

Legal Issues in Interagency Data Sharing

Report for C.G.S. 4-67z

January 15, 2021

Table of Contents

Introduction	3
Recommendation I: Coordinated Statewide Governance Structure for Cross-agency Data Sharing.....	3
Recommendation II: Flexible, Durable Data Sharing Agreements.....	4
Process Improvements for Data Sharing	6
Related Efforts	7
Conclusion.....	7
Exhibit A: Governance and legal framework for interagency data sharing protocol	8

Introduction

Since filing the report with the Legislature pursuant to Public Act No. 19-153 on January 15, 2020,¹ the Office of Policy and Management (OPM) and its Chief Data Officer have been taking steps to make data sharing a more efficient, uniform and safe process as demand for interagency data has increased. This report reviews progress made during 2020 with respect to “methods to facilitate the sharing of such high value data to the extent permitted under state and federal law, including, but not limited to, the preparation and execution of memoranda of understanding among executive branch agencies.”²

The previous report included the following recommendations based on an analysis of survey results from executive branch agencies, review of data sharing agreements, analysis of state and federal laws and regulations on data sharing, and consultation with state agency staff and national experts:

- I. **Establish a coordinated statewide governance structure for cross-agency data sharing:** The absence of a statewide governance structure leads to fragmented approaches to sharing data on high-priority issues which reduce the ability of the state to mobilize a response; and
- II. **Develop more flexible, durable data sharing agreements:** A proliferation of data sharing agreements makes oversight difficult and reduces the ability to protect clients’ data and manage risk.

Progress on these recommendations, under active development at the time of this report, includes:

- I. Developing a coordinated governance structure, building on the success of Preschool through Twenty and Workforce Information Network (P20 WIN), and evolving to expand the data sharing partners,
- II. Drafting flexible, durable data sharing agreements to define the data sharing process between executive branch agencies and with outside entities,
- III. Process improvements to make data sharing timelier and more efficient, such as creating a “playbook” to help agency staff navigate the steps to successfully share data.

Related supports to this progress include partnering with Actionable Intelligence for Social Policy (AISP), which works with states and local governments to collaborate and responsibly use data to improve lives and exploring changes to the technological infrastructure to enable data sharing.

Recommendation I: Coordinated Statewide Governance Structure for Cross-agency Data Sharing

In support of this recommendation from the 2020 report, OPM, in consultation with the Office of the Attorney General and the P20 WIN participating agencies, will build on and evolve the existing P20 WIN architecture while maintaining a decentralized structure which allows each agency to retain administrative authority over their data.

¹ Previous report available here: <https://portal.ct.gov/CTData/Content/Agency-Guidance>

² Connecticut General Statutes, section 4-67z: https://www.cga.ct.gov/2020/sup/chap_050.htm#sec_4-67z

P20 WIN was created to link data to improve education for students of all ages. It created a governance structure with sound policies and practices through the secure sharing of longitudinal data across the participating agencies to ensure that individuals successfully navigate supportive services and educational pathways into the workforce. It was created and has accomplished securely linking data between education, workforce and supportive service agencies in the state to inform policy and practice.

Future governance changes will determine how to make the process efficient and effective while continuing to ensure a high degree of data security. New participating agencies will be added to the participating entities, including but not limited to the data from social services, child welfare and homelessness in 2021; data sharing will occur using the improved governance process to facilitate data sharing in areas other than involving education.

The existing governing documents for P20 WIN define a process for data management. Researchers may submit an application to become an authorized representative in order to conduct an audit or evaluation of publicly funded education programs. Currently, such requests must be approved by members of the P20 WIN Data Governing Board. Once approved, a memorandum of agreement specific to that data requested is executed and the approved authorized representative is able to receive matched data from the participating agencies (matched by the Connecticut Department of Labor, as Data Matching Agency) to conduct the approved audit or evaluation. The authorized representative is able to work with the data to produce a report that is sufficiently aggregated (non-personally identifiable) to comply with the education privacy statutes and the aggregated results and accompanying reports are made public.

