

(S. B. 236)
(Conference)

(No. 122-2019)

(Approved August 1, 2019)

AN ACT

To create the “Puerto Rico Open Government Data Act,” in order to establish as a Public Policy principle that managing government data effectively is critical to support innovation processes of all the sectors in Puerto Rico, facilitate a culture of constant improvement and accountability in governmental bodies, have sustainable economic development and growth, and generate valuable tangible results that have an impact on our people; to create the position of Chief Data Officer under the office of the Puerto Rico Innovation and Technology Service (PRITS), and establish its powers and duties in order to guarantee the implementation of the public policy established in this Act; set forth the obligation of Governmental Bodies to collaborate with the Puerto Rico Institute of Statistics and the Chief Data Officer; repeal Act No. 69-2005; and for other related purposes.

STATEMENT OF MOTIVES

Compliance with the rules on the right of access to public information, fiscal and administrative transparency, accountability, data openness, and having an open government are some of the claims made by citizens worldwide that have become the new paradigms of an ever-more demanding knowledge society. Constituents are claiming more involvement in political decisions and demanding more transparency relating to investments and public spending, and thus, they wish to know where and how public funds are being used, and the results and impact of the programs and projects implemented by governmental bodies. The lack of transparency at all levels in public administration is a global concern.

The right of access to public information and the duty to encourage government openness are fundamental aspects of administrative transparency. Providing constituents with open access to public data registers and information shall, in turn, reassert the republican, democratic, and egalitarian nature of our government systems. At present, however, Puerto Rico lacks comprehensive legislation pertaining to data transparency and protection. Likewise, the scarce and scattered legislation on access to public information does not have all the elements needed to implement an open data strategy at the Government level.

Hence, for the last decade, governmental bodies worldwide have championed efforts to become more transparent by granting citizens access to government data. These efforts have focused on what is known as open data, which stresses transparency through the publication of data in digital form to be readily accessed and reused by anyone who may need to research and process said information.

The implementation of an electronic government public policy through the enactment of Act No. 151-2004, as amended, known as the “Electronic Government Act,” was a great step towards accelerating the positive effects that can be derived from moving towards an information society, and is consistent with broader information requirements made to governmental bodies. However, the objective of said legislation—and, consequently, the outcome thereof—did not focus on the effective management of public data, but rather on integrating information technology into government procedures.

It is a known fact that, in Puerto Rico and across the world, that there have been significant advances related to information technology and data management. Nevertheless, it is worth noting that the focus on data management has evolved at a fast pace during the last decade and it is expected to continue evolving. The global trend has shifted towards implementing intermediate strategies that address open

data access according to the most pressing needs of the people while also working on creating value for this data. Focusing on data without having a purpose that adds an ‘all-or-nothing’ value tends to be expensive, and hard to implement and maintain in the long-term.

Governments collect and manage significant amounts of very diverse data. Disruptive technologies and innovations in the digital field have led to an exponential increase in the volume and variety of available data. These technological changes require governments to focus on how to effectively manage government data, in order to capitalize on its value, while they continue to work on transparency and on upholding the people’s right of access to public information. To guarantee that the data creates value and has a tangible impact on the people, it is necessary to convert it into a format that is easy to understand and that facilitates actions by the government and the people. A forefront data strategy seeks to generate sustainable economic knowledge, facilitate a government culture of ongoing improvement, support innovation processes in all sectors in Puerto Rico, and produce tangible results that have an impact on our people.

The trend in many large technology companies around the world is to capitalize on the value of their data to generate efficiencies as well as on the development of new goods and services for their clients. Obtaining the maximum data value is a global trend that every innovative organization and government has also identified and begun to work on.

Through this Act, this Legislative Assembly shows that Puerto Rico is prepared and ready to join governments around the world in implementing the most innovative data management trends for the benefit of its people.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Title

This Act shall be known as the “Puerto Rico Open Government Data Act.”

