Teka Komisji Prawniczej PAN Oddział w Lublinie
vol. XIX, 2026, no. 1, pp. 421-436
https://doi.org/10.32084/tkp.9857

THE SUBJECT MATTER OF THE RIGHT TO RE-USE IN LIGHT OF THE ACT ON OPEN DATA AND RE-USE OF PUBLIC SECTOR INFORMATION

Dr. Katarzyna Tomaszewska

University of Wrocław, Poland
e-mail: katarzyna.tomaszewska@uwr.edu.pl; https://orcid.org/0000-0003-4024-0036

Abstract. One of the still underappreciated informational rights is the right to reuse information. The causes of this situation are diverse. In part, it stems from a lack of public awareness regarding the significance of information held by public institutions. The primary aim of this study is to define the subject matter of the right to reuse and to provide a detailed discussion of those categories of public sector information to which the legislator itself devotes particular attention. This pertains to open data, research data, dynamic data, and high-value data. A detailed examination of these categories of information will enable a determination of whether public sector information constitutes the sole type of data subject to processes regulated by the Act of 11 August 2021 on open data and the reuse of public sector information.

Keywords: information; re-use; access to information; public sector information.

INTRODUCTION

One of the constitutionally guaranteed information rights of an individual is the right to re-use information held by public institutions. From the very beginning, this right was derived from the wording of Article 54(1) of the Constitution of the Republic of Poland,[1] although nowadays some scholars take the position that there is no direct basis for it in constitutional regulations [Sakowska-Baryła 2022, 266]. Expanding access to public sector information (hereinafter referred to as PSI) and its re-use has recently become part of national and European economic policy [Eechoud 2011, 169-202]. The significance of this law in the era of technological development does not require much justification. However, as it is often emphasised, this law is not appreciated and used to the extent that it should be. And the reasons for this are varied. The reuse obligations are closely related to the challenges faced by modern science and the opportunities for the economy [Chałubińska-Jentkiewicz 2021]. Just as personal data is often treated as a valuable object of trade between private entities, data held by public

[1] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

ISSN 1899-7694
e-ISSN 2719-7379

entities, in particular public administration bodies, should be used as a basis for creating new goods or services with a view to the benefits that it can bring to the modern individual, economy or the entire state. "Public data is an attractive 'raw material' for the corporate sector – a resource that can be used for economic development' [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 43]. The driving force behind the reforms of modern administrations is, among other things, the information revolution [Bugaric 2004, 490].

Historically, the subject of the right to re-use was public information, and the right to make further use of it was regulated by the Act of 6 September 2001 on Access to Public Information.[2] This was the result of the 2011 amendment, which added Chapter 2a on re-use to the existing content of the AAPI.[3] Over the years, the subjective and objective scope of the re-use right in question, as well as the procedure for its exercise, have changed [Piskorz-Ryń 2018, 169]. Currently, the essence of this right is centred on the re-use of public sector information (PSI), as indicated in the very title of the Act of 11 August 2021 on Open Data and the Re-use of Public Sector Information.[4] At this point, however, the question arises whether the subject matter of the discussed information right truly concerns only public sector information (PSI), or whether other types of data, or their collections (datasets), may also be involved? To determine the answers to these questions, we will interpret the term ISP and present a typology of information that can be derived from the content of the ODPSI. The culmination of the discussion will be an analysis of the types of information to which the legislator has deliberately and purposefully devoted greater attention, both in terms of defining their conceptual framework and presenting specific rules for their access and reuse.

1. PUBLIC SECTOR INFORMATION AND PERMISSIBLE DATA CLASSIFICATIONS IN LIGHT OF THE ACT ON OPEN DATA AND THE RE-USE OF PUBLIC SECTOR INFORMATION

According to Article 2 point 8 of the ODPSI, PSI means any content or part thereof, regardless of the methods of fixation, in particular paper, electronic,

---

[2] Journal of Laws of 2014, item 782, as amended [hereinafter: AAPI]. See for example: Chałubińska-Jentkiewicz 2018, 95. At present, the right of access to public information and the right of re-use of public sector information constitute two distinct yet closely interconnected legal rights. As P. Pieniążek notes, the right of access to public information enables every individual to participate consciously and informedly in the social and political life of the state [Pieniążek 2025, 91]. By contrast, the right of re-use permits the creation of goods and services based on knowledge and information held by public sector bodies.

[3] See the Act of 16 September 2011 amending the Act on Access to Public Information and Certain Other Acts, Journal of Laws No. 204, item 1195.

[4] Journal of Laws of 2023, item 1524 [hereinafter: ODPSI].

sound, visual, or audiovisual version, held by an obligated entity.[5] The legal definition of ISP presented above is closely related to the concept of a document referred to in Article 2 point 6 of Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information.[6] The EU legislator exemplifies this document by referring to any content, irrespective of its medium – whether in paper, electronic form, sound, visual, or audiovisual form, or any portion thereof. While the terms "information" and "document"[7] are not interchangeable, both definitions underscore that the subject of the reuse process must be fixed, regardless of the method of fixation and entirely independent of the version thereby obtained. The fact of fixation constitutes one of the elements in the statutory definition of PSI. This group of elements also includes any content or part thereof, as well as possession attributed to entities referred to in Article 3 of the ODPSI are known as obligated entities or public sector bodies. This type of definition assumes a broad scope of data classified as PSI, even though it excludes the oral version of information subject to the reuse process.