To facilitate the expansion of P20 WIN to new participating agencies, the governing documents will be changed to ensure compliance with the federal and state privacy and confidentiality laws that apply to the new participating agencies while still meeting the privacy and confidentiality requirements that apply to education and workforce data. The current data sharing governance framework and the proposed evolution of governance is described in Exhibit A, attached.

As a first step towards this expansion and within the existing statutory authority, in the summer of 2020, the P20 WIN Executive Board agreed to move the responsibilities of the Administrative Lead Agency from the Connecticut State Colleges and Universities to the Connecticut Office of Policy and Management (OPM), based on the central role of OPM in state policy and planning efforts. Program management is provided by the staff of the OPM Data and Policy Analytics unit, under the supervision of the Chief Data Officer. The function of securely linking the proposed data from participating agencies remains with the staff at the Connecticut Department of Labor.

Recommendation II: Flexible, Durable Data Sharing Agreements

During the first six months of 2020, OPM drafted new template data sharing agreements in anticipation of new participating agencies joining the P20 WIN governance process, under an expanded vision to include education, workforce and supportive services. The draft documents, still under review by state agencies and the Office of the Attorney General, are to provide and advance a flexible, durable data sharing process for the State, while also providing for participating agencies to have proper oversight over their data and to reduce the effort needed to share data for legitimate state purposes. OPM is in

the process of obtaining comments and feedback from the current P20 WIN participating agencies and from future participating state executive agencies (including the Department of Social Services, Department of Children and Families, Office of Higher Education and Connecticut Coalition to End Homelessness). Their feedback will influence the next drafts of the documents and help shape the process for the proposed uniform data sharing process.

The template documents are the following, each of which is described also in Exhibit A:

1. **Letter of intent or policy agreement:** A document signed by the participating agency leader, agreeing to participate in the creation of policies and procedures for a data sharing process, to eventually replace the multiple data sharing agreements and the piecemeal process that each of the participating agencies currently experience. This document does not obligate that any specific data be actually shared or cause any agency loses ownership of any data; instead, it is a policy and planning statement that the State must build a functioning, secure, efficient and effective means of sharing data for a multiple of purposes to improve the lives of its citizens.
2. **Enterprise Memorandum of Understanding (E-MOU):** This legal document sets forth the “rules of the road” for how data is shared for all current and future participating state agencies, regardless of whether the data is identifiable, de-identified, anonymized or aggregated. The participating agency is agreeing to participate in the governance process set forth to make data sharing a uniform, efficient, and effective process, saving time and money. The United States Commission on Evidence-Based Policymaking recommended the Enterprise Memorandum of Understanding (E-MOU) as a “best practice” method for data sharing.³

The E-MOU sets forth the issues that relate to any and every data sharing request, including but not limited to the data sharing governance structure, roles and responsibilities, including a Resident Advisory Board to work on equity and public trust issues and other committees as needed to respond to inquiries and improve safe, ethical and secure sharing of data across agencies; the role and responsibilities of the Administrative Lead Agency and the process for managing data sharing requests; how any data is shared and the responsibilities of the Participating Agency that owns and continues to own the data; enterprise privacy and security and how to avoid any breaches of data; specifications for the data matching services; and onboarding new participating agencies without having to draft a new E-MOU.⁴

3. **Data Sharing Agreement (DSA):** The Data Sharing Agreement (DSA) is the legal document that is signed by the provider or providers of data for the purposes of sharing specific data with a particular recipient or recipients through the Connecticut Data Linking Hub (currently the Department of Labor) and pursuant to the “rules of the road” set forth in the E-MOU. The DSA specifies the responsibilities of the provider of data and the responsibilities of the Connecticut Data Link Hub. It also provides for how data is transferred to the Hub.

An essential attachment to the DSA is the document that is completed by the provider of the data, which includes the specific data elements and the legal basis for the data sharing. This attachment must be affirmed by legal counsel of the provider that all federal and state privacy and

³ The Promise of Evidence-Based Policymaking: Report of the Commission on Evidence-Based Policymaking, September 2017.

confidentiality requirements are being met by the data sharing arrangement. It provides the legitimate state purpose for the data sharing, the legal basis for what is shared, and who can have access to the shared data.