Section 2.- Applicability

This Act shall apply to every Puerto Rico Governmental Body, private citizens discharging public functions and providing public services, but only with respect to the public functions being discharged and the public services being rendered; to every public or private administration transaction where public funds or resources have been invested or allocated (directly or indirectly), or over which the authority of any public official has been exercised, in terms of the data generated as a result of such activities. The public data object of this Act may be inside or outside of the territorial boundaries of Puerto Rico, or in possession of public employees or third parties, in document, electronic, or digital format, as electronic records or pending conversion to document format.

All persons mentioned in this Section shall disclose their public data in accordance with the provisions of this Act.

Section 3.- Definitions

For purposes of this Act, the following words or phrases shall have the meaning stated below:

(a) “Government Information Technology Area” – means the Puerto Rico Innovation and Technology Service (PRITS), which is entrusted with the duty to incorporate information technology into government operations and ensure the sound management thereof, as provided in Act No. 151-2004, known as the “Electronic Government Act,” as amended.

(b) “Open Data” – means data that is made available to the public and that may be available digitally on the Internet portals of the Government of Puerto Rico with the necessary technical features that enable them to be used, reused, and redistributed freely and at no cost by any person and at any time through online applications, from which additional value can be created.

(c) “Public Data” – means information documented or that must be documented by a public servant or a third party authorized by law or by the latter; it includes every printed or electronic document that the Governmental Body creates, maintains, or receives in accordance with the law or related to the administration of public affairs, and that is required to be kept permanently or temporarily as proof of the transactions or their legal value, in accordance with the provisions of Act No. 5 of December 8, 1955, as amended, known as the “Puerto Rico Public Documents Administration Act”; it also includes all public information or information obtained as a result of the exercise of public authority or as a result of the use of public resources or public authority, whether directly or indirectly delegated. It includes documents, data or other type of visible electronic information, or any other similar information that offers details about the results of initiatives or the public endeavor and the use of resources as well as the exercise of the power of the State, whether directly or indirectly delegated. Employee records or any similar information shall not be deemed to be Public Data. When delivering any data deemed to be public, the Governmental Body shall make sure to take all necessary precautions to not include any information or data that may contain information that is confidential, prohibited under any law, or among the exceptions provided in Section 4 of this Act.

(d) “Proactive Disclosure” – means the disclosure of the data that Governmental Bodies create, maintain, or receive through the Internet and in Open Format, before they are requested by any person.

(e) “Open Formats” - means a group of features related to technical aspects and how the information is presented with respect to the logical structure used to store data in an integrated manner and that facilitate its digital processing; which specifications are publicly available and allow for unrestricted user access.

(f) “Institute” or “Institute of Statistics” – means the Puerto Rico Institute of Statistics, created by Act No. 209-2003, as amended, known as the “Puerto Rico Institute of Statistics Act.” It shall be responsible for having the data list established in Section 5 available to the people, on its Internet portal.

(g) “Governmental Body”- means every department, board, commission, bureau, office, agency, administration or body, public corporation or political subdivision of the Executive Branch of the Government of Puerto Rico.

(h) “Governmental Body Data Officer” or “Data Officer” – means the public servant who must be designated by each Governmental Body, from among existing employees, to achieve the purposes of this Act, and who shall provide assistance and work with both the Institute of Statistics as well as with the Chief Innovation, Data, and Technology Executive of the Government of Puerto Rico.

(i) “Person” – means any natural person, partnership, or juridical person, regardless of how it is organized.

(j) “Government Information Technology Area Staff” – means all the employees of the Puerto Rico Innovation and Technology Services (PRITS).

(k) “Puerto Rico Open Data Internet Portal” – means the portal or portals that may be identified by the Puerto Rico Innovation and Technology Services (PRITS) and/or the Puerto Rico Institute of Statistics, whereby the Government Entities shall meet their obligation to publish all their public data in an Open Format, as determined by PRITS.

