

reinventing
data
protection?

Freedom of Information *vs.* Privacy

(Privacy *vs.* Freedom of Information?)

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Are FoI and Privacy conflicting...

...concepts?

...values?

...rights?

Essentially, ***NO***.

Both protect the citizen
against excessive information power.

Are FoI and Privacy complementary...

...concepts?

...values?

...rights?

Essentially, ***YES***.

The transparent, accountable State and the autonomous, self-determining citizen are interdependent sister concepts.

Are FoI and Privacy complementary...

...concepts?

...values?

...rights?

- East/West cultural dichotomy? – not completely true

- Democratic/dictatorial dichotomy? – a grotesque symmetry

Essentially, ***YES***.

The transparent, accountable State and the autonomous, self-determining citizen are interdependent sister concepts.

If this is true...

...there is no need to “balance” the two concepts in general.

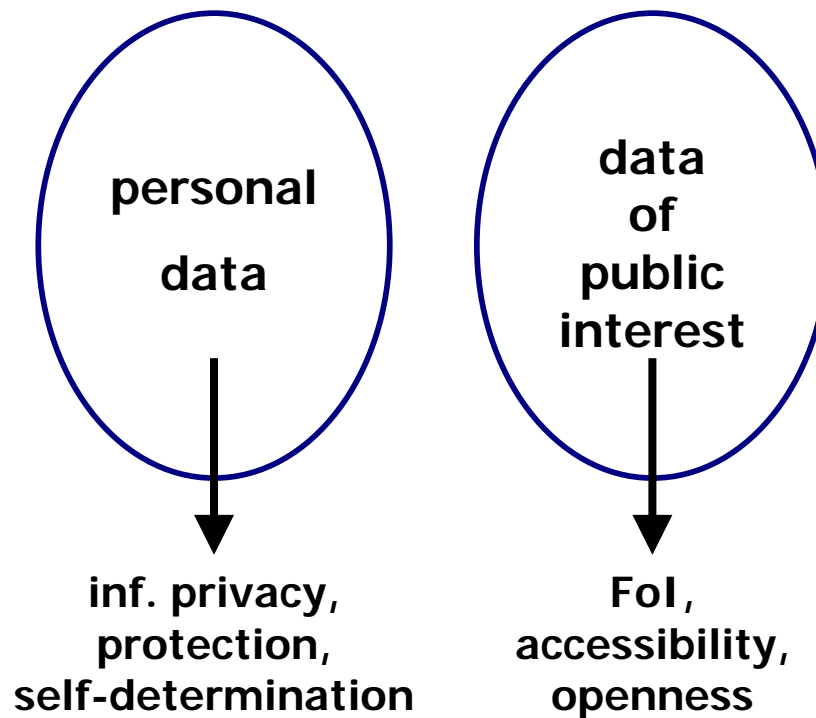
BUT:

There are conflicting *areas*, or *interfaces* between
FoI and Privacy

- Where does access to one’s own data belong to?
FoI or data protection (or informational self-determination)?
- Does a public servant have a private life?
- Are information about collaborators of former [dictatorial]
regimes, “data of public interest”?