As previously indicated, PSI encompasses any content or part thereof. Although the legislator does not specify the subject matter to which such content must pertain, it is understood to include information relating to the performance of public tasks or associated therewith, generated by an entity referred to in Article 3 of the ODPSI, or information that remains solely within the possession of such an entity.[8] PSI is any content held by a public institution, such as a document from an archive (paper version), an electronic library catalog (electronic version), a musical work in the public domain (audio version), a photograph of an artwork (visual version), or a recording of a municipal council session (audiovisual version).[9] Within this group, it is necessary to distinguish PSI subject to the regulations of the ODPSI from information whose reuse is governed by specific provisions.[10]

---

[5] See also: Sitniewski 2017, 25.

[6] Official Journal of the European Union L 172 of 26.6.2019, pp. 56-83 [hereinafter: Directive 2019/1024].

[7] Unlike the Polish legislator, the European legislator consistently employs the concept of "document," rather than "information," to define the data subject to disclosure. This terminology is likewise used in the Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council, and Commission documents (Official Journal of the European Union L 145, 31 May 2001, pp. 43-48).

[8] See also the judgment of the Voivodeship Administrative Court in Warsaw of 4 November 2022, ref. no. II SAB/Wa 365/22, https://orzeczenia.nsa.gov.pl/doc/5481DFEB29 [accessed: 27.06.2025].

[9] See https://www.gov.pl/web/gov/wykorzystaj-informacje-sektora-publicznego2 [accessed: 30.06.2025].

[10] This includes, among others, the following regulations: the Act of 17 May 1989 – Geodetic and Cartographic Law (Journal of Laws of 2024, item 1151 as amended), the Act of 29 June 1995 on Public Statistics (Journal of Laws of 2024, item 1799), the Act of 20 August 1997 on

Although PSI constitute the primary group of data subjects to reuse, in light of the ODPSI, it is possible to identify additional groups of data that possess a utilitarian character. This group includes metadata describing the structure of PSI as well as private data published on the data portal, together with their accompanying descriptive, explanatory, locational, and facilitative information that aids in their discovery (see Article 2 point 10 of the ODPSI). As outlined in Article 2, point 13 of the ODPSI, data of this kind are subject to disclosure for use. The choice of the term 'use' rather than 'reuse' in this context is deliberate. The distinction referred to in Article 2, point 13 of the ODPSI is of significant importance. The term 'reuse' serves to highlight the use of information that extends beyond the performance of public tasks for which the information was initially created or collected. Though the relevant regulations are dedicated to the process of reuse, and the data portal constitutes one of the methods for providing public information (see Article 7 AAPI) as well as an instrument for making PSI available for reuse, this IT system may also contain private data published for their use.[11] Data of this kind is not created to meet collective needs arising from social coexistence [Boć 2010, 15]. Their functionality is entirely different; for this reason, the legislator allows their use, but not their reuse. However, this distinction has significance solely in legal terms. This does not imply a complete difference in the processes performed on information after it is disclosed. In everyday terms, these processes could also be collectively described as reuse. It is essential to recognise that the original purpose for which private data was created is not public in nature, however, upon disclosure to other entities, such purpose may assume either a private or public character, depending on the recipients to whom the information is made available (transferred).[12]

In establishing the legal definition of private data, the legislator referred to the definition of PSI. Private data also encompasses any content or part thereof, regardless of the method of fixation, particularly in paper, electronic, audio, visual, or audiovisual versions. The distinguishing element lies in the category of the holder and creator of the data. It cannot be an obligated entity within the meaning of Article 3 of the ODPSI, but rather a private entity such as an entrepreneur or a non-governmental organisation [Sybilski 2021, 98]. Regarding private data, the focus is not on the disclosure of information from private life (which rarely has a utilitarian character, although it may

---

the National Court Register (Journal of Laws of 2024, item 979 as amended), the Act of 24 September 2010 on the Population Register (Journal of Laws of 2025, item 274) and the Act of 20 June 1997 – Road Traffic Law (Journal of Laws of 2023, item 1047 as amended).

[11] See also the judgment of the Supreme Administrative Court of 24 May 2024, ref. no. III OSK 1285/22, https://orzeczenia.nsa.gov.pl/doc/0BD52A153C [accessed: 27.06.2025].

[12] Such reuse shall not encompass the exchange of public sector information (PSI) between obligated entities solely for the purpose of performing public tasks.

generate general interest among third parties), but rather on a specific data carrier originating from and produced by private entities [Sitniewski 2022].

