UNDERSTANDING TWO MECHANISMS FOR ACCESSING GOVERNMENT INFORMATION AND DATA AROUND THE WORLD

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CONTENTS

"We are in the midst of an explosion in the measurement of government openness and the accessibility of information to the public" Coronel (2012)

1. INTRODUCTION[1]

References to openness and transparency are found in a large number of blogs, academic papers and now, increasingly, in political speeches; especially speeches delivered close to election time. The increased political salience of these terms means that it is important to make the effort to clarify them where we can. This report is predicated on the idea that we may have greater success in these efforts if we try to build on what we already know about two fundamental components of openness and transparency: Freedom of Information (FOI) and Open Government Data (OGD), as both concepts refer to a certain quality, which lift the veil of secrecy, when referring to political systems (Davis 1998).

The increased use of the concepts of transparency and openness has fuelled the demand for measurements, rankings and assessments on FOI legislation and OGD policies, especially as global comparative exercises. The past two decades have seen these FOI legislation and OGD policies become key developments in the transparency and openness areas. FOI laws presently have exceeded 100. In less than 10 years OGD initiatives have become a trend for governments everywhere with numbers accelerating after the launch of the Open Government Partnership (OGP) [2].

Actors on both the demand and supply sides of government-held information and data are behind the requests for such measurements. On the demand side, advocacy groups and practitioners need to present impact-related figures to donors and governments, but it is difficult to promote something when its impact is difficult to be empirically proved. On the supply side, the champions of increasing access to information within public administrations need to "sell" the benefits of these types of policies by showing the decision-making heads of agencies and/or governments, and the staff required to implement the policies, that their 'pros' surpass their 'cons'.

From the late 1990s to the present, FOI groups and experts have provided advice and guidance on legislative design and implementation. During this same period, requests for measurement and evidence-based advocacy started to become the norm for many donors and other international governmental organization (IGOs). In a context where evidence-based policy[3] became popular (and "new public management"[4] was already mainstream), donors and IGOs started to request evidence that FOI was leading to greater transparency and accountability[5] (and thus good governance), in spite of the jurisprudence leading to more information being disclosed by government. Until now, there have been several exercises[6] related to global assessments of the levels of transparency in different countries, of which FOI is a key component. During the current decade, many measurements and assessments have been developed in the Open Data field as well.

The number of measurements increased, in particular, during the last couple of years. Several international initiatives to measure the impact, results, and other variables related to the disclosure of government-held information and data have been launched in order to determine the level of openness and/or transparency of a given jurisdiction. Organisations developing such initiatives include the Sunlight Foundation, the World Justice Project, Open

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[3] *"The term EBP gained political currency under the Blair administrations since 1997. It was intended to signify the entry of a government with a modernising mandate, committed to replacing ideologically-driven politics with rational decision making."* http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/3683.pdf

[4] *"New Public Management draws practices from the private sector and uses them in the public sector of management. The New Public Management reforms use market forces to hold the public sector accountable and the satisfaction of preferences as the measures of accountability*." Kaboolian, Linda. "The new public management: Challenging the boundaries of the management vs. administration debate." Public Administration Review (1998): 189-193.

[5] The close relationship between FOI and transparency, a necessary previous step towards accountability in most cases, has been portrayed in the majority of the assessments

[6] Some of them cancelled after some time For example, the Global Integrity Index. In 2011, the organization made a conscious decision to discontinue the index aspect of the report. "Global Integrity found that while the index generated good publicity for Global Integrity, it was less effective as an advocacy tool"
Source: http://blogs.worldbank.org/publicsphere/climatechange/index-or-not-index

Knowledge Foundation as well as the Web Foundation. Some of these exercises are related to Open Government Data (OGD), others to transparency in a broader sense. All of them are new members of a long list of available measurements, rankings and indices of both Freedom of Information (FOI)[7] laws and Open Government Data initiatives[8].

The first part of this report assesses whether the differences and similarities between the two information-related initiatives of FOI and OGD requires examination of similar or different variables. The second part focuses on the major existing rankings, indices and other measurements used for these initiatives. The last section suggests potential areas for future research.

2. KEY CONCEPTS

- Freedom of Information

Freedom of Information is generally understood as the ability to request and obtain information produced and held by governments, subject to exceptions defined in law, and with disputes resolved by an independent institution. From the enactment of the first legal regulation on Freedom of Information in Sweden in 1766[9] to the late 20th century, the adoption of FOI legislation was not an important public policy issue for the vast majority of countries (Darch and Underwood 2010; Stubbs 2012). However, in a 20-year period, between the early 1990s and the late 2000s, which was named by Darch and Underwood

> *Freedom of Information (FOI) is generally understood as the ability to request and obtain information held and produced by governments, subject to exceptions defined in law, and with disputes resolved by an independent institution.*

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[7] In this note the term Freedom of Information (FOI) is included as a synonym of Right to Information (RTI) and Access to Information.

[8] Article 19 Mexico RTI Index; Assessing the performance of freedom of information (Ben Worthy and Robert Hazell); Carter Center RTI Implementation Assessment tool; Access Info- Centre for Law and Democracy RTI Rating; Toby Mendel- Freedom of Information. Comparative Legal Survey; Freedom of Information around the world- Global survey (David Banisar for Privacy International); Global Integrity Index; Freedom House Index (Freedom in the World); Assessing Open Government Budgetary Data in Brazil (Craveiro, Tavares & Alburquerque, 2013); Open Data Barometer (expert survey and secondary data- 90+ countries); Open Data Index (Ongoing crowdsourcing- 97 countries); and The PSI Scoreboard, among many others.

[9] "*The key achievements of the 1766 Act were the abolishment of political censorship and the gaining of public access to government documents. Although the innovation was suspended from 1772-1809, the principle of publicity has since remained central in the Nordic countries*". Björkstrand, G. and J. Mustonen (2006). Introduction: Anders Chydenius' Legacy Today. The World's First Freedom of Information Act. J. Mustonen. Sweden, Anders Chydenius Foundation.

(2010) as the 'Golden Age', a dramatic expansion of the number of national FOI laws occurred, from 13 to over 70 (Vleugels 2011). During this period two intertwined processes were extremely significant in terms of the diffusion process of FOI legislation worldwide (Fumega 2015): first, the internationalization of the concept and proposed standards on FOI, and secondly, the claim of Freedom of Information as a human right made by civil society advocates, in particular Article 19 (Mendel 2000).

These two processes have not been the only factors affecting the government-held information ecosystem in recent years. During the first few years of the 21st century the impact of computer and communications technologies became evident through a wave of new ideas surfacing in the area of government information: Open Government Data. (Fumega 2010)

- Open Government Data

The key principle of 'Open Data' is that structured data (the raw components that when analysed produce a meaningful output known as information) is made available by the organisation that created or collected it for reuse by others. 'Open Government Data' is the subset of Open Data that is created or collected and held by government agencies. To be 'open', the data should be proactively published by governments in reusable formats allowing third parties not only to access data, but also to reuse it in the way that they prefer. The OGD concept is based on the premise that raw digital data (produced and/or held) by governments should be freely available for everybody to reuse. The most significant corollary to open data that is made available by governments is that it should not involve inappropriate disclosure of personal information.

> *Open data is "data that can be freely used, reused and redistributed by anyone –
> subject only, at most, to the requirement to attribute and share alike". (Open
> Knowledge Foundation 2009)*

- Information and Communication Technology (ICT)

Developments in ICT have influenced profoundly all activities related to the gathering, storage, use and disposal of information, including governmental systems. The developments in ICT have not only impacted in obvious areas where technology is a core

component of government activity, but also across areas such as policy development and service delivery.

In spite of having its genesis in a paper-based era, recent FOI laws have been affected by the influence of ICT. This influence is clearly recognisable both in the design of FOI laws, which (either explicitly or implicitly) rely on the internet to enable proactive publication[10] of information by government agencies on their websites, and in the operation of the laws, such as the possibility, in many jurisdictions, of filing an FOI request via email (Fumega 2015). The latter has led to the proliferation of government and civil society group websites that process FOI requests online[11].

Open Government Data also predates the arrival of computer technology in government — the most obvious example being the publication of in paper form of census data collected by governments — but our current conception of the term is fundamentally based on the use of ICT not only to collect, store and manage raw digital data, but also to distribute and publish it.

In the past decade, OGD has gone from an almost non-existent concept to a key policy and operational activity for government officials, users and advocates. Yet, it was the groundwork and activities of international and domestic FOI advocacy groups, especially in the 1990s and early 2000s, which achieved the conceptual acceptance of access to governmental information holdings and the practical framework of legal mechanisms for accessing information as a right. The capacity to exercise the right to access government documents and information was one of the main steps that made the OGD movement[12] a reality (Fumega 2013).

2.1   Literature: some basic trends

Highlighting some of the characteristics of the evolution in the FOI and OGD literature provides some insights into the changes that these two areas are experiencing. Although the academic literature is limited in both fields, it does indicate that despite the similarities in

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[10] In most cases as documents in proprietary and non-reusable formats.