(l) “Chief Data Officer” (CDO) – means the Chief Data Officer of the Government of Puerto Rico, who shall be part of and shall report to the Puerto Rico Innovation and Technology Services (PRITS).

(m) “Reuse” – means to use something, whether for the purpose it previously fulfilled or for other purposes.

(n) “Data Reuse” – means the use of the data under the control of the public sector by persons, whether or not for commercial purposes, provided that said use does not constitute a public administration activity.

Any word importing the singular shall also include the plural, except when the context indicates otherwise. Likewise, any terms importing the feminine gender shall include the masculine gender, and vice versa.

Section 4.- Declaration of Public Policy

We are facing a significant global transformation favored by technology and digital media, and furthered by data and information with the potential to promote governments that are more transparent, responsible, efficient, receptive, and effective. Open government data improves transparency and promotes multi-sectoral collaboration toward achieving common objectives. Moreover, it is a tool that has the potential to engage constituents in the process of solving issues of public interest.

Consequently, it is hereby established as the Public Policy of the Government of Puerto Rico to manage government data effectively as it is critical to support the innovation processes of all the sectors in Puerto Rico, to facilitate a culture of constant improvement and accountability in governmental bodies, to have sustainable economic development and growth, and generate tangible results that are valuable and have an impact on our people.

Any request of confidentiality or privilege by any Governmental Bodies in order to protect and avoid the disclosure of any data shall be made in accordance with the following criteria:

- a. that it is thus provided by law;
- b. that the data is protected by any of the evidentiary privileges that citizens may invoke;
- c. that revealing the data may impair the fundamental rights of third parties;

- d. that it is the identity of an informer; or
- e. that it is “official information,” in accordance with Rule 514 of the Rules of Evidence of Puerto Rico.

Furthermore, the exceptions to the Public Data disclosure shall be the following:

- i. Any information and/or documents classified as national security;
- ii. The internal employee rules or practices of a Governmental Body;
- iii. Internal communications between agencies;
- iv. Public information that applies to any of the privileges recognized in the Constitution of the United States or of Puerto Rico, and the laws and Rules of Evidence, including Official Information and Decision-making Official Information in Public Policy-making Procedures, as recognized by case law;
- v. Information associated with civil or criminal actions to which a Governmental Body is a party, or an employee or public official is a party by reason of their employment, provided that the action is pending at the time of the request or is at the investigation stage;
- vi. Information that, if disclosed, could constitute an invasion of the privacy of a third party, or impair the fundamental rights of said third party;
- vii. Information on informers or undercover officers; investigations and/or prosecutions that could impair the right of a citizen to a just and impartial trial, or information that endangers the physical safety of any Person;
- viii. Information on the Department of Justice’s pre-trial proceedings, which is privileged, or the work product included in the investigation file or that has information or documents related to an ongoing investigation.
- ix. Information regarding trade secrets obtained by a Person which are confidential under a contract, statute, or court decision;

x. Business or financial information whose disclosure has been proven would cause a substantial competitive harm to the person from whom the information was obtained;

xi. Any type of information related to the street address, telephone number, emergency contact information, social security number, credit card number, tax and/or financial information, bank activity, confidential information of private third-parties, trade secrets, tax returns, debt, or pin number, which is collected or maintained by the Governmental Body; and

xii. The information related to computer network security or the design, operation, or protection of said computer network.

Section 5.- Duty to Digitize.

