



Strasbourg, 25 May 2011

**CDL-UDT(2011)011**  
Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**UNIDEM  
CAMPUS SEMINAR**

**INFORMATION, (SOCIAL) MEDIA AND THE CIVIL SERVICE**

**Council of the Regione Friuli Venezia Giulia  
Sala De Rinaldini  
Piazza Oberdan 5  
Trieste, Italy**

**2 – 5 May 2011**

**INFORMATION AND THE CIVIL SERVICE:  
HANDLING INFORMATION, EXCHANGING INFORMATION,  
AND THE PUBLIC'S RIGHT TO KNOW  
by  
Mr Jean-Patrick VILLENEUVE  
(IDHEAP Swiss Graduate School of Public Administration,  
Lausanne, Switzerland)**

## INFORMATION AND THE CIVIL SERVICE

### Transparency and Access to Information : What and Why

Transparency and openness are two of the main concepts in the modern operation of the public sector. Transparency generally means the opening up of the internal organizational processes and decisions to third parties, whether or not these third parties are involved in the organization (Florini, 1998). It rests upon a non-negotiable right to know (Fung et al., 2003; Pope, 2003; Open Government, 2004) made explicit in Article 19 of the Universal Declaration of Human Rights.<sup>1</sup> This fundamental right is also at the heart of the modern processes of accountability and the legitimization of public authorities (Naurin, 2002).

In addition to being a right, transparency must also be considered an instrument insofar as it equates to organizational methods and processes enabling the complete reversibility of information exchanges between the general public and public sector organizations. By 'reversibility' should be understood moving from the principle of absolute privilege and the discretionary use of information to a system where privilege is the exception and one that, moreover, must be substantiated and justified legally. This concept of information 'reversibility' in public organizations significantly shifts the historical balance between privilege and transparency — the root of a debate that is at the heart of current concerns.

Transparency is a very broad concept which applies to many areas (Pasquier and Villeneuve, 2005): organizational transparency, accounting and budgetary transparency, transparency of government action and responsibilities, as well as documentary transparency. The latter, documentary transparency, is the most innovative and demanding of these, and is the main focus of this course. Documentary transparency is based on access to information laws. These laws give individuals the opportunity to request, without need to justify or substantiate the request, information, or a document containing the desired information. The public therefore has a legally guaranteed right of access to information held by the government, the main objective being to force public authorities to disclose what they would rather keep secret.

Several reasons underlie the development of this new form of transparency. First of all, transparency is essential to the process of information exchange. The state needs increasing amounts of information from citizens (questionnaires, forms, etc.) to carry out various tasks within our societies. At the same time information itself is increasingly valuable. In the context of the 'information society' and with the revolution in the means of communication, information has been transformed. From a resource essential for the good management of society, it has become an indispensable public resource. Here the need for 'reversibility' of information becomes significant, for we see a strong imbalance between information held by governments (ever-increasing in quantity and value) and that possessed by citizens. A re-balancing is becoming necessary.

Transparency is also intended to improve relations between the public authorities and the general public. In a context marked by the ever-present problem of public deficits (OECD, 1999), a loss of confidence in the authorities (Van de Walle and Bouckaert, 2003), demands for greater accountability (Savoie, 2003) and the fight against corruption (Transparency International, 2004), access to information makes it possible to reverse some of these trends.

Finally, transparency is a tool that encourages the involvement of the people in the development and implementation of public policies. There is in fact a growing tendency for the public to participate in decision-making and the policy-making processes of the state (Juillet and Paquet, 2001; Open Government, 2004). In order for them to participate more actively in the governance of the state they must have access to a better quality and an increased quantity of information. In this context, transparency in state activities becomes a *sine qua non* condition of good governance and active participation of citizens.

*Access to information legislations :*

<i>Sweden</i>	<i>1766</i>
<i>United States</i>	<i>1966</i>
<i>France</i>	<i>1978</i>
<i>Canada</i>	<i>1983</i>
<i>Zimbabwe</i>	<i>2002</i>
<i>Vaud</i>	<i>2003</i>
<i>UK</i>	<i>2005</i>
<i>Switzerland</i>	<i>2006</i>
...	
<i>Albania</i>	<i>1999</i>
<i>Armenia</i>	<i>2003</i>
<i>Azerbaijan</i>	<i>2005</i>
<i>Bulgaria</i>	<i>2000</i>
<i>Croatia</i>	<i>2003</i>
<i>Georgia</i>	<i>2000</i>
<i>Romania</i>	<i>2001</i>
<i>Russian Federation</i>	<i>2009</i>
<i>Serbia</i>	<i>2004</i>
<i>Ukraine</i>	<i>1992</i>

**Characteristics of Access to Information**

Access to information as codified in the relevant laws exhibits several characteristics (Frankel, 2001; Banisar, 2003; Canada, 2003, 2004):