As P. Sitniewski rightly points out, private data can be a carrier of PSI [ibid.]. This assertion finds its justification when considering the widely accepted general principle, known almost since the inception of the institution of reuse, according to which every public information is PSI, but not every PSI constitutes public information [Sitniewski 2017, 10].[13] Personal data, that is, information about an identified or identifiable natural person, has been unequivocally excluded from this group.[14] Private data may be voluntarily published on the data portal, provided that the entity deciding to disclose it assumes the obligation to ensure its accuracy, currency, completeness, and appropriate quality (see Article 3(2) point 4 of the ODPSI). Disclosure is optional, but it does not mean complete freedom of action regarding what and how it will be published [Sibiga and Sybilski 2020, 262]. The matter may involve private information of particular significance for the development of innovation within the state and the advancement of the information society, as well as metadata describing their structure. The presentation of such data on the data portal requires the entity deciding to publish to adhere to a specified method of data ordering and organisation, as well as to comply with the provisions of the ODPSI generally [ibid.]. Furthermore, it is worth noting that although the definition of private data encompasses various methods of fixation, private data must constitute a digital resource. Regarding their disclosure, a request-based procedure is not applicable, only a non-request-based mode is possible. A private entity may decide to "share" economically valuable information with other private sector entities or with the public sector by publishing it on the data portal maintained by the minister competent for informatisation. However, in making this decision, the entity as a rule must approve the applicable principles for disclosure aimed at reuse and the regulations governing the determination of conditions for this type of process. Data generated by private entities may play a crucial role in fulfilling public tasks and hold significant value for the common good, despite not having been produced using public funds or involving public entities [Sybilski 2021, 99]. They may serve as a basis for processes that result in the creation of products and services which can

[13] See the judgment of the Supreme Administrative Court of 11 June 2019, ref. no. I OSK 1820/17, https://orzeczenia.nsa.gov.pl/doc/3B742D0B98 [accessed: 01.07.2025].

[14] See Article 4 point 1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Official Journal of the European Union L 119 of 4.5.2016, pp. 1-88).

compete with public goods [Sibiga and Sybilski 2020, 23; Sakowska-Baryła and Fisher 2024, 289-306].[15]

This category of data – private data – should be distinguished from the information referred to in Article 6(2) of the ODPSI, namely, information concerning individuals holding public office, insofar as it is connected with the performance of their official duties. Such information occupies a certain "borderline status", as it partially discloses aspects of an individual's private life, but only to the extent that it relates to the activities associated with holding public office. This category of data is the most problematic, as it has not been explicitly defined, thereby giving rise to the most significant number of interpretative difficulties – issues that have persisted since the AAPI first entered into force. However, this is not private data. Nor can it easily be classified as public information. It undoubtedly constitutes information subject to disclosure and thus qualifies as PSI, about which the right to re-use cannot be restricted based on an individual's right to privacy. However, given their content, there may be some reservations about their usability, about the validity of their continued use in products or services. Moreover, it is worth noting that in the same provision (Article 6(2) of the ODPSI), the legislator explicitly permits the re-use of personal data, provided that the data subject consents to the processing of their data for re-use. This is possible despite the legislator's explicit exclusion of personal data from the category of private data referred to in Article 2 point 5 of the ODPSI that is subject to reuse. In doing so, the legislator confirmed the permissibility of dividing the subject matter of the right to re-use into two categories: open data and other data subject to re-use.

In the context of referencing data portal, it is also possible to distinguish between PSI of particular significance for the development of national innovation or the information society – which, due to their method of storage and dissemination, are suitable for re-use – and other PSI. This division corresponds with the classification according to which one can distinguish PSI that simultaneously constitute public information and those that extend beyond the scope of information on public affairs – not qualifying as public information, but forming part of resources such as libraries, museums, or archives.

Due to the status of the information referred to in the provisions concerning re-use, it is possible to distinguish between PSI that qualify as open data (special data) and data that do not fall under the category of open data (ordinary data[16]). Taking into account the title of the Act as well as the content of Article 10(1) of the ODPSI, open data have been recognised as the most valuable type of PSI due to their version and how they can be made

[15] See the Explanatory Memorandum of the government's draft law on open data and re-use of public sector information, https://www.gov.pl/web/premier/projekt-ustawy-o-otwartych-danych-i-ponownym-wykorzystywaniu-informacji-sektora-publicznego2 [accessed: 14.07.2025].

[16] This is the term used by D. Sybilski [Sybilski 2021, 95].

available for re-use. This type of PSI is available in electronic version and is provided under the terms outlined in Article 2 point 11 and Article 10 of the ODPSI [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 39]. Under Article 10(1) of the ODPSI, the obligated entity shall, whenever possible, make PSI available or transmit it as open data for re-use. A similar provision is found in Article 32(5) of the ODPSI, which emphasises that open data may be made available through the data portal, if feasible. In this sense, open data – similar to dynamic data, high-value data, and research data – constitutes information that is specifically regulated by the provisions of the ODPSI[17] (special category data). Under Article 2 point 11 of the ODPSI, open data are PSI made available or transmitted in electronic version, unconditionally or subject to conditions imposed by law, complete, up-to-date, in their source version, and an open and non-restricted format intended for machine reading. Such data is intended for free re-use under the same terms for every user without the requirement to verify their identity.