As determined by PRITS, and in order to make it available through the Internet Portal, every Governmental Body shall have the duty to digitize following:

i. Official travel reports specifying the destination, expenses, purposes, and payment method;

ii. Budget approved by the government entity and quarterly expenses;

iii. Strategic plans, results projected, and achieved;

iv. Representation expenses prepaid, paid, or reimbursed by the appointing authority;

v. Specific personnel compensation and the position classification plan;

vi. Vacancy announcements, job descriptions, personnel selection, contracting, and appointment processes;

vii. Records of resolutions adopted by the Governing Boards or Boards of Directors of public entities and corporations;

viii. Calendars with the hearings and administrative procedures to be held, as well as the decisions, adjudications, and determinations published;

ix. Regulations, letters, circular letters, policy letters, codes, protocols, and any other information relating to the operations, adjudications, and determinations regarding the application of public policy by every government entity, provided that it does not jeopardize confidential information, or the security of Government institutions, and/or any person; and that it does not contain protected information;

x. Business hours, telephone directory, office location, services offered, opportunities for citizen participation in the works of the Governmental Body, complaints and/or claims processes, and the service request process;

xi. Bids or proposals received for works and services. Public bidding records once awarded, or when no bid is placed;

xii. Any contracts executed with public funds, stating in detail for each contract: the public works entailed, the goods acquired or leased, and the services contracted. Moreover, the amount, the name of the provider, contractor, or Person with whom the contract has been executed; the public servant or entity that oversees the contracting; the contract completion dates, the proposals and/or bids received for such contracts; the source of the funds earmarked for said contract, the status of the works performed under said contract, and the documents and/or reports that certify the work performed under such contract shall be specified;

xiii. External audits and any financial status reports issued by the Governmental Body;

xiv. Court judgments, except those that include nondisclosure agreements, partial or total debt cancellation agreements, or concession or conveyance agreements executed by any government entity;

xv. Agreements for the modification, suspension, or approval of urban planning, soil classification, zoning, and any actions that have an environmental impact;

xvi. Licenses, permits, concessions, and exemptions granted each month.

Section 6.- Implementation of Public Policy.

The Puerto Rico Innovation and Technology Service (PRITS) shall be the entity responsible for implementing the Open Data Public Policy. For such purposes, PRITS shall work together with other Governmental Bodies, namely the Institute of Statistics, which shall provide support for the implementation of this public policy as applicable. The Institute shall be required to disclose the data listed under Section 5 on its internet portal. However, this shall in no way be construed as the Institute having the power to analyze the public data received, given that its duty is to make such data available to the citizenry through its internet portal. The Institute and the Puerto Rico Innovation and Technology Service (PRITS) shall provide the public with online access to the data that has been released and published in strict compliance with the provisions of this Act, in such a manner that it is easy to access, and available at no cost, and in an Open Format that can be easily downloaded and Reused in online applications.

The Institute of Statistics and the Puerto Rico Innovation and Technology Service (PRITS) shall be responsible for maintaining the Puerto Rico Open Data Internet Portal (PRITS)[sic], ensuring the proper use thereof, and coordinating the entry, storage, and availability of the data received. Furthermore, it shall be responsible for establishing the guidelines, Formats, and standards for collecting and transmitting the information, receiving said Data, establishing proper mechanisms to access such resources, and providing users with support to ensure compliance with the Public Policy set forth in this Act.

The Puerto Rico Innovation and Technology Service (PRITS) shall prescribe through regulations or circular letter, as applicable, all that pertains to its operations and the attainment of the objectives provided herein.

Section 7.- Chief Data Officer of the Government of Puerto Rico.

The office of Chief Data Officer of the Government of Puerto Rico is hereby created, which shall be part of the Puerto Rico Innovation and Technology Service (PRITS), and shall report to the Chief Information and Innovation Officer.

The Chief Data Officer shall work in conjunction with the Institute of Statistics, the Office of the Chief of Staff, or the employees of any other Governmental Body that has been designated to discharge such duties by law, in the formulation and execution of strategies to properly manage Government Data, and in the implementation of the Open Data Public Policy established herein.

Section 8.- Duties and Powers of the Chief Innovation, Information and Technology Officer.

