.gc.ca), others have not. Mandatory rules and policies are necessary to compel all departments to release data and to help foster a culture of openness and transparency.

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8 U.S., Executive Office of the President, "Open Government Directive" (December 8, 2009), online: The White House <<http://www.whitehouse.gov>>.

9 *Ibid.*

## II. Open Information

### **Question 4: What could be done to make it easier for you to find government information online?**

To make it easier for Canadians to find government information online, the federal government should create a central repository for government documents that indexes and archives all policies, manuals, directives, reports and other text-based publications. Presently, the location and availability of this information varies greatly depending on the particular department and website.

*Open information is about proactively releasing information, including on government activities, to Canadians on an ongoing basis. By proactively making government information available, it will be easier to find and more accessible for Canadians. This includes Government of Canada information about government operations, e.g. expenditures on contracting or travel, signed collective agreements and financial reports.*

Government of Canada

In fact, today much of this information is not even available online. Obtaining public sector documents often requires a lengthy process of finding an appropriate contact, requesting the information by phone or email, and/or filing an access to information request. Where a document poses no privacy or security concerns, the default action should be that the government agency responsible for it simply publishes it to a centralized repository.

In addition to placing these documents in a central location, the government should also institute a policy of making all such information available under an open license. Unfortunately, most information on federal government websites currently subsists under a non-open license that prohibits non-commercial reproduction. Ironically, this even includes the “Open Government” consultation website.<sup>10</sup> Although the license permits use for non-profit purposes, an open license that does not discriminate based on field of endeavour would allow businesses to develop innovative tools that use, re-use and re-distribute government information.

### **Question 5: Of the items below, which are the priority areas of information that you would like to see released on government websites:**

- **Reports commissioned by the Government of Canada**
- **Statistical information about Human Resources within the Government of Canada**
- **Financial/public expenditures**

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<sup>10</sup> Canada, “Important Notices”, online: Open Government <<http://open.gc.ca/>>.

- **Information submitted to Parliament by departments and agencies**
- **Other (please specify)**

Citizens would greatly benefit from the federal government releasing all reports, statistical information, financial expenditures and information that is submitted to Parliament by departments and agencies. The low publishing and distribution costs afforded by today's online technologies mean that the government can release all of this information at little cost to the public purse, but at great benefit to transparency and the breadth of public knowledge of government processes. Moreover, the more that the government publishes documents online and develops an infrastructure for the open release of public sector information, the lower this publishing cost will be and the more the public will benefit from a helpful and centralized resource of government documents.

In addition to the aforementioned types of documents, the government should make a specific effort to release all responses to access to information requests. By the time the government sends a response to an ATIP requestor, the reply has already gone through privacy and security review processes that ensure that the information is safe for public release. It is an easy next step for the government to safely and cheaply publish this information.

Although a database with the full-text of access to information responses is the ideal solution, an alternative option is for the government to follow the recommendation of the Office of the Information Commissioner of Canada and bring back the Coordination of Access to Information Requests System (CAIRS), or as system similar to it.<sup>11</sup> Until the program was discontinued, this database provided the public with a list of all access to information requests (but not the responses). Restoring this minimal database of the requests themselves will at least allow journalists, researchers and citizens to once again search for and re-request previously compiled and reviewed responses.

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11 Office of the Information Commissioner of Canada, "The Coordination of Access to Information Requests System (CAIRS)", online: <<http://www.oic-ci.gc.ca/>>.

### **III. Final Comments: Open Government Strategy**

#### **Question 8: Are there approaches used by other governments that you believe the Government of Canada could/should model?**

Many other governments are finding productive ways to realize the benefits of providing citizens with transparent and open access to public sector information. Canada would do well to adopt some of the same policies:

- governments in countries such as Australia, New Zealand, and Brazil place data under Creative Commons licenses to maximize interoperability and the ability of the public to make use of public sector data;
- other governments, such the United Kingdom, release data under a license that is at least compatible with Creative Commons licenses;
- the United States government releases all data to the public domain, thereby removing nearly all restrictions and barriers to use and re-use of government data;
- the Australian government, recognizing the value in making public vector information freely and openly available for reuse and adaptation, agreed in principle that government departments should, by default, openly release all public sector information to the public -- and not restrict information releases to select datasets or documents.