

ADVICE NOTE:

**SINT MAARTEN
DATA SHARING**

Submitted to:

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January 19th 2023

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Executive Summary

Globally, whether applied by developing or developed countries, the approaches utilized by in designing safeguards and enablers for data protection and governance directly impacts the real economy and the effectiveness with which economic activities are undertaken.

The facilitation of data sharing among Government entities and the private sector community is critical in promoting competition, encouraging innovation, facilitating the effective delivery of services and increasing the attractiveness of the jurisdiction to investors, among other things. While there appears to be a chasm between the digital economy and the real economy in theory, in practice, the effectiveness and efficiency of the former, greatly impacts the latter.

Data is therefore regarded as a vital resource which contributes significantly to numerous processes and activities that drive commerce, government services, and other socio-economic and cultural activities. However, there are also significant risks that are presented and several ethical considerations to be borne in mind. Data, and policies which govern data, interplay with issues of:

- Standards
- Ethics
- The Economy of Data
- Industry Practices
- Legal and Regulatory Considerations

It is therefore important to have a keen understanding of data policy and related issues in order to achieve the delicate balance of regulation and facilitation.

Data policy issues undoubtedly influence and further guide how various sectors of the economy interact with and leverage technological advancements. Harnessing the full potential of data must be undertaken with consideration given to the accompanying rights and responsibilities associated with such data use. When data policies are adequately aligned, the untapped potential of data can serve to resolve many of the socio-economic development challenges and assist economic growth.

One of the key areas of data policy which interplays, whether directly or otherwise with the issues above noted, is that of data sharing.

This Advice Note on Data Sharing has therefore been developed to highlight the importance of understanding and applying key principles and lessons learnt from international best practices of jurisdictions such as the European Union, New Zealand and Belize. In so doing, this Advice Note is presented as follows:

Chapter 1: Introduction

Chapter 2: Understanding the Importance of Data Sharing and its Underlying Principles

Chapter 3: International Developments and Noteworthy Considerations in Data Sharing

Chapter 4: Conclusion and Recommendations

1. Introduction

In the current era, massive amounts of data including personal information are collected, transferred, processed and stored within, between and among business and government entities and jurisdictions. Accordingly, it is imperative that national policy, legal and regulatory frameworks are adequately designed and equipped to address the ever-evolving precepts and tenets governing these and attendant data sharing arrangements.

Noting the prudent advancements of Sint Maarten to advance efforts towards digital transformation, understanding the importance of data sharing and the underpinning principles and precepts which facilitate and interplay with data sharing is imperative.

The development of this Note is both necessary and prudent to better contextualize the recommendations proffered under the wider umbrella of the Sint Maarten Digital Transformation Project. This Advice Note highlights that there have been several international developments which have advanced customary practice and established international best practices in respect of data sharing. Developments of note include the European Union (EU) General Data Protection Regulation and EU Data Report on Data Sharing for Public Good; developments in respect of Big Data/Open Data; the increased use and application of Artificial Intelligence and Standards in Data.

This Note therefore discusses these key elements by highlighting the importance of underlining principles; Open Data and Once Only Principle, and further discussing international developments and interventions which positively impact developments in respect of data sharing. It also recommends the development of a national law to govern and regulate public sector data sharing.

2. Understanding the Importance of Data Sharing and its Underlying Principles

2.1 The Importance of Data Sharing

Data and information sharing are very important to the undertaking of actions and transactions in the public and private sectors.

Organizations often need to collaborate and share data and information to provide efficient and effective services and similarly government Ministries, Departments and Agencies (MDAs) share information across various platforms, databases and systems.

The importance of data sharing, particularly through electronic platforms has been underscored during the height of the COVID-19 pandemic and is still very evident to date. Public organizations, in particular, have recognized that through collaboration, quality services can be delivered in an easily accessible and cost-effective manner. The efficiency of the delivery of public services can be further enhanced by achieving system interoperability, thus allowing users to easily access information stored on multiple e-platforms.