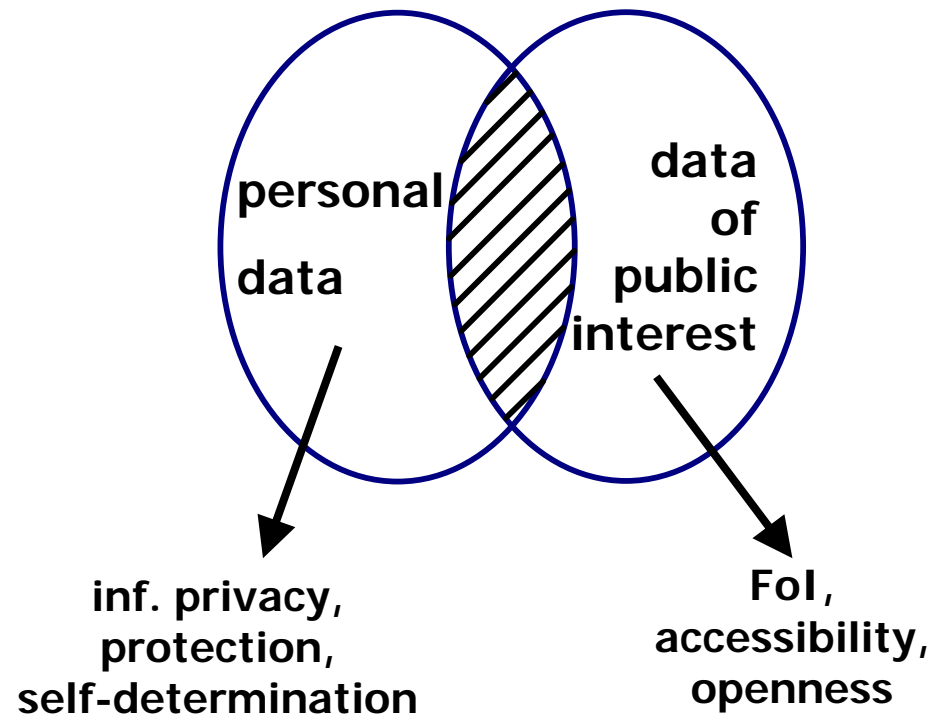
Public service and private life

(Public and private: an outdated dichotomy?)



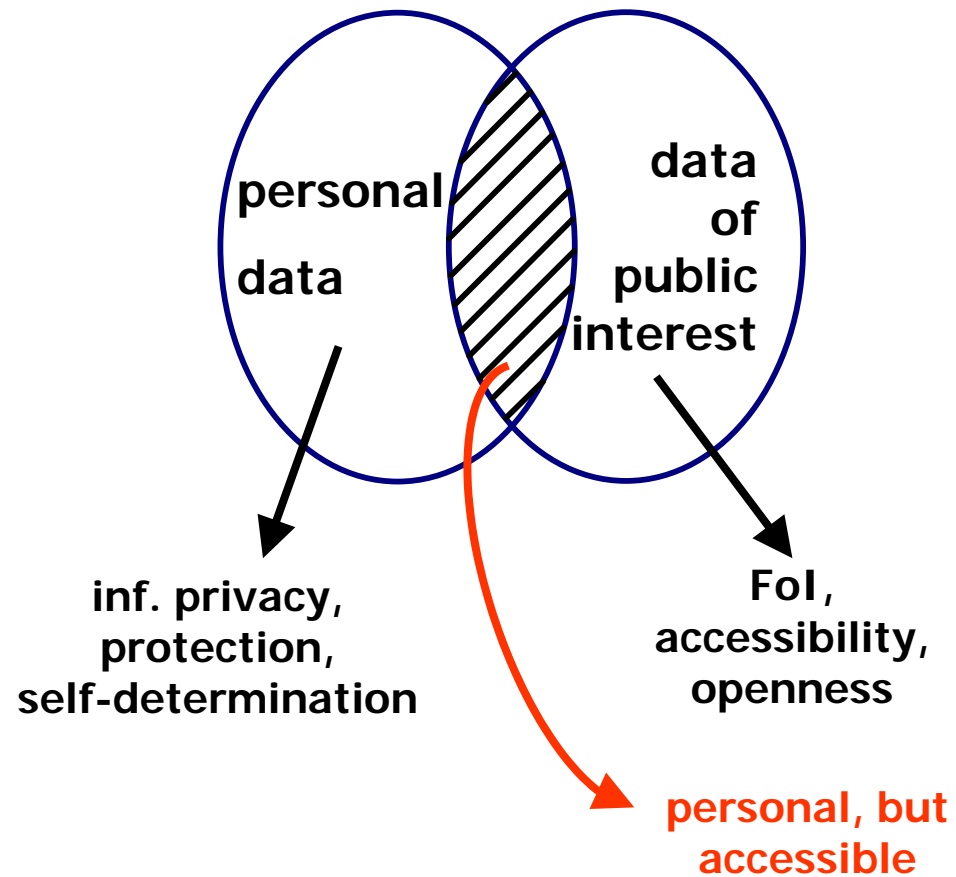
Public service and private life

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Public service and private life

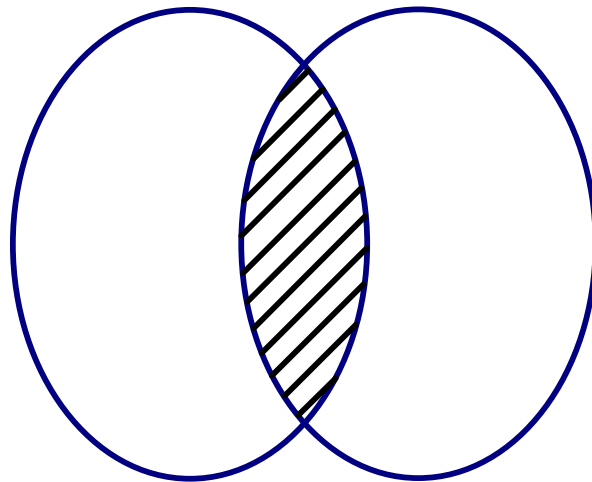
(Public and private: an outdated dichotomy?)



