

**To:**

**The Ministry of Electronics and Information Technology,  
(Government of India)  
Electronics Niketan, 6, CGO Complex,  
Lodhi Road, New Delhi - 110003**

**17th March 2022**

**We thank the Ministry of Electronics and Information Technology for the opportunity to provide feedback on the Draft India Data Accessibility and Use Policy. The process of consultation is a welcome one, and we hope that this spirit of transparency and due process is continued in the framing of future policies by the Ministry.**

**We have been particularly pleased to see that the Ministry has been thinking critically about data sharing and data use for social benefit. Responsible data sharing, as the Draft Policy recognises, has the potential to deliver better services, products and governance for the Indian polity. However, we believe that this Draft Policy is still quite far away from a meaningful, implementable policy document - many of the ideas posited in the document, including the proposed institutional framework, protocols for sharing of non-personal data, data sharing toolkit, lack clarity and will lead to confusion and incorrect implementation. This is not to say that the conversation on the Draft Policy is not important but in India where a personal data protection framework still does not exist, and sector specific data related regulations are being contemplated - the move to unlock data for monetisation requires more public discussion.**

**At Aapti Institute, we have been working on the idea of data stewardship closely, while examining lived experiences at the intersection of technology and society. Our detailed submission below builds off our engagement on questions of agency, digital literacy and data rights, and draws from international best practices. We hope that this Draft Policy will go through several transparent iterations.**

**We look forward to engaging further on this issue,**

**Aapti Institute**

## Draft India Data Accessibility and Use Policy

**Note:** *The Draft India Data Accessibility and Use Policy was originally published on the Ministry of Electronics and Information Technology website on February 21, 2022 and was subsequently revised without clear public notification. This change was made aware to the Aapti team through [posts](#) and [tweets](#) by the Internet Freedom Foundation. The two versions of the notification can be found below.*

**Initial version:** Available as a web archive post [here](#)

**Current version:** Available on MEITY official website [here](#)

### Section 1, 2 & 4: Background and context to the Policy

The Draft India Data Accessibility and Use Policy (Draft Policy), notified by the Ministry of Electronics and Information Technology (MEITY) on February 21, 2022, purportedly seeks to enhance inter-departmental data sharing while also facilitating monetisation of data through sale of public data. At the core of this Draft Policy is a conception that data is a “valuable economic and social resource” which needs to be harnessed to facilitate better product and service delivery as well as governance to citizens. But, what the Draft Policy fails to acknowledge is the mounting privacy and digital rights concerns posed by its provisions, necessitating considered democratic deliberation and public review before it is rolled out.

At the outset, the Draft Policy makes it clear that it shall be applicable to all non-personal data available with government departments, ministries, agencies and autonomous bodies. Additionally, it offers that state-level governments are “free to adopt the policy...as applicable”. This recommendation is undesirable, in Aapti’s view, as it seeks to introduce multiple regimes within Indian jurisdiction for data accessibility, sharing and use. Moreover, competing provisions in state-level data accessibility policies and the current Draft Policy could prove to be a logistical and regulatory nightmare for government officials seeking to harness data, creating unprecedented challenges for operationalisation of this Draft Policy. Aapti recommends harmonising the current Draft Policy with state-specific policies already introduced in [Karnataka](#), [Punjab](#), [Telangana](#), to name a few.

More specifically, the publishing of the Draft Policy itself is akin to putting the proverbial ‘cart before the horse’, surfacing glaring vulnerabilities in the Policy’s licensing framework. This is because India does not have an operative data protection legislation, let alone meaningful mechanism for regulation of non-personal data that this Draft Policy hopes to exploit for government revenue generation.

Therefore, it is imperative that the Draft Policy be revised under the aegis of an expert committee. Among other things, the committee must ensure that this Draft Policy is harmonised with the provisions of the draft [Data Protection Bill](#), Ayushman Bharat Digital Mission's [Health Data Management Policy](#) and the state-specific data policies mentioned previously. To this end, the committee should recognise that data is not merely an economic resource to be exploited for money income, but is intricately tied to individuals and communities who generate this information. Consequently, their data must be employed in the interests of their welfare, used for purposes and by parties who respect their agency and preferences.

