

# **Policies on Public Sector Information in the Netherlands, *Towards optimum availability and accessibility***

## **I Introduction**

Approximately half of the population in the Netherlands currently has access to the Internet, either at work or at home. The number of services offered via the World Wide Web is growing spectacularly. E-commerce is opening interesting perspectives for economic growth. The Dutch public sector, too, can be found on the Internet with increasing prominence. Almost all public sector bodies now have their own website, offering information and often even services. The quality of these sites is improving with leaps and bounds. Some organisations even actively provide their databases or parts thereof to the public via the internet.

**In the Netherlands there is a coalition agreement, to ensure that public sector information is as widely accessible and available to citizens as possible. First of all because citizens need that information in order to participate in the democratic process. Secondly, national welfare is likely to benefit from public sector information made available in an open-minded manner. Thinking in terms of the new knowledge-based economy implies that the societal value of this information will increase as more people use it. How the Dutch government tries to ensure the accessibility and availability of public sector information is the central issue in this presentation. I will present the Dutch approach of dealing with different kinds of public sector information and their cost regimes. This presentation will end with some words about the relation between the directive of the European Parliament and the Council on the re-use and exploitation of public sector documents and the Dutch policy.**

### *Benefits of Public Sector Information*

Several different classes of individuals, organizations and groups can benefit from the availability of public sector information.

- First, there is the individual citizen, both in his role as consumer as well as citizen. The citizen will benefit by being informed about what is happening in his surroundings and by using information from the government to maximize the impact of his decisions about where to live, where to go to school, how to vote etc.
- Second, companies and even entire economic sectors can benefit enormously from public sector information. Companies can re-use and add value and create new products for end-consumers. Also, companies will be able to make well-informed business decisions.
- Thirdly, government itself will benefit largely from public sector information.
- Finally, given the broad range of beneficiaries, one can argue that national economies and even the global economy will benefit from openly accessible public sector information.

The making available of public sector information to third parties must be on a non-discriminatory basis and at uniform prices; if a uniform price is maintained; the users should only be charged the marginal costs of making the information available; (those

marginal costs are for instance telephone charges, the price of a diskette and any additional costs of processing the data so that it is suitable for provision, e.g. removing information that can be traced to individuals. These are the rules set out in the Dutch coalition agreement. Later we will present different categories of public sector information and their price regimes.

Some people have suggested that the policy line only be implemented for use by public authorities and by citizens in the context of participating in the democratic debate. For commercial use by businesses, it should be possible to charge a license fee.

There are three reasons why the Dutch government is against doing so.

- Firstly, businesses already contribute to the establishment of the databases through the tax system. Moreover, in many cases they have had to provide information stored in those databases on the grounds of obligations prescribed by public law. We do not find it correct to charge them yet again by way of a license fee on such a database.
- The second reason is that in the coming years businesses will be expected to create commercially attractive products based on public sector information. Products that will result in significant economic growth in our country. The welfare impact of providing the databases against no more than provision costs might well be far greater than the revenue generated for the public sector – now and in the future – of selling licenses for the use of databases.
- The third reason is of a practical nature. The difference between users as citizens, public authorities and businesses can be made, in theory, but is impossible to maintain in practice.

#### *Potential consequences*

In 1996 Coopers & Lybrand<sup>1</sup> conducted a study into the returns for the public sector from payments for providing information. Based on a limited spot check, the researchers came up with a total of approx. € 80 million a year. The researchers also reported that in the vast majority of cases, information was provided free of charge. In 1998, BDO Consultants<sup>2</sup> conducted a study into the nature and use of the electronic databases of the public sector. They ascertained that 70% of public sector databases were already being used by others. For that matter, 80% were reused by another government body. In 70% of cases in which databases were provided, this was free of charge. In 9%, only the costs of provision were charged. In 16%, part of the costs of building and managing a database were also charged to the user, and in 5% of the cases prices were fully cost-effective. No profit was made in any of the cases.

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<sup>1</sup> Proceeds from public sector information, inventory of the maximum loss of revenue as a result of easy accessibility of public sector information, Coopers & Lybrand Management Consultants, Utrecht 1996 commissioned by the Ministry of the Interior.

