



June 18, 2022

To:

Ms. Kavita Bhatia,
Scientist 'F',
Ministry of Electronics and Information Technology (Government of India)
Electronics Niketan,
6, CGO Complex, Lodhi Road,
New Delhi - 110003.
E-mail: kbhatia@gov.in ; pmu.otech@meity.gov.in

Submission to the Ministry of Electronics and Information Technology on the National
Data Governance Framework Policy - June 2022

We thank the Ministry of Electronics and Information Technology (MeitY) for the opportunity to submit comments on the new draft version of the proposed National Data Governance Framework Policy.

About Access Now

Access Now is an international non-profit organisation which works to defend and extend the digital rights of users at risk globally. Through presence in 13 countries around the world, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the internet's continued openness and the protection of fundamental rights.

As part of this mission we operate a global Digital Security Helpline for users at risk to mitigate specific technical threats. We work directly with lawmakers at national and international forums to ensure policy decisions are focused on users and those who are most vulnerable. We also host RightsCon, the world's leading conference on human rights in the digital age. We coordinate as part of CiviCERT (Computer Incident Response Center for Civil Society) a Trusted Introducer accredited CERT, and are a member of the global Forum of Incident



Response and Security Teams (FIRST). We have special consultative status at the United Nations.¹

Access Now has consistently engaged with multiple stakeholders around the world, including governments and regulatory authorities, on the creation of data protection and governance frameworks; and also specifically with digital rights related developments in India, including the Personal Data Protection Bill, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, and the Directions issued by CERT-In in April 2022. We write to you to provide our comments based on our expertise working on data governance and digital rights in various regions across the world, including the Asia Pacific region.

Below, we provide our initial comments on the May-June 2022 version of the draft National Data Governance Framework Policy (“Draft Policy”).

Access Now’s brief initial comments on the Draft Policy

We recognise and appreciate the importance of a Union Government effort to systemize how it maintains and enables accessibility of data, and we commend the Ministry for redrafting the Draft Policy in light of the very alarming approach and language in the previous draft. However, we humbly submit that further changes are necessary if the Government of India wishes to advance this Draft Policy.

At the outset, we respectfully state that in the absence of a data protection law, the impact of measures proposed in the Draft Policy on people’s privacy is concerning; without an anchoring legislation, the precise scope and authority that the Draft Policy carries and the manner in which it may be implemented needs further clarification. This is particularly critical given India’s federal system and the fact that the Draft Policy proposes to include state government and state-union level data issues as well within its ambit [**Part 3 of the Draft Policy**]; in the absence of a clear, federally applicable data protection legal framework, the Draft Policy would add to uncertainty for users regarding their data and likely result in obstacles to remedy in cases of data breach or other privacy harms.

Despite some of the most alarming language around commercialisation of data having been eliminated, we are still concerned by the overall approach and lacunae in the Government’s

¹ Access Now, *About us*, <https://www.accessnow.org/about-us/>.



proposed steps in the Draft Policy.

The Draft Policy continues an approach which does not adequately recognise that the data collected, managed and retained by government agencies and the public sector as a whole is extremely sensitive, and crucial for the protection of individual privacy as well as national security, and therefore, needs to be governed by a robust, well-defined framework regarding access, sharing, and remedy. Such a framework must prioritise the need to safeguard privacy and data protection, treating the interest of individuals as paramount, and must be in keeping with the strictest standards of necessity and proportionality, data minimisation and storage limitation. Only if this is done, will the rules and standards that will be framed under the policy in the future, including on anonymisation for example, meaningfully protect people's privacy.

We respectfully submit that the primary purpose of the Draft Policy is still not ideal [**Part 2 of the Draft Policy**]. We believe it would have been crucial to focus on truly ensuring that the government's efforts with respect to data are aimed at making sure citizens are truly aware and in charge of their data, and that open government and open data efforts build on the spirit of the Right To Information movement. Instead, the Draft Policy still appears to be geared at enhancing data collection, linking together data and making it available for the apparent purpose of growing 'artificial intelligence' and machine learning efforts, particularly from a perspective of aiding the growth of domestic industry on that front.

A crucial gap in the Draft Policy is that it fails to specify how it will interact with the Personal Data Protection Bill (PDPB) [**Parts 5 and 6 of the Draft Policy**]. For instance, the interaction between the proposed India Data Management Office (IDMO) and the proposed Data Protection Authority to be established under the PDPB currently before Parliament is unclear. Furthermore, in the absence of an anchoring legislation, the authority that the proposed IDMO will have over the different stakeholders in the system - Union Government departments, state governments, the private sector - is not clear. And if the IDMO is proposed to be established before the PDPB is passed, it is troubling that the Draft Policy does not place any mandate on the IDMO regarding safeguarding and furthering data protection principles and remedy in how it would govern access and sharing of public sector data. This would not only be a lost opportunity; a failure to do so would place the privacy interests of individuals in India at risk and likely result in institutional clashes between the IDMO and the Data Protection Authority under the PDPB in the immediate future.



Therefore, despite some improvements, the core focus of the Draft Policy still needs to shift, from enabling more and better storage and access to data, to empowering people to better control their data and how it is used, and once that is done, the former will follow to ultimately result in a data governance framework that protects people's rights and enables true realisation of the value of data. **We urge the Ministry of Electronics and Information Technology to incorporate this feedback, and the concerns that continue to be raised by stakeholders, and conduct a consultation on a final, improved version of this Draft Policy before proceeding further.**

Conclusion

Thank you for the opportunity to participate in this consultation. We remain available for any clarification or queries, and hope to be of further assistance in this important process.

Yours sincerely,

Raman Jit Singh Chima

Senior International Counsel and Asia Pacific Policy Director

raman@accessnow.org

Namrata Maheshwari

Asia Pacific Policy Counsel

namrata@accessnow.org

Access Now | <https://www.accessnow.org>