[11] For more information of some Governments building websites to process FOI requests online, See: Fumega, S. (2015). Information & Communication Technologies and Access to Public Information Laws. Transparency and Access to Information Network and W. Bank.

[12] In this document the term "movement" is used in a loose fashion to define as a group of individual and organizations advocating for a similar cause.

the two fields, there are differences in the rates at which they are developing.

FOI scholarship, until recently, was primarily legalistic and focused on development of FOI legislation, consisting mainly of the normal array of academic sources such as books, refereed articles, secondary sources, including government publications and reports, as well as conference papers. In contrast, until very recently, OGD material had been generally primary source, and concentrated in new media platforms including the web, social media and blogs, and to a lesser extent conference presentations, with only a few incipient studies. This scenario has started to change, and currently there are several initiatives promoting the development of academic literature in the OGD field[13].

FOI legislation has attracted considerable interest over the past three decades among scholars. The speed of production and focus of the literature on the topic has largely followed the patterns of FOI adoption. The field of FOI research experienced a slow pace at first, but, since the mid-2000s, the number of FOI studies has increased substantially.

The development of the FOI literature parallels the worldwide increase in the number, and types, of enacted legislation. Between the 60s and late 90s/early 2000s, many of the US, Canadian, Australian and New Zealand case studies of the 20th century's first adopters had focused on the development of these legislative ideas in the global north. But by the late 1990s, this area, which had been predominantly led by domestic factors, experienced an eruption of the topic in the international arena.

That shift to the international arena was largely driven by the belated recognition by the World Bank that corruption in the countries receiving aid or loans from the Bank (and other development institutions) meant that a significant proportion of the money was being stolen, embezzled or otherwise going missing. The Bank suggested that empowering the citizens of these countries with the information necessary to hold their governments to account would reduce this 'leakage' of aid, and lead to more effective delivery of development projects. FOI advocates seized the opportunity to push for the enactment of FOI laws as the tools to empower citizens to do this, and the number of countries with such

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[13] Some examples are: Open Data Research Network (http://www.opendataresearch.org/) and ILDA (http://idatosabiertos.org/about-ilda/). During the Research Symposium (http://www.opendataresearch.org/project/2015/symposium) at the 3rd Open Data International Conference (http://opendatacon.org/) many of the products of these two initiatives together with many other researches around the world were presented.

laws, regulations or constitutional commitments increased rapidly (Fjeldstad and Isaksen 2008).

The explosion in global demand for disclosure of government-held information, sometimes referred to as the "golden age"[14] for FOI advocates, had its translation into academic literature also. Studies, which were sometimes advocacy-driven, began focusing on the need to establish international models and standards (Mendel 1999, Coronel 2001, Neuman 2004, Kranenborg and Voermans 2005, Banisar 2006, Mendel 2008).

These early studies on the legal aspects of the FOI movement were necessary at that time, especially in terms of advocacy, as they articulated desired norms and what the advocates claimed were 'standards', as well as providing models to facilitate the policy transfer processes; however, they proved to be limited. A deeper analysis of the context and actors in the different policy settings was required. From leadership to power relationships and historical pre-conditions, new perspectives which mostly came from the social sciences, enhanced and enriched a new stage of FOI analysis.

More recently, scholars, such as Darch and Underwood (2011), have started to break free from a largely legal-centric approach, as Stubbs and Michener explain in their dissertations (Michener 2010, Berliner 2011, Stubbs 2012). Thus, while most of the FOI literature is still embedded in a legalistic perspective, there are new studies starting to shed light on a diversity of aspects, which until recently have been under-researched. Researchers such as Berliner (2012) and Michener (2010) have expanded the limits imposed by the legal approach to the topic by analysing other relevant factors such as the political context and the degree of media freedom within a jurisdiction in which those regulations come into force (Michener 2010, Berliner 2012).

The academic literature regarding Open Government Data has fallen well behind that on ICT developments in government, and significantly lags behind the popular and variable use of this concept among practitioners, advocates (from ICT and policy domains), public officials and politicians. Most of the ideas and insights in this emerging field are still in development. As the field is relatively new, most of the attempts at analysis and understanding were, until

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[14] As named by Colin Darch in Darch, C. and P. G. Underwood (2011). Freedom of Information and the Developing World: the citizen, the state, and models of openness. Oxford, United Kingdom, Chandos Publishing Ltd.

recently, more easily found in blogs, social media, conference papers, government or international organisations' reports. More recently they are also found in technology-oriented publications[15] as well as a few policy journals[16].

The first mention of the ideas surrounding the reuse of government information can be traced back to the 1970s. According to Yu and Robinson, the term 'open data' was first used in a policy environment in a NASA international agreement document (Yu and Robinson 2012). However, the idea of reusing government digital information can also be found in British and French government reports and regulations,[17] as well as in the demands[18] of British civil society groups of the 1980s and 1990s.[19]

In most of the above-mentioned 1990s documents, the idea of reusing information was connected to ICT developments for better service delivery (transactional reforms[20]) in the first government projects on the topic such as CitiStat.[21] In the early 2000s, the notion of reusing government information was associated with the European Union (EU) Public Sector Information (PSI[22]) directive (2003). The term 'open government data' did not gain widespread popularity until Obama's 2008 memorandum on "Transparency and Open Government",[23] in combination with the attention that the US and UK portals for accessing OGD received at the time[24] (Fumega 2010).

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[15] Some examples are the Journal of Community Informatics and Information System Management.

[16] E-Journal of e-Democracy and Open Government (JeDEM)

[17] http://discovery.nationalarchives.gov.uk/SearchUI/details?Uri=C16571
http://www.epi.asso.fr/revue/histo/h80simon2.htm

[18] https://web.archive.org/web/20130603103506/http://www.cfoi.org.uk/ltrfreeman2.html

[19] The term "open data", even though not a popular term in government circles in the 90s, became a recurrent part of the vocabulary in scientific circles (Chignard, 2013) in regard to geophysical and environmental data. http://www.paristechreview.com/2013/03/29/brief-history-open-data/

[20] For more information on Transactional and transparency ICT-based solutions: Davies, T. and S. Fumega (2014). "Mixed incentives: Adopting ICT innovations for transparency, accountability, and anti-corruption." U4 Issue **2014**(4).

[21] From: Fumega, S. (2013). Opening the cities: Open government data in local governments of Argentina, Brazil and Uruguay. Buenos Aires preliminary report. 3rd Global Conference on Transparency Research. Paris.

According to Joshua Tauberer, the Mayor of the City of Baltimore (U.S.), Martin O'Malley, implemented one of the first public data-related initiatives coming from a public agency in 1999: CitiStat. This tool aimed at addressing a number of problems associated with the poor performance of that local government (high levels of crime, costly taxes and a government that had high levels of staff absenteeism). Even though it was first intended to monitor only the level of absenteeism among public officials, it eventually expanded to monitor all social programs in the city. This initiative set the basis for creating a website, in 2003, to allow public access to social programs' statistics in Baltimore. This same initiative was replicated in other cities, such as Maryland and NYC. Tauberer, J. (2012). Open Government Data. Washington DC, Civic Impulse LLC.

[22] http://ec.europa.eu/digital-agenda/en/european-legislation-reuse-public-sector-information

[23] http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/

Around the time that US and UK governments launched their OGD portals, the initial studies in this area were mainly focused on defining and delimiting the concept and its main characteristics (Eaves 2009, Robinson, Yu et al. 2009, Gigler, Custer et al. 2011, Heusser 2012, Janssen, Charalabidis et al. 2012, Yu and Robinson 2012). There are other works that were largely focused on the technical aspects of the topic (Choudhary 2003, Maali, Cyganiak et al. 2010, DiFranzo, Graves et al. 2011, Hoxha and Brahaj 2011, Villazón-Terrazas, Vilches-Blázquez et al. 2011, Wang, Chen et al. 2011).

As in previous stages of the FOI field, scholars and advocacy groups[25] have, in recent years, started to develop models and standards to help in the definition process of OGD. Akin to the first group of FOI academic studies, the first OGD field reports too were based mostly on case studies (at country or city level) of different OGD initiatives. The difference between the FOI and OGD fields is the origin of the reports. In the first stages of FOI diffusion, aside from the reports coming out of academia, the reports mostly came from civil society advocates. In the OGD field, the reports are developed or commissioned by governments implementing the policies (Cabinet Office 2007, Government 2.0 Taskforce 2009, Power of Information Taskforce 2009), as well as other civil society and academic actors (Napoli and Karaganis 2007, Pollock 2008, Access Info and Open Knowledge Foundation 2010, Hogge 2010). Similar to the material found in the FOI movement, most of the first reports on OGD provide a positive view of its benefits (Janssen, Charalabidis et al. 2012) but lack an analysis of the barriers and risks associated with the disclosure and use (data not being used provides no value) of the data (Davies and Fumega 2014). This largely relates to the work of advocacy and "evangelists" in both the FOI and OGD initiatives groups. These actors needed to emphasise the benefits and value of the access, in the case of FOI, and the use, in the case of OGD in the first stages. In the OGD field, they are only just starting to analyse these issues as academy usually comes later in the analysis.