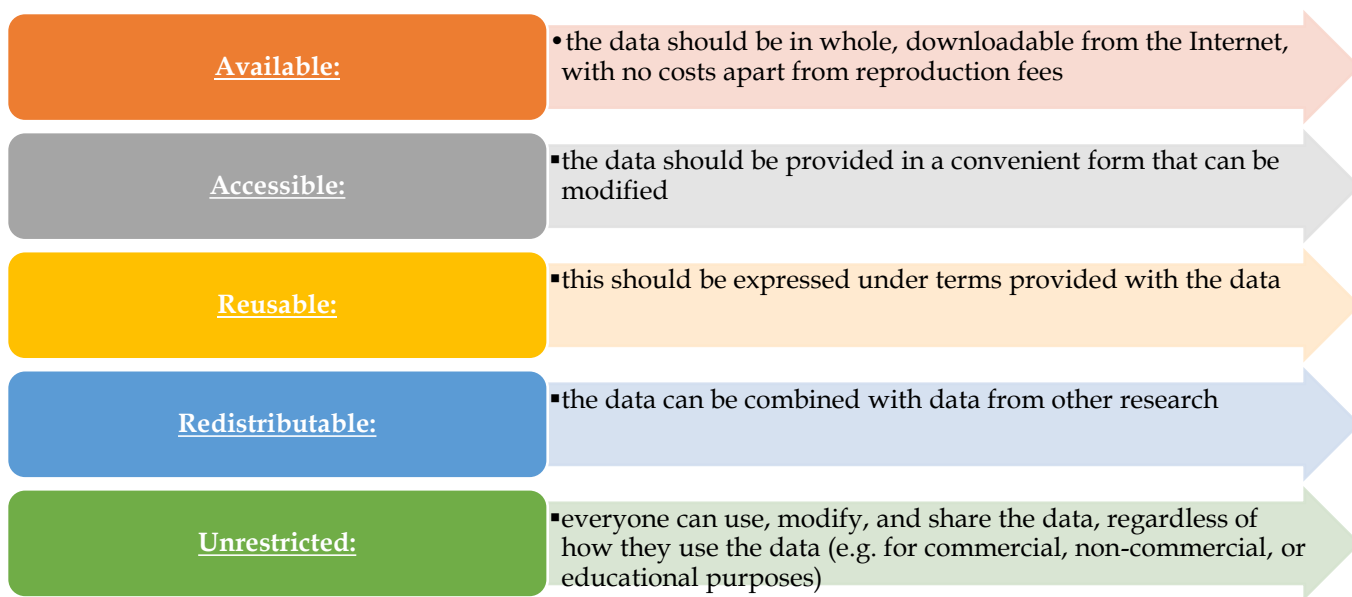
In discussing the concept of data sharing, it is important to understand key principles relating to data sharing; most notably the Open Data and the Once Only Principle.

2.2 Open Data

In discussing the concept of “data sharing”, a clear understanding of “open data” is required. Open Data refers to data that is available freely and easily accessible via the Internet. Open data is therefore downloadable, modifiable and distributable without any legal or financial limitations.¹ The concept of “open data” represents one of several issues to be considered in respect of data sharing and it is therefore important that clear policy directions and decisions are made in this respect. Key features of Open Data which are presented in the figure below.

¹ York University. [What is Open Data?](#)

Figure 1: Key Features of Open Data²



In strengthening the national legislative framework governing Data Protection and Data Sharing Sint Maarten must give consideration to these elements highlighted in the diagram above. Moreover, it is imperative to highlight that revisions to the national framework will promote innovation through the recognition and inclusion of principles and precepts relating to open data, data analytics and data sharing arrangements.

Open Data and Data Sharing are imperative in the current global context given the rise of electronic transactions, electronic commerce and electronic government services. There are lessons that can be learnt from other countries within the Caribbean which have embraced and implemented regimes to support Open Data e.g., Trinidad and Tobago. This is evidenced by the establishment and operationalization of the nation's electronic Single Window for trade, industry and commerce; TTBizLink.

In addition to the Open Data Principle, it is equally important to understand the Once Only Principle.

² Developed based on York University. [What is Open Data?](#)

2.3 The Once Only Principle (OOP)

Closely related to the concept of Data Sharing is the “Once Only Principle” (OOP).

The OOP is best described as an e-government principle that is premised on the use, reuse and/or sharing of data, information or documents already previously supplied within the public administration system, in a manner which is transparent. This principle pursues enhanced efficiency, a reduction in administrative burden and the protection of personal information. It essentially determines that information presented in or managed within any framework or system governing or facilitating administrative procedures shall only be required once and must be stored and retained within such framework or system.

The infusion and application of this principle as part of the national policy and legislative framework of Sint Maarten are very important and relevant given the many challenges which confronts citizens and residents alike, having to resubmit information at various national agencies and departments. Should there be adequate data sharing legislative, regulatory, and administrative mechanisms challenges such as these will be removed. It is essential to ensure that all relevant supporting laws underpinning key themes and elements to support the national ICT enabling framework are implemented. Key to this is national data sharing legislation which will enable the application of the once only principle to address issues such as effectiveness, efficiency and reduced administrative costs associated with the provision of government services.

