Institutional maximization and path dependency – the delay of implementation of the EU public sector information directive in Sweden

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Running head (50 characters): Institutional Resistance against Transparency

Abstract: The translation of the word ‘document’ in the 2003/98/EC directive on the re-use of public sector information into Swedish had several alternative words but used the word ‘handling’. The administrative law precedence for the word ‘handling’ has embedded several assumptions of the actual document, and based on a precedence that started in the 1760s the interpretation became path dependent. The Swedish case of how bureaucratic inertia and path dependence can stall the implementation of EU directives is. The Swedish government’s initial stance claimed that public sector information is not within the European Commission’s jurisdiction and driven by the definition of ‘handling’. This posture has been supported and defended by the Swedish bureaucracy, unwilling to share the information with private entities, and seeking to maximize the bureaucratic influence. The Swedish case visualizes the complexity to implement legislation pursuing information dissemination requiring the cooperation of an established path dependent bureaucracy.

Keywords: e-government, public information dissemination, public sector information, PSI-directive, information market, commercialization, e-commerce

Introduction

The European Commission’s directive for commercialization of public sector information (PSI) (2003/98/EC) was implemented in Sweden after 12 years in 2015 (The Government of Sweden 2015) after the European Commission rejected a partial implementation in national legislation in 2010 (SFS 2010:566), meanwhile other directives were implemented after a few years (European Commission 2003a; b). As an example, the European Commission’s Directive 95/46 on the protection of individuals with regard to the processing of personal data (European Commission 1995) became
Swedish law in 1998 (SFS 1998:204) after only three years. This inquiry study the reasons for the decade long delay, especially as the European Commission’s directive for commercialization of public sector information (PSI) (2003/98/EC) was assumed to create economic growth and stimulate the transition to the information society and it was the European Commission’s intent that the directive would be implemented in a short time frame to enhance the common European market for information services.

The expected European market for dissemination and utilization of public sector data is still over a decade after the passing of the directive (2003/98/EC) marginal, but growing. The European Commission identified in the late 1990s that the United States was far ahead in the re-use of public sector information in both commercialized revenue and degree of re-utilization (European Commission, 2000; 2003a; b). The directive was initiated as a tool to free public information to commercial interests with several public benefits. First, the estimated European market for re-used PSI-information is estimated to be EUR 32 billion (European Commission, 2011b; The Guardian, 2007). The estimate is considered to be conservative and based on assumptions that were in place in 2009 - 2010 (European Commission, 2011b). It is troublesome to quantify new and emerging markets, but the potential for re-used PSI was and is still significant for the European economy. The rapid development of a market of geographical information by the use of geospatial positioning in smartphones has likely increased the market further.

Second, the synergy effects of the re-used PSI are considered to be high even if these effects are as well difficult to quantify. PSI can be used to make businesses more efficient, reduce waste in government, increase citizens’ confidence in government, and limit environmental impact through proper resource usage through coordination.

In a limited number of countries, the implementation of the European public sector information directive stalled; Sweden and Poland have been most obstructive to
implement (European Commission, 2008). The European Commission had to threaten Sweden with legal action before a national law (SFS 2010:566) was passed that, according to Swedish legislators, should meet the criterion of the European public sector information directive (PSI-directive). According to the European Commission, the Swedish law (SFS 2010:566) did not meet the commercialization goals intended with the initial PSI-directive (European Commission, 2011a). After the Swedish legislation of 2010 (SFS 2010:566), the Swedish Government in 2015 intend to implement the directive (2003/98/EC) fully.

The information re-distributing private enterprises, including start-ups and individual entrepreneurs, have had high hopes for a rapid implementation of the PSI-directive that would enable these companies to build new information based business.

New high-tech startups utilize geospatial, data mining, and public information to create entrepreneurial business models and are dependent on the access to public service information (Lakomaa and Kallberg 2013).

The Swedish Government usually takes great pride in its rapid and extensive implementation of EU directives and while delayed or refused implementation of directives have been commonplace in other EU member countries, Sweden has only once before the PSI directive claimed that the subsidiarity principle should overrule the European Commission. The subsidiarity principle was first used in defense of the alcohol monopoly, which is a politically-sensitive issue in Sweden.

