

Sunshine Week: OPEN Government Data Act

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Sunshine Week recognizes developments in transparency in government operations, as well as the records, data, and Freedom of Information Act (FOIA; [5 U.S.C. §552](#)) professionals involved in processing government information. Recognition of the people’s right to know what their government is doing through access to government information can be traced back to the [early days](#) of the nation.

Multiple statutes have established processes through which the public may access government information (e.g., FOIA, the [Federal Records Act](#), and the [Government in the Sunshine Act](#)). The recently enacted Open, Public, Electronic, and Necessary Government Data Act—also called the OPEN Government Data Act (Title II of the Foundations for Evidence-Based Policymaking Act of 2018; P.L. 115-435)—seeks to change how government information is formatted, catalogued, and presented for public use and access. This Insight discusses transparency and access provisions of the OPEN Government Data Act and selected issues for Congress.

Overview

The OPEN Government Data Act (hereinafter, the Act) added new definitions of terms in government information policy and new duties for agencies and the [Office of Management and Budget \(OMB\)](#). Prior to the Act’s passage, [statute](#) provided the OMB director the general authority to “oversee the use of information resources to improve the efficiency and effectiveness of governmental operations to serve agency missions, including burden reduction and service delivery to the public” and “develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines.” The OMB director [institutionally shares](#) information resources management with the General Services Administration (GSA), the National Archives and Records Administration (NARA), and other agencies.

The Act made key changes that affect government information and transparency policy, which include:

- defining and adapting certain information policy terms to also contemplate a digital environment,
- calling for government information to be made “open by default,” and
- requiring agencies to conduct a comprehensive data inventory and facilitating the creation of a federal data catalogue.

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Adapting Terminology for a Digital Environment

In response to the proliferation of networked information technology, Congress continues to change federal recordkeeping and data practices via statute. The Act builds on the Presidential and Federal Records Act Amendments of 2014 (P.L. 113-187), which required [records materials to be assessed](#) by the content of the information—rather than the media used to store it—by similarly requiring agencies to adapt government information and data integration practices for a digital environment. The Act also codified [previous OMB guidance](#) on terminology and efforts to make government information machine-readable.

Table 1. Terms Defined by the OPEN Government Data Act

Term	OPEN Government Data Act Definition
Data	recorded information, regardless of form or the media on which the data is recorded
Data Asset	a collection of data elements or data sets that may be grouped together
Machine-Readable Data	data in a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost
Public Data Asset	a data asset, or part thereof, maintained by the Federal Government that has been, or may be, released to the public, including any data asset, or part thereof, subject to disclosure under FOIA
Open Government Data Asset	a public data asset that is- (A) machine-readable; (B) available (or could be made available) in an open format; (C) not encumbered by restrictions, other than intellectual property rights, including under titles 17 and 35, that would impede the use or reuse of such asset; and (D) based on an underlying open standard that is maintained by a standards organization.

Source: Title 44, Section 3502, of the U.S. Code.

Guidance to Make Data “Open by Default”

The Act [requires](#) agencies to publicly disclose data assets if they would otherwise be made available under FOIA and unless otherwise prohibited from disclosure for being personally identifiable information or subject to intellectual property rights. The Act also requires agencies to ensure their public data assets are released in [machine-readable formats](#) while permitting agencies to conduct a [cost-benefit analysis](#) on whether there is sufficient public value in converting such information.

This portion of the act depends on an Administration’s interpretation of FOIA, and that interpretation has changed over time. Previous Administrations [have declared](#) that such information should be disclosed “rapidly in forms that the public can readily find and use.” In practice, critics have noted that such disclosure still faces [legal](#) and practical hurdles to convert analog or paper information into [digital formats](#).

In combination, a varying interpretation of what it means for information to “otherwise be made available” under FOIA, as well as uncertainty related to OMB’s cost-benefit analysis implementation guidance for converting information, may cause the Act’s effects on transparency to vary over time.

Comprehensive Data Inventory and the Federal Data Catalogue

The Act also requires each agency to [establish a comprehensive data inventory](#) (CDI) that “accounts for all data assets created by, collected by, under the control or direction of, or maintained by the agency.” CDIs must describe, in part:

- the data asset and all variable names and definitions,
- whether the data asset can be considered open or is partially or wholly exempt from disclosure,
- method of public access, and
- the owner of the data set.

Public data assets are to be supplied, in real time, for inclusion in the federal data catalogue. While not explicitly stated in the statute, it appears that [Data.gov](#) has become the home for the federal data catalogue.

Issues for Congress

Under the Act, OMB is required to issue guidance on how to make data open and available and how agencies are to construct their CDIs. The Government Accountability Office notes that [OMB has not yet done so](#). The Act’s implications would be influenced by OMB’s implementation guidance. Looking ahead, Congress may consider several questions:

- Does OMB guidance acknowledge and incorporate GSA and NARA’s information resources management responsibilities and expertise?
- How should agencies format information for public use?
- What are the roles for Congress and the public in determining whether the CDI properly considers data sets to be available or exempt from disclosure?

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