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[24] A few examples:
http://www.economist.com/node/15469415
http://bits.blogs.nytimes.com/2009/05/22/datagov-unlocking-the-federal-filing-cabinets/?_r=0
http://www.nytimes.com/2009/08/02/magazine/02FOB-onlanguage-t.html

[25] In December 2007, 30 open-government advocates met in Sebastopol, California to develop a more robust understanding of why open government data is essential to democracy. They spelled key requirements for government data which emphasised the need for easily accessible, machine-processable and highly reusable data. http://wiki.opengovdata.org/

A similar path to the first stages of the FOI literature is also found in the incipient OGD-related documents. Most of the early case studies were based on the developed world (Sheridan and Tennison 2010, Janssen 2011, Kalampokis, Tambouris et al. 2011, Bates 2012, De Chiara 2013, Ubaldi 2013). However, there has been a recent change in emphasis and coverage, including reports on Kenya Open Data Portal (Rahemtulla, Kaplan et al. 2012), Latin America (Fumega and Scrollini 2013) as well as the on-going research project funded by the Web Foundation and IDRC on the Emerging Impacts of Open Data in Developing Countries.[26] These current studies clearly demonstrate the rapid pace in which the OGD field of study is moving. In this sense, the OGD field, due to rapid developments in ICT, has moved through similar stages to that of FOI research, but at a much faster speed. In the FOI field, the passage from the country specific studies to the international realm took decades, since the diffusion of the concept — and hence the related research — pre-dated the arrival of the web. Unsurprisingly, the far greater maturity of ICT in place when the concept of OGD gained traction meant that a similar process of diffusion took only a few years. This has led to an overlap of stages, where in the present stage, similar to the FOI field, studies are starting to focus not only on definitions and models to better understand these policies in the developed world, but also exploring the context and results in the developing world. The Open Data Research Network and ILDA are examples of this stage[27].

Increasing demand and the large supply of assessments in both fields is surrounded by a context in which both areas present a certain level of academic development but they are still far from being well researched and easily accepted by all stakeholders.

3. MAIN SIMILARITIES AND DIFFERENCES

Despite the linkages between the FOI and OGD fields, distinguishing and analysing the main characteristics of both fields (together with the main features of their advocates) will provide the elements for better understanding the assessments.

3.1 General features

Even though both fields are intrinsically related, there are some important points that differentiate FOI and OGD. Some of the main features relate to the object of each field, the focus of those initiatives, and the role that licensing plays in the reuse of the data and

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[26] http://www.opendataresearch.org

[27] See footnote 14

information. All of these aspects need to be taken into account when designing assessments/measurements for both initiatives.

Table 1. Differences between both fields (general features)

	FOI/RTI	OGD/RTD
Object of the field is conceived as	• Information (in most cases in documents but not exclusively) held and/or produced by public sector • Requester has, in most cases, the right to express a desired format	• Data in reusable digital format held and/or produced by public sector. • Open format is inherent to the initiative
Key element inside that conception of the object: Copyright/licensing	• Varies between countries: • Some (like USA) have no restrictions on republication • Other FOI laws do not alter copyright laws, so rights to reuse may be limited	• Inherent in OGD is that a license is granted to the user to reuse, republish the data
Focus: re: info/data	• Reducing information asymmetry (focus on access)	• Focus on re- use (added value)

- **Object:**

The main object of the Freedom of Information field is government-held and produced information. Thus, by definition, as data is a raw element necessary to produce the meaningful output known as information, FOI laws should encompass inert as well as adaptable/reusable data (the latter being the main object of the OGD, as mentioned in previous pages) within their scope. The definitions of Data and Information borrowed from the information sciences help in understanding the differences behind each field: "*Data are the basic individual items of numeric or other information, garnered through observation; but in themselves, without context, they are devoid of information. Information is that which is conveyed, and possibly amenable to analysis and interpretation, through data and the context in which the data are assemble.*" (Zins 2007 pp.481)

Hence, it would seem logical for FOI laws to enable access to government held datasets. However, because FOI laws that pre-date the OGD movement were designed to increase public access to information held by government (rather than raw data) and, therefore, the concept of 'reuse', which is a fundamental component of OGD, was mostly absent from the way these laws were framed. Thus, the requirement that information be presented in

reusable formats is relatively alien to FOI legislation, even within the FOI 2.0 reforms although with some exceptions[28]. This can be partially explained by the correlation between the information environment and the initiatives arising from that environment[29]. ICT was not a key component when most of the early FOI legislation was enacted and implemented so the idea of disclosing data in reusable formats did not find its way into the legislative provisions enacted during that time. Consequently, most of the world's FOI legislation focuses on access to information regardless of the format. In some instances, the requester is able to express a preference for the form in which they would like to receive the information, and the government agency responding to the request might be expected to comply with that request unless there are good reasons for not doing so. Yet, the file format in which data is disclosed is inherent to OGD initiatives. Here, large quantities of data need to be disclosed in a reusable, machine readable format so that it can be processed by computer programs to form a meaningful output: information.

The absence of provisions in FOI legislation to require data to be disclosed in a reusable file format is connected both to the recent evolution of ICTs and to the lack of connection or interaction between the actors (Darbishire 2010, Hogge 2010, Fumega 2013) who work in these complementary fields.[30] The paucity of academic literature spanning these fields is additional evidence for this.

- **Licensing**

In many countries, FOI regulations do not restrict re-publication of the information supplied to a requester; however, in some cases, reuse may be limited where FOI laws do not alter existing copyright law.

Most FOI laws either did not touch on copyright and intellectual property rights, (or did so only to protect the government agency disclosing the information from an action for breach of copyright). As laws on copyright were mostly left unamended, a requester who obtained

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[28] Brazil, Mexico, UK. The Brazilian FOI law was enacted very recently (it was passed in 2011 and implemented in 2012), while the Mexican and British legislations were amended in the past few years.

[29] The prior efforts of domestic and international FOI related organizations and individual advocates laid the legal and administrative foundation for access to government information (and later, data in digital format, with the influence of ICT developments) and sowed the concept that government information should, prima facie, be available for access. This last statement relates not only to Stiglitz's (1999) concept of information asymmetry but also to the correlation between the information environment, and the initiatives arising from within that environment. Hence, some of the main differences between FOI and OGD present strong linkages to the environments in which they were introduced.

[30] This statement is not only based on the review of academic literature but also on personal observations.

information from government in response to an FOI request had only the rights to reuse that information that existed in that jurisdiction's legislation on copyright[31].

Conversely, in the OGD field, the granting of a licence to the user to reuse, republish the data, is inherent to the initiatives and has prompted reform of the legal regimes for copyright in government held information in many jurisdictions[32].

- **Focus**

The main motivating focus of FOI initiatives is the reduction of information asymmetry between the principal and agent: citizens and their governments, in this case. While FOI laws are focused on providing greater access to society, they do not generally present the requester with the explicit right to reuse information, as previously mentioned. Users have a qualified right of access with a right to request, in some cases, that the information be provided to them in a particular format, but not necessarily to obtain it.

In the case of OGD, the ability to reuse (and thereby add value) is inherent to the field and the main goal for users. Thus, as mentioned above, the format in which the information is presented is part of the definition of the field. The focus on reuse in the OGD field has a correlation with the importance of copyright and licensing.

After having briefly recounted some of the main differences between the two fields, it is important to then analyse some of the main attributes of the advocates of both fields. Movements are not created in a vacuum. Thus, involved actors have imprinted their vision of 'how things should be' on each of the fields. This imprint is constructed through a combination of the way that the advocacy actor relates to governments; approaches the topic; as well as an imposition of their goals and backgrounds. These attributes are more comprehensively detailed in the following subsections.

3.2 Advocates and practitioners (background and approach)

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[31] In countries that derived their law from the United Kingdom, this generally boiled down to 'fair use' for the purposes of art, literature and criticism

[32] Example of that is the new Re-use of Public Sector Information Regulations 2015 in the UK: http://www.legislation.gov.uk/uksi/2015/1415/pdfs/uksi_20151415_en.pdf

As a generalisation — because no one model fits all — the FOI community has mainly focused on the construction, enactment and operation of access to information laws, while OGD groups are dedicated to the reuse of disclosed data. The former fundamentally comes from a legal rights background, while the latter has generally stemmed from economic/commercial or technological environments. These differences partially explain the diverse approaches to their relationship with governments.

Even though both groups work with government information resources, the FOI movement regards the government as something that needs to be watched and held accountable, while the OGD groups see governments as a source of useful data given the breadth and depth of government's involvement in people's lives and as an economic actor.