The importance and rationale for such a framework for data sharing is premised on the need for evidence-based planning and decision making, improved governance and the provision of guidance on the proactive disclosure of government data, among others.

The OOP is widely recognized and applied by several jurisdictions, particularly the pioneers of e-government and digital transformations. The European Union is one such notable pioneer and has established an EU Once Only Initiative complemented by the Once Only Technical System (OOTS).

The OOTS represents a system which enables information sharing between and among public sector administrations. The OOTS represents a cross-border information exchange system which is utilized by EU countries and is grounded on the Once Only Principle. It is therefore important to pursue consistency with practices in the EU and internationally.

The OOP is applicable across various spheres of government administration including fiscal management practices. This is evident through an analysis of the ALL.

2.3 Legal Frameworks in Sint Maarten

The Sint Maarten National Data Protection Ordinance (Landsverordening Bescherming Persoonsgegevens)³ is based on Directive 95/46/EC of the European Parliament and of the Council, dated 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Both the GDPR and e-IDAS were adopted in the EU after the enactment of Sint Maarten's law and regulations. Thus, the Data Ordinance has not changed even though Directive 95/46/EC was repealed in the EU, effective 25 May 2018, when the GDPR was introduced. There are plans to draft and introduce a more GDPR style law in The Kingdom in the next couple of years. A separate Advice Note details the current legislative landscape for data protection as well as considerations in adopting the new law.

The question of data sharing on Government Portals is an issue that has been under discussion for some time. One of the key discussions are around what data sharing is allowed by the Tax Office.

With respect to the ALL (general ordinance for national taxes) based on which the Tax Office operates, Article 50 states as follows:

"1. Anyone who is involved in the implementation of the national ordinance and who thereby has access to data of which he knows or should reasonably suspect the confidential nature, and for whom not already by virtue of office, profession or legal regulation with regard to that data a duty of confidentiality applies, is obliged to observe secrecy with regard to such data, except insofar as any statutory regulation obliges him to disclose or the necessity for disclosure arises from his task.

2. The first paragraph does not apply to the criminal offenses described in Articles 198 and 200 of the Code of Criminal Procedure.

3. The Minister may grant an exemption from the prohibition contained in the first paragraph.

4. Any person who intentionally violates the duty of confidentiality imposed on him pursuant to subsection 1 shall be punished with a term of imprisonment not exceeding two years or a fine not exceeding one hundred thousand guilders, or both.

5. The person to whose fault the breach of secrecy is due shall be punished with a term of imprisonment not exceeding six months or a fine not exceeding fifty thousand guilders.

6. Prosecution with regard to a breach of confidentiality will only be instituted upon a complaint

³ [Sint Maarten National Data Protection Ordinance](#).

from the person in respect of whom the confidentiality has been violated.”

It is very clear that while the totality of information about a person or entity business acquired by the tax department should remain confidential, as this could contain substantial data. This is apparently what the ALL 50.1 means to address.

It would be difficult to argue that the provisions to mean that that certain pieces of information (e.g., tax ID coupled with the name of person/business) in their nature are confidential, since in certain cases as various statutory regulations obliges this disclosure e.g., this information must made available to government entities (and in some cases private entities) outside the tax department (e.g., social security bank, business licences, chamber of commerce etc.).

Given the EU Once Only Initiative as well as the EU The Once Only Technical System (OOTS) which enables the sharing of information between public administrations across borders between EU countries, the argument that the Tax Office is banned from sharing any data at all, on say an online portal, which will benefit the taxpayer, does not seem to accord with current practices.

3. International Developments and Noteworthy Considerations in Data Sharing

There have been several developments on the international front which have impacted practices in respect of data sharing. This Advice Note particularly highlights developments in respect of:

- a) Artificial Intelligence
- b) International Best Practices: European Union, New Zealand and Belize

3.1 Artificial Intelligence (AI)

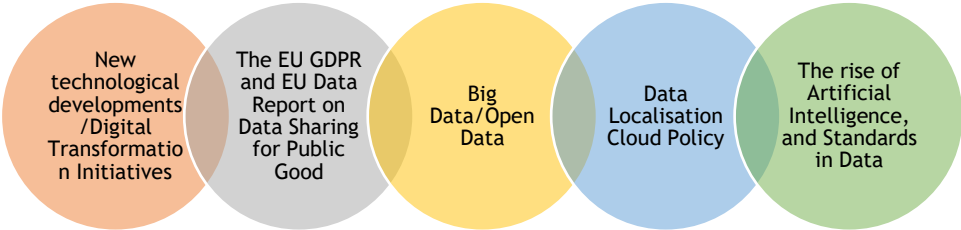
AI is no longer a mere abstract concept but a real reality that affords numerable significant benefits. Globally, countries and regional blocks have been developing blueprints to guide their strategies in respect of leveraging the benefits which AI present.