The inquiry conducted in this paper is seeking to explain why the Swedish government first delayed, and later refused full implementation of the PSI-directive by creating a weakened legislation that relies of fragments of older freedom of information legislation (SFS 1949:105) leading to the legislation of 2010, which eventually was challenged by the European Commission and led to the full implementation in 2015.
Key in the older Swedish freedom of information legislation (SFS 1949:105) is the concept of a formal administrative document ‘handling’, which derives its origin from the first access to public records given 1766.

The national bureaucracy has limited, if any, incentive to usher forward or be a proponent of transparency and dissemination of public sector information. The four ways of disseminating public information described by Piotrowski (2007) – public meeting, leaks, voluntarily dissemination and freedom of information requests – are driven by other actors than the bureaucracy itself. The dissemination described by Piotrowski (2007) sees the information sharing as a result of political processes. The challenge occurs when politicians restrain from regulating the dissemination of information in detail and the bureaucracy is given a wide mandate to structure the release of public information. The Swedish case clearly visualizes the conflict between a political vision and the bureaucracy’s inherited self-interest.

**Previous research**

Existing research on Public Sector Information (PSI) is predominantly related to e-government inquiries addressing aspects of democratic theory, voter participation, democratic deliberation, and open government in a broader context (Amichai-Hamburger, McKenna and Tal, 2008; Bertot, Jaeger and McClure, 2008; Blackstone, Boganno and Hakim, 2005; Bertot and Jaeger, 2006; 2008; Chadwick, 2008; Carter and Weerakkody, 2008; Garson, 2003; Hernon, Cullen and Relyea, 2006; Ganapati, 2010; Khosrow-Pour, 2009). The linkage to PSI in published research is in several cases weak and in general terms. The value of PSI is seen as strengthening democratic institutions and empowering citizens instead of commercialization. The existing relevant research is derived from democratic theory (Dahl, 1971; 1991; 1998; 2005; Habermas, 1971; 1991;
Estlund, 1997; Kallberg, 2011). The core set of reasoning and inquiry address citizen participation, the legitimacy and authority of the state, and the level of citizen confidence in the state’s execution of power. Public access to PSI is a vehicle for transparency in the democratic context (Bertot, Jaeger and McGrimes, 2010; Franzel and Coursey, 2003; Nixon and Koutrakou, 2007; Nixon, Koutrakou and Rawal, 2010) or a method to address corruption and waste (Wong and Welch, 2004; Kallberg, 2011; Bertot, Jaeger and McGrimes, 2010). The future value of commercialization is largely ignored in the paradigm of e-government research regarding dissemination of public sector information.

The inherent conflict of interest between PSI-information owners and potential PSI-utilizing commercial entities is mentioned, but not investigated thoroughly in the existing literature. Blakesmore and Craglia (2006) state that the conflict between PSI-information owners and potential PSI-utilizing commercial entities can be seen in four different ways. These four perspectives are derived from the limited earlier research.

The first perspective is built on the assumption that the PSI-aggregating agencies, which in practice are governmental entities, are used to deliver services to the public. The PSI-aggregating agencies are influenced by institutional reasoning, such as possessing domain knowledge, and therefore regard themselves as superior in the delivery of the PSI-information to the citizens (Lash, 2002). According to Lash, the agencies intend to manage and administrate all public aspects of the issues within their realm of influence. Therefore, they are seeking to manage the eventual commercialization of PSI-information under their control.

The second perspective is that PSI-information is like any other commodity. In this market the buyer and the seller have equal power and understanding of the market (Harvey, 2001). This perspective is indirectly founded on the assumption that the
agencies are unbiased and lack institutional self-interest, an assumption that is challenged by other research (Rothstein and Torell, 2008).

The third perspective is influenced by post-modernism and focuses on the power struggle between Nation States and the EU. According to Richardson and Jensen (2000) there is a conflict between the European Commission, the executive arm of the European Union, and the member states. The PSI-information is, according to the member states, considered to be a national issue and the control over PSI-information resides with the member states. Meanwhile the European Commission has exerted their authority on the PSI-information issue as an integrated part of their mission to increase European integration and cross-border cooperation.