Related to this point are the main advocates' professional backgrounds, their respective philosophical approaches, and their effect on both fields[33]. Most FOI advocates have come from either from the freedom of expression or public law fields, and have used rights-based arguments to promote the enactment of FOI laws that are driven by a belief in the value of governments being publicly accountable for their actions (and inactions). The area has largely been a lawyers' domain[34]. This laid the foundations for a legalistic approach to the initiatives, and adversarial relationships with government, since FOI laws are fundamentally about testing the strength of competing claims to where the public interest lies, in disclosure or secrecy. In contrast, the OGD community tends to attract professionals with strong IT knowledge, or technocratic policy backgrounds. These OGD actors look for more cooperative relationships with governments. The difference partially resides in the fact that the latest groups of actors work with the data the governments are willing to disclose (Fumega 2013).

Additionally, the philosophical background of OGD advocates, a mix between the utilitarian approach to liberal values of freedom and openness, together with their 'neutral' position in the face of non data-related government policies, allow OGD actors to have a more collaborative approach to working with government officials. In spite of the promotion of a similar set of western liberal values by FOI and OGD organisations, the importance of the

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[33] This does not mean, in any way, that each movement presents a coherent monolithic body of thought but they share, in each particular phase of the movement, a set of concepts in which they based their activities and strategies.

[34] Some human rights and administrative lawyers started to become popular names in the field (same or more than the organizations they represented. In general they later created their own organizations on the topic)

hackers'[35] ethics – in the technological way of defining that word[36]- in the OGD community adds to the reasons to look for a more collaborative approach with governments and public agencies.

If we were to oversimplify things, we might say that FOI advocates have been motivated by the concept of accountability, while OGD advocates have been driven by a belief in generating additional value through co-production. However, as with all oversimplifications, we risk losing sight of the fact that there are actors in both movements that gravitate more towards the other group's motivations.

Table 2. Differences between both fields (through the lenses of civil society actors)

	FOI/RTI		OGD/RTD	
Approach	•	**Legalistic (mostly)**	•	**Technical + policy + economics (mostly)**
Goal	•	**Transparency** towards accountability, mostly	•	**Broad range of goals** (innovation, economic growth, etc.)
Relationship with public sector (govt.) `	•	Adversarialism	•	Utilitarianism (collaboration)
Philosophical background	•	Classic liberalism (theory of democracy)	•	Liberal utilitarianism, libertarian socialism

To sum up, OGD involves not only the ability to access data held by government agencies, but also the possibility of reusing it, to add value to the data (towards a vast set of different goals). In this sense, it implies much more than a provision on formats within a current FOI statute. To be effective, a regulation on Open Government Data needs to address not only the issue of access to datasets (sometimes already covered by FOI legislation) but also the critical issue of lifting any barriers impeding reuse (copyright, licenses, formats).

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[35] The emphasis on the efficiency and innovation coming from the Open Source movement (and the linkages to the knowledge economy) had an influence on the OGD advocates (far from the rights-based arguments of the FOI/RTI movement), together with the ethical claims of freedom, privacy, individual, meritocracy, reveal, as expressed by Coleman (2011) that most of them are tied to liberal commitments, utilitarian liberalism as mentioned previously.
See also: Morozov, E. (2013). Open and Closed. The New York Times. NYC.

[36] A Code for America blog's post clearly explains the differences between the approaches to the word hacker "*To most of the population, hacking is still associated solely with the acts of breaking into security systems found in the media. To those near the technology world, hacking means attempting to solve problems more quickly or creatively than before — it's about using new ideas and approaches to improve the status quo, whether at the scale of a single software project or an entire city. These two definitions are almost completely at odds with one another, especially in terms of their end goals.*" Levitas, J. (2013). Defining Civic Hacking. Blogging for America. C. f. America.

Thus, Open Government Data and Freedom of Information are two different fields with several points of convergence. Despite their common points though, the differences have to be taken into account.

4. CURRENT DEBATE

The previous sections outlined the differences between the FOI and OGD fields and the actors working in them. Despite all the obvious connections between these two fields joint activities are still very scarce. Not only are joint activities infrequent, but so to have been the debates around this lack of connection between the actors in these two movements.

The new decade started with several popular initiatives in terms of OGD. The launch of the US and UK portals (2009 and 2010 respectively) indicated the beginning of the use of the concept of Open Data in mainstream publications as well as political speeches, among others. Since then, just a very small number of practitioners have been focusing on the linkages (or lack of them) between the FOI and the OGD community (in general, the references are to Open Data in general though). (Access Info and Open Knowledge Foundation 2010, Hogge 2010, Fumega 2013)

By 2010, the FOI community had already established its topic as a key component of transparency and good governance reforms. That year, Access Info and Open Knowledge Foundation (2010) paired up to produce a document on the convergences of Open Government Data and Freedom of Information. That same year, Hogge (2010) wrote another document providing an overview of US and UK initiatives while including a section on the relationship between FOI and Open Data (with opinions of many FOI community's leading members). This report included some comments from well–known FOI advocates. In that document, advocates voiced their concerns, as they perceived that any move away from FOI reforms (towards open data-type initiatives) would represent an unfortunate change of priorities. (Hogge 2010 p. 19) At that point, FOI was a well-established community and OGD professionals were the 'newcomers'. In less than five years, the balance of power — if we are to judge it by public comment, government take-up and prioritisation — has largely changed.

The following year, in 2011, the International Conference of Information Commissioners (ICIC), one of the main events of the FOI community, was held in Canada. The gathering

provided an opportunity for the FOI community to raise their concerns, and several mentions of the difficult relationship between these two communities were reported. The FOI community's members were mostly focused on the proactive nature of the OGD policies and the lack of legislation supporting the right of users to request open data from governments. An example of that is the statement by Alexander Dix, Berlin Data Protection and Information Commissioner during that event: "*At the same time we need individual rights that do not leave the decision of what to publish to the government*". (Freedominfo.org 2011) In this same event, according to Freedominfo, Andrew Puddephatt, director of Global Partners and Associates, mentioned that Open Data supporters tend to be anarchic and to present an aversion to laws, which he termed a "serious weakness for us" and, thus, the human rights community is not fully engaged with the value of the open data field. (Freedominfo.org 2011)

During these early days there were frequent complaints in social media as well as at transparency events about the emphasis on the use of ICT more than the institutional and legal channels to demand government's accountability. These complaints were often related to the use of the terms 'Open Government Data' and 'Open Government' by OGD advocates. FOI (and transparency, in general) advocates felt the need to clarify that terms such as 'Open Government' had been used within the FOI field for many years,[37] and that the use of that term by OGD advocates to only mean 'release of datasets by government for reuse' significantly limited the breadth and significance of the term. For many FOI advocates, governments developing open data policies were not necessarily working towards a more open government in the traditional sense. Some of these concerns were also portrayed in academic articles, such as Bates (2012) and Yu and Robinson (2012).

Open data supporters and advocates were not frequently taking part in these discussions, although some of them did voice their concerns regarding FOI legislation and initiatives. A Canadian open data supporter, David Eaves, during the above-mentioned ICIC meeting in 2011, mentioned, regarding the FOI agenda on information access, that "*If the legal framework doesn't allow it to be repurposed it doesn't empower*" (Freedominfo.org 2011). Eaves also commented on the issues arising from the 'waiting time', inherent to the reactive disclosure of information requested under any FOI regime: *"I just think FOIA is broken; the*

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[37] For example the UK Government's 1993 white paper on increasing public access to government held information was entitled 'Open Government'.

wait time makes it broken...” said David Eaves, who added that *“efforts to repair it are at the margins”* and government has little incentive for reform. (Freedominfo.org 2011)

These divergences[38] can be correlated to the lack of joint projects, as previously mentioned. Furthermore, the lack of common ground also might relate to the absence of provisions in FOI legislations regarding data and formats until recently (even now these provisions are relatively alien to most FOI legislation). In spite of that, there have been some recent signs to suggest that the trend is slowly starting to be reversed. Several mentions of the relationship (or lack of it) between FOI and OGD movements have surfaced in late 2014 and early 2015.

This debate[39] on the connections between FOI and OGD resurfaced in OGD related events[40] and, in most cases, by Open Data community members. In particular, the third International Open Data Conference (held in Canada in May 2015) provided the location and opportunity to reinvigorate the debate about the linkages between these two communities. Following the discussions at that event, a debate, which began as a discussion about the relationship between privacy and openness,[41] soon focused on the lack of relationship between the FOI and OGD communities[42]. Similar arguments to those outlined in 2011, resurfaced. They were mostly focused on the lack of a legal framework, which would allow users to appeal in case of non-compliance:

> *“My concern with the way that Open Data is moving forward is that it is not working with the Access to Information community to understand how existing laws can be used as guides to frame the issues and guide decision-making on the important*

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[38] This lack of communication and collaboration between these two communities became evident with the launch of the Open Government Partnership. The constant critics from many FOI experts on the importance given to the Open Data-related activities in the actions plans unmasked the difficult relationship.

[39] This section does not include an exhaustive list of concerns and critics to both policies (FOI and OGD). This is just an illustration of the type of debate between the supporters of each of them.