AI solutions have been applied to identify and/or predict diseases and pests in crops even using satellite images. It is further foreseen that AI can also be the transformative tool in addressing the global phenomenon of climate change. AI is therefore transforming the world one sector at a time. Noting the limited human involvement in AI, the cost savings in leveraging this technology can be as immense as the benefits it may yield.

3.2 International Best Practices: European Union

Data Sharing Policy and Data Protection go hand in hand. Data Sharing must be balanced with Data Safeguards. Accordingly, thematic areas and core issues both consider the national contextual realities while also prescribing policy tenets that accord with international best practices in data protection and data sharing. The figure below notes some of these international developments which impact and interplay with Data Policy.

Figure 2: International Developments which impact and interplay with Data Policy



Source: Adapted from WEF (2021)

The EU Data Report on Data Sharing for Public Good⁴ was released in February 2020 and speaks to the proposal of the creation of a regulatory framework for Open Data in the EU. The report found that the EU countries are not using data to its full potential yet. It is suggested that public administrations can be helped by the use of private sector data for the public good through more secure and regular data sharing across the EU.

The rapporteur of the High-Level Expert Group on B2G Data Sharing, Alberto Alemanno said:

⁴ European Commission. [Experts say privately held data available in the European Union should be used better and more.](#)

“Our report suggests how the EU might become a global leader in fostering not only a framework for B2G data access, but also a sensible, inclusive and participatory data culture through a set of viable, practicable and scalable welfare-enhancing solutions.”

The Report Mr. Alemanno referred to notes that:

“In order to increase Business-to-Government (B2G) data sharing, the experts advise to make data sharing in the EU easier by taking policy, legal and investment measures in three main areas:

1. Governance of B2G data sharing across the EU: such as putting in place national governance structures, setting up a recognised function (‘data stewards’) in public and private organisations, and exploring the creation of a cross-EU regulatory framework.
2. Transparency, citizen engagement and ethics: such as making B2G data sharing more citizen-centric, developing ethical guidelines, and investing in training and education.
3. Operational models, structures and technical tools: such as creating incentives for companies to share data, carrying out studies on the benefits of B2G data sharing, and providing support to develop the technical infrastructure through the Horizon Europe and Digital Europe programmes.”

Building on this Report, the European Commission launched public consultations on “The Data Act” proposed by the European Commission to ensure “access to and use of data for legitimate purposes, including in business-to-business and business-to-government [B2G] situations”⁵ Further to this, the principles on private sector data sharing in business to government contexts were revised to include new principles on accountability on fair and ethical data use, as a guide to the business to government data sharing in the interest of the public.

The principles on private sector data sharing in B2G contexts were also revised and new principles on accountability and on fair and ethical data use included to guide B2G data sharing for the public interest. Examples of successful B2G data sharing partnerships in the EU were cited to include “an open forest data system in Finland to help manage the ecosystem, mapping of EU fishing activities using ship tracking data, and genome sequencing data of breast cancer patients to identify new personalized treatments.”⁶

⁵ European Commission. [Data Act & amended rules on the legal protection of databases.](#)

⁶ European Commission. [Experts say privately held data available in the European Union should be used better and more.](#)

In December 2022 the Commission published the Data Act Proposal.⁷

3.3 International Best Practice: New Zealand

One of the foremost features of The Privacy Act 2020 of New Zealand is its flexibility, thus allowing it to be applied in the ever-changing dynamic global environment. The Act is principles-based and 'open-textured' meaning that the application of the Act must be undertaken utilizing one's judgement and the privacy principles are therefore applied and assessed relative to each individual case.

A key theme of the Privacy Act is information sharing. Data and information sharing are quite crucial to the operations of several public and private entities. A multiplicity of organisations often needs to collaborate and share data and information in an effort to provide efficiency and effective services. The importance of data sharing, particularly through electronic platforms has been underscored during the current pandemic. Public organisations in particular have recognized that through joint collaborations, quality services can be delivered in an easily accessible and cost-effective manner.⁸ The efficiency of the delivery of service is further enhanced should the service user only be required to access an online platform at one place, and through interoperable systems, access information stored on several e-platforms of public organisations and government departments.

