

Letter to the French Government and Members of the Parliament against "behaviour" controls on public data reuse

Dear Madam, Dear Sir,

We, the undersigned civil society organisations, are writing to you to urge you to withdraw the proposed reform to the French 1978 Access to Administrative Documents Law [1] found in Article 30 ter of the draft Security Law named LOPPSI (draft law number 2827 - *Loi d'orientation et de programmation relative à la sécurité*) [2]. This article would allow the French authorities to apply the procedure of administrative checks on "behaviour" ("*comportement*") defined in the 1995 Security Law [3] to individuals wishing to re-use information obtained from public bodies such as documents or databases.

Currently, such checks on behaviour apply to such cases as individuals who have access to dangerous substances and high security zones. Extending this to those who simply want to re-use information obtained from public bodies is both unnecessary and disproportionate. It essentially categorises the re-use of information as a potentially dangerous activity. Given that the definition of "behaviour" is not explicitly defined in the law and so is left to the authority's discretion, which is likely to result in arbitrary limitations on access to information and freedom of expression in France.

The proposed article would seriously damage the right of access to information protected by the 1978 Access to Administrative Documents Law, as modified by European Union Directive 2003/98/EC of the European Parliament and Council on the Re-use of Public Sector Information of November 17th 2003) [4].

In addition, the proposed article directly contravenes EU Directive 2003/98/EC [5], which requires governments to create "*fair, proportionate and non-discriminatory conditions for the re-use of [public sector] information.*" This rule is consistent with the jurisprudence of the European Court of Human Rights which has based the right of access to information on the right to freedom of expression, rights which can be exercised without discrimination [6].

Making public sector information freely available for widespread re-use also has significant social and economic benefits. The availability of such information promotes participation in decision-making and improves relations between citizens and government. Members of the public can add value to government-generated information, for example by developing applications or programmes that benefit society as a whole.

These benefits are clearly recognised by many leading democracies – such as Australia, Denmark, New Zealand, Norway, the United Kingdom or the United States – who are posting large volumes of raw public data online with no preconditions on who may use it or how [7]. If the proposed article were to be introduced, it would unnecessarily obstruct the progress of open government data initiatives in France. As such it would be a regressive step at a time when many European Governments are making significant advances in terms of transparency and citizen engagement.

For these reasons the undersigned organisations call on the French government and Members of the Parliament to withdraw Article 30 ter from this draft law.

Yours sincerely,

[1] [http://www.legifrance.gouv.fr/affichTexte.do?](http://www.legifrance.gouv.fr/affichTexte.do?idSectionTA=LEGISCTA000006095904&cidTexte=JORFTEXT000000339241&dateTexte=20101118)

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[2] http://www.assemblee-nationale.fr/13/ta-commission/r2827-a0.asp#P676_118627

[3] [http://www.legifrance.gouv.fr/affichTexteArticle.do?](http://www.legifrance.gouv.fr/affichTexteArticle.do?idArticle=LEGIARTI000006527969&cidTexte=LEGITEXT000005617582&dateTexte=20101118)

[idArticle=LEGIARTI000006527969&cidTexte=LEGITEXT000005617582&dateTexte=20101118](http://www.legifrance.gouv.fr/affichTexteArticle.do?idArticle=LEGIARTI000006527969&cidTexte=LEGITEXT000005617582&dateTexte=20101118)

[4] <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000629684>

[5] http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive/psi_directive_en.pdf

[6] See, inter alia *Társaság a Szabadságjogokért v. Hungary* (App no 37374/05), ECHR, 14 April 2009:

<http://cmiskp.echr.coe.int/tkp197/view.asp?>

[action=html&documentId=849278&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649](http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=849278&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649)

[7] <http://www.data.gov/datapolicy>

<http://www.nationalarchives.gov.uk/doc/open%2Dgovernment%2Dlicence/>

- **AFRICA :**

- Africa Freedom of Information Centre (AFIC) (Gilbert Sendugwa, Coordinator, Head of Secretariat)

- **ASIA :**

- Citizens' Campaign for Right to Information (CCRI) – Nepal (Tanka Aryal, General Secretary)

- **EUROPE :**

- Access Info Europe (Helen Darbishire, Executive Director)
- La Quadrature du Net (Philippe Aigrain)
- Open Knowledge Foundation (Rufus Pollock)
- Parlorama
- Statewatch Europe (Tony Bunyan)
- Armenian freedom of Information Center – Armenia (Shushan Doydoyan)
- More Onion – Austria (Michael Hartl, Executive Officer)
- Access to Information Programme – Bulgaria (Gergana Jouleva, Executive Director)
- LibertIC – France
- OWNI – France
- ReadWriteWeb France – France (Fabrice Epelboin)
- Regards Citoyens – France
- Movimento Scambio Etico – Italy
- NEXA Center for Internet & Society at Politecnico di Torino – Italy
- Rolf Kleef – Netherlands (consultant open data for international development)
- Informational Policy Institute – Republic of Moldova (Alex Marciuc, Executive Director)
- Public Association Center for Promotion of Freedom of Expression and Access to Information – Republic of Moldova (Vasile Spinei)
- Apador-CH (Romanian Helsinki Committee) – Romania (Diana-Olivia Hatneanu, Executive Director)
- Center for Independent Journalism – Romania (Ioana Avadani)
- Transparency International Romania – Romania (Victor Alistar, Executive Director)
- Institute for Information Freedom Development – Russia (Ivan Pavlov)
- David Goldberg – Scotland (information rights campaigner)
- ChangeNet – Slovakia (Norbert Brazda, Executive Director)
- Asociación Open Data de España – Spain (Jacobo Elosua)
- Bilgi Edinme Hakki – Turkey (Yaman Akdeni)
- Open Rights Group – United Kingdom (Javier Ruiz)
- OpenlyLocal – United Kingdom (Chris Taggart)
- UntoldLondon – United Kingdom (Babs Guthrie)
- Alex Skene – United Kingdom (volunteer for WhatDoTheyKnow)
- Tom Steinberg – United Kingdom (Official Transparency Board member)

- **NORTH AMERICA :**

- Centre for Law and Democracy – Canada (Toby Mendel, Director Executive)
- Montreal Ouvert – Canada (Jonathan Brun)
- Andres Mejia – USA (Carter Center, ATI department)

- **CENTRAL AMERICA :**

- Jamaicans For Justice – Jamaica (J. Carolyn Gomes, Executive Director)
- Instituto de Acceso a la Información Pública del Distrito Federal – Mexico (Jorge Bustillos Roquín, Comisionado Ciudadano)

- **SOUTH AMERICA :**

- Asociación por los Derechos Civiles – Argentina (Álvaro Herrero)
- Greg Michener – Brazil (professor and advocate)
- Fundación Ciudadano Inteligente – Chile
- Fundación Pro Acceso – Chile (Moisés Sánchez, Director Ejecutivo)
- Instituto de Derecho y Economía Ambiental (IDEA) – Paraguay (Ezequiel Santagada, Executive Director)
- Suma Ciudadana – Perú (Javier Casas)
- Cainfo – Uruguay (Edison Lanza, Director Ejecutivo)