<sup>2</sup> Electronic databases of government administration, BDO Consultants, Groningen 1998, commissioned by the Ministry of the Interior.

If the results of this second study are extrapolated, it turns out that currently 80% of the requests for databases are granted at the price which we advocate: no more than the additional charges of provision. The BDO study into the databases of the public sector show that in 80% of all cases the policy line set out above is already being followed. In the remaining 20%, access and use of a number of frequently used databases is governed by specific legislation (e.g. the Land Registry Act, the Act on the Central Bureau and the Central Committee of Statistics and the Municipal Personal Record Database Act). On the basis of specific legislation, a separate price regime is possible for those databases. The influence of these specific laws will not be modified. The policy line will therefore have no impact on this. What remains is a relatively small group of databases for which budgetary problems may arise. There is no specific legislation for these databases, although a higher fee is charged for them. Research has shown that this involves some 10% of all databases. Examples are the 'Top 10 vector database' of the Netherlands Topographic Authority and the municipal WOZ (Valuation of Immovable Property Act) related databases. A number of case studies will be conducted into the nature and method of use of these databases and the revenue involved. These case studies will also examine which financing method (budget financing instead of output financing [direct benefit principle]) will have the greatest welfare impact on a national scale. Whether a recommendation for a form of financing can be formulated on the grounds of this research will be discussed in interdepartmental coordination.

#### *Research on Prosperity Effects of Open Access Policy*

The Netherlands Economics Institute (NEI) and consulting company Berenschot performed a study for the Dutch Ministry of the Interior on the effects of open access policy for public sector information in the Netherlands<sup>3</sup>.

NEI looked for both qualitative and quantitative prosperity effects of different pricing models for public sector information: no cost, marginal cost and full cost recovery (integral cost, including cost of data). Their hypothesis was: open access policies for public sector information will lead to prosperity effects. Their research concentrated on four government datasets: the large-scale base map of the city of Rotterdam, the elevation dataset from the Ministry of Transport and Water Management, the 1:10.000 vector dataset of the Dutch Topographic Service and the Law and regulation dataset from the Ministry of the Interior.

#### NEI/Berenschot conclusion

Prosperity effects will be maximized when data is sold at marginal cost. Marginal cost is defined as all costs related to the dissemination of public sector information. This includes shipping, promotional costs, personnel and IT costs. Although NEI only researched four datasets, they suggest that by extrapolating their results to all public sector information, enormous additional economic activity can be expected.

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<sup>3</sup> Berenschot and Nederlands Economisch Instituut (2001) *Report on the wealth effects of different methods of financing the development and management of public sector electronic databases*, available at Circa.

The report suggested that reverting to a marginal cost pricing policy would at least in the short term increase the burden on the public burden. NEI quantified micro-economic effects and looked at meso and macro economic effects qualitatively. NEI claims it is impossible to reasonably quantify economic prosperity effects at the macro level. The NEI study seems unconcerned with job growth potential from exploitation of public sector information, due to the low unemployment levels in the Netherlands. NEI also concludes that some public sector information, like geographic information, has technologically-based barriers to entry. Even when disseminated for free, certain levels of technology and knowledge are needed to be able to use a number of important government datasets. NEI questions the interest of citizens in these datasets and questions whether use of these datasets will increase should an open access policy be applied. The study ignores the professional private sector companies that can make this type of public sector information into usable products for both specialized and general audiences. NEI does recognize that “lower prices for geographic data may result in increase of turnover and possibly increase of users”. Indeed, “high end” government data sources, such as real time access to geographic and meteorological data may be the most significant category in stimulating prosperity growth for society as a whole.

#### *Research on Economic Benefits of Open Access Policy*

Another attempt to quantify the economic effects of open access policies for spatial data was performed by the Dutch Federal Geographic Data Committee (RAVI)<sup>4</sup>. The goal of the research was to identify the potential benefits of open access policies within the community of geographic information. Possible economic effects can be efficiency effects, potential for income, jobs, product innovations, market development and economic growth.

