

Opinion: Could open government movement shut the door on Freedom of Information?

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The Conversation**

For democracy to work, citizens need to know what their government is doing. Then they can hold government officials and institutions accountable.

Over the last 50 years, Freedom of Information – or FOI – laws have been one of the most useful methods for citizens to learn what government is doing. These state and federal laws give people the power to request, and get, government documents. From everyday citizens to journalists, FOI laws have proven a powerful way to uncover the often-secret workings of government.

But a potential threat is emerging – from an unexpected place – to FOI laws.

We are scholars of government administration, ethics and transparency. And our research leads us to believe that while FOI laws have always faced many challenges, including resistance, evasion, and poor implementation and enforcement, the last decade has brought a different kind of challenge in the form of a new approach to transparency.

Technology rules

The new kid on the block is the open government movement. And despite the fact that it shares a fundamental goal with the more established FOI movement – government transparency – the

open government movement threatens to harm FOI by cornering the already limited public and private funding and government staffing available for transparency work.

The open government movement is driven by technology and seeks to make government operate in the open in as many ways as possible.

This includes not just letting citizens request information, as in FOI, but by making online information release an everyday routine of government. It also tries to open up government by including citizens more in designing solutions to public policy problems.

One example of this hands-on approach is through participatory budgeting initiatives, which allows citizens to help decide, via online and in-person information sharing and meetings, how part of the public budget is spent. Thus, while open government and FOI advocates both want government transparency, open government is a broader concept that relies more on technology and encourages more public participation and collaboration.

One type of open government initiative is data portals, such as Data.gov. Governments post lots of data that anyone can access and download for free on topics such as the environment, education and public safety.

Another popular open government reform is crowdsourcing. Crowdsourcing asks the general public to come up with ideas to solve government problems or collect data for government projects. Two popular crowdsourcing initiatives in the U.S. are Challenge.gov and citizen science projects, such as the ones for Environmental Protection Agency where citizens are testing water quality.

Advocates of FOI and open government talk about them in similar ways and indeed participate in many of the same initiatives such as the Open Government Partnership. That

initiative is a global partnership of countries that develop multiple types of open government practices like anti-corruption programs, open budgets or crowdsourcing events.

Movements complement each other

The open government movement could help FOI implementation. Government information posted online, which is a core goal of open government advocates, can reduce the number of FOI requests. Open government initiatives can explicitly promote FOI by encouraging the passage of FOI laws, offering more training for officials who fill FOI requests, and developing technologies to make it easier to process and track FOI requests.

There's a lot to the Freedom of Information Act. U.S. Department of Justice

On the other hand, the relationship between open government and FOI may not always be positive in practice.

First, as with all kinds of public policy issues, resources – both money and political attention – are inherently scarce. Government officials now have to divide their attention between FOI and other open government initiatives. And funders now have to divide their financial resources between FOI and other open government initiatives.

Second, the open government reform movement as well as the FOI movement have long depended on nonprofit advocacy groups – from the National Freedom of Information Coalition and its state affiliates to the Sunlight Foundation – to obtain and disseminate government information. This means that the financial stability of those nonprofit groups is crucial. But their efforts, as they grow, may each only get a shrinking portion of the total amount of grant money available. Freedominfo.org, a website for gathering and comparing information on FOI laws around the world, had to suspend its operations in 2017 due to resources drying up.

We believe that priorities among government officials and good government advocates may also shift away from FOI. At a time when open data is “hot,” FOI programs could get squeezed as a result of this competition. Further, by allowing governments to claim credit for more politically convenient reforms such as online data portals, the open government agenda may create a false sense of transparency – there’s a lot more government information that isn’t available in those portals.

This criticism was leveled recently against Kenya, whose government launched a high-profile open data portal for publishing data on government performance and activities in 2011, yet delayed passage of an FOI law until 2016.

Similarly, in the United Kingdom, one government minister said in 2012, “I’d like to make Freedom of Information redundant, by pushing out so much data that people won’t have to ask for it.”

Open data, no substitute for FOI

But the World Wide Web Foundation, the founder of the global open data ranking system called the Open Data Barometer, reported in 2015 that the United Kingdom government was using its first place ranking in the Barometer to “justify a (government) mandate to review, and allegedly limit, the Freedom of Information Act.”

Open government programs not mandated by law are easier to roll back than legislatively mandated FOI programs. In the U.S., the Trump administration took down the White House open data portal. The move was immediately condemned by open government advocates, to no avail. In other cases, new open government efforts could hinder existing FOI implementation due to a limited number of staff members assigned to transparency work.

One indication of this is a 2015 Mexican reform that increased the categories of information that government agencies were

required to post in the online Portal de Obligaciones de Transparencia.

But the job of identifying and digitizing this information was given to agencies' existing FOI response units – without any additional staff or resources. This led to severe administrative burdens and, in some cases, slower response times to FOI requests. Meanwhile, the updated portal was criticized for a complicated interface and unreliable or missing information.

Is it possible for open government and FOI to avoid the mistakes seen in the Mexican case? Some experts are optimistic. Beth Simone Noveck, who served as the first United States deputy chief technology officer and director of the White House Open Government Initiative from 2009 to 2011, suggests that “in the long term, FOIA and open data may themselves converge as we move to a future where all government data sits in a secure but readily-accessible cloud.”

Such a happy convergence would require a commitment by government to have any new or merged systems reflect the goals of both FOI and open government. That would mean a system that both supported existing avenues for transparency while also adding new ones. As scholars, we are unclear which direction government will take and thus, whether the public interest will ultimately be served.

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