Without it being construed as a limitation, the Chief Innovation, Information, and Technology Officer shall have the following duties and powers and the Executive Director of the Institute of Statistics may collaborate in the discharge and exercise thereof, as deemed necessary by the former:

- a. to formulate the Public Policy through regulations and circular letters in a manner consistent with the provisions and objectives of this Act;
- b. to establish the rules, standards, and guidelines to implement the Open Data policy in Puerto Rico;
- c. to create advisory groups and working committees as deemed necessary;
- d. to establish Open Data pilot programs in certain Governmental Bodies;
- e. to request and obtain input from the public, public entities from Puerto Rico and other jurisdictions, Persons specialized in technology and innovation, the academia, and other interest groups on the formulation, adoption, and implementation of the rules and regulations necessary to implement this Act and the attainment of its objectives;

f. to advise the Governor and the Office of the Chief of Staff on structuring and implementing the Open Data Public Policy so as to maximize the benefit that the Government of Puerto Rico can derive from the Data;

g. to work and collaborate with Governmental Bodies to protect and prevent the disclosure of Public Data classified as confidential or privileged pursuant to the appropriate legal basis;

h. to identify and develop the best practices to have and manage Open Data, facilitate the access to information and Public Data, and improve the quality of the data available while protecting confidential or privileged information.

i. to optimize information resources and focus them on the program's priorities;

j. to offer legally sound technical advice based on a cost-benefit analysis on the optimum way to classify data according to its security level;

k. to promote the implementation of the best Open Data management and disclosure practices between the Governmental Bodies; and

l. to assist and advise Governmental Bodies and users on accessing and publishing Open Data.

Section 9.- Data Officers in Governmental Bodies.

An employee shall be designated from among the existing employees, in every Governmental Body, who shall discharge the duties required by this Act. These designated employees shall also provide assistance to the Puerto Rico Innovation and Technology Service (PRITS).

The Data Officer of each agency or Governmental Body shall be trained on the provisions of this Act, the applicable regulations and procedures, and his legal obligations as one of the persons responsible for enforcing compliance therewith. The Data Officers shall share the responsibility of ensuring compliance with this Act with the leadership of the Governmental Body. If necessary, the leadership of the

Governmental Body, in conjunction with the Puerto Rico Innovation and Technology Service (PRITS), may designate more than one Data Officer for said entity.

Section 10.- Duties and Powers of the Data Officers in the Governmental Bodies.

The Data Officer of every Governmental Body shall have, without it being construed as a limitation, the following duties and responsibilities:

a. to prepare a Data Inventory and a Work Plan for the formulation, implementation, and enforcement of the Open Data policies, rules, and regulations of the Governmental Body for which he works. The former shall be submitted annually to the Puerto Rico Innovation and Technology Service (PRITS) and the Institute of Statistics before the end of the calendar year and pursuant to the provisions of this Act. The Work Plan shall be consistent with the provisions of this Act and the rules and regulations adopted thereunder. The Data Inventory and the Work Plan shall be published in the Puerto Rico Open Data Internet Portal. The Data Inventory and Work Plan shall include, among others, the following:

1. Concerning the data that, in the judgment of the Governmental Body, is confidential or privileged, the Inventory shall state the legal basis for such classification as well as the legal grounds that justify it.

2. The measures that the Governmental Body shall take to digitize and freely distribute the data generated or obtained by the Governmental Body and the time it shall take to implement each measure.

b. to establish and disseminate among the employees and contractors of the Governmental Body the guidelines, Data Inventory, and Work Plan for the implementation of the Open Data policy within such Governmental Body.

c. to annually evaluate the development and compliance status of the Work Plan, as well as to implement mechanisms and processes for the revision and modification of such Plan if deemed necessary;

d. to be the Governmental Body's main contact for the Proactive Disclosure of the Public Data that said body generates, pursuant to this Act and the applicable rules and regulations, and to assist Persons that request public data or information not published on the Internet;

e. to serve as a liaison between the Governmental Body and the Puerto Rico Innovation and Technology Service (PRITS) and to provide complete, reliable, and timely information on any issue pertaining to Data publishing;

f. to submit annual reports on the Governmental Body's compliance with this Act to the Puerto Rico Innovation and Technology Service (PRITS) or when required;

g. to inform the leadership of the Governmental Body and the Puerto Rico Innovation and Technology Service (PRITS) of the Governmental Body's noncompliance with any of the provisions of this Act or the rules and regulations adopted thereunder, and to identify the employees or contractors thereof deemed to be fully or partially responsible for such noncompliance;

h. to promote the best data publishing practices among the employees and contractors of the Governmental Body;

i. any other duty or responsibility prescribed by regulations and adopted pursuant to this Act.