[40] Regional Open Data Conference, Mexico. September 2014: http://condatos.org/ Summary: http://silvanafumega.blogspot.com.au/2014/10/breve-resumen-de-la-charla.html (in Spanish)
RightsCon- Philippines, April 2015: https://www.rightscon.org/ Summary: http://labs.webfoundation.org/we-had-a-blast-at-rightscon-2015/
3rd Open Data Conference, Canada, May 2015: http://opendatacon.org/ Summary: http://silvanafumega.blogspot.com.au/2015/06/iodc15-recount-recuento-de-la_3.html (English and Spanish)

[41] The article by Martin Tisné (Director of Policy at the Omidyar Network, and member of the Steering Committee of the Open Government Partnership) that prompted the debate was published on TechCrunch on 10 June 2015: Tisne, M. (2015). In The Information Debate, Openness and Privacy Are The Same Thing. Techcrunch. **2015**.

[42] Although the same initial message was posted to both FOI and OGD discussion forums and mailing lists, it attracted more participants from the FOI community than from the OGD communities' forums. The discussion was re-published on the Freedominfo.org website here: http://www.freedominfo.org/2015/06/a-2015-online-discussion-openness-and-privacy/.

issues you raise in your statement." Victoria L. Lemieux – Senior Public Sector Specialist, The World Bank. (Freedominfo.org 2015)

Some of the usual concerns from the FOI and transparency circles relate to the lack (in most cases) of legal support of users' right to demand certain datasets in the context of open data initiatives. Connected to this point is the emphasis by OGD initiatives on the proactive disclosure of the data in open formats and, thus, the reuse of the data that governments are willing to disclose. Overall, the concern from FOI circles seems to be that if OGD advocates give governments an 'openness seal of approval' for proactive publication of some datasets, it undermines the ability for other actors to argue for greater openness on topics where the government may be more reluctant to make either information or datasets available. There is already evidence from the UK government to support this fear, where Ministers including the Prime Minister David Cameron, have said that they want open government data to "make Freedom of Information redundant" (Foi Man 2014), and that "Real freedom of information is the money that goes in and the results that come out" (Foi Man 2012).

From the open data circles, even though this debate was not as present in email lists and events, as previously mentioned, most of the criticism relates to the absence of a dynamic approach to the information and, therefore, the idea that the value of the data lays on the possibility of reuse, and therefore FOI laws and related activities do not empower users. (Freedominfo.org 2011) The assumption behind that criticism is that OGD policies put government's data at the fingertips of any citizen with access to the Internet and thus all these citizens may engage in the process of governance more effectively than when such information was available only by request, in hardcopy, or in person. (Robinson, Yu et al. 2010, Tran and Scholtes 2015)

The flipside of that criticism of FOI - coming from the open data circles - relates to the new divide that places a lot of emphasis on the ICT dimension of open data policies (and sometimes OGP action plans[43]). Most current discourse on the value of open data initiatives suggests that ICT tools will allow everybody to not only access the data but also reuse it and act upon the insights generated through that reuse. (Davies and Fumega 2014) However,

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[43] In that sense, Dave Banisar, Senior Legal Counsel for Article 19, mentioned: *"In the OGP, many countries in their national action plans highlight their open data commitments but are silent on ensuring that people have a right to demand the information that they need"* in this post: Banisar, D. (2013). Talking About a (Data) Revolution. article19.org. London, UK, Article 19. **2013**.

this essential role of ICT access and skills to make use of OGD could actually enhance the division between those with the language, education, and computer skills needed to access and reuse the data effectively - and thus take advantage of these policies - and those who do not have the requisite knowledge or resources (Gurstein 2011, Eaves 2013).

Despite the fact that these types of exchange have attracted more attention in FOI circles, the topic has not been ignored by the OGD organisations (in particular, the international groups). The concerns expressed in FOI circles have had a clear correlation in the reaction of international organisations such as the Web Foundation, MySociety[44] and OKFN to the proposed weakening of the UK FOI Act.[45] Thus, the current Government backlash against FOI in the UK, even though it is worrying news for the FOI community, has had positive side effects. The international organisations working in open data-related activities are publicly getting involved in the advocacy process, to try and stop the British government's latest efforts to weaken that country's FOI law. The Web Foundation has expressed its concern that the British government was citing its Open Data Barometer to justify their proposed changes:

> "We were frustrated to learn that the UK Government has used its ranking in our Open Data Barometer in an effort to justify a move that could water down the Freedom of Information Act.
> The ODB primarily measures the supply, use and impact of data in reusable formats and is not a comprehensive measure of government openness in the broader sense."
> (Web Foundation 2015)

It perhaps worth noting that OGD advocates have taken this action in a jurisdiction where the FOI law has been amended to give people a right to request datasets that are not proactively published by the government. It will be interesting to observe whether OGD advocates are as active in defending FOI laws in jurisdictions where the FOI law does not explicitly support the OGD agenda.

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[44] https://www.mysociety.org/2015/07/20/government-review-of-foi-a-response-from-whatdotheyknow-and-mysociety/

[45] UK government announced in July 17, 2015, the creation of a new commission to consider "whether new measures are needed to protect the government's internal discussions from disclosure and to reduce the 'burden' of the FOI Act". (Campaign for Freedom of Information, 2015)
http://us7.campaign-archive2.com/?u=13d085a482c6f35f67c006cfd&id=dddb1a6f3e&e=b2dedd36bf
 http://webfoundation.org/2015/07/why-is-the-uks-review-of-the-freedom-of-information-act-a-cause-for-concern/   and
https://drive.google.com/file/d/0B49ZtmN-sAd2RDZXZkh6U3Qzcm8/view?usp=sharing

It is still early days but it seems that there could be a more fluid communication between these communities in the near future. While they are both maintaining their unique elements, which make them focus on different aspects of the information and data produced and/or commissioned by governments, there is certainly recognition of the value that each approach (and work) brings to the other community.

5. OVERVIEW OF ASSESMENTS AND MEASUREMENTS

International rankings, ratings, indices, barometers all refer to the idea of placing the elements of a given domain in a particular order. However, this order is not arbitrary. All the measurement mechanisms refer to the placement of a certain list of objects according to a set of criteria or variables, which in turn depend on the values of those creating the measurement tool. Even though measurements and assessments in both fields relate to the availability of different types of information/data, the main features of each field differentiates them. Thus, the criteria and variables selected in the FOI field differ from the ones applied in the OGD context.

As previously mentioned there are relatively low volumes of academic literature on FOI, and the literature is even more scare in relation to OGD. Within both fields the paucity of materials that relate to measurement and impact is even starker. However, there are a few relevant works, such as Hazell and Worthy (2010), Coronel (2012), Scrollini (2012) and Caplan, Davies et al. (2014). The first three documents relate to FOI (and transparency as a whole) while the last article refers to an effort to synthesize the overlapping measurements in the open data field. In this regard, in 2012, Sheila Coronel commented on the various FOI measurement tools, noting that "*the existing ratings differ only in the countries they cover and some of the indicators they use. There is already much overlap in this field*" (Coronel 2012).

Unsurprisingly, despite the many differences between the FOI and OGD fields, in both cases the measurements and assessments relate to the availability of different types of information. However, there are also other elements in common that could help organise (and possibly correlate) some of the most well-known assessment exercises, as well as explain the main differences between the two fields. As previously shown, some of the main elements to differentiate both fields are the object, the geographic scope of the exercise, and the type of assessment (approach). In the following subsections, examples of each of the categories are included. The list of examples is not exhaustive, and the assessments included are just illustrative of the different categories. The examples contribute to the analysis of the elements needed when designing future measurement tools.

5.1 Object and approach

The object and approach of the assessments in each field relate to the influence of the background, and to the nature of each of the fields (OGD in contrast to FOI). Thus, while these OGD assessments are mostly focus on the proactive disclosure of certain categories of data in open formats, FOI measurements (and transparency oriented exercises including FOI elements) are mostly concentrated on the possibility to request, and later obtain, information. Even though the majority of FOI legislations contain elements on proactive disclosure of information, most of the provisions relate to the possibility of accessing the information by filing a request. Although increasing importance of the proactive disclosure is being shown within the FOI field, it is mostly concentrated on reactive disclosure while the OGD field is focused on the proactive disclosure of the data in reusable formats, as already mentioned.

The objects and approach behind global measurements on both fields (FOI and OGD) agree, unsurprisingly, with the elements included in the description of each of the fields (and actors) in the first pages of this report. Global FOI measurements are predominantly comprised of right-based indicators aimed at assess the reactive disclosure of information (in any format) while Open Data comparative exercises are mostly focused on the proactive disclosure of government data in open formats. Unlike FOI measurements, the technological component (in terms of the characteristics of the disclosed data) in the OGD assessments is key to determine the openness of the data. The difference is mostly reflected in what it is that the two fields are assessing - and what sort of variables they are using to do it- in their rankings, indices, and the other exercises of this type. Thus, in terms of FOI assessments, they are mostly related to transparency while the Open Data measurements present broader goals (innovation, for example as analysed by Davies (2014) on the report of the ODB second edition).

