



ADVISORY PANEL ON PUBLIC SECTOR INFORMATION

Public Sector Information policy in the Netherlands

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The Dutch Government identifies three types of Government information¹

- Basic information of the democratic constitutional state
- Information that is public on the grounds of the Act to promote open Government
- Other information

Basic information of the democratic constitutional state

The information which the Dutch Government views as basic to the democratic constitutional state are the underlying rules and regulations upon which Dutch society is built. At a minimum this includes

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

The Dutch Government considers this information to be essential to the citizen: “[C]itizens must know the rules they are to abide by, for the citizen is expected to know the law”². Thus it is prescribed by law that Acts of Parliament, decrees and other regulations must be publicly announced before implementation and that they are readily available to any citizen who wishes to examine them. This is a tried and tested axiom of a democratic society and so committed are the Dutch to it that in their response to the European Commission’s Green Paper *Public sector information: a key resource for Europe* the Dutch Government insisted that the Commission make

¹ *Towards Optimum Availability Of Public Sector Information*, Memorandum presented to the Lower Chamber of the Dutch Parliament by the Minister for Urban Policy and Integration of Ethnic Minorities, The Hague, 26 April 2000, Lower Chamber, session year 1999-2000, 26 387, no. 7. This document remains accurate, with significant parts of it being reproduced in *Policies on Public Sector Information; the economic and democratic benefits of openness*, a presentation by the Dutch delegation for the European Public Administration Network e-Government Working Group, 13th September 2004, Carlton Beach Hotel, The Hague.

² *Towards Optimum Availability Of Public Sector Information*, p6.

this type of information free from copyright and database-right both in EU institutions and within Member States, and that this information be made available electronically and free of charge.³

To minimise barriers to access, no copyright is retained on “Basic information”. Citizens (and by extension, anyone else) are free to read, use, reproduce and re-use this data for any purpose (commercial or otherwise) they wish. It is available at marginal cost in print form and online (where the margin is considered to be zero).

Publication of these is not perfect. While amendments to existing legislation are published, integral texts are not available. The Dutch are in the process of building a database on consolidated legislation, an initiative that has echoes of the British Government’s own efforts to build a “Statute Law Database”. The Dutch database will also have access to other national and regional legislation. It is also recognised that local authorities are not as advanced in this area, and a subsidy scheme has been set up to assist them. Finally, law courts have begun to make jurisprudence available.

Information that is public on the grounds of the Act to Promote Open Government

The *Wet openbaarheid van bestuur* (Act to Promote Open Government, known by its Dutch acronym, the *Wob*) is the Dutch equivalent of the Freedom of Information Act (FOIA). It is aimed at “promoting good and democratic government administration”⁴ by making all administrative decisions open to scrutiny. Members of the public may request information without specifying their motive; departments may only charge the marginal cost of reproducing and despatching the information.

All information is in principle public as long as certain requirements are met. Grounds for refusal do exist. Furthermore, it only covers Government (the executive). The wider public sector does not have to comply, including both the legislative and judicial branches.

Administrative information is defined as that held by a Government body which pertains to policy proposals, decision making and implementation. Thus some but not all databases are included. Indeed, any information that is not policy related is exempt. The *Wob* also does not cover information and databases the openness of which is covered by other legislation.

The *Wob* permits citizens to use the information for any purpose they like; one does not require a separate copyright licence. However, the *Wob* does not negate other legislation, so if a licence would normally be required (under, say, the 1912 Copyright Act, the Database Act or the Data Protection or Personal Data Protection Acts) these restrictions still apply. Furthermore, the *Wob* may oblige Government to share information on which others have copyright.

The Government also notes (in *Towards Optimum Availability Of Public Sector Information*) that freedom of information is restricted as much by ignorance as by legislation. It calls for the creation of asset lists to improve knowledge of what is available. It laments that information once-released might be useful to third parties but recognises that it may not be practical to publish everything that is released. Instead it notes that the *Wob* calls for officials to actively provide information “in the interests of good and democratic government administration”.⁵ Reliance on paper record keeping also hampers sharing of information. The Government allows officials to refuse to share information if sanitising it so that confidential information is removed would impoverish it or would require undue resources.

³ *Towards Optimum Availability Of Public Sector Information*, p13.

⁴ Quoted in *Towards Optimum Availability Of Public Sector Information*, p7. The source is not given but it would appear that it was lifted directly from the *Wob*.

⁵ *Wet openbaarheid van bestuur*, Article 8.

Other Information

Information that does not fall into either of the above categories is classified as “other information”, notably

- Information access to which is covered by legislation other than the Wob, some of which is restricted (e.g. police records or information the secrecy of which is vital to national security) and others widely available (e.g. land registry and statistical information)
- Information that is not related to administrative tasks (e.g. research from research institutes and the catalogues of cultural institutions)
- Software.

The objective is to make this information more readily available as long as it does not interfere with other legislation. However, there is no presumption that this should be free of charge and how citizens may use the information is tightly restricted. Furthermore, files may require intensive work before they can be released to the public.