- 4. Data Use License (DUL):** The last document is the Data Use License (DUL). It is signed only by the receiver of the specific data and sets forth the permitted data sharing project, outlining the approved use of the specific data elements, including but not limited to any required Institutional Review Board (IRB) approval for the project using the particular data. The document also includes but is not limited to details including a clear statement that data ownership remains with the providing agencies; how the data is transferred from the Data Integration Hub to the receiver; the security provisions for the data; who will have access to the data; how the data will be safeguarded; the accountability of the receiving party for the use and disclosure of the data and to ensure the unauthorized access to the data; and how the data will be returned to the providing agency or destroyed after the legitimate purpose is completed.

OPM intends complete revision to these documents within the first quarter of 2021, incorporating changes recommended by State agencies to make the future process more effective and efficient.

Process Improvements for Data Sharing

In 2020, a team from OPM, the Office of Early Childhood (OEC), and Skylight Digital, a digital consultancy for government developed a Data Sharing Playbook⁵ to provide strategies to help Connecticut state agencies share data safely, securely, and ethically. Development of the Playbook involved conducting user interviews with 13 data sharing practitioners across Connecticut state agencies, research into best practices from data sharing experts and into case studies from other states, a detailed review of available technology tools to provide secure channels for data transfer between Connecticut state agencies, and examining the findings from the OPM's [Legal Issues in Interagency Data Sharing Report](#). The playbook can be updated and additional content included. It is written in an easy-to-read manner and can help agencies build a data sharing framework that respects and abides by the laws and regulations that apply to their data. For the data providing agencies, the playbook can help enable data sharing, and at the same time, respond to data requests and safeguard data. The data sharing playbook can also help agencies that seek to request data with chapters on preparing a successful data request and identifying the data sharing agreement they will need to accomplish the data sharing partnership. The playbook includes chapters on enabling data sharing, safeguarding data, responding to data requests, preparing a successful data request, and transferring data, including steps to use Enterprise Secure File Transport Process (SFTP) to securely transfer files, and linking datasets.

OPM has already been meeting with agencies to determine their experiences with the current structures for data sharing. One frequent opinion is that the process is inefficient and time-consuming from identification of a need to share data until the data is linked, aggregated and analyzed. Therefore, if the process is to be used statewide and by varied state executive agencies, one of OPM's major initiatives for 2021 is to simplify the process and make it timelier, while at the same time, ensuring that the security, privacy and confidentiality of the data are maintained.

⁵ The Playbook is accessible at: <https://ctopendata.github.io/data-sharing-playbook/>

One focus for process improvement is to streamline the steps to make and fulfill data requests for P20 WIN. Since 2013, P20 WIN has processed twenty requests, an average of just under three requests per year. Six requests have been from external researchers (ex. Urban Institute, Yale University), and fourteen have been ‘internal’ requests between the P20 WIN participating agencies. The end-to-end timeline to process a request has been more than 8 months on average, from the time a data request is formalized to the pre-publication review of results. This process includes an average of two to three months to sign contracts related to the data request (before data are matched or analyzed), and does not include the potentially substantial additional time to define and refine a request before it is formalized. Efficiencies at any step in this process, while preserving privacy and security, is a goal for the next year and part of the 2021 – 2022 State Data Plan.⁶

Related Efforts

In 2019 – 2020, the state also benefited from a partnership with Actionable Intelligence for Social Policy (AISP), which helps state and local governments collaborate and responsibly use data to improve lives by bringing together cross-sector data safely and responsibly. By partnering with AISP, a team of staff from OPM, OEC and DOL have been able to learn about data sharing by other states and successes and failures from other jurisdictions in their data sharing efforts. Such efforts include the sharing of data dealing with education, economic security, early childhood, child welfare, vital records, private/corporate entities, non-governmental organizations (NGO), justice, housing/homelessness, health, and federally-supported benefit programs (including but not limited to the TANF, SNAP and Medicaid). Development of the Playbook and the draft legal agreements was informed by this partnership.

In addition, as part of a federal grant to support Statewide Longitudinal Data Systems,⁷ the P20 WIN participating agencies will be reviewing the technical infrastructure for the system to identify potential improvements to data matching and the hardware and software used for data sharing. Preliminary recommendations from this review are expected in mid-year 2021.