Section 11.- Duty to Inform and Educate on the Open Data Public Policy.

The Puerto Rico Innovation and Technology Service (PRITS) shall establish and maintain an online education program to inform and educate the public on the right to access Open Data. This program shall also educate on the technical aspects

related to the use of electronic and internet devices that facilitate access to Open Data.

The Puerto Rico Innovation and Technology Service (PRITS) shall establish and maintain a continuing education program on the provisions of this Act and the Open Data Public Policy for the Data Officers and employees of the Governmental Bodies.

Section 12.- Compliance with this Act and the Digitization of the Public Data Listed Above.

Every Governmental Body shall digitize the data listed in Section 5, in accordance with PRITS, within thirty (30) days after the data was generated. Provided, that the list of data to be digitized pursuant to Section 5 shall apply to data generated after the effective date established for this Section. The data listed in Section 5 shall be made available through the webpage of the Institute of Statistics, however, any other Government portal may make it available in accordance with PRITS.

Section 13.- Budget.

The cost to defray the functions set forth herein shall be earmarked in the budgets of the Puerto Rico Institute of Statistics and the Puerto Rico Innovation and Technology Service (PRITS), as appropriate.

Section 14.- The Legislative Branch, the Judicial Branch, and the Municipalities.

This Act shall not apply to the Legislative Branch, the Judicial Branch or the Municipalities. However, within twelve (12) months after the approval of this Act, they shall establish the internal processes necessary to disclose and digitize the public data listed in Section 5.

Section 15.- Repealing Clause.

Any statutory or regulatory provision that is inconsistent with the provisions of this Act is hereby repealed to the extent of said inconsistency.

Act No. 69-2005, as amended, known as the “Act to direct every agency, and public corporation, and any other instrumentality to publish and update in their respective Internet pages and official statistics and indices,” is hereby repealed.

Section 16.- Severability Clause.

If any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act thus held to be null or unconstitutional. If the application to a person or a circumstance of any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect or invalidate the application of the remainder of this Act to such persons or circumstances where it may be validly applied. It is the express and unequivocal will of this Legislative Assembly that the courts enforce the provisions and application thereof to the greatest extent possible, even if it renders ineffective, annuls, invalidates, impairs, or holds to be unconstitutional any part thereof, or even if it renders ineffective, invalidates, or holds to be unconstitutional the application thereof to any person or circumstance.

Section 17.- Effectiveness.

This Act shall take effect immediately after its approval, except for Sections 5 and 12 which shall take effect twelve (12) months after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 122-2019 (S. B. 236) (Conference)** of the **5th Regular Session** of the **18th Legislative Assembly of Puerto Rico**:

AN ACT to create the “Puerto Rico Open Government Data Act,” in order to establish as a Public Policy principle that managing government data effectively is critical to support innovation processes of all the sectors in Puerto Rico, facilitate a culture of constant improvement and accountability in governmental bodies, have sustainable economic development and growth, and generate valuable tangible results that have an impact on our people; to create the position of Chief Data Officer under the office of the Puerto Rico Innovation and Technology Service (PRITS), and establish its powers and duties in order to guarantee the implementation of the public policy established in this Act; set forth the obligation of Governmental Bodies to collaborate with the Puerto Rico Institute of Statistics and the Chief Data Officer; repeal Act No. 69-2005; and for other related purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 30th day of August, 2019.

Orlando Pagán-Ramírez
Director