The third perspective is interesting from a Nordic and Swedish perspective. It can explain why Sweden only implemented the PSI-directive twelve years after the directive was decided by the EU, and only after the EU had threatened Sweden with legal proceedings to enforce EU-legislation. The PSI itself is not the issue according to the third perspective; it becomes a proxy for a larger power struggle between the over-arching European Union and the member states. This view could have explanatory power in the Swedish case as Swedish bureaucracy has collected data extensively for over 50 years, at an annual societal cost between 1 – 2 % of GDP, which directly makes the data a core asset of the agencies. The Swedish bureaucracy is also in international perspective highly automated and relies on the data integrity of their databases.

The notion to surrender these data to a data dissemination based on a European Commission directive could, according to the third perspective, be seen as a significant financial loss for the Swedish government and a decline in national sovereignty.

The fourth perspective is purely economic and focuses on the notion that since data gathering has been funded by the tax payers, the data should also be freely
accessible by the tax payers. Citizens are accustomed to free access over the Internet to unprocessed information, even if processed and refined information may cost money to access (Longhorn and Blackmore, 2004).

International research on access to information and pricing has mainly addressed topographical and geo-spatial information (Longhorn and Blackmore, 2004; Ganapati, 2010; Harvey, 2001; Norris, 2007; Richardson and Jensen, 2000; Pubellier, 2005) or national statistics (Cook, 2000). Limited research has been conducted in the field of inter-municipal cost-sharing in the context of coordination and provision of jointly generated services (Tomkinson, 2007). Cerrillo-i-Martinez (2011) reports the Spanish development of dissemination of PSI but does not directly link the developments to the PSI-directive, but instead to a national effort to increase transparency within the Spanish government. Janssen (2011) studied compliance of the PSI-directive implementation and the alignment with the guidelines and overarching ideas formed by the European Commission that led up to the PSI-directive. Janssen (2011) reviews the legacy of actions, ideas, and the foundation that formed the incentive for the PSI-directive from the first initial technical reports in the late 1990s to the national implementation of the directive. Janssen is targeting the legal compliance of the PSI-directive. She writes:

“The general principle in Article 3 shows the limited ambition of the PSI directive: the Member States have to ensure that, where the re-use of documents held by public sector bodies is allowed; these documents shall be re-usurable for commercial or non-commercial purposes in accordance with the provisions of the directive. Hence, the directive does not impose any obligation on the Member States or the public bodies to allow re-use, but only to comply with the obligations of the directive if they choose to make their data available for re-use. However, the freedom of the Member States or public sector bodies to allow re-use is not unlimited. When they decide to make their documents available for re-use for one purpose outside of the
public task, e.g. research, they have to allow any other type of re-use of these documents. It is no longer possible for public sector bodies to allow non-commercial re-use of their data, while prohibiting any commercial application” (Janssen and Kabel, 2005).

Janssen points out that the purpose of the PSI-directive was to commercialize PSI and that any additional considerations such as democratic participation, transparency, and accountability, are beneficial for society but not the goal for the PSI-directive.

In the Swedish case the institutional resistance against the implementation of the PSI-directive has a variety of rationales and motives. Bureaucracies tend to defend status quo, and to add to the change aversion. There are several Swedish structural obstacles that can, if utilized against implementation, be significant hurdles for legislators to override the bureaucracy’s unwillingness to implement.

By using the word ‘handling’ for a general piece of information in the translation to Swedish of the directive 2003/98/EC it enabled the bureaucracy to deny massive public release of public sector information.

**A single words makes a difference**

A reoccurring Swedish issue is the conceptual and terminological blending of *Offentlighetsprincipen*, the Swedish established right to read a physical copy of any unclassified official public print or document once processed in the bureaucracy, and PSI. The Swedish *Tryckfrihetsförordningen*, the ordinance of freedom for the press, is derived from *Offentlighetsprincipen*. The FOIA (Freedom of Information Act) extends the rights from the *Offentlighetsprincipen*, which translated to English would be ‘the Principle of Open Government’.
The core of the Offentlighetsprincipen is from the 1766, even if it has been revised and updated several times since then, but it was not a freedom of information per se but instead a freedom to read what the king already had authorized to be published and the right to republish documents already cleared by the monarch to be published.