Conclusion

The intersection of these efforts will serve to make data sharing more efficient, and safe, ethical and secure. Coordinated data governance, through an expanded P20 WIN, will create a consistent process for development and review of interagency data requests, improving the experience for agencies and data requestors. Flexible, durable data sharing agreements will allow a consistent approach with templates that can be tailored to individual agency use. Process improvements, for agency staff and to the data request and review process, will reduce the end-to-end time for requests, allowing for data to be used to inform decision-making on an ongoing basis.

⁶ The 2021 – 2022 State Data Plan is accessible at: <https://portal.ct.gov/ctdata>

⁷ A general description of activities under the SLDS grant, including the technical infrastructure, is available here: <https://nces.ed.gov/programs/slids/state.asp?stateabbr=CT>

Exhibit A: Governance and legal framework for interagency data sharing protocol



July 1, 2020

Via Email

The Honorable Marilyn V. Moore
The Honorable Catherine F. Abercrombie
Co-Chairs Human Services Committee

The Honorable Mae Flexer
The Honorable Daniel J. Fox
Co-Chairs Government Administration and Elections Committee

Legislative Office Building
Hartford, CT 06106-1591

Re: *Uniform Interagency Data Sharing Protocol*

Dear Senator Moore, Representative Abercrombie, Senator Flexer, and Representative Fox:

Pursuant to Section 2(e) of Public Act 19-78,¹ I am enclosing information regarding the uniform interagency data sharing protocol that our offices are in the process of developing and implementing to promote improved cross-agency and cross-sector collaboration. The attachments contain a proposed governance and legal framework for interagency data sharing, along with a diagram of the proposed relationships between the governing bodies. Consistent with the requirements of Public Act 19-78, the framework was developed by our offices under the leadership of the Office of Policy and Management's Chief Data Officer, and in consultation with the Two-Generational Advisory Board, and the Connecticut Preschool through Twenty and Workforce Information Network (P20 WIN), established pursuant to C.G.S. section 10a-57g.

¹ "Not later than July 1, 2020, pursuant to the advisory authority established in section 3-125, the Office of the Attorney General, in consultation with the Two-Generational Advisory Board, the Secretary of the Office of Policy and Management, the Chief Data Officer appointed pursuant to section 4-67p and the Connecticut Preschool through Twenty and Workforce Information Network, established pursuant to section 10a-57g, shall develop a uniform interagency data sharing protocol to remove legal barriers to promote cross-agency and cross-sector collaboration under this section to the fullest extent permitted under state and federal laws." Public Act 19-78, Section 2(e).

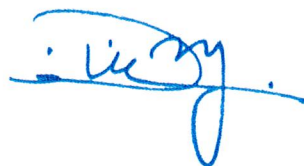
July 1, 2020
Page 2

Should you need further information or have any questions about this report, please contact Nicole Lake in the Office of the Attorney General or Claire Coleman in the Office of Policy and Management.

Very truly yours,



Melissa McCaw
Secretary



William Tong
Attorney General

Enc. Attachment A: Governance and legal framework for interagency data sharing protocol

Cc: The Honorable George S. Logan, Ranking Member, Human Services
The Honorable Jay M. Case, Ranking Member, Human Services
The Honorable Rob Sampson, Ranking Member, Government Administration and Elections
The Honorable Mike France, Ranking Member, Government Administration and Elections

Attachment A: Governance and legal framework for interagency data sharing protocol

As Connecticut advances a data-driven approach to pressing policy challenges, the state also needs a secure framework to share data across institutional boundaries. A series of recent executive and legislative actions has tasked the Office of Policy and Management (OPM), the Chief Data Officer, and the Office of the Attorney General, among others, to develop a data sharing protocol and integrated data system:

1. [Executive Order No. 4](#) created the **Governor’s Workforce Council** (GWC), which requires that “state agencies shall enact appropriate data-sharing agreements with one another and with the Governor’s Workforce Council to facilitate” analysis of workforce development programs and services, funding streams, and the associated outcomes.
2. The Governor’s [Task Force on Housing and Supports for Vulnerable Populations](#) is focused on matching data across agencies “to ensure that the state evaluates vulnerability and prioritizes resources consistently, coordinates effectively to serve shared clients, and implements best practices reliably to meet residents’ housing/housing support needs with the goals of improving outcomes and conserving resources.”
3. For the **Two-Generational Advisory Board** and related efforts, [Public Act No. 19-78](#) requires the Office of the Attorney General, in consultation with OPM and P20 WIN,¹ to “develop a uniform interagency data-sharing protocol to remove legal barriers to promote cross-agency and cross-sector collaboration under the act to the fullest extent permitted under state and federal laws” by July 1, 2020.

A January 2020 report² submitted by the OPM pursuant to Public Act 19-153 on legal issues for interagency data sharing made two primary recommendations to facilitate the sharing of data across government agencies:

1. **Establish a coordinated statewide governance structure for cross-agency data sharing:** The absence of a statewide governance structure leads to fragmented approaches to sharing data on high-priority issues which reduce the ability of the state to mobilize a response.
2. **Develop more flexible, durable data sharing agreements:** A proliferation of data sharing agreements makes oversight difficult and reduces the ability to protect clients’ data and manage risk.

This document describes the data sharing protocol and governance and legal framework that the Office of the Attorney General and OPM propose to deliver upon these recommendations.

A **coordinated statewide governance structure** will build upon the existing governance structure for P20 WIN. P20 WIN will continue to support current and future initiatives, such as those described above, and the P20 WIN vision will expand to encompass education, workforce and now supportive services.

¹ [Preschool through 20 and Workforce Information Network](#)

² [Legal Issues in Interagency Data Sharing: Report for Public Act 19-153](#), submitted by OPM

The expanded P20 WIN governance structure, once authorized through legislation, would retain an Executive Board, a Data Governing Board, and is proposed to add a Resident Advisory Board, along with other committees as needed to respond to inquiries and improve safe, ethical and secure sharing of data across agencies. As an initial step towards this expanded framework, within the existing statutory authority, the P20 WIN Executive Board has agreed by consensus on June 26, 2020 to shift administrative duties to OPM in summer 2020.

Flexible, durable data sharing agreements are also necessary for agencies to have proper oversight over their data and to reduce the effort needed to share data. The Office of the Attorney General and OPM are developing draft template agreements, based on a four-document approach:

1. **Letter of intent or policy agreement** of the participating agency leaders to achieve an integrated data sharing process.
2. **Enterprise Memorandum of Understanding (E-MOU).** This type of Memorandum of Understanding (MOU) sets forth the “nuts and bolts” of how data is shared for all participating state agencies, regardless of whether the data is identifiable or de-identified. The Enterprise MOU will avoid the need to negotiate and draft a new MOU document every time data needs to be shared, saving time and money. The United States Commission on Evidence-Based Policymaking recommended the Enterprise Memorandum of Understanding (E-MOU) as a “best practice” method for data sharing.³
3. **Data Sharing Agreements (DSA).** Documents that are signed by the provider of data for the purposes of sharing the data with a particular party or parties. It provides the legitimate governmental purpose for the data sharing, the legal basis for what is shared, and who can have access to the data.
4. **A Data Use License (DUL).** This is a document that is signed by the receiver of data and sets forth the security provisions for the data, who will have access to the data, the use of the data, and how the data will be returned to the provider or destroyed after the legitimate purpose is completed.