- Consultable information: the basis of every law on access to information is the opportunity given to the individual to request, without having to justify or give reasons for such a request, information about the existence of a document containing the desired information. The documents in question can take very different forms: reports, notes, minutes of meetings, e-mail, even unwritten documents such as telephone conversations. The laws governing access to information must therefore explicitly distinguish between information which is available and that which is not.
- Exceptions: in general these laws apply to all governmental and administrative entities. However, exceptions relating to the defence of the higher interests of the state (international relations, national security) or to those of the individual (personal data) are provided for.
- The assistance provided by the state in the search for information: given the complexity of governmental operations, it would be wrong to expect members of the public to be aware of all the documents which have been drawn up and are therefore at their disposal. According to the country and/or institution, instruments or offices are set up to inform the public of the type of documents/information produced by the government.
- The time required for the release of information: the laws and regulations generally prescribe the time span within which the government or entity in question has to respond to a request for access to information. The government therefore may not make a member of the public wait unduly. This is vital when one considers that information often loses its value with time (subject no longer pertinent, important vote gone by, etc.).
- The costs and expenses of searches: the costs of a request are clearly indicated in the law. If search expenses, often quite large, exceed a certain limit (photocopies, search time, etc.), it is permissible to demand payment. The amounts, however, must remain reasonable to ensure that no one is deprived of this right.

- Redress procedures: a distinction is generally made between the department's in-house procedures and the possibilities of legal appeal to defend one's rights of access to information against any refusal, unjustified delay or overcharging on the part of the public service department.

### **Administrative Reactions to Access to Information**

While laws giving access rights to citizens are necessary, their mere adoption is far from sufficient to reach the goals of a transparent and democratic debate between citizens and public administrations.

A number of administrative reactions to Access to Information laws can be identified :

- Non-transparency is characterized by the fact that an organization or some of its activities are legally exempt from the obligation of disclosing information.
- Averted transparency corresponds to the behaviour of an organization which is subject to the law but which actively and illegally prevents access to information.
- Obstructed transparency corresponds to the use of all legal means to limit access to information (self-censorship, irregular classification of documents, restrictions in the transparency of the processing of requests, etc.).
- Strained transparency corresponds to behaviour on the part of the public body which, consciously or unconsciously, limits access to information, whether due to a lack of resources for processing the demands, unfamiliarity with the documents, etc.
- Maximized transparency: this form may *a priori* appear to be a panacea as it means that the organization makes all the information in its possession available. The public therefore does not even need to ask. However, it may also constitute an impediment insofar as that, if the interested parties do not have the registers, filing systems, etc., they often cannot access the information that interests them or have great difficulty locating it. In other words, too much transparency may destroy transparency.

**Table 1** Types of impediment to transparency in information

	Not subjected		Subjected		
	Legal	Illegal	Legal		
	Non-transparency	Averted transparency	Obstructed transparency	Strained transparency	Maximized transparency
Description	The concept of transparency does not apply. Transparency is only voluntary	The organizations directly disobey the law (refuse to participate)	Obstructions to transparency through using provisions of the law	Inability to cope with transparency due to an absence of resources or misunderstanding of information	Behaviour intended to forestall possible demands by making all the information available
Justification	'It's not necessary.'	'The file doesn't exist.'	'It wouldn't be responsible.'	'We don't have the resources.'	'It's simpler and less costly.'

### Explaining Administrative Resistances

While documentary transparency is solidly anchored in a legal context, one can nonetheless observe forms of resistance and the development of strategies aimed at avoiding this transparency. There seem to us to be four principal reasons explaining this resistance to change.

The first, behavioural in nature, is to be found in the persistence of a culture of secrecy. It arises out of a certain historical tradition in which knowledge was accumulated without being really shared, with the consequence that those in power have always tended to consider files and other data as being their own or the institution's property — but not of the citizen. The second reason is institutional. The bureaucratic culture of organizations is by nature hierarchic, introverted and risk-averse (Reid, 2004b). To protect their resources and avoid having to admit their mistakes, but also to keep a comparative advantage over other organizations, public service organizations are little inclined to disclose the information at their disposal. Third, a political reason, the security-minded environment linked in particular to the terrorist attacks of September 2001 and the multiplicity of international agreements afford those in power new possibilities of limiting the access to information (Blanton, 2003; Mendel, 2003b). The last reason, rarely discussed, is of an organizational nature. Being little used to communicating and maintaining regular relations, apart from strictly administrative ones, with the public, many public service organizations are somewhat unequipped to implement these laws. Not only are these organizations unforthcoming with regard to operational techniques to be developed, but their actual practices also differ greatly from one organization to the next, with few 'good practices' that could serve as reference points having been developed to date.

## **Consequences**

What are the possible consequences of an legal instrument, an Access to Information regime, that falls prey to some of the administrative reactions detailed in the previous section ? Numerous could be identified but the most tangible, and most observed seem to be :

- Faltering organisational memory
- Poorer capacity to make decisions
- Less accountability

Other consequences are likely to be based on the specific institutional or socio-historical conditions of the country studied.

## **Solutions... ?**

There are no simple solutions to the effective management of administrative units. Rather, we should use the two extreme scenarios and reflect on the ability to bring us closer to a fruitful and effective dialogue between citizens and the State. Should we strive for:

- 'Total Transparency': making everything accessible

Or rather

- A 'Balanced Transparency': clearly identifying what is worth making transparent

The discussion, for citizens, civil servants, elected officials and all other stakeholders is now centred on this fundamental opposition in approach.

## **References**

The full references for this short outline can be found in the article Pasquier, Villeneuve (2007) Organization barriers to transparency: a typology and analysis of organizational behaviour tending to prevent or restrict access to information, international review of Administrative Sciences, 73(1), pp.147-62