In the case of OGD assessment, the main features of these exercises relate to the proactive availability of the data, and the format in which they are disclosed. Thus, the mere availability of certain information does not place a particular country in a good position on the index if the data is not available in machine-readable reusable formats. Examples of initiatives from the Open Data field include the Global Open Data Index and the Open Data Barometer. The Global Open Data Index <http://index.okfn.org> by OKFN (formerly known as Open Knowledge Foundation) presents information according to a list of criteria on the

current state of open data release around the world. It tracks whether data (10 datasets were selected from a list of 14 essential datasets defined for the 'G8 Open Data Charter') is actually released in open formats. The Open Data Barometer <http://www.opendatabarometer.org> reflects changes in the disclosure of data (like the Index, the ODB tracks datasets from the G8 Open Data Charter[46]) a in open reusable formats by exploring multiple dimensions of open data readiness, implementation and impact. While the Index only looks at datasets, the Barometer also examines OGD impact in three dimensions – Government, civil society and businesses.

On the FOI field one of the most popular examples is the "Right to Information Rating" < http://www.rti-rating.org>, which was developed by Access Info Europe and the Centre for Law and Democracy. It orders a large list of FOI legislation according to the correlation between the text of the law and a set of standards that mostly originates from the work of the Centre for Law and Democracy's Director, Toby Mendel, ("Principles on Freedom of Information Legislation") produced in 1990s, when he worked for Article 19 (other examples are discussed in section 6). The legalistic background of FOI groups and actors, explored in the first part of this document, is clearly present in the approach to the measurements and assessments.

Although not numerous, there are a few exercises, together with the RTI rating, that focus more exclusively on FOI regimes, such as "Transparency and Silence" (a one-time assessment) from Open Society Foundations that reported on the outcomes of FOI requests.[47] Besides these examples, in the FOI field, global rankings and index as well as country assessments are mostly related to the idea of measuring the performance of a given government (in terms of anticorruption, good governance, among others) while including questions to assess the possibility to access government-held information, among other elements. Thus, most global assessments in the FOI field do not solely focus on the right to access information but "compile aggregate indicators of good governance" Worthy (2010). The Global Integrity Index[48] can be included as one of these aggregated exercises.

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[46] With the exception of trade statistics, all of these data categories are explicitly noted in the technical annex of the G8 Open Data Charter as categories "of high value, both for improving our democracies and encouraging innovative re-use of data" Davies, T. (2014). "Open Data Barometer. Global Report. Second Edition " World Wide Web Foundation.

[47]   http://www.opensocietyfoundations.org/publications/transparency-and-silence-survey-access-information-laws-and-practices-14-countries

[48] http://blogs.worldbank.org/category/tags/global-integrity-index
http://report.globalintegrity.org/globalIndex.cfm

5.2 Geographic scope

While the more high-profile assessment exercises considered in this report compare countries' performance, there are also a number of single jurisdiction assessments. These provide in-depth analyses of the jurisdiction in question (normally a nation state) and allow the researcher to take into account the context and particularities of the specific jurisdiction being assessed. Some examples of this type of assessment include the detailed analysis of the Indian Freedom of Information Act 2002 by the Commonwealth Human Rights Initiative (CHRI),[49] and the legal analysis of the Tunisian FOI proposals conducted by Article 19.[50] The report by Hazell, Worthy et al. (2010) on the impact and performance of UK FOI Act moved beyond legal analysis to consider whether the law was achieving the government's intended objectives and what other effects it might be having. Other assessments included in this group are reports on government performance produced by the government agencies in charge of implementation[51] as well as by FOI oversight bodies.[52]

These in-depth assessments of a particular jurisdiction can also be found in the OGD field. Examples of that are government reports such as the one created by the New Zealand government on the "Agency Adoption of the Declaration on Open Government Data"[53]. This report allows the readers to understand the progress made by public service departments and the wider public sector in supplying public data for reuse, how third parties are re-using the data and the impact of that reuse. The wide range of goals pursued by the release of open data is clearly present when reporting on the social, economic benefits as well as the gains in terms of transparency and efficiency of New Zealand public sector. Like in the FOI field, single-country assessments are also elaborated by academics on the open data field. That is the case of the report on Open Government Budgetary Data in Brazil.[54]

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[49] http://www.humanrightsinitiative.org/programs/ai/rti/news/india_foi_act_analysis_for_mps.pdf

[50] http://www.article19.org/resources.php/resource/2945/en/tunisia:-freedom-of-information

[51] http://www.cdc.gob.cl/wp-content/uploads/documentos/informes_estadisticos/Reporte_anual_2012.pdf

[52] http://inicio.ifai.org.mx/nuevo/11o_informe.pdf

[53] https://www.ict.govt.nz/assets/Uploads/Documents/2014-Report-to-Cabinet-on-adoption-of-the-Declaration.pdf

[54] http://www.icmc.usp.br/~jporto/papers/icds_2013_1_40_10183.pdf

More information on section 6

Despite the importance of these single-country assessments in both fields, most of the exercises reviewed in this report are focused on the global/international sphere. The possibility of extract comparison between different countries clearly attracts the attention of donors, governments as well as civil society practitioners. In this category of assessments, there are some large exercises, which include FOI elements. As previously mentioned most of the global assessments in the FOI field do not solely focus on the right to access information, with the clear exception of the RTI rating. This rating assesses the 102 jurisdictions (the first launched in 2010 and then updated in 2012 and 2013). In the OGD field, the first edition of the Barometer comprised 77 countries while the second included 86. (Davies, 2014) Half of these jurisdictions were selected from the developing world. The Index contained over 70 countries in 2013 (30 of which are in Europe) to over 100 jurisdictions in 2014 and 2015. (Rubinstein, 2014)

The importance and high profile of the global assessments relates to the possibility of establishing comparison between jurisdictions. This type of comparisons provides to government's champions and civil society activists with information to support their work, or to advocate for improvements and/or changes. However, as this type of global assessments focuses on particular aspects of the disclosure of information and/or data, their results should not be extrapolated to describe another related area, a more general scenario, or a government as a whole.

5.3 Types of Assessment

Together with the differences in terms of object (and approach) and geographic scope there is one last main point to highlight: legal and/or implementation assessments. This is of particular relevance for the FOI assessments as they may be focused on the text of the law, its implementation or both. These differentiations between the legal analysis and the actual implementation are mostly absent in the global Open Data assessments as there is no global exercise focus solely on the legal analysis of the initiatives.

Assessments that solely focus on the legal aspect of the initiative can mostly be found within the FOI field. They are limited to measuring the legal framework and does not assess the quality of implementation. The right-based approach to the topic explains these exercises. Examples of this type of assessments are the RTI ranting, which concentrates on the assessments of the legal provisions regarding a set of variables and also one-country

assessment such as the Mexico's Access to Information Index[55] by Fundar and Article 19, which focused entirely on the correspondence between the provisions and the standards in the field[56].

In contrast to these legal analysis, the Open Government Index by the World Justice programme measures *"the openness of government by looking at the experiences and perceptions of the general public as well as in-country lawyers and public health practitioners, in contrast to efforts that focus on laws on the books or on the implementation of certain laws"*. (World Justice Project 2015). According to the 2015 report, the Index aims to measure government openness from the perspective of the ordinary individual. However, it has to be pointed that the particular methodology of the Index brought the attention and the criticism of some FOI practitioners and experts. They mostly found this type of approach to the access to information as a detriment to the right-based claims and assessments. (Darbishire 2015, Worthy 2015)

There are also some assessments that present a dual focus (legal and implementation analysis). These assessments include questions about the legal right and the implementation of these rights, such as the Global Integrity Index. In this Index, researchers needed to answer some questions about the actual possibility to access certain categories of information as well as the legal duty of public agencies to produce and publish that information[57].

In a similar vein, in the OGD field, The Open Data Barometer includes indicators related to the presence of legal regulations on the right to access information and on data protection as they are both seen as key prerequisites to assess a jurisdiction readiness for an effective open data policy. The ODB, in its two editions, indicates that there is a strong connection between a country's readiness (including the legal support to the access to information and the data protection) and the impact that expert researchers observe. Davies concludes that *"in most countries, proactive disclosure of government data is not mandated in law or policy*

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[55] http://www.article19.org/data/files/pdfs/press/mexico-access-to-information-index.pdf

[56] Where such 'standards' have been developed by civil society and donors, and not by governments or international organisations such as the UN or International Standards Organisation.

[57] In the case of performance/implementation assessments, it is important to also mention single country assessments, for example, the report produced by Hazell, R. and B. Worthy (2010). "Assessing the performance of freedom of information." Government Information Quarterly **27**(4): 352-359.
    amongst others such as the public sector's report on its own performance, as previously mentioned.

as part of a wider right to information, and privacy protections are weak or uncertain"
(Davies, 2014).

This is a key point, not only in terms of assessments but also regarding the need for closer collaboration between these two communities (FOI and OGD). The main area of overlap with FOI is where OGD actors and assessments push for change, or examine, the issue of gaining access to government-held datasets that are not proactively published Thus, this area might be benefited by further research.