For a citizen to see what the King, and his administration have written, the document had to be a drawn up document that is finalized called in Swedish ‘upprättad handling’. In the 2003/98/EC directive the English word ‘document’ is translated to ‘handling’, which directly in Swedish administrative law is defined and already been established in the courts already in the 1800s as a drawn up finalized administrative paper document. A ‘handling’ is the government agency, the department, or the county’s official stand and can be challenged by the citizen’s in court. The ‘handling’ has its inherent legal standing.

By using the word ‘handling’ in the Swedish translation of 2003/98/EC, the national bureaucracy refuted the idea it could be data, data bases, digital information, GIS information, but instead had to be a paper copy of a drawn up finalized official document. The usage of ‘handling’ with no further explanation, which leaves the definition to rely of court precedence, triggered a path dependent behavior that is a major reason why the implementation of 2003/98/EC was delayed a decade.

Offentlighetsprincipen is well-established in Swedish administrative law with, by international comparison, large precedence in court cases. By being unable to separate Offentlighetsprincipen, Tryckfrihetsförordningen and the 2003/98/EC PSI-directive within Swedish administrative agencies, it created opportunities to block, delay, or create rules that work against the purpose of the 2003/98/EC PSI-directive.
The fact that public documents have been publically available for since 1766 has created legacy of the pricing, access, and timeliness of access to documents that is counter-productive to PSI-directive and is described in the literature (Woods, 2001). Woods states,

“Many of the member states government agencies at present charge for PSI and there is a widely held view that rigorous freedom of information legislation weakens the grip of government on the information. However, Sweden has had a freedom of information policy in place since the mid-1700s and the high rates of charging for PSI by its government agencies refute this view. Significantly, of all the countries in the survey, it makes the highest investment in the production of public sector information, and perhaps as a result it also has the highest value of information, of between 0.5% and 2.8% of its GNP.”

Woods states that the assumption that well-established public access to documents would guarantee dissemination and access of PSI at an acceptable cost is false. Wood (2001) uses Sweden as the example. He clearly states that the legal legacy would be an obstacle. The Swedish public discourse was the opposite. The Swedish government, and public discourse, firmly officially believed that they are spearheading the dissemination of public information based on the traditional right to read public paper documents. This would have been true, if the directive 2003/98/EC was limited to drawn up finalized official documents on paper.

**The financial upside for the bureaucracy**

The Swedish government are paid by allocated funds from the national budget, but to avoid agencies and department to return small incomes to the treasury it has been the rule that any side-income an agency or department can generate can be kept by the government entity and utilized (SFS 1992:191). The rule originated in the 1970s when citizens started to ask for photocopies of public documents, providing a limited income
for the agencies that charged € 20 cents a photo copy. The law makers of the 1970s thought it was irrational to send back these incomes derived from € 20 cents a photocopy to the treasury, so the agencies were allowed to keep any revenue that was raised from selling information or copies thereof leading to the Avgiftsförordningen (SFS 1992:191). The Avgiftsförordningen, translated to English ‘the law of dues and tariffs’, allows agencies to actively sell their information and raise money, which can be used by the agency at their will within the law, and it will not affect their budget.

So if an agency denies any private entity to reuse of it can instead raise money and commercialize it themselves, which was the bureaucratic opportunity that was protected in the 2010 legislation.

Seen from this perspective, the law Avgiftsförordningen, which was designed to allow agencies to keep a few thousand Euro of photocopying fees would allow the agencies to sell data for millions of Euro. Several agencies started in the early 2000s to refine, process, and retail data themselves with the support of the Avgiftsförordningen. Lantmäteriverket, the Swedish mapping, cadastral and land registration authority, SMHI, the meteorological agency, and Bolagsverket, the national office of incorporation, adopted this idea and commercialized PSI data themselves. If the government themselves commercialize the data and become retailers of commercialized data it derails the intent with 2003/98/EC directive, because the intent with the directive is to initiate a private enterprise utilization of the re-used data. A government commercialization would also limit the actual re-use as the re-use would be within the boundaries of the government agency’s field. As an example, an entrepreneur could design a dating application or direct marketing tools from cadastral land data, which the land survey agency will not do. So the commercialization through the government agencies themselves retailing processed data has a limited economic potential.