Against the backdrop of the above definition, open data constitutes an exceptionally valuable information resource due to the absence of technical restrictions on their use in products and services [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 325], as well as owing to their quality and the form in which they are expressed. This is also determined by the title of the relevant legal provisions adopted by the legislator, where open data is mentioned first, followed subsequently by the re-use of PSI. It is no coincidence that the legislator does not replicate the previously used terminology but, following the approach of the EU legislator, endows the concept of open data with an axiological dimension. The placement of the 'open data' category in the title, and more importantly, at its very beginning, should be regarded as a deliberate measure. It indicates the special status of this type of PSI while simultaneously conferring upon re-use the significance of an institution that encourages public entities to share the data in their possession [Sibiga and Sybilski 2020, 181]. The content of Article 10(1) of the ODPSI does not establish an absolute obligation to make all PSI available or to transmit it as open data, instead, but is intended as a guideline for obligated entities. This guidance is situated among the provisions known as the principles of making PSI available and transmitting it for re-use, thereby constituting a set of regulations of particular significance for the process under discussion. Their purpose (as with any procedural rules) is to ensure the efficiency, speed, simplicity, and correctness of the process of making PSI available (or transmitting it), so that obtaining information does not pose significant difficulties and use PSI can be effective and yield the desired outcomes.[18]

[17] The last three groups mentioned form a separate classification of information based on the content of PSI.

[18] For this reason, the procedure set out in the ODPSI is considered to be more formalised compared to the procedure governed by the AAPI.

The concept of open data refers to the provision (or transmission) of information that meets specific quality criteria [Sybilski 2021, 91], specifically in terms of its form, version, and delivery to the interested party. The recommendation as mentioned above aims to increase the level of openness of the PSI made available or transmitted, as entities referred to in Article 3 of the ODPSI are expected to demonstrate an effort to provide data as open data as frequently and to the greatest extent possible [Sibiga and Sybilski 2020, 181; Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 39]. This is particularly important in the 21st century, as M. Sakowska-Baryła and B. Fisher point out, since open data constitutes a valuable resource for training artificial intelligence [Sakowska-Baryła and Fisher 2024, 289-306; Zygmuntowski 2020, 9].[19] For its proper programming, it is necessary first to input a wide range of information reliable and up-to-date data which most often originates from public sector entities [Chaba 2023, 115-26]. On one hand, the abundance, diversity, and accessibility of various data sets, and the other hand, their substantive scope, accuracy, and timeliness are factors that determine the attractiveness of open data [Sakowska-Baryła and Fisher 2024, 289-306].

An important classification of PSI under the ODPSI is the division into simple information and – although not explicitly stated in the text of the regulation – transformed information, which pertains to information prepared or transmitted in the manner or form specified in a re-use request.[20] Under the provisions of Article 39(3) point 5 and 6 of the ODPSI, the information requester specifies in the application the form in which PSI is to be prepared and the manner of its transmission, provided that such PSI is not otherwise made available or transmitted. A positive response to the requester's expectations may entail fees as referred to in Article 18(1) of the ODPSI. As a general rule, within the procedure related to the re-use of PSI (unlike the regulations under the AAPI), processed information – that is [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 330], information explicitly prepared upon request of the information requester, which does not exist at the time of submitting the PSI processed request but is generated as a result of such a request based on materials held by the public institution – does not occur. This assertion has merit, notwithstanding that Article 18(1) of the ODPSI refers to the preparation of information, whereas Article 18(3) pertains to the process of anonymisation.[21] As follows from the very nature of PSI,

[19] Similarly, M. Bernaczyk observes that the development and improvement of artificial intelligence systems is not possible without data that trains artificial intelligence [Bernaczyk 2021, 17].

[20] See for a more detailed discussion on simple, transformed, and processed information: Sitniewski 2011, 55-60.

[21] In both doctrine and case law, the prevailing view is that anonymisation does not constitute the processing of public information, see Sitniewski 2011, 58; and the judgment of the Voivodeship Administrative Court in Kraków of 30 January 2009, ref. no. II SA/Kr 1258/08, https://orzeczenia.nsa.gov.pl/doc/C962C82014 [accessed: 10.07.2025].

such data must be recorded, that is, collected in the datasets or databases held by the public entity. This is their essential characteristic. They constitute a foundational material for products and services that are yet to emerge. Therefore, they cannot be created *ad hoc* at the request of the information requester. Nevertheless, subsequent processes carried out after their availability (or transmission) may result changes of the original content and the creation of new, qualitatively distinct information through compilation, analysis, aggregation, calculation, and other operations performed not "towards", but "on "PSI originating from various public entities.