6. SOME EXAMPLES

The examples listed in the past few pages are not the only exercises on the FOI and the OGD fields. Some other examples are included in the next few pages. They were selected according to the object, geographical scope and type of assessments. The list is very limited and in no way exclusive.

RTI/FOI[58]
- Single- country legal
  - Art 19 Mexico RTI

- Single- country performance/implementation
  - Assessing the performance of freedom of information (Ben Worthy and Robert Hazell, 2010);
  - Carter Center RTI Implementation Assessment tool

- Global/international legal
  - Access Info- Centre for Law and Democracy
  - Toby Mendel- Freedom of Information. Comparative Legal Survey
  - Freedom of Information around the world- Global survey (David Banisar for Privacy International)

- Global/international performance/implementation (in most cases, these are indicators in broader transparency assessments)
  - Global Integrity Index
  - Freedom House Index (Freedom in the World)

RTD/OGD (not including readiness assessments)
- Single- country performance/implementation
  - Assessing Open Government Budgetary Data in Brazil[59] (da Silva Craveiro, de Santana et al.)

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[58] For other examples, also check (in Spanish): Scrollini, F. (2012). Evaluacion de la Transparencia. Estado del Arte de Indicadores de Transparencia. C. p. l. Transparencia. Santiago, Chile.

[59] http://www.icmc.usp.br/~jporto/paper

- Global/international performance/implementation
  - o Open Data Barometer
  - o Open Data Index
  - o The PSI Scoreboard

- **Art 19 Mexico RTI**[60]

Period: 2010
Goal: The Access to Information Index for Mexico sought to measure the development of the 32 laws of the federal entities and the Federal Law on Transparency and Access to Information. The Index's goal was to ascertain the level of development of these laws in reference to the international human rights instruments and national and international principles and standards in this area, as well as best practices.
Universe: 32 States in Mexico
Responsible: Fundar and Article 19
Methodology: The Index grades a list of elements that constitute the normative provisions of each of the transparency laws in the country. The Index includes three main variables, nine sub-variables, supported by 31 indicators, measured primarily by 199 parameters for the indicators or the criteria for the indicators.
Some results: According to the study, in regard to the measurement against international standards and best international practices, the national average was 0.56. Out of the 32 laws, 21 local legislations failed under the analysis, obtaining results that go from 0.4 to 0.6. The lowest results were the states of Baja California Sur and Guerrero. The federal law obtained a result of 0.65 in the Basic Index.

- **The Impact of the Freedom of Information Act on Central Government in the UK** (Hazell, Worthy et al. 2010)

Period: 2005-2010
Goal: The study aimed to determine whether the Freedom of Information Act in the United Kingdom has met the expectations held at the time of its enactment. The study proposed an evaluation of access to public information under the British government, from an academic point of view.
Universe: United Kingdom
Responsible: Robert Hazell and Ben Worthy. The Constitution Unit, UCL
Methodology: The authors conducted a study of context, based on the history of the passage of the legislation, as well as other supporting documents. Despite that lack of specific objectives in the UK law, the study indicates that the contextual analysis can be drawn at least five major objectives: 1. Increase openness and transparency in government. 2. Increase the accountability of government. 3. Increase the quality of decision-making in the public sector. 4. Increase confidence in the government.

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[60] http://www.article19.org/data/files/pdfs/press/mexico-access-to-information-index.pdf

5. Increase public participation in government.

The methodologically consisted of:
· In-depth interviews with public servants.
· Survey online public servants.
· Analysis of the print media.
· Analysis of cases before the Commissioner and Justice.

Some results:
The study concluded, based on the perceptions of respondents and surveys, the British government have improved when it comes to transparency. When it comes to processes of accountability, the study indicates that the public perceives an improvement in these processes, although this is not necessarily linked to cases of access to public information.
The authors found no evidence that access to public information has improved the confidence of citizens in government.

- **RTI Rating**

Period: 2013- present

Goal:
The RTI Rating is a system for assessing the strength of the legal framework for guaranteeing the right to information in a given country. It is limited to measuring the legal framework, and does not measure quality of implementation.

Universe: 102 countries

Responsible:
Access Info Europe and Centre for Law and Democracy

Methodology:
The RTI rating consists of 61 Indicators. For each Indicator, countries earn points, depending on how well the legal framework delivers the Indicator, for a possible total of 150 points.
The Indicators are drawn from a wide range of international standards on the right to information, as well as comparative study of legislation from around the world.

Some results:
The top 20 countries with scores over 100 tend to be younger laws, which reflect the progress made in international standard setting on this right in the past 20 years. According to the rating, with the exception of Finland (adopted in 1951) the average age of the laws in the top 20 countries is just 5 years.

- **Global Integrity Index**

Period: 2004-2011 (a couple of reports about a smaller universe were published after 2011 until the project was cancelled)

Goal:
The Reports evaluated both anti-corruption legal frameworks and the practical implementation and enforcement of those frameworks.
Freedom of Information legislation and implementation was a key element in the reports.

Universe: 107 countries

Responsible: Global Integrity

Methodology:
Local researchers, lawyers, journalists and academics prepared each country assessment. It was implemented a double-blind peer review process and a software

INDABA not only to collect the information but also to review it.

Each country assessment comprised two core elements: a qualitative Reporter's Notebook and a quantitative Integrity Indicators scorecard.

Scorecards take into account both existing legal measures on the books and de facto realities of practical implementation in each country.

Some results:

Back in 2010, some of the key findings of the report were that the Public access to government information was a key ingredient of an effective anti-corruption framework in any country, regardless of income level.

"*In Global Integrity's 2010 sample, Peru topped the list on our access to information indicators, with the principle of freedom of information now enshrined in its national constitution. On the other end of the spectrum stand most of the African nations covered in Global Integrity's 2010 sample; mechanisms for requesting government information are virtually non-existent in Egypt, Tanzania, Somalia, Cameroon, and Nigeria*"[61].

- **Open Budgetary Data in Brazil**

Period: 1999-2012

Goal:

This document aimed to provide a structured framework for assessing the quality of budgetary information disclosed to citizens.

Universe: 88 Brazilian open government data websites, a sample composed by different levels of the executive power (national, state and municipal), and complemented with all Brazilian audit courts websites were reviewed

Responsible:

Craveiro, Tavares, & Alburquerque,

Methodology:

Data collection (including the survey of municipalities and addresses of corresponding websites, data observation and analysis, information and services available on the portals) was performed between the months of August to October 2012.

The collection of data from the portals was performed, according to the authors, following the procedure: when accessing the homepage, the content was accessed through the map of the site. When the homepage did not have a map of the site, the search was performed through the links existing on the main page; the information not found was sought through the search service, if it was available on the site.

Some results:

The responsible for Brazilian budgetary data portals were putting effort to meet the legal transparency requirements, but they still needed to work on the quality of the disclosed data.

Most Brazilian budgetary open data portals, at the time of the report, still needed to comply with the legal requirement of publishing data in real time. Many portals still needed to improve the accessibility of data (over 10% datasets analysed could not be accessed) and the capacity of machine processing (over 50% data was still made available in PDF format, hindering its processing). Finally, the principle of free licensing of data was not followed by any of the portals analysed.

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[61] http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan047869.pdf

- **Open Data Barometer**

Period: 2012- present
Goal: It analyses global trends, and provides comparative data on countries and regions via an in-depth methodology combining contextual data, technical assessments and secondary indicators to explore multiple dimensions of open data readiness, implementation and impact.
Universe: 90+ countries
Responsible: Web Foundation
Methodology: The methodology for the Barometer is mainly focused on peer reviewed expert survey. Researchers are asked to provide a score from 0–10 in response to a range of questions about open data contexts, policy, implementation and impacts. Together with the information secondary data is selected to complement the expert survey data. This secondary information is used in the readiness section of the Barometer, and is taken from the World Economic Forum, United Nations e-Government Survey and Freedom House. The future versions of the Barometer, according to their website, are likely to include additional components to look further at data use and impacts.
Some results: The second edition of the Open Data Barometer showed that "*there is still a long way to go to put the power of data in the hands of citizens. Core data on how governments are spending our money and how public services are performing remains inaccessible or pay walled in most countries. Information critical to fight corruption and promote fair competition, such as company registers, public sector contracts, and land titles, is even harder to get. In most countries, proactive disclosure of government data is not mandated in law or policy as part of a wider right to information, and privacy protections are weak or uncertain.*"

6.1 Observations

Different assessments cover different jurisdictions as well as they examine different aspects of the disclosure of government information. In doing so, they use a variety of criteria and methodologies. Regardless of the particularities, comparative measurements and assessments are based on the idea that those holding the first position in the ranking are more valuable/useful/have greater impact than the lower ranked objects. However, what it actually means is that those policies or laws that are ranked highly are simply closer to the preferred — or ideal — model of the author of the scale.[62] As the criteria and variables selected for measurement in the FOI and OGD domains differ, so the ideal conditions for each domain exhibit differences as well.