Apti's work explores precisely this facet of data governance which includes communities in the decision making over data. [Data stewardship](#), an evolving approach to data governance, is one such framework that seeks to balance twin imperatives of privacy and data rights of individuals and communities while making available their data in a safe manner for socially beneficial ends. Embedding stewardship within the Draft Policy focalises citizen-driven data exchange as its guiding principle, unlocking data for public benefit in a manner that creates value for a cross-section of stakeholders: citizens, governments, civil society and private sector. Barcelona City Council's [DECODE](#) project and South Korea's Gyeonggi Province [Data Dividend Programme](#) are valuable reference points for India to borrow from while revising the Draft.

## **Section 5: Principles of the Draft Policy**

An overarching imperative underlying the Draft Policy is the push towards openness of data and data systems in a bid to enhance government-to-government and government-to-business data (G2G and G2B) data sharing. However, the absence of clarity and specifications on the standards for openness, the modes through which data will be stored and shared are alarming omissions within the Draft Policy.

Similarly, well-defined accountability for stakeholders is a vacuous proposition with little teeth in a jurisdiction that lacks a comprehensive data protection legislation. A data protection legislation is fundamental for citizens to realise their rights over data, including the right to informed consent, portability and re-use of data - all of which are necessary to enable data accessibility and use. Further, data protection regulations can protect citizens from data breaches and address harms arising from data sharing.

Aapti's work on role of public institutions<sup>1</sup> in promulgating appropriate policy data sharing draws attention to three constituent components that necessitate action:

- **Legislative frameworks** - This includes policies for data governance set forth by public institutions within each jurisdiction. Legislative actions include the establishment of individual and community rights over data. This is supported by data protection frameworks that seek to protect communities from harm due to breach of consent. Similarly, granting individuals the right to portability and re-use of data are important forerunners that make data available for public benefit use. In turn, the use of data for public benefit requires a clear articulation of first principles, values and purposes for unlocking data which should be enshrined within laws and legal frameworks on data governance
- **Regulatory structures** - This refers to composite spaces set up by the state for interaction among communities to deliberate and exercise preferences over data. Building appropriate regulatory structures is eminent to empower communities to participate in decision-making and reduce the consequent burden on state agencies to represent community interests. Decentralising data decisions through clear articulation of sharing norms guided by consent-driven and purpose-specific clauses is foundational to institutionalise citizen-centric through policy action
- **Enabling environment** - Relates to those actions of the state that open data for technical and regulatory innovation. Setting up a safe pilot environment for low-risk testing using anonymised and synthetic datasets is salient to surface the practical considerations involved in operationalising the Draft Policy. Similarly, periodic consultation with communities, civil society and private entities - stakeholders affected by data sharing - to examine legislative frameworks and regulatory structures provides feedback for evidence-based policymaking on data governance. State subsidies that may incentivise uptake of technical sharing formats such as FHIR, SNOMED, etc would fall under this category of actions directed at promoting openness, transparency and interoperability as principles for data accessibility and use

Thus, the current Draft Policy must be re-imagined from the lens of these three components and made responsive to public concerns about privacy, consent-driven data sharing and broad-based value generation from data.

## **Section 6. Institutional Framework**

Section 6 outlines the institutional framework for the implementation of the Draft Policy, through the creation of an India Data Office (IDO) and an India Data Council

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<sup>1</sup> Sridharan, Manohar and Kapoor (2021), "Health data stewardship: Top-down state action for public benefit data sharing", pg. 7-51, <https://thedataeconomylab.com/wp-content/uploads/2021/09/Aapti-Combined-Updated-w-Foreword.pdf>