#### RAVI conclusions

1. Consumers as well as private business can profit significantly from freely accessible public sector information.
2. Growth potential: lowering the price of data by 60% would lead to a 40% turnover growth.

Several types of benefits would occur from open access policies:

Efficiency: faster policy decisions and decision making in general. More efficient logistics, less duplication of effort by various entities independently entering similar datasets;  
Quality and effectiveness: makes value added services possible, particularly those relevant to business and industrial siting;

Use of Information and Communication Technologies and Geographic Information Systems: use will increase particularly among small and medium enterprises;

New applications, products and services for businesses as well as consumers will be developed.

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<sup>4</sup> Ravi Bedrijvenplatform (2000) Economische effecten van laagdrempelige beschikbaarstelling van overheidsinformatie. Publication 00-02.

## **II Description of the objectives and bottlenecks for the different information categories**

### *Basic information of the democratic constitutional state*

It prescribes by law that acts, decrees and regulation must be publicly announced before they can be implemented. After all, citizens must know the rules they are to abide by, for the citizen is expected to know the law.

When push comes to shove, for instance in disputes between the public sector and citizens or between citizens themselves, there will be a need for more detailed clarifications and information on the interpretation and application of the law, legislation and where acts are concerned, parliamentary documents. ICT has excellent possibilities for making this information available in a coherent manner.

Information resulting from the core tasks of the public sector must not be put to commercial use by the public sector itself. Citizens and businesses must be entitled to 'free' use of public information. First of all because this enables them to participate better in the democratic debate. A second reason is that our national welfare is likely to benefit from public sector information being made available in an open-minded way. Thinking in terms of the new knowledge-based economy implies that the societal value of this information will increase as it is used by an increasing number of people.

Which information can be earmarked as basic information of the democratic constitutional state?

The basic information of the democratic constitutional state is information containing the rules and regulations on how society must function in the Netherlands and on the democratic decision-making process. Without proper accessibility to those rules, participation is difficult.

The term 'basic information of the democratic constitutional state' must in any event cover:

1. Netherlands laws, general measures of government administration and decisions in the meaning of Article 1:3 of the General Administrative Law Act as well as treaties concluded by the Netherlands;
2. decisions by international organisations insofar as these have legal effect in the Netherlands;
3. court decisions made in the Netherlands;
4. decisions by international courts insofar as these have legal effect in the Netherlands;
5. agendas, reports and other public documents of representative bodies;
6. official translations of that set out in 1 through 5.

What are the policy objectives?

To ensure that this category of public sector information can be accessed autonomously, easily and coherently.

How and at what price will this information be made available?

The long-term objective is that this information be accessible to citizens free of charge and made available to them at cost price. This goal may be attained through

disseminating information via the Internet and making it available for perusal in libraries and public sector buildings.

What may citizens do with this information?

Insofar as the information originates from public bodies in the Netherlands, or is contained in databases produced by Dutch Public Authorities, it is free from copyright and database-right. Citizens are under no restrictions regarding the use and reuse of this data, not even for further commercial use.

Which obstacles hinder this objective and what is the answer?

The present mode of publication often only contains amendments to existing legislation.

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publication method forms a barrier for citizens who want the integral text of the law in question. That was the main reason for the Dutch government to build a databases containing consolidated legislation. Now we are building a system that makes it possible to make connections with other national and regional legislation and with printed documents of the parliamentary process. Official Publications are available free of charge to citizens, businesses and public authorities via [www.overheid.nl](http://www.overheid.nl). The integral body of Dutch legislation is now available via the Internet. A European tender is being prepared to this end. A subsidy scheme has been set up to assist local authorities in making the information about their executive bodies and their decrees and regulations available via the Internet. Law courts, finally, have also started making jurisprudence available.

#### *Information that is public on the grounds of the Act to promote open Government*

By making administrative information public available and accessible to citizens, the transparency of government administration is improved and citizens are given more possibilities to monitor government administration and participate in the democratic debate. The law prescribes that all information on government administration is in principle public, provided that the requests for provision of information meet certain requirements.

Which information can be earmarked as information under the Act to promote open Government?