The Swedish national statistics board SCB (2015) supplies the basic data, but charges for the computation of non-standard datasets, which is a form of commercialization as the data is held in the governmental sphere and any non-standardized analysis would be a matter of commercial activity from the agency.

The Swedish discourse within government agencies has been mainly focused on the opportunity to raise additional revenue and not the opportunity to create public good through increased utilization of data. Due to the path dependent relation to the document as a ‘handling’ there has been, until the legislative session leading to the new legislation of 2015, limited discourse beyond the concept of a drawn up final official paper document. The state-run Swedish Institute for Economic Growth (ITPS) produced a report ‘PSI-direktivet – politik och potential’ (ITPS, 2008) that avoided the larger context and instead only focuses on the commercialization of geo-spatial data in a limited market space.

In the report ‘Fritt fram att avtala om offentlig information?’, The Swedish Agency for Public Management, Statskontoret, describes processes for dissemination of PSI and what contractual concerns there might be. However, it does not separate Swedish Offentlighetsprincipen from the European PSI-directive leading to a distorted picture of the legal foundation (Statskontoret, 2005). This steering document issued by the central Swedish government is was misleading and lacked understanding of the European objectives.

Statskontoret (2005) considers that Sweden, by the older legislation, already meets the requirements from the PSI-directive, which is clearly inaccurate and evidenced by the European Commission’s non-acceptance of the 2010 legislation and forcing compliance leading to the 2015 legislation.
The older Swedish legislation is a right to read legislation that requires that the citizen knows the resource exists, where it is stored and in which format, and requires an outlay to request the information, and then the agency can deliver the information in a non-machine readable format, as long as the document is finalized and reaches the threshold to be considered a drawn up official document ‘handling’.

This extensive freedom for the agency to set their own rules and keep the proceeds can be used to sell digital services by the agencies themselves, as the Swedish incorporation registry, Bolagsverket, sells online as a retailer of their own database information of who owns a company, the composition of the corporate boards, and any corporate filing. The Bolagsverket sells the information retail and provides a database for other information merchants that is limited compared to the database the bureaucracy themselves market at retail pricing. There is no access to the complete database as raw data – and if requested as freedom-of-information – then the Bolagsverket can deliver the database as several tons of printouts at a price of € 25 cents a page. The option to refuse machine-readable format and the legal right to invoice € 25 cents a printed pages ensures that Bolagsverket can completely block any threatening competition that will undermine the commercialization business model of the agency.

**Bureaucratic resistance through confusion**

In the 2010 legislation to implement the 2003/98/EC directive, there was a confusion that linked the offentlighetsprincipen and the PSI-directive, that lead to the reliance on established, but irrelevant, legal precedence which prevented the implementation of the PSI directive. Offentlighetsprincipen has been legally codified with extensive published legal research (Lundell and Strömberg, 2009; Bohlin, 2010). This confusion creates a belief that there is a legal standing to claim that the
requirements of the PSI-directive are met. As stated, the *core problem* is that the Swedish freedom-of-information legislation and PSI-directive are *not interchangeable and different from a legal perspective*.

*Offentlighetsprincipen* and supporting and auxiliary Swedish freedom of the press legislation, is a legal tradition since the mid-1700s that aims to allow the public to share a public decision made by the royal authorities, once determined and published by the authorities themselves, and this right is extended over time to all public documents that are not classified. The citizens’ right is to read the public document and the citizen will be provided an opportunity to read the public documents at any Swedish government agency. If the citizen want a copy to read at home, it becomes a financial transaction between the citizen and the agency.

