

**Professor David Rhind CBE**

**Chair**

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Michael Wills MP  
Minister of State for Justice  
Ministry of Justice  
Selbourne House  
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21 July 2008

Dear Minister,

**APPSI's recommendations to progress the re-use of public sector information**

I promised you a letter before the recess encapsulating APPSI's views on what can be done speedily to enhance the re-use of Public Sector Information (PSI). This is it.

It is common ground now that, to compete successfully in the future, the UK must develop its knowledge economy and foster innovation: the March 2008 White Paper 'Innovation Nation', the entire 10 Year Science and Innovation Framework and Lord Sainsbury's 2007 report entitled 'The Race to the Top' have all been predicated upon that premise. Re-use of existing information, facilitated by new technologies and often collected at high cost to the taxpayer by many thousands of public bodies in the UK, must be able to play a major role in supporting economic development and innovation. But PSI can also play a much wider role in underpinning an informed democracy, supporting better public services and enhancing education.

APPSI's view is that some real progress has been made in recent years, notably arising from Government's Cross-cutting Review of the Knowledge Economy in 2000 and through the activities of the Office for Public Sector Information (OPSI). Despite that, however, APPSI members are clear that there is still much progress to be made if we are to achieve the visions set out by UK government and in the 2003 EC Directive on re-use of public sector information. A detailed statement of all this is included in the attached report to you, triggered by the announcement by the EC that it was reviewing the Directive. Some of the recommendations could be addressed by EU action but almost all of this could be addressed more speedily by the UK government.

APPSI proposes to send, by the end of this month in order to meet the original deadline, a set of comments to the European Commission in connection with the Commission's review

of the application of Directive on the re-use of public sector information. The comments will take the form of answers to their questions derived from, and backed up by, the report attached to this document. OPSI, as you are aware, is coordinating the official UK government response to this review. I understand that you have contributed to the Foreword.

### **Road blocks to progress in widespread use of PSI**

The main 'road blocks' to greater progress, as seen by the bulk of APPSI members, are as set out below. Some address process matters, others are designed to improve transparency and public confidence whilst one is about enhancing awareness of the need to make widespread use of PSI easy and effective. The words used are not the same as in our report: I have sought to articulate them in non-technical terms:

1. The availability of PSI from UK Public Sector Bodies (PSBs) that can be used for wider purposes is not mandatory in the Directive or the UK Regulations. This ensures that inconvenient requests to use PSI can simply be parked. We believe that some form of guaranteed right of access and use (subject to limited exceptions, such as personal information) is essential to encourage the widespread exploitation of PSI. This need not be expensive since – as we argue in the report – many potential users would take the responsibility for adding value to information provided in an 'as is' state.
2. The definition of 'Public Task' is central to how the Directive operates – anything carried out by government and associated bodies which is not part of their Public Task is not covered by the Directive or UK Regulations. We have found a great lack of clarity about what is the Public Task for government bodies, especially Public Sector Information Holders (using the OFT term) but also for PSBs more generally. Clearly it is possible that government bodies could define their own public task (and re-define it) to their own advantage; equally, commercial bodies might want the task so restricted that it maximises the scope for them to reduce progressively the activities of government. As a result of the lack of clarity in the process for defining an organisation's 'Public Task', there is much mistrust between the various parties. This suggests that a proper process is required to define Public Task and that the results should be capable of challenge in order to create public trust. One approach might be to:
  - Define some over-arching criteria and due process (the existing Information Policy Exchange Group of officials including OPSI, might be an appropriate body to advise on this)
  - Organisations draft their own proposals for their Public Task, supervised by departments where appropriate
  - The results should then be consulted upon publicly, with the appropriate department making the final decision

This outcome would have to be reviewed periodically since circumstances and needs of government change. Finally, you asked us how Public Task and Public Function inter-related; we are still seeking guidance on this from within government and your department.


3. Many organisations are now involved in work that was originally a Public Task but may no longer be so categorised. APPSI members believe that information originally created by any organisation as part of its Public Task should always be included in the scope of the PSI rules (as with the FOI legislation).
4. We need a better approach to dealing with third party IPR input. If a PSB incorporates another party's data into its own outputs this results in information which may not be subject to the Directive, Regulations and PSI guidelines – however small a fraction of the total the new addition represents. This needs some detailed study and legal input.
5. Where a PSB does transgress against the Directive, UK regulations or various other legal structures (e.g. Competition Law), the sanctions which are available are either inadequate or 'nuclear' (i.e. potentially destroying the business of a government body). The precise mechanics for enforcement are left in the Directive to the nation state. We urge that re-thinking of these to be proportionate, graduated but irrevocable is carried out and the results published; this may best be initiated by OPSI.
6. There have, as you will be aware, been many concerns expressed about the charging levels and procedures employed by some PSBs. It is difficult to be generic here for all of them, notably the Trading Funds, differ significantly. Two of the three recent relevant reports (*The Power of Information* and the *Cambridge Study* reports) have argued that there is greater benefit to the taxpayer from making PSI available at marginal cost rather than average cost (i.e. recovering costs of information collection, processing and dissemination rather than dissemination alone). Based on examples drawn from various parts of the world, there can be no doubt that providing information free certainly widens its take-up and use. What has been much more contentious is whether this results in greater benefit to the taxpayer who would end up paying for the collection and processing. There are many factors here but the Cambridge Study came out strongly in favour of a marginal cost approach based on the data available to them as providing greater welfare. This approach is strongly favoured by the great bulk of APPSI members though none of them would wish for a reduction in quality of the existing information from the main PSIHs operating on a Trading Fund basis. We note that this would require continuing government – rather than user – funding over a very long period. The example of poor quality of government mapping in the USA (where the average map is nearly 30 years old) is not a situation that anyone would wish to replicate for key sets of information in the UK.
7. We have no means of assessing how many exclusive licence arrangements exist between PSIHs and commercial bodies but know that some do (e.g. that between Dr Foster and the Health Information Centre) and believe this is generally unwise and contrary to the Directive. Clarity of government guidelines on exclusive arrangements and publication of all of those which are in this category, with the justification, is desirable in the view of APPSI members. In APPSI's view this publication should be on one central web site (e.g. the OPSI site), analogously to the UK Statistical Authority's hub for publication of National Statistics produced by government.

8. We have been struck for some time by how little is known of PSI re-use and all the work done to date amongst many government organisations. This is particularly acute in the NHS and local government but also occurs in central government. Given its present resourcing, OPSI can not create a radical change in this awareness. We urge that an awareness-raising campaign be created on the back of the change proposed in 1 above and APPSI stands ready to support you and help devise and implement a communications strategy to achieve this end.

Finally, I should make it clear that the process of agreeing our report has proved difficult for the government employee who sits upon APPSI representing Trading Funds. These Funds do not share the views of the bulk of APPSI members in certain respects (as outlined in Chapter 7 of the report).

I trust this is helpful

Yours sincerely,

A handwritten signature in black ink that reads "David Rhind". The signature is written in a cursive, slightly slanted style.

David Rhind  
**Chair of APPSI**

cc. Carol Tullo, Director of OPSI