Administrative information is information held by a government body and which pertains to policy proposals, decision-making and implementation. Databases also come under this Act, unless such database has no relationship with, or the contents thereof have no relationship with the 'administrative tasks' of the public sector body in question. Databases, or the information therein, may therefore fall outside the scope of this Act. When the openness of certain databases is provided for differently in specific legislation, that information does not come under information either.

What are the policy objectives?

The policy objectives are to clarify the legal framework and to remove any obstacles to using information. The objectives of this Act may be attained even better if citizens have access to the electronic databases which government bodies have produced in the framework of carrying out their tasks as well as access to the associated software. An increasing number of citizens now have the necessary hardware and knowledge. The

societal value of these databases can be improved if the business community can use them to produce commercially attractive products, thereby stimulating economic growth.

How and at what price will this information be available?

- The Act to Promote Open Government distinguishes between five methods of providing information, from issuing a copy to verbal information.
- Public bodies can demand a fee for the provision of this kind of information based on a Royal decree and regulations. At state level, this is based on the cost price of producing the medium – not the costs of gathering information and assessing a request. The fee for a paper copy is no more than € 30, for electronic files no more than the price of a diskette or telephone charges.

What may citizens do with this information?

Citizens are free to use the information at their own discretion. Use or reuse outside the scope of the applicant's request is possible, unless such is limited by specific legislation. Such limitations may result from the 1912 Copyright Act (Aw), the Database Act (Dw) and the Data Protection Act (to become the Personal Data Protection Act).

Which obstacles hinder this objective and what is the answer?

- The Copyright Act, the Database Act and the Data Protection Act may present obstacles to reuse of the public sector information thus obtained.
- One of the requirements regarding a request for the provision of information according to the Act to Promote Open Government is that the information must be connected in some way to administrative tasks. Jurisprudence has shown that (the contents of) databases of research institutions do not in principle have that connection with administrative tasks, unless such data was used in the preparation and implementation of policy. It is not clear whether there is always the required connection with administrative tasks in databases (or selections therefrom) of government administration.
- Citizens are not aware of the databases held by government bodies. This makes it difficult for them to specify a request for information provision in sufficient detail. There are two ways in which attempts are being made to improve this. Firstly, public sector bodies are invited to indicate via [www.overheid.nl](http://www.overheid.nl) those areas in which policy is being prepared. In addition, government bodies will be invited to indicate for each sector which databases are in their administration.
- Information that is made public on request may also be interesting for third parties, for instance for economic (re)use. The fact that information on request is aimed at the individual means that third parties often are not aware that a government body has decided to make certain information public. This could be overcome if every government body were to publish all information provided on the basis of the Information Act. However, this seems a rather impracticable option in view of both the quantity and the large diversity of forms in which this information is provided. A workable solution seems to be an open-minded implementation of the instruction norm contained in Article 8 of the Act, aimed at actively providing information 'in the interests of good and democratic government administration'.
- Being able to inform citizens properly is limited by the possibilities of finding administrative information in the (paper) records and having rapid access to them. Current ICT tools can greatly improve this situation. This will require modifications to the internal administrative and registration systems within the public sector. Research is being conducted into this possibility within the scope of the Digital Longevity Programme and pilots are being financed.

- Public sector databases often contain information provided in confidentiality, or information that can be traced to individuals. Before information or a database can be provided, that confidential information must be removed from the database (impoverishing a database). If impoverishing a database proves to be labour-intensive (it interferes with the normal activities), this may constitute a reason to refuse the provision of information. A possible consideration is to accommodate the costs of impoverishing databases under the pricing scheme.
- Information services to the public often fail to reach their target and are physically too far from the citizen, for instance at post offices, libraries and public sector buildings. By using ICT, and particularly the World Wide Web, information services can be specifically targeted and reach citizens more directly. The various government sites and those of provinces, municipalities, water boards and the industrial organisations governed by public law are good examples.
- Based on the Act to promote open government, government bodies may be obliged to provide information on which third parties have copyrights. This would imply possible infringement on those rights.