Pricing is based on the interest to see one sheet of paper, or a few, and time is not of the immediate essence. The precedence is that a request should be processed within 4 – 6 weeks. The agency can freely choose the method of disseminating the information. A request to obtain a copy of the computerized data set of court dockets could at the court’s discretion be printed out on thousands of papers and delivered 4 – 6 weeks after the request at a price of €20 cents a page. The method of delivery can greatly reduce the functional usability of the data, rendering it practically useless. The PSI-directive was initiated to imitate the U.S.’s success in creation of information services based on re-used public sector information. The EU and European Commission identified that Europe was far behind the U.S. in capitalizing on its public sector information assets to drive the evolution of the information society. In the U.S., these data sets are either free or made available at low cost.
The Swedish definition of document

In the original English version of the PSI-directive, the word ”document” is used (European Commission, 2003a), which in the United Kingdom has a wider interpretation than the Swedish “handling” that is used in the translation to Swedish in the official European documentation (European Commission, 2003b). This little translation error triggers a chain of confusion. The focus in the Swedish translation becomes “handling” which in the legal precedence in Swedish is a sheet of paper that contains written information. The misconception proliferates into the Swedish implementation by using the freedom of press definition of “handling” which dates all the way back to the mid-1700s as an expedited final written act of the government. The word “handling” is well-defined in the national Swedish legal literature (Lundell and Strömberg, 2009; Bohlin, 2010). The main construct in the legal framework of the Swedish freedom of press is defined as when a proceeding is finalized with a public servant’s final decision, a citizen can ask to see the underlying documents if not classified. This request has to be processed in “reasonable” time. By using the obsolete and misleading interpretation, raw data could be seen as being outside of the scope of the PSI-directive according to Swedish legal scholars. The absence of Swedish PSI-directive supporting literature and the amassed volume of precedence and literature defining offentlighetsprincipen create an obstacle for releasing raw PSI-data to commercialization. The key term is the Swedish “upprättad” which can be translated to the English ‘prepared’ or ‘expedited’. In the Swedish offentlighetsprincipen, an expedited and prepared (“upprättad”) document cannot in legal doctrine be an unprocessed data point because the process itself generated the preparedness that constitutes the threshold for being considered ‘expedited and prepared’.
Bureaucratic resistance through delayed action

In the information society, we are used to real-time access to data. The Swedish PSI-directive implementation of 2010 links the dissemination to the older established offentlighetsprincipen. The existence of confusion stems from older laws that have precedence for how much time is acceptable for the fulfillment of a public records request. The Swedish laws use the word ‘skyndsamt’, for which the English translation would be promptly, and is linked to the work load of the government agency. If the agency is busy a ‘prompt’ compliance with the request can take over a month to process due to the legal precedence is over a century old, when the pace in information processing apparently was very slow.

The agencies can utilize this aspect to separate the PSI-directive driven access to their own retailing of processed information. If commercializing private entities want access to information, the information could be a month old; meanwhile the agency retails real-time information over the Internet at retail price. This is not in compliance with the PSI-directive, but current Swedish law, in its 2010 version, enables the opportunity for agencies to attempt to maximize revenues. This vulnerability for the implementation of the PSI-directive, in combination with the Swedish administrative code Avgiftsförordningen, enables the agencies to freely use any revenue generated from the freedom of information.

The time of delivery has not been investigated in the peer-reviewed published literature, but is essential for the factual commercialization of PSI. Even if it will occur in later revisions of the PSI-directive, the implementation is still national.

When Neelie Kroes of the European Commission presents the future development of the PSI-directive in three major directions, the delivery time aspect is not mentioned (European Commission, 2011a):
The Commission proposes to update the 2003 Directive on the re-use of public sector information by:

Making it a general rule that all documents made accessible by public sector bodies can be re-used for any purpose, commercial or non-commercial, unless protected by third party copyright;

Establishing the principle that public bodies should not be allowed to charge more than costs triggered by the individual request for data (marginal costs); in practice this means most data will be offered for free or virtually for free, unless duly justified.

Making it compulsory to provide data in commonly-used, machine-readable formats, to ensure data can be effectively re-used.

Introducing regulatory oversight to enforce these principles;

Massively expanding the reach of the Directive to include libraries, museums and archives for the first time; the existing 2003 rules will apply to data from such institutions.”

The four obstacles identified are: the price of the information, the need for machine-readable format, accessibility, and timing. The problem is that without setting limits on delays of dissemination of data, it will be up to the agencies to determine. If the Department of Motor Vehicles can provide 60-day old vehicle registration data, or the SMHI weather forecast for yesterday, and still meet the alleged requirements of the PSI directive while at the same time sell processed, real-time data in retail, it will undermine the implementation of the directive.