Public service and private life

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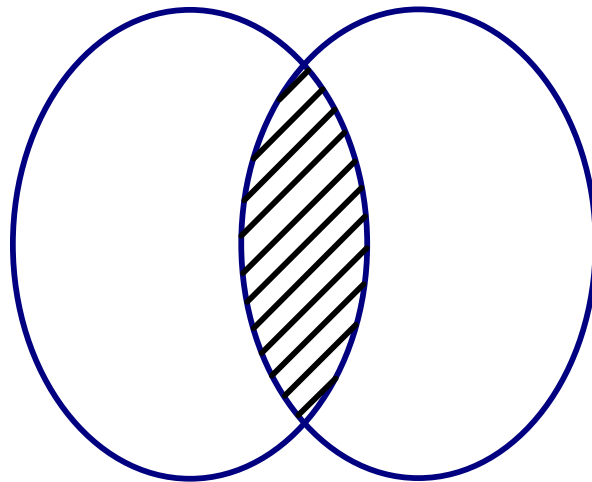
How wide?



Public service and private life

(Public and private: an outdated dichotomy?)

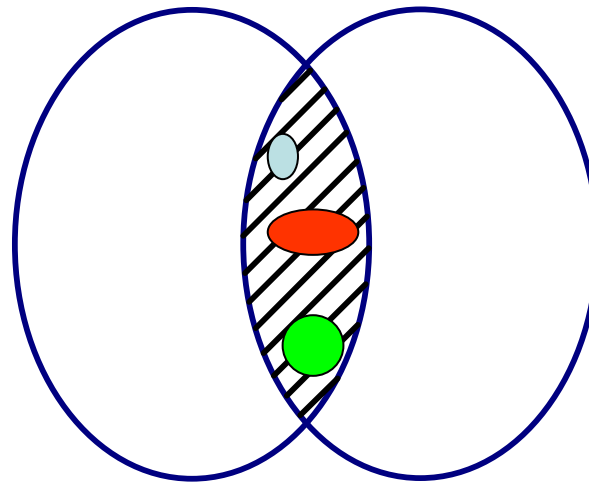
How long?



Public service and private life

(Public and private: an outdated dichotomy?)

How separable?



→ The clue is the
public function

Lustration (Screening and purging...)

- Screening and purging: *sanctions*
- Informational compensation: *collective rights*
- Informational self-determination: *individual rights*

➔ The clue is the
public function

Evolution or erosion?

FoI: historical evolution

Privacy: historical erosion

New democracies:
rapid evolution, followed by erosion in both areas

Evolution + instant erosion:
Western influence on new democracies

Similarities and differences

Similar courses:

research, advocacy, legislation, institutionalization, criticism, activism...

Different pace:

FoI: early start, slow development, good finishing

Privacy: several advances but losing ground

Today:

more FOIAs (~70) than Privacy/DPAs (~55)

but more Privacy/DP Commissioners (~45) than

Information Commissioners (~22)

Common solutions

Legislation: combined or interrelated;
system of sectoral laws vs. single-law solutions

Supervision: combined or interrelated;
Information *and* Privacy Commissioners

Education: citizens, data controllers, public servants,
journalists, information technologists...

Civil movements: convergence

Neighbouring areas: FoI and FoE

Freedom of Information and Freedom of Expression:
"communication" rights?

(Communication is over-represented among information operators)

FoI as a prerequisite of FoE

Freedom *without* information = Glasnost...

FoE: old branches of civil law

FoI: new branches of constitutional law

(quasi case law of the supervisory agencies)

Neighbouring areas: Archives and Privacy

The changing role of archives:

- archives of the recent past

- post-custodial archives

- document life-cycle management

- digitization

- distributed storage

- storing "everything" "forever"...

Scholarly research *vs.* Privacy

Access to archives *vs.* Privacy

More realistic rules needed (but not weaker guarantees)

Common danger: restrictions in the post-9/11 era

There *are* lawful and legitimate interests which can lead to curbs on informational rights and freedoms.

Such curbs should be imposed in a reversible way.

Post-9/11 FoI restrictions: theoretically reversible

Post-9/11 privacy restrictions: practically irreversible

A suggestion: A checklist of minimum standards of restricting informational rights

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