*Other information*

Besides 'Basic information of the democratic constitutional state' and information that is public on the grounds of the Act to Promote Open Government information, the public sector also has information that does not fall into either category, and is therefore classified here as other information.

Which information can be earmarked as other information?

All information held by the public sector which cannot be classified as basic information of the democratic constitution and information that is public on the grounds of the Act to promote Open Government. To be more precise:

- a. Information from government bodies of which the openness and use (usually including pricing) are provided for separately in specific legislation. This sometimes results in the information not being public (Police Records Act, Security and Information Services Act), and sometimes being accessible and usable (the Kadaster Act [governing land registry], the Act on the Central Bureau and the Central Committee of Statistics and the Municipal Personal Record Database Act). This specific legislation has preference over the Act to Promote Open Government.
- b. Information from public sector bodies that is not related to administrative tasks. This class of information would appear to be fairly comprehensive. It includes information of research institutions (research reports and database files) and cultural institutions (catalogues).
- c. The software with which public information can be read and processed.

What are the policy objectives?

Building and managing databases in this category are often paid from public resources at high costs. The objective is therefore to make this category of databases more accessible and usable to a wider audience. Provided, of course, that there is no legislation against such publication, for instance in the case of sensitive information about individuals or businesses.

How and at what price will this information become available?

- Insofar as access and use are provided for by specific legislation, the conditions for access and use are contained in such legislation. Those conditions vary according to each law.
- Providing information from the second sub-group depends fully on the willingness of the public sector body in question. By law, public sector bodies are free to demand a fee and to determine the amount thereof.
- The owner of the software determines the price for a licence on the software.

What may citizens do with this information?

How citizens may use this information is subject to the conditions prescribed by law (first sub-group) and by the public sector body (second sub-group). Over and above that, use or reuse for a wider audience than the applicant is limited by special legislation, such as the Copyright Act, the Database Act and the Data Protection Act.

Which obstacles hinder this objective and what is the answer?

- Prior to use or reuse of the database files mentioned in specific legislation, the files often require intensive processing, for instance the removal of confidential information and information that can be traced to individuals. The activities involved in such processing as well as the structural provision generally do not fall within the scope of the assigned public task. It may be a consideration to have the law prescribe such processing and provision as constituting a public task. This was the course taken in making Land Registry data available for reuse.
- Access to publications and provision of scientific and cultural information of knowledge institutions in the areas of scientific research (e.g. universities and research institutions) and culture (museums and archives) is provided for in specific legislation such as the Higher Education and Research Act for universities, the Royal Netherlands Academy of Sciences and the National Library of the Netherlands, the Act governing the Netherlands organisation for scientific research and the TNO Act [Netherlands Organisation for Applied Scientific Research] as well as the Act on specific cultural policy. The application of ICT tools makes it easier to have access to information which is not published (e.g. underlying data, information on the collection).

### **III The directive of the European Parliament and the Council on the re-use and exploitation of public sector information and the Dutch coalition agreement.**

*Dutch Framework; Towards optimum availability of public sector information.*

Public Sector information should be made as widely accessible and available as possible. Basic information of the democratic constitutional state is free of charge and free from copyright and database-right, therefore suitable for re-use.

For information that is public on the grounds of the Act to promote Open Government public bodies can demand a fee for provision; at state level this is based on the cost price of the information. Citizens are free to use the information at their own discretion, unless this is limited by specific legislation.

For other information public sector bodies are free to demand a fee and to determine the amount thereof.

*Directive of the European Parliament and the Council on the re-use of public sector documents:*

A document held by a public body is a document where the public body has the right to authorise re-use.

This Directive allows public sector bodies to recover total costs of collecting, producing, reproducing and disseminating documents, together with a reasonable return on investment. (There is no distinction between different categories of public sector information).

Public sector bodies may allow for re-use of documents without conditions or may impose conditions, where appropriate through a licence.

## **Concluding**

The Netherlands will choose a more appropriate cost calculation method for public sector information in line with the coalition agreement: public sector bodies will make their information accessible and available at no charges at all (basic information of the democratic state) or at cost price (information that is public on the ground of the Act to Promote Open Government). For all other information public sector bodies are free to determine the amount of the price.