Bureaucratic resistance has also relied on privacy concerns based on EU protection of privacy (European Commission, 1995) to avoid non-government commercialization and usher in agency maximization through the government itself as the commercialization partner. The privacy issue is central as the Swedish government
have collected a massive amount of personal data on the citizens, data that in many cases is accessible through FOIA.

The Swedish FOIA handles the associated privacy risks by only releasing sensitive information on paper. Traditionally this has prevented wide dissemination and re-use of sensitive data as the cost and time issues have prevented persons and companies to acquire usable data sets and prevented them from cross referencing data.

The requirements of machine-readability in the PSI directive, in order to reduce the privacy risks associated with the massive personal data collected, therefore requires changes in the Swedish privacy laws, or that sensitive personal information on the citizens are purged from the Government databases.

**Bureaucratic resistance supported by political fear**

International research has shown that there is a resistance to transparency and to the release of large aggregations of bulk data if the political elite assume there is a political risk involved (Coglianese, 2009). The release of data gives others an opportunity to see results that could have been ignored or missed by the agencies themselves. Politicians are more concerned about their legacy than they tend to express (Dobel, 2005; Ruscio, 2004). This basal political survival instinct creates a political anxiety over the release of raw data in bulk. A British survey has shown that trust for government is lost initially when data and information is made freely available (Worthy, 2010).

Data from national government, counties, and municipalities that is a record of program performance and how policy is implemented to execute the production and distribution of public goods and services are likely to be thoroughly researched by interest groups, trade unions, legal activists, political opposition, and various segments
of the civic society. Those who set out on a journey to find failure are likely to find it according to Worthy (2010).

From this perspective it can be assumed that government authorities will try to control or delay the implementation of the PSI directive. It could also provide an explanation to why Sweden, a nation that historically has been a quick implementer of directives, has first after twelve years decided to fully implement the 2003/98/EC directive (European Commission, 2003a; b; SFS 2010:566; The Government of Sweden 2015). It has to be noted that the central Swedish government has assigned two persons, one full-time and a second part-time, to work with PSI-directive related issues on a part-time basis meanwhile other countries have staff of 20 – 50 employees assigned to implement the directive or to promote transparency.

In comparison with the U.S. (Tolbert, Mossberger, and McNeal, 2008), not only is Sweden far behind in PSI dissemination, but also the rest of Europe. U.S. and Australia (Creative Commons, 2015; The Government of Australia, 2015a; b) have taken steps to further increase accessibility to PSI data from federal, state and local government (U.S. Office of Management and Budget, 2004; 2009; 2015a; 2015b; 2015c; U.S. Congress, 2003; State of Texas, 2015a; 2015b; Federal Funding Accountability and Transparency Act of 2006).

Conclusion

The Swedish delay in implementing the PSI-directive can be explained by three factors: the translation of the English word ‘document’ that was translated to ‘handling’ triggering a path dependency of older freedom-of-information legislation that was not relevant, bureaucratic self-interest and agency maximization, and finally, political weak leadership and inability to transpose visionary thinking to tangible results.
Political visionary thinking and broad ideas can stumble – if the instructions to the bureaucracy are too open ended or if the bureaucracy realize that there is no real political intent behind the different transparency postures presented by the political elite. The Swedish case visualizes the complexity to implement legislation pursuing information dissemination requiring the cooperation of an established path dependent bureaucracy. The sudden utilization of the subsidiarity principle as a defense against compliance with the directive 2003/98/EC visualize the connection between the bureaucracy, which sees an opportunity to do bureaucratic maximization and commercialize their information assets themselves, and politicians unable to lead the bureaucracy, but instead are led by the bureaucracy.

An aligned finding is if the bureaucracy is left, with limited political supervision, to tailor the implementation of the European public sector information directive, it is likely that the outcome is marginal data released for commercialization. If the bureaucracy is able to by themselves commercialize data dissemination, then the bureaucracy will likely seek to prevent other actors, as private enterprises, to enter the market and gain access to the data held by the bureaucracy. Early commercialization using the bureaucracy as the bridge to private commercialization could increase the resistance to enlarged dissemination.

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