

Is Spain hiding certain Public Sector Information behind statistical confidentiality?

Submitted on 17 Apr 2015 by Luis Meijueiro

Fears that statistical confidentiality may become a major excuse for non-disclosure of public sector data in Spain seem to have become a reality, as revealed by Openkratio - a Spanish civic association that promotes government transparency and the opening of public data in the country.

Openkratio explains [on their website](#) (in Spanish) that having requested the detailed (and anonymized) crime data that presumably was used to build the '[Balance de la Criminalidad 2013](#)' [dataset](#) (available from data portal [datos.gob.es](#)), the Ministry for Home Affairs of Spain denied the access request using the statistical confidentiality as an excuse, wielding the law of 12/1989 on the Public Statistical Function ([Ley de la Función Estadística Pública](#), further LFEP) as legal basis. In the [letter of response](#), the Ministry argues that, for the case of crime data, the LFEP prevails over any transparency legislation in Spain (and over any PSI reuse law I presume).

Openkratio [has appealed the decision](#) to the [Consejo de Transparencia y Buen Gobierno de España](#) (CTBG) within the legal timeframe (1 month). And, although I am not a legal expert, the letter of appeal seems to broadly describe why the appeal should be granted, explaining in great detail why the denial goes against several Spanish rules and regulations.



From an EU perspective, I would like to mention two aspects linked with this case: the EU PSI-reuse Directive, and the European Statistics Code of Practice. The Directive 2003/98/EC on the re-use of public sector information does not contain an obligation to allow re-use of documents. The decision whether or not to authorise re-use will remain with the Member States or the public sector body concerned (in this case the Ministry for Home Affairs of Spain). And the amendments made by [Directive 2013/37/EU](#) do not define nor change access regimes in Member States, which remain their responsibility. But given that the denial of access to crime data was justified by the mention of LFEP, then we need to know more about how Spain relates with the European Statistical System (ESS).

The [European Statistics Code of Practice \(CoP\)](#) sets out the standards for developing, producing and disseminating European statistics. The main tool for assessing progress in implementation of the Code in all the EU Member States is the ESS peer reviews. Each peer review results in a report on compliance with the CoP. A first round of peer reviews was carried out in 2006-2008, while a second round launched in December 2013 will conclude this year.

The latest peer review visit to Spain took place between 17 - 21 November 2014. [The corresponding report](#) that presents the outcomes has been available on the [Eurostat website](#) since February

2015. The reports are structured according to the issues identified by the peer reviewers for each country rather than by principles of the CoP.

In chapter 4.2.3 - *Use of confidential data for research purposes* - the peer reviewers recommend that the National Statistical Institute (NSI) of Spain should carry out actions to promote the necessary legislative amendments, authorising the Institute and other producers of official statistics to grant access to confidential data, including microdata, for research purposes and to lay down the main conditions for such access.

In other chapters, like 4.2.6 - *Increasing the security of microdata* - the peer reviewers recommend that the NSI should apply standard tools for the anonymisation of microdata files for researchers, while in chapter 4.2.9 - *Issues related to meeting user needs* - when talking about *Accessibility of microdata*, the NSI should develop and implement remote access to microdata for research purposes and lay down specific protocols for such access.

Taking these recommendations into account, I hope the NSI, the Ministry for Home Affairs, and the Consejo de Transparencia y Buen Gobierno of Spain, will be able to solve this in a way that the access and reuse of statistical microdata and the protection of privacy are both ensured.