

REFSA BRIEF

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Strengthening Malaysia's Open Data Ecosystem: Notes for reform



1. According to Promise 29 within the Harapan manifesto, the coalition government has expressed a wish to encourage more data-sharing as a check-and-balance mechanism on the Government of the day:

"To help stakeholder groups play their check and balance role on our administration, the National Statistics Department will be directed to publish important socio-economic data regularly, in a format that is easily analyzed and easily accessible by all. A panel of respected experts will be formed to assure the veracity of the data. All these will help ensure that the public have all the necessary arsenal to make us transparent and accountable." (Buku Harapan, p.65)

2. Data is important as a means to strengthening Malaysia's democracy, empower legislators, enable citizens to be informed about the state of national development. In some instances, innovative usage of data also allows service providers to enhance public service delivery, for example through the creation of third-party public transit apps that relies on open government data. There is undeniable benefit to public good from more open data.

3. As Malaysia aspires towards developed nation status, research on the country's developmental policies will be important. To achieve this aim, the government of Malaysia needs more proactive measures to unlock the full potential of public sector data, including:

a. Updating legislations to safeguard against abuse of data as a first-step towards safer public data-sharing. This includes the need to amend outdated secrecy laws (Official Secrets Act) and privacy laws (Data Protection Act) that prevent transparent open-data and data-sharing;

b. Improve dialogue between government agencies with data and the private sector, members of academia, think tank and public policy researchers. Dialogue is critical to enhance the production and publication of relevant data for its end-users.

c. Changing the public sector philosophy of sharing to a culture of open data by default unless the nature of data released is classified as sensitive information under the Official Secrets Act. At the same time, we need to build in periodic review mechanisms to re-interpret sensitivity and privacy of data, allowing the public sector data-sharing to adapt to changing societal expectations of privacy and transparency, and rapidly-shifting technological trends.

d. Institute an Open Government Data Act to ensure that open data commitment is an enshrined statute rather than only a non-legally binding policy commitment.

Malaysia's current effort

4. Malaysia's current culture of open-data and data-sharing efforts are laudable, considering the infancy of the project. Since the launch of data.gov.my spearheaded by MAMPU in 2014, 13,600 datasets have been uploaded (figure updated as of 2020).
5. However, such efforts lag behind other developed nations such as the United States (266,365), United Kingdom (53,307), South Korea (33,749) and Australia (85,343), as reported on their online data repositories.
6. A 2016 survey by the Open Data Barometer indicates that the Malaysia has a rich repository of data that are already available, but we fare poorly in the publication of these data or in processing them in more user-friendly format.
7. Even as the 2016 survey points is slightly outdated, some of its results point to the difficulty of open data access in Malaysia:
 - a. Dataset is not provided in a machine-readable format
 - b. Data is not available free of charge
 - c. Data may not be regularly updated
 - d. Data may not be easily searchable
8. Fortunately, the report also points out that the data is readily available, or that the government already possess the capacity to collect and obtain these data. An insignificant amount of public resources need only be expended to make these datasets public with great payoff to the general user.

Changing laws to make data accessible

9. One of the principal challenges to making data more accessible across all agencies, ministries and levels of government is the **lack of a single overarching framework** to empower the sharing of data. This has created much regulatory uncertainties as to whether individual agencies should release data.
10. Beyond safeguarding information relating to Malaysia's strategic economic and defence interests, the Official Secrets Act 1972 empowers individual cabinet ministers and chief

ministers to decide to the 'openness' of data under their jurisdiction. This is inadequate for a truly open dissemination of beneficial government data since it creates much vagueness and arbitrariness in the criteria for open data release.

11. In the case of the Department of Statistics Malaysia, the Statistics Act 1965 also gives DOSM broad discretionary powers to decide if a dataset is "in the public interest" before being released to the public. However, what is deemed to be "in the public interest" is not yet clearly defined, nor is there evidence that it is defined in consultation with the public users of data.

12. This fragmented regulatory framework over data-sharing creates much uncertainties on whether the government should release data. In many cases, the prevailing government data-sharing culture is still defined by a norm of secret unless deemed to be in the public interest. In the face of the undeniable public utility from open government data, we need to enshrine a culture of data-sharing that is public unless deemed sensitive, as defined by the Official Secrets Act.

13. This would require that we **amend the intent of the law over data management** enshrined in the Official Secrets Act 1972 and Statistics Act 1965 towards a culture of **data should be open by default**. Across the world, this is increasingly a standard practice. For example, in the United States (Open Data Government Act), Indonesia (Public Information Disclosure Act), and United Kingdom (Freedom of Information Act).

14. The creation of a single regulatory framework that protects the public access to information held by government bodies gives the public sector a clear legal authority to share data. It augers a shift in thinking amongst those in public service **from 'can one share?' to 'how can one safely share?'**.

15. A new Open Government Data Act that reframes data as a public good will go a long way to ensuring that openness of government datasets is more than a policy commitment on paper, no longer subject to the vagaries of politics. Crucially, such a law not only endows government agencies to publish data, it also makes the lack of data publication a legally questionable act liable to litigations against government.

16. However, the release of data will also require more safeguards to be built in place against the abuse of government data. The current Personal Data Protection Act applies only to consumer data held by the private sector, it should also be extended to cover personally identifiable information in government data that is abused by third parties.

17. Moreover, in order to adapt to rapidly shifting norms over privacy and sensitivity, as well as keep pace of changing technological trends, we also need to build in mechanisms under the Official Secrets Act and the proposed Open Data Government Act to periodically review whether data released into the public infringes privacy and is detrimental to the

public interest.

Other Recommendations

18. In the spirit of open data, Department of Statistics Malaysia (DOSM) should also consider the removal of prohibitively high fees in data requests. This is an archaic practice that violates the spirit of transparency in Malaysia's nascent democracy.

19. The central government's Open Data Portal initiative (data.gov.my) should be extended to more state government and local authorities, encouraging data transparency across all vertical levels of government, from the highest level of bureaucracy to the smallest local authority.

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