2. SPECIAL CATEGORIES OF PSI

As previously indicated, the legislator devotes greater attention to specific PSI. In addition to PSI classified as open data, this group also includes research data, dynamic data, and high-value data. As noted in the doctrine, to increase the supply of particularly valuable information available for reuse [Sakowska-Baryła and Fisher 2024, 289-306], as well as to enhance interest in their further utilisation, new categories of data have been distinguished among all PSI. In addition to explicitly defining them in Article 2 point 2 to 4 of the ODPSI, the legislator devotes an entire Chapter 5 to these types of information, entitled: Research Data, Dynamic Data, and High-Value Data. Such legislative measures allow for conferring upon them the status of PSI of special categories. Their special character is also determined by the content as well as by the specific rules governing their availability and transmission for re-use outlined in Articles 22 to 27 of the ODPSI.

As noted by D. Sybilski, these types of information fall within the general understanding of PSI, with their distinctiveness attributed to the quality and how the data is distributed for re-use [Sybilski 2021, 91]. The information referred to above is sometimes also described in the literature as new categories of PSI [Sibiga and Sybilski 2020, 77]. This designation is attributable to the prior absence of permissibility for their re-use. Such re-use was not possible under the previously applicable directive – Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information[22] as well as under the former Act of 25 February 2016 on the re-use of public sector information.[23]

Under Article 2 point 2 of the ODPSI, research data shall be understood as PSI recorded in electronic version, other than scientific publications, which have been produced or collected in the course of scientific activity referred to in Article 4 of the Act of 20 July 2018., the Law on Higher Education

[22] Official Journal of the European Union L 345 of 31 December 2003, pp. 701-707.
[23] Journal of Laws of 2016, item 352.

and Science[24] and are used as evidence in the research process or serve to verify the accuracy of findings and research results. The legal definition presented corresponds with the content of Article 2 point 9 of Directive 2019/1024, according to which research data means digital documents, other than scientific publications, that are collected or produced in the course of research activities and are used as evidence in the research process or are widely accepted within the scientific community as necessary for verifying the accuracy of findings and research results. Though the term "research data" is not easy to define precisely [Fisher 2020], it should be noted that this is a category of PSI characterised by a specific origin and a clearly defined mode of fixation. The distinctive nature of this type of PSI is primarily based on particular version. Although the general definition of PSI permits any method of fixation, in the case of this specific data group, only the electronic – or, as indicated by the EU legislator, digital – version is applicable. This is closely linked to the legally guaranteed mode of their availability for re-use. Research data are made available through the ICT system of the obligated entity, in particular via an institutional or thematic repository. The legislator thus provides for a non-application procedure for their disclosure, which also results in the free re-use of such data. The public availability of research data, connected with the exclusion of the application procedure, conditions the possibility of their re-use, as does the public funding of the scientific activities within which the research data are produced or collected.[25]

As explicitly stated in Article 22 of the ODPSI, scientific publications are not classified as research data, although access to them—similarly to access to scientific journals or monographs—is equally, if not more, important due to their primary (raw) nature. "The volume of research data being generated is increasing at a rapid pace, and the potential for its re-use extends beyond the scientific community. To efficiently and comprehensively address growing societal challenges, it is of paramount and urgent importance to ensure access to data originating from diverse sources, sectors, and disciplines, as well as the ability to synthesise and re-use such data."[26] They constitute so-called unprocessed research material created or collected in scientific research, development work, or artistic creation (see Article 4(1) LHES).[27] These include

---

[24] Journal of Laws of 2024, item 1571 as amended [hereinafter: LHES].

[25] As R. Markiewicz points out, Directive 2019/1024 is based on the obligation to adopt a policy of open access to data from scientific research funded by public resources [Markiewicz 2021].

[26] See Recital 27 of Directive 2019/1024.

[27] Pursuant to Article 4(2) and Article 5(1) of LHES., scientific research encompasses basic research, understood as empirical or theoretical work primarily aimed at acquiring new knowledge about the foundations of phenomena and observable facts without direct commercial application intent. It also includes applied research, defined as work aimed at acquiring new knowledge and skills directed towards the development of new products, processes, or services or significant improvements thereof. Furthermore, experimental development comprises activities involving

statistical data, experimental results, measurements, field observations, survey results, interview recordings, photographs, as well as metadata, specifications, and other digital objects (see Recital 27 of Directive 2019/1024). In analysing their special status, the particular nature of their holder is also significant. This refers to the entities specified in Article 7 of the LHES. On the one hand, as indicated in Article 4(1) point 3 of the ODPSI, the provisions of the ODPSI do not apply to entities that constitute the higher education and science system, nor to entities operating on behalf of this system (Article 7 of the LHES).[28] On the other hand, as an exception to the general rule, these entities are to be included among the obligated information entities, but solely with respect to research data made available for their reuse. Making such data accessible through an ICT system other than the BIP or the data portal entails the necessity to specify the conditions for reuse or to explicitly inform about the absence of such conditions (see Articles 22 and 11 of the ODPSI). The absence of information regarding the conditions of reuse cannot be interpreted as a waiver of their establishment and, more importantly, may lead to a deadlock, effectively blocking the possibility of further use. According to the generally accepted rules governing the reuse of public sector information (see Article 39(1) point 2 of the ODPSI), the provision of PSI through an alternative ICT system – without specifying the reuse conditions or explicitly stating their absence – triggers the necessity to initiate the request-based procedure. However, as previously indicated, in the context of distributing research data, the legislator has not provided for any request-based mechanism.

