

The Cost of Open Data

Canadian cities are increasingly moving to new models of access for individuals. Why a recent U.S. court ruling could give them pause.



By Lou Milrad for CIO Canada (an IT World Canada publication). Reprinted with permission.

We've started hearing a lot over the last year or so about "open data", particularly in the municipal sector. It's all about municipalities (and senior levels of government) sharing information with private individuals, principally in digital format and via website portals.

Open data covers information such as weather and environmental data, census reports, public projects and proposals with private individuals to make as much data as possible available in a useable format for private citizens.

CANADA

Open Data Portals are rapidly appearing on a host of Canadian municipal Web sites – the trend is being driven by a cohesive Canada-wide collaboration of Canadian municipalities.

Vancouver was the first Canadian municipality to pass a motion for open data standards. Since, four of Canada's largest municipalities, Vancouver, Edmonton, Toronto and Ottawa, have informally organized into a group called the "G4" to form the G4 Open Data Framework.

The goal of the initiative is to create

- A common standard for the data;
- Common Terms of Use Agreements; and
- To enhance open data Web access to data managed by government that can be leveraged by citizens, businesses, and communities for their own purposes.

The provincial and federal levels of government, and stakeholder agencies are rapidly forging ahead with their own initiatives.

The previous model for government data allowed access for a price. Instead, open data standards make information available to anyone. In doing so, the information is accessible to private citizens with diverse skills and unique perspectives. The goal is to allow citizens to contribute to their community with creative uses for the data. Many of the new and leading smartphone apps incorporate access to open data.

UNITED STATES - ORANGE COUNTY, CA

A RECENT US COURT DECISION in Orange County, Calif., has threatened to derail the movement toward greater public access to a particular category of data, namely

geographic information systems data. The case, currently under appeal by the Sierra Club to the California Supreme Court with amicus curiae support from over 182 GIS professionals, including 14 GIS organizations, supporting open access to government geodata, is garnering much attention from open data advocates, land surveyors, GIS and other professionals, law firms as well as environmentalists and homeowners.

While geographic information systems (GIS) are expensive to develop and maintain, the information they provide is of high value to city planners, community groups, land developers and the public. Tight government budgets have generated a tension between providing free public access to the data and selling licenses at a profit. Orange County maintains a GIS and has set annual licensing fees at \$1 a parcel. It is estimated that an annual licence for the whole dataset would cost \$375,000. The dataset is made available under terms of a licence that specifies the terms and conditions under which the dataset may be used. Because of the high price tag, the sale of these licenses has traditionally raised a considerable amount of revenue for the County.

The high cost of this data, however, has effectively prevented consumer and environmental groups from accessing the information. The Sierra Club, a local conservation group, launched a legal challenge to this licensing regime, arguing that the data should be provided at the cost of reproduction under the California Public Records Act (PRA), which provides that all local agencies must supply copies of public records to members of the public. Surprisingly, the court refused to order that the licence be granted to the Sierra Club. In *The Sierra Club vs. County of Orange (Orange County)*, Justice Di Cesare found that the licence granted by Orange County did not grant access to a database but to a "computer mapping system." Software licenses are specifically exempted from the provisions of the PRA, and as such Orange County was under no obligation to provide a licence to the Sierra Club.

GIS DISCLOSURE - PUBLIC BEFORE PROFIT?

This redefinition of the nature of GIS gives rise to a number of interesting considerations with respect to a municipality claiming proprietary rights in municipally

generated information, particularly when other U.S. jurisdictions embrace an open-data policy (for example, Washington DC, Seattle and San Francisco as well as the U.S. federal government). Assuming that the decision withstands the current appeal and is not further appealed to one or more higher courts (and if appealed, whether it is set aside on appeal), one can only wonder whether some other U.S. city or cities choose to follow or rely on the Orange County ruling and assert a proprietary interest in their GIS?

WHAT'S THE IMPACT, IF ANY, ON CANADIAN MUNICIPALITIES?

There are three considerations, including the potential impact of the decision upon Ontario (or Canadian) municipalities, particularly in light of the trend toward open government and the public's increasingly demanding need for open data.

1. APPLICABLE STATUTORY DISCLOSURE OBLIGATIONS

Orange County was subject to the Public Records Act, which contains a specific statutory exemption for software licenses. The same does not typically hold true in jurisdictions such as Ontario. Public officials in Ontario are subject to the Freedom of Information and Privacy Act and the Municipal Freedom of Information and Privacy Act. Importantly, neither of these Acts contains a statutory exemption for software licenses. The acts establish a right of access to public "records," defined as any record of information "however recorded, whether in printed form, on film, by electronic means or otherwise" (emphasis added). The definition of electronic means could be sufficiently wide to capture a GIS license. As such, there is a strong argument that Ontario public officials may be under a greater obligation to provide GIS licenses at the cost of reproduction than the officials in Orange County – however and this is mere speculation, the GIS software companies may have a different perspective if public access to open data is required through a feature in their proprietary software where such arrangements have not been earlier contracted for.

2. PUBLIC DEMAND FOR FREE DATA ACCESS

In addition, the Canadian public increasingly is demanding free and open access to municipal data. In Ontario, the concept of "access by design" (AbD) is emerging. Ann Cavoukian, Ontario's Information and Privacy Commissioner, states that AbD "consists of funda-


mental principles that encourage public institutions to take a proactive approach to releasing information, making the disclosure of government-held information an automatic process where possible - access as the default." Access by design advances the view that government-held information should be made available to the public, and that any exceptions should be limited and specific."

3. BENEFITS OF FREE PUBLIC ACCESS TO GIS

The open-government movement (often noted as Gov 2.0) advocates free public disclosure of government records. Vancouver, Toronto, Edmonton, Ottawa (the "G4" mentioned above) and even smaller municipalities like Nanaimo, have all started converting their records into an accessible Web-based format via data catalogues.

Jury Konga, chair of [Municipal Information Systems Association] MISA Ontario's Gov 2.0 Committee and a strong proponent of free public access to government information, argues that the economic benefits of free public access to GIS/geospatial data can in many instances outweigh the benefits of selling data-usage licenses for a fee.

"Free access to online information can significantly cut down on Freedom of Information related costs," he says. "In addition, new tax revenues generated by entrepreneurs who capitalize on freely accessible GIS data, by adding value and creating new services, can become a source of government income and support of local economic development. Other benefits are derived from the open community development of applications and services that address local needs that governments are not currently providing."

Given that public officials need not develop their own publicly accessible GIS, one possible approach might be to convert their data into a format that is accessible by open-source GIS software. This may enable them to reap the benefits of full public disclosure while minimizing some of the associated costs. A variety of initiatives in the open data realm continue to explore opportunities in this regard. The redefinition of GIS as "software" in the Orange County decision will undoubtedly give rise to much debate, particularly as it counteracts the current trend toward free access to public data. 

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