In an effort to achieve this, there must be a user-friendly interface, system connectivity and interoperability and information sharing protocols. In addition, issues in respect of privacy and data protection are also relevant to the discussion. Ensuring that these key elements are featured in information sharing systems to promote collaboration and efficient service delivery can be challenging, owing to issues relating to:

- Data Accessibility, Reliability and Management
- Identifying and Implementing Cost Sharing Mechanisms
- Varying levels of data maturity
- The application of subjectivity to the interpretation of 'Data Privacy'
- Governance and Ownership

A further analysis of issues in respect of data accessibility, reliability and management is required given the importance of these elements. In this regard, there are lessons that can be learnt from the approach advanced by New Zealand in addressing these matters legislatively.

⁷ <https://www.bdva.eu/european-commission-publishes-data-act-proposal>

⁸ Controller and Auditor-General of New Zealand. [Sharing Data](#).

New Zealand can boast of a successful initiative, the Integrated Data Infrastructure (IDI). Under this initiative sets of data held by Statistics New Zealand were collated from a range of public organisations. Strict rules and principles of confidentiality, privacy and anonymity of the data were applied in the implementation of this intervention. The IDI provided a mechanism through which organisations were afforded the unique opportunity to locate and use reliable data to inform their policy decision making processes.

Data management is also key and the New Zealand model adopted the following principles in the use of its IDI:⁹

- The application of the Once only principle to Data, meaning that data is collected once and reused as many times as required
- Real time compilation of data
- Development of clear data management standards in alignment with national laws and international best practices
- Open data

3.4 International Best Practice: Belize

Belize is one of the countries which has a separate Data Sharing law, entitled the Public Sector Data Sharing Act 2021.¹⁰

The Belize Public Sector Data Sharing Act was enacted in 2021 and serves to provide the legislative framework to facilitate data sharing between public sector agencies and other entities. In addition, the law establishes an Office for Data Analytics under the Ministry with responsibility for digital transformation and e-governance and further serves to support the implementation of the Act. Some of the principal objectives of the law are presented in Figure 3 below.

Figure 3: Principal Objectives of the Belize Public Sector Data Sharing Act

⁹ Controller and Auditor-General of New Zealand. [Sharing Data](#).

¹⁰ <https://www.nationalassembly.gov.bz/wp-content/uploads/2021/10/Act-No-27-of-2021-Public-Sector-Data-Sharing.pdf>

To promote, in a manner that recognises the protection of privacy as an integral component, the management and use of public sector data as a public resource that supports good government policy making, program management and service planning and delivery

To facilitate the expeditious sharing of public sector data between public sector agencies;

To provide protections in connection with data sharing under the Act

The Act provides for Regulations for the safe and secure sharing and use of public sector data and public sector data sharing authorisation. It specifies that–

(1) “A public sector agency is authorised to share public sector data that it controls with another public sector agency for any of the following purposes–

(a) to enable data analytics work to be carried out on the data; and

(b) to enable related public sector agencies to develop better government policy making, program management and service planning and delivery by the agencies.

(2) If public sector data is shared under this Act, the data provider and the data recipient shall comply with all data sharing safeguards that are applicable to that public sector data.”

4. Conclusion and Recommendation

It is imperative to leverage lessons learnt from international best practices and applicable principles which can be applied to data policy frameworks, particularly in respect of data sharing. This is important in ensuring that the adequate balance is struck between facilitation and regulation. These considerations are to be borne in mind when developing and reforming policy and legislative frameworks that advance the national digital transformation agenda.

Furthermore, giving regard to the local realities of Sint Maarten and developments on the international front, some key recommendations are proffered to enhance the national framework. These include:

⇒ Introducing a Decree setting out the following:

- Requirements to support interoperability and information exchange between and among agencies and entities
- Principles of data exchange and interoperability
- Application of the Once Only Principle
- Provisions which:
 - Promote, in a manner that recognises the protection of privacy as an integral component, the management and use of public sector data as a public resource that supports good government policy making, program management and service planning and delivery
 - Facilitate the expeditious sharing of public sector data between public sector agencies
 - Provide protections in connection with data sharing

Legislation

Australia Public Sector (Data Sharing) Act 2016

[https://www.legislation.sa.gov.au/_/legislation/lz/v/a/2016/public%20sector%20\(data%20sharin%20g\)%20act%202016_61/2016.61.un.pdf](https://www.legislation.sa.gov.au/_/legislation/lz/v/a/2016/public%20sector%20(data%20sharin%20g)%20act%202016_61/2016.61.un.pdf)

Belize Public Sector Data Sharing Act 2021

<https://www.nationalassembly.gov.bz/wp-content/uploads/2021/10/Act-No-27-of-2021-Public-Sector-Data-Sharing.pdf>

New Zealand Privacy Act 2020

Parliamentary Council Office. New Zealand Legislation. [Privacy Act 2020](#). Version as at 28 October 2021.

UK Public General Acts. [Data Protection Act 2018](#)