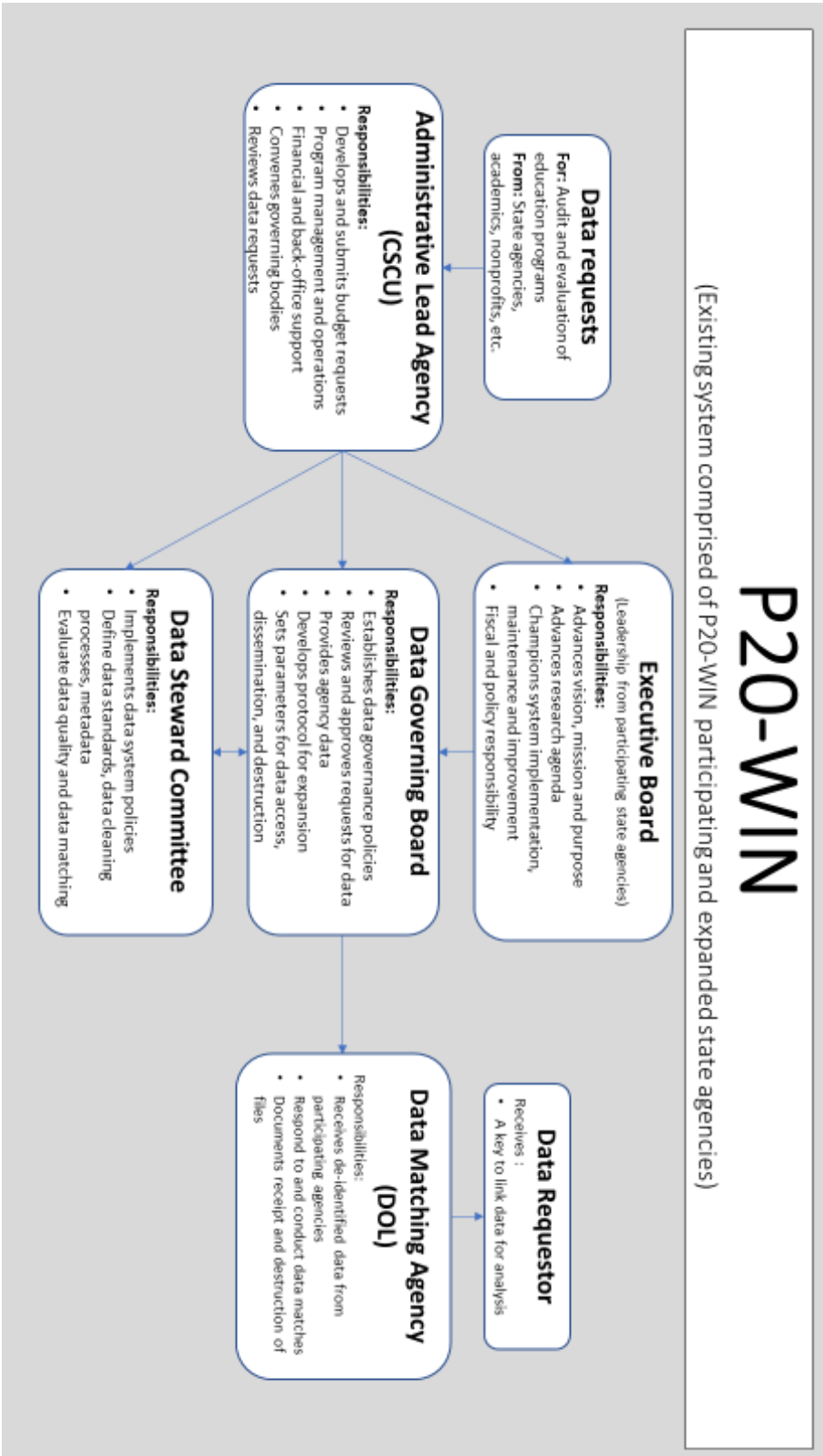
The legal documents reflect the three-tier governance framework – participating agencies will sign both the E-MOU and their own individual agency Data Sharing Agreement with the Data Linking Hub.

In this way, the governance structure and legal agreements would enable any state agency to sign on to the E-MOU to share data with other state agencies or other participating entities while preserving and strengthening the critical privacy safeguards and confidentiality requirements. Agencies that wish to share data through this structure would join the Executive Board and Data Governing Boards, and the appropriate committees.

The Office of the Attorney General and OPM is in the process of revising the four documents referenced above and will obtain input from the new and existing P20 WIN participating agencies beginning in summer 2020.

³ [The Promise of Evidence-Based Policymaking: Report of the Commission on Evidence-Based Policymaking](#), September 2017.

Attachment B: Diagram of interagency data sharing governance framework



Proposed evolution of P20-WIN governance