The second group of PSI of a special nature consists of information whose availability is addressed in Article 24 of the ODPSI. In this case, the reference is to dynamic data, which is understood as data recorded in electronic version that is subject to frequent updates or real-time updates, including due to its variability or rapid obsolescence (in particular, data generated by sensors). Similarly to research data, the normative definition of this concept does not significantly diverge from the formulation found in EU regulations. Under Article 2 point 8 of Directive 2019/1024, dynamic data refers

---

the acquisition, combination, shaping, and use of currently available knowledge and skills – including those related to IT tools or software – for production planning as well as the design and creation of modified, improved, or new products, processes, or services, excluding routine or periodic changes even if such changes involve improvements. Artistic creation is defined as a creative activity in the arts that results in an artistic work – either tangible or intangible – that contributes to cultural development, including artistic performances. Scientific research and experimental development are conducted within specific scientific fields and disciplines, whereas artistic creation occurs within corresponding artistic fields and disciplines.

[28] This case concerns, among others, entities such as universities; federations of educational system entities; the Polish Academy of Sciences (PAN); scientific institutes of PAN; the National Science Centre (NCN); and the National Centre for Research and Development (NCBiR).

to documents in digital form that are subject to frequent updates or real-time updates, particularly due to their variability or rapid obsolescence. Data generated by sensors is typically considered dynamic data. These are data whose defining characteristic is their rapid temporal variability, which necessitates an immediate response to accurately reflect the current state of affairs [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 73]. The legislator refers to the issue of data update frequency only indirectly, indicating that dynamic data are those subject to frequent updates or real-time updates. Undoubtedly, such updates cannot be so infrequent that the data loses its valuable economic and social utility. The market value of these data is directly dependent on their currentness and rapid accessibility [Sibiga and Sybilski 2020, 20].

The very act of defining dynamic data indicates a specific category within this type of data, namely data generated by sensors. Dynamic data include, inter alia: environmental data, traffic data, satellite data, meteorological data, and mobility data [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 73]. Due to their inherent characteristics, as well as the objective of ensuring their practical use, the legislator establishes a specific timeframe, form, and method for their disclosure. Dynamic data, which exists exclusively in electronic version, must be made available immediately upon collection – that is, as soon as technically possible. In his effort to distinguish between the various terms used under the AAPI concerning the timing of disclosure of public information, P. Sitniewski employs the expressions "without undue delay" and "immediately". Whereas the term "without undue delay" may be interpreted as permitting action within several days, the term "immediately" should be understood as requiring the provision of information within the next few hours [Sitniewski 2016, 90ff]. Given the nature of the data in question, the above interpretation of the term "immediately" is justified in the context of non-request-based access to dynamic data. As stated: "Dynamic data shall therefore be made available immediately after collection or, in the case of manual updates, immediately after the dataset is modified" (Recital 31 of Directive 2019/1024). However, being aware of the short timeframe for disclosure, the legislator provides for an exception to the rule. The delayed provision of dynamic data is permissible where making them available immediately after collection via an application programming interface would exceed the financial or technical capabilities of the obligated entity. However, any delay in the disclosure process must not undermine the economic and social potential of PSI. The absence of a clearly defined deadline for such delay in Article 24(2) of the ODP-SI and the resulting discretionary margin left to the obligated entity in this respect may constitute a significant devaluing factor. It is not without reason that the doctrine refers to non- absolute obligation for obligated entities to disclose dynamic data [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 73]. As indicated earlier, the provision of dynamic data requires speed. This

is to be guaranteed by the API, or application programming interface, which constitutes a set of technical functions enabling the connection and mutual exchange of data or metadata between computer programs or information systems (Article 2 point 9 of the ODPSI). The provision of data via an application programming interface (API) is intended to facilitate the development of web and mobile applications based on dynamic data, as well as applications utilising cloud computing (Recital 31 of Directive 2019/1024). The provision of dynamic data via an API corresponds to the obligation outlined in Article 10(4) of the ODPSI, according to which the obligated entity must ensure the stability, availability, uniformity of usage methods and standards, ease of use, maintenance throughout the entire lifecycle, and security of the API employed.[29] As noted by P. Sitniewski, a request-based mode of disclosure is not excluded concerning this type of data; nevertheless, due to the nature of dynamic data, the non-request-based mode appears to be the most appropriate for their reuse [Sitniewski 2022].