(IDC). While it is mentioned that the IDO will be constituted by the MEITY, there is a lack of clarity on who will be members of the IDO. Further, there is also no clarity on the process of appointment or the qualifications required for the members of the IDO. Unlike the IDO, there is no clarity on under whose auspices the IDC is being constituted. Additionally, while it is made clear in Section 6.3 that the IDC will comprise the India Data Officer and Chief Data Officers of various departments of the central and state governments, the Policy does not provide any guidance on the necessary qualifications or desired competencies of such officers. Moreover, it is unclear from the policy, who the India Data Officer is or what their role and responsibilities are. There are also no provisions regarding the actual functioning and compliance measures of these bodies. In this regard, it would be great to follow the examples of [Findata](#) and [Transport for London](#), which provide a detailed organisational structure, and follow principles of clarity and openness in the decision-making processes. Additionally, neither the IDO nor the IDC allow for citizen participation in decision making, use and sharing of public data sets which can possibly relate to and be about citizens themselves. On this front, learnings from the [Decode](#) project must be incorporated to ensure that citizens exercise some degree of control in deciding how data related to, or about them, is being shared in the interest of public good.

Finally, there are no provisions that detail the nature of the relationship between these bodies and the mooted Data Protection Authority (DPA) under the draft Data Protection Bill (DPB). Given that the DPA is intended to serve as a cross-sectoral regulator for all matters relating to data governance in India, it would be critical to note how the IDO and IDC will work with the DPA.

## **Section 10. Protocols for sharing of non-personal datasets**

While the Draft Policy provides that licensing frameworks for the sharing of non-personal datasets will be framed by the IDO, it is critical that any aspects of monetisation within such licensing frameworks centre around providing benefits back to the public. Data is not merely a resource to be monetised, but something that [individuals](#) and [communities](#) have rights over, as has been recognised through policy documents presented at the national level. The monetisation of data [should be seen](#) as a part of the journey to data rights, a way to ensure the sustainability of models that help challenge and renegotiate power dynamics in the data economy. In this regard, it is critical that individuals see direct benefits from the sharing of data generated by and relating to them. The IDO in drafting the licensing frameworks must keep in mind the [Data Dividend policy](#) of the Republic of Korea's Gyeonggi Province, which [recognises people as the producers of the data](#) and provides them with returns for sharing their

data. Such measures also serve to incentivise individuals to share their data for public benefit and provide them with a sense of involvement and fulfilment in the data sharing ecosystem.

## **Section 12. Data Anonymisation & Privacy Preservation**

Anonymisation is not a fool-proof or irreversible process. There have been various instances of anonymised data being used to [glean personal information on individuals](#), or being [easily de-anonymised](#). The lack of a data protection legislation that penalises intentional or unintentional de-anonymization adds to the risk of improper anonymisation in India. Given the criticality of privacy preservation, it is crucial that the standards followed by various departments be determined in advance to the operationalisation of data sharing under this Draft Policy. Further, there must be involvement of independent experts in determining these standards and it must be ensured that the standards followed under this Draft Policy are standardised across all policy documents issued by the Government of India in relation to data sharing.

## **Section 15. Data Sharing Toolkit**

The Joint Parliamentary Committee on the Personal Data Protection Bill, 2019 [expressed their concern](#) with respect to the capacity of Government departments to protect the large volume of data that they collect. This raises questions about the capacity of the data officers to undertake actions including identifying data sets qualified for release, the release mechanisms and the necessary anonymisation efforts to be undertaken.

## **Section 17. Implementation Manual**

The Draft Policy recognises the MEITY as the relevant authority to oversee the implementation of this Policy. However, it is strongly urged that the implementation of this Policy be brought under the auspices of the DPA, an independent legislative body for the governance of data in India. Adequate checks and balances on the DPA will help provide a greater degree of oversight on the process of sharing of public data.

## **Conclusion**

While the MEITY's effort to formulate a policy to unlock public sector data for public use is laudable, it is imperative that the policy is revised under the aegis of an expert committee to address a number of issues highlighted above. Additionally, such a policy should be promulgated only after a robust data protection legislation is put in place.