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[62] Despite that, most Governments and Civil Society organizations apply the results of these comparative exercises to assess their work's merits against some of the measurements (global/international ones) E.g.: http://timesofindia.indiatimes.com/india/India-second-among-95-countries-in-RTI-ratings/articleshow/24000390.cms That comparative quality is the main reason why this document focuses in the international initiatives (despite very relevant one-country examples)

As rankings/ratings, and other exercises, assess particular aspects and characteristics in each initiative (FOI and/or OGD) they do not necessarily place a country/district in the same position. While assessments of specific jurisdictions may have some elements in common with assessments of different jurisdictions, they also tend to examine different aspects of the disclosure of government information. Thus, comparing the results of such assessments should therefore be done with an eye on these differences, in order not to draw any unjustified conclusions. Furthermore, any synthesised comparative results generated from different studies of different jurisdictions must be considered cautiously. Similarly, the diversity of comparative indices which use the same methodology to benchmark and monitor public policy objectives across multiple jurisdictions means that caution needs to be exercised when drawing conclusions from the results provided by the assessment of a particular aspect (for example, to extrapolate the score in a FOI legal analysis to the implementation of the regulations, or to the levels of transparency and/or openness of these governments).

Examples of that partial and misleading picture could be found if we were to draw conclusions by simply extrapolating from the RTI rating results for India and Liberia. On paper, both of these countries have enacted strong FOI legislation, which are placed among the best laws in the field. In the case of India[63], despite its high score of 128/150 in the RTI rating, the country is placed 85/175 in the Transparency International Corruption Perceptions Index and the Open Data Barometer gives the country a 39/100. Liberia presents a similar scenario. The RTI rating gives the country's FOI law a high score (124/150) but the World Justice Open Government Index 2015 scores the country with a low figure (0.35/1), as does as the Transparency International Corruption Perceptions Index (94/175). [64]

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[63] India:
Open Data Barometer: 39/100 (rank change -5) (3 in impact)
Open Data Index: 10
RTI rating: 128/150
Transparency International: 85/175
Global Integrity report (2011) 79/100
WGI 2014: 50-75th percentile range (Voice and accountability)
World Justice Open Government Index 2015: 0.56/1
Another example:
South Africa:
ODB: 41/100
ODI: 36
RTI: 109/150
Transparency International: 67/175
Global Integrity report (2010) 33/100
WGI 2013: 50-75th percentile range (Voice and accountability)
World Justice Open Government Index 2015: 0.62/1
[64] No measurements available on Open Government Data.

Thus, to obtain a more accurate picture of a given jurisdiction it is necessary to gather information from a myriad of assessment's exercises on different aspects of the disclosure of government information and data. This combination of information (from different assessments made by different actors to a variety of aspects regarding government's disclosure of information and data) also could help to identify the cases of resistance to effective accountability.

In a similar vain, because the letter of the legislation sometimes says little about the actual implementation of it in practice and thus the reality of access to government-held information and data in a given country, it is necessary to assess the production of statistics on compliance with FOI and OGD requirements. This type of information enables advocates and researchers to complement the assessments produced by civil society and academia in a given jurisdiction. This information is mostly provided by governmental assessments (agencies in charge of implementation and/or oversight agencies[65]) of their own policies and legislation. These systematic exercises allow users and watchdogs to learn about the implementation status of the legislation and policies[66].

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[65] In Brazil, the CGU (Comptroller General of the Union) gathers and publishes information on the reasons why requesters appeal the decisions of the FOI law mandated agencies. According to data provided by the CGU, in 2013, 68 appeals (with respect to all agencies of Brazil's Federal Executive Branch) were filed because the requesters received the information by means other than requested. This figure could relate to how important digital formats have become, and within that category, open formats in particular. The notion of requesting and receiving information in a certain format shows the influence of information technologies in all realms, including those related to the access to public information via FOI request. Fumega, S. and M. Mendiburu (2015). Uso y cumplimiento de legislación sobre acceso a la información pública: las experiencias sobre datos de desempeño en Brasil, Chile y México. Transparency and Access to Information Network and W. Bank.

[66] Even though, there are caveats as some jurisdictions may not collect statistics on the operation of their FOI laws (e.g. New Zealand), or may only do so for some public authorities (e.g. the United Kingdom, which only collects statistics on the operation of the Act in relation to central government). Similarly, when the locations of data catalogues is dispersed across government agencies and types of public authority, it can be challenging to try and assess even the number of datasets proactively published in a particular jurisdiction.

7. SUMMARY AND FINAL REMARKS

Many initiatives, policies, and laws on the disclosure of government information and data, as well as assessments of their impact and effectiveness, have been launched in the past two decades. In this context, this report has covered two of the main intertwined issues. First, it elaborates on some basic elements of the concepts of FOI and OGD to explain the similarities and divergences of the two fields. Second, it outlines a number of examples of different measurements and assessments. While this review has traversed the core issues, it is also important to highlight some other issues arising from such this increasingly diverse field.

In both areas there are many pending topics and aspects still waiting to be researched and debated. Thus, this document concludes with a number of observations for further consideration.

- Generalisations are dangerous, but it does appear that most of the actors working in the FOI field — and therefore the field itself — tend to demonstrate a more legalistic approach. Unsurprisingly therefore, most of the assessments of FOI also have a strong focus on legal analysis of the main provisions of the legislation. However, there are also examples where issues related to the FOI regime are included as elements within broader exercises. These measurements are often designed to assess a given country's performance on different aspects such as transparency of its development aid programme, accountability, or even its anticorruption efforts. In contrast, the actors working in the field of OGD tend to be technologists, social or private sector entrepreneurs or policy specialists, with lawyers tending to be involved mostly with reforms to copyright law or licensing. This is reflected both in the activities in this field -which tend to focus on policy and practical solutions to problems of file formats and conditions on reuse - as well as assessments in the OGD field.

- Most of the measurements included in this report relate to the possibilities of access to information and data, and the possibility of reusing disclosed data (depending on the specific field). In this context, even though assessing these issues is not straightforward, we can see even greater efforts are needed if we are to progress to

assessing the outcomes of FOI and OGD.

- There is much fruitful research, assessment and analysis to be done of both OGD and FOI. In addition to research on the conceptual aspects of both, there is a need to complement this with more action-based research into how these mechanisms of access and reuse are being used. Despite some research has been conducted in terms of the users of certain types of information and open data, such as Worthy (2015) further research is needed to develop a framework to allow for a global systematic assessment on the use of a government information and data.

Despite the need for further research to develop a framework to understand the use of information and data in a global comparative exercise, there are also other points that need some effort in order to build bridges between the FOI and the OGD communities. Thus, to have provisions on formats for disclosure, to have clear licenses for the use, to count with more politically sensitive information proactively disclosed, to solve accountability problems with new tools, they are all tasks, among many others, which require a closer collaboration from these two groups. (Fumega 2013)

- On the FOI side, fairly close links have been developed with privacy/data protection specialists, as all FOI regimes need to navigate the boundary line between appropriate disclosure of government-held information and what would be inappropriate disclosure of personal information about third parties. On the OGD side, technologists working to derive valuable insights datasets face similar privacy issues. Thus, there are connections that can be fostered here.

- There is also scope to explore collaboration on improvements to copyright and intellectual property legislation. There seems little reason why the rights to reuse data should be greater than the right to reuse information obtained via FOI requests.

- Similarly, there is room for collaboration on the question of file formats. While the formats and mechanisms needed by OGD practitioners may differ from those needed by FOI requesters, the latter are still subject to risks of not being able to use disclosed information if it is provided in a close file format.

- While the OGD movement may not have exhausted other technical and legal issues around datasets that are proactively published, practitioners are already seeking access to datasets that their government are unwilling to publish. Thus, the most likely area of collaboration between FOI and OGD communities will come in the issue of gaining access to datasets that governments do not wish to proactively publish, for reasons of political sensitivity mostly. It is here that the decades of experience built up by the FOI community can assist the OGD community. This collaboration can be foster by creating a physical and intellectual space for these FOI and OGD actors to come together to talk to each other (an space with people talking across each other could provide a better chance of an agreed approach to the disclosure of information and data).

In addition to these areas that are ripe for better collaboration at a practical level, conceptual and practical research will assist in removing misunderstandings and enhance the collaboration between these communities. Both successes and failures can help provide examples of the possible collaboration between these groups, and in different sectors (health, environment, education, etc.) [67]. Despite the efforts made in the last decade, we have really only begun to take some firsts steps, and there is much to do and a significant distance to be covered. Far more will be achieved, and with far greater efficiency, if both FOI and OGD communities invest in trying to develop a shared learning and research agenda. This will not only deliver more coherent and effective research outputs, but also build crucial bridges between the two communities.

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[67] These days, data driven journalists are one of the main groups taking advantages of all the channels to access government-produced and/or held information and data. Some examples (in Spanish):
http://cuentasjuradas.ojo-publico.com/
http://interactivos.lanacion.com.ar/declaraciones-juradas/

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