The final category of data with a special character comprises high-value data, defined as PSI, whose reuse entails significant benefits for society, the environment, and the economy, particularly due to their usefulness in the creation of products, services, and applications based on the utilization of such data (Article 2 point 4 of the ODPSI). Although the EU legislator identifies high-value datasets subject to disclosure, its understanding forms the basis for the legal definition of data under Article 2 point 4 of the ODPSI. High-value datasets are documents whose reuse entails significant benefits for society, the environment, and the economy, particularly due to their usefulness in the creation of value-added services and applications, as well as new, decent, high-quality jobs, and also considering the number of potential beneficiaries of such value-added services and applications based on these datasets (Article 2 point 10 of Directive 2019/1024). The determination of which data qualify as high-value information subject to disclosure does not lie with either the public sector entity holding the data or the user expressing an intention to reuse them [Sibiga and Sybilski 2020, 22]. A differing view is presented by P. Sitniewski, who emphasises that there is nothing to prevent entities partially exhibiting a public character, i.e., entities referred to in Article 3 point 5 of the ODPSI, from themselves recognising specific PSI as high-value data [Sitniewski 2022]. Article 26 of the ODPSI grants the European Commission the authority to establish a list of high-value datasets by implementing acts issued under Article 14(1) of Directive 2019/1024. According to the contents of Annexe I to Directive 2019/1024, six thematic categories of high-value data can be distinguished. These are: geospatial data, earth observation and environmental data, meteorological data, statistical

[29] See also Recital 32 of Directive 2019/1024.

data, data on enterprises and their ownership, and mobility data [Sybilski 2021, 92]. This aligns with the content of Recital 66 of Directive 2019/1024, where the EU legislator includes in the group of high-value datasets: postal codes, national and local maps (geospatial data); energy consumption and satellite images (earth observation and environmental data); in situ instrument data and weather forecasts (meteorological data); demographic and economic indicators (statistical data); business registers and identification numbers (data on enterprises and their ownership); and road signs and inland waterways (mobility data).

The legal definition of high-value data does not limit its scope (unlike research and dynamic data) to data existing solely in electronic version. However, unlike dynamic data, the EU legislator imposes an absolute obligation on Member States to make such information available via an API [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 75]. High-value data shall be made available in a machine-readable format, that is, in a structured file format enabling computer programs to identify, recognize, and extract specific data and their internal structure (see Article 2 point 7 of the ODPSI), generally free of charge and, where feasible, for bulk download (see Article 25(1) of the ODPSI). An exception to the general rule of free access applies to entities referred to in Article 3 point 5 of the ODPSI (i.e., public enterprises), as well as to state and local government museums, public, scientific, and pedagogical libraries, and archives. These entities, when providing access to high-value data, may impose a fee for reuse, taking into account the general principles regarding the calculation and collection of charges for the provision and transfer of information for PSI reuse. These conditions are detailed in Chapter 4 of the ODPSI. The terms of reuse for such information must comply with the provisions of licenses based on open standards [Fisher, Piskorz-Ryń, Sakowska-Baryła, et al. 2022, 75].

CONCLUSIONS

The foregoing considerations reveal various categories of data subject to the process of reuse, and the classifications presented do not have a dichotomous nature. As Ł. Nosarzewski points out that this constitutes a broad and complex category of information [Nosarzewski 2022, 116]. The classification of a particular piece of information into one data category does not preclude its classification under another typology. Although the legislator's chosen titling of regulations on reuse might suggest otherwise, open data constitutes one of the groups of PSI. By distinguishing these, as well as research data, dynamic data, and high-value data, the legislator highlights their valuable attributes, seeking to encourage potential users to engage in their further use. This holds particular significance in the present era, where

a wide variety of information could contribute to the country's economic development and, consequently, to the improvement of individuals' well-being. The legislator presents the subject matter of the right to reuse in a broad and fairly detailed manner (to the extent possible). This approach to defining the subject of the right to reuse, together with appropriate commentary, aims to eliminate potential unawareness within society and in the state and to inspire private entities to exercise their informational entitlement.

However, it is not merely the lack of awareness among private entities regarding the right to reuse that weakens the possibility of its exercise. Even more detrimental is the reluctance of public institutions to share the information they possess. From the perspective of public sector entities, this right, much like the political entitlement to public information, is often perceived as an additional burden or obligation. Consequently, it is viewed as an undesirable obligation that employees seek to avoid, and the absence of statutory sanctions for failing to provide (or transfer) PSI may, unfortunately, encourage such behaviour. Equally significant in this context is the limited knowledge among public entity employees, which prevents them from distinguishing between the right to reuse PSI and the general right to access public information.

REFERENCES

Bernaczyk, Michał. 2021. "Wprowadzenie. Konstytucyjne czy ponadnarodowe gwarancje do otwartych danych? Kilka uwag o nowym pojęciu „wykorzystywania informacji sektora publicznego" w polskim ustawodawstwie." In *Otwarte dane i ponowne wykorzystywanie w prawie polskim*, edited by Michał Bernaczyk, 15-39. Wrocław: Prace Naukowe Wydziału Prawa, Administarcji i Ekonomii.

Boć, Jan. (ed.). 2010. *Prawo administracyjne*. Wrocław: Kolonia Limited.

Bugaric, Bojan. 2004. "Openess and transparency in public administration: challenges for public law." *Winsconsin Internetional Law Journal* 3:483-521. https://wilj.law.wisc.edu/wp-content/uploads/sites/1270/2012/02/bugaric.pdf [accessed:14.07.2025].

Chaba, Dawid. 2023. "Zbieranie i ponowne wykorzystywanie danych w jednostkach samorządu terytorialnego." *Roczniki Administracji i Prawa* 4:115-26. Lex el.

Chałubińska-Jentkiewicz, Katarzyna. 2018. *Ponowne wykorzystanie informacji sektora publicznego (re-use). Komentarz do ustawy*. Warszawa: Difin.

Chałubińska-Jentkiewicz, Katarzyna. 2021. *Prawna ochrona treści cyfrowych*. Warszawa: Wolters Kluwer. Lex el.

Eechoud, Mireille. 2011. "Friends or Foes? Creative Commons, Freedom of Information Law and the European Union Framework for Reuse of Public Sector Information." In *Open Content Licensing: From Theory to Practice*, edited by Guibault, Lucie, and Christina Angelopoulos, 169-202. Amsterdam: Amsterdam University Press. http://www.jstor.org/stable/j.ctt46mtjh [accessed: 30.06.2025].

Fisher, Bogdan. 2020. "Autorskoprawne konteksty ponownego wykorzystywania danych badawczych." In *Sto lat polskiego prawa handlowego. Księga jubileuszowa dedykowana*

Profesorowi Andrzejowi Kidybie. Tom II, edited by Małgorzata Dumkiewicz, Katarzyna Kopaczyńska-Pieczniak, and Jerzy Szczotka. Warszawa: Wolters Kluwer. Lex el.

Fischer, Bogdan, Agnieszka Piskorz-Ryń, Marlena Sakowska-Baryła, et al. 2022. *Ustawa o otwartych danych i ponownym wykorzystywaniu informacji sektora publicznego. Komentarz*. Warszawa: Wolters Kluwer.

Markiewicz, Ryszard. 2021. *Prawo autorskie na jednolitym rynku cyfrowym. Dyrektywa Parlamentu Europejskiego i Rady (UE) 2019/790*. Warszawa: Wolters Kluwer. Lex el.

Nosarzewski, Łukasz. 2022. *Prawne ograniczenia ponownego wykorzystywania informacji sektora publicznego*. Warszawa: Oficyna Wydawnicza Uczelni Łazarskiego.

Pieniążek, Patryk. 2025. "Access to public information: comparative study of Poland and United Kingdom." *Studia Iuridica Toruniensia* 36:91-110. https://apcz.umk.pl/SIT/article/view/57015/44395 [accessed: 03.06.2026].

Piskorz-Ryń, Agnieszka. 2018. *Ponowne wykorzystanie informacji sektora publicznego. Zagadnienia administracyjnoprawne*. Warszawa: Wolters Kluwer.

Sakowska-Baryła, Marlena, and Bogdan Fisher. 2024. "Wykorzystywanie otwartych danych jako element zwiększenia wyjaśnialności AI." *Prawo i Więź* 6:289-306. Lex el.

Sakowska-Baryła, Marlena. 2022. *Ochrona danych osobowych a dostęp do informacji publicznej i ponowne wykorzystywanie informacji sektora publicznego*. Warszawa: Wolters Kluwer.

Sibiga, Grzegorz, and Dominik Sybilski. 2020. *Ustawa o otwartych danych i ponownym wykorzystywaniu informacji sektora publicznego. Komentarz*. Warszawa: C.H. Beck.

Sybilski, Dominik. 2021. *Wpływ ogólnego Rozporządzenia o ochronie danych na otwarte dane i ponowne wykorzystywanie informacji sektora publicznego*. Warszawa: Oficyna Wydawnicza Uczelni Łazarskiego.

Sitniewski, Piotr. 2011. *Ustawa o dostępie do informacji publicznej. Komentarz*. Wrocław: Presscom.

Sitniewski, Piotr. 2016. *Dostęp do informacji publicznej. Pytania i odpowiedzi. Wzory pism*. Warszawa: Wolters Kluwer.

Sitniewski, Piotr. 2017. *Ustawa o ponownym wykorzystywaniu informacji sektora publicznego. Komentarz*. Warszawa: C.H. Beck.

Sitniewski, Piotr. 2022. *Otwarte dane i ponowne wykorzystywanie. Przewodnik po zmianach*. Warszawa: C.H. Beck. Lex el.

Zygmuntowski, Jan. 2020. *Wspólnice danych. Alternatywny model zarządzania danymi. Raport projektu SPOŁTECH*. https://instrat.pl/wp-content/uploads/2020/07/Raport_Wsp%C3%B3lnice_Danych_Spo%C5%82Tech.pdf [accessed: 25.06.2025].