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Proactive Transparency: The future of the right to information?

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WORKING PAPER

Proactive Transparency: The future of the right to information?

*A review of standards, challenges, and
opportunities.*

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The findings, interpretations, and conclusions expressed in this volume do not necessarily reflect the views of the Executive Directors of The World Bank or the governments they represent. The World Bank does not guarantee the accuracy of the data included in this work.

This paper has been commissioned by the Access to Information Program at the World Bank Institute (WBI) and supported financially by the Communication for Governance and Accountability Program (CommGAP).

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Acknowledgements

I would like to thank the following people for responses to my requests for information while researching this paper, and for proactively sharing useful information and ideas: Jerzy Celichowski, Charles Davis, Andrew Ecclestone, Greg Elin, Andrea Figari,  Fldes, David Goldberg, Jonathan Gray, Kristina Kotnik Sumah, Norah Mallaney, Jos Luis Marzal Ruz, Toby Mendel, Venkatesh Nayak, Nataa Pirc Musar, Nemanja Nenadi, Mateja Preern, Suzanne Piotrowski, Miguel Pulido, Andr Rebentisch, Alasdair

Roberts, Santosh Sigdel, Shekhar Singh, Graham Smith, Richard Smith, Rick Snell, Ivan Szekeley, Roger Vleugels, and John Wonderlich. My gratitude also to my colleagues at Access Info Europe, to the many contributors to the FOI Advocates Network, and to Marcos Mendiburu, Luis Esquivel, Aranzazu Guillan-Montero, Rosario Soraide and the team at the WBI Access to Information Program. Errors and views are solely the author's and do not necessarily reflect the official position of the World Bank.

Executive Summary

This paper identifies four primary drivers of proactive disclosure throughout history (Section 2). The first is the need to inform the public about laws and decisions and the public's right to be informed, to know their rights and obligations. The second is the public's demand for the information needed to hold governments accountable both at and between elections. The third is the demand for information in order to participate actively in decision-making. The fourth is the provision to the public of information needed to access government services, which has expanded significantly in the past decade with growth of electronic access to services or "e-government."

These drivers led to progressive development of laws and practices for proactive disclosure. They have been given further impetus by the large-scale disclosure potential of the Internet. Also advancing proactive disclosure has resulted from the development of the right of access to information, as enshrined in access to information laws, which increasingly contain specific proactive provisions. The recently adopted legal frameworks which include proactive disclosure regimes (Section 3) point to an emerging standard on the classes of information which should be made available at the core of any national proactive disclosure regime.

The national standards are reiterated and complemented by provisions by internation-

al bodies (Section 4). These international provisions make clear that, in addition to having numerous benefits for public bodies and for members of the public, proactive disclosure is an obligation that is part of the right of access to information. From comparing the national and international provisions it is possible to identify a set of 14 core-minimum of classes of information for proactive disclosure (detailed in Section 4.3).

The lessons learned from the practical experiences of implementing proactive disclosure regimes indicate that due consideration should be given to how information will be structured, organized, edited, and when and where it will be disclosed (Section 5).

Also essential in setting up proactive disclosure regimes is the need to allocate necessary resources, to consider rolling out proactive disclosure programs progressively, and to establish effective enforcement mechanisms to ensure compliance. These considerations lead to a number of recommendations including that information should be organized and published so that it is: available, findable, relevant, comprehensible, free or low cost, and up-to-date. When setting up or improving proactive disclosure schemes, public bodies should ensure that they are well-resourced, progressive, promoted (within government and to the public), comprehensively monitored, and properly enforced.

Introduction

There are two main ways by which information held by public bodies¹ can be accessed by the public.² The first is when individual members of the public file requests for and receive information (*reactive disclosure*). The second is when information is made public at the initiative of the public body, without a request being filed. This is known as *proactive disclosure*³ and the result is proactive transparency which can be achieved using a multiplicity of means ranging from publications and official gazettes, to publicly accessible notice boards, to radio and television announcements, to posting on the Internet via a public institution's website.⁴ This paper reviews the development of, and the emerging standards for, proactive disclosure.

1.1 The Benefits of Proactive Disclosure

For public authorities, numerous benefits accrue from taking the initiative to publish the information they hold. Proactive disclosure ensures that members of the public are informed about the laws and decisions that affect them and contributes to the rule of law. It facilitates more accountable spending of public funds and promotes integrity in government. Disclosure of data and policy documents ensures that the public has the information needed to partici-

pate in policy- and decision-making. Dissemination by public bodies of information about how they function helps the public access government services. These benefits are among the main drivers of increased proactive disclosure in recent years, as examined in Section 2 of this paper. The rise of the Internet has furthered transparency by making large-scale publication of government data possible at low cost.

A further benefit of proactive disclosure is that it encourages better information management, improves a public authority's internal information flows, and thereby contributes to increased efficiency. In countries with access to information regimes, proactive disclosure has another benefit, which is to reduce the burden on public administration of having to process requests for information that may be filed under an access to information law.

From the perspective of members of the public, the automatic availability of information ensures timely access to information and helps to ensure that there is equality of access for all members of society without the need to file requests. A significant advantage of proactive disclosure, particularly when this becomes automatic and close to real-time, is that it becomes harder for public officials to subsequently deny the existence of, or to manipulate, the information.⁵

Another important benefit of proactive disclosure in countries emerging from authoritarian

regimes is that it gives some protection to applicants from weaker segments of society for whom it is often a hazardous activity to actually request information that could expose powerful vested interests. If such information is proactively available, then it can be downloaded or accessed anonymously.⁶ This also helps avoid a common situation in corruption-prone countries where public officials are more likely to attend to those who are sufficiently empowered to file requests for information needed to defend their rights.⁷

Taking the initiative to push out information will contribute to public use of it, perhaps by combining it with other data in a way that adds value to the information, giving it greater relevance for other members of the public or making it more useful in public policy debates. As will be examined in Section 3, the creative use of information by the public is inspiring greater proactive disclosure.

1.2 Standard-setting on Proactive Disclosure

As this paper will show (Section 2), the numerous benefits of proactive disclosure have been driving forces resulting in significant quantities of public information being disclosed. This information includes core data on the main functions of government (budgets, annual reports, major policy decisions, etc.) and sector-specific information that is produced for and disseminated to affected members of the population (such as information about primary schools, health care for the elderly, business development opportunities, or support for immigrants).

Standard-setting on what information should be disclosed, where, when, how, and to whom, has also been advanced by initiatives coming from government bodies and as a result

of campaigns by civil society movements promoting proactive disclosure.

At least four groups of civil society activism on proactive disclosure can be identified:

1. **National level, sectoral campaigns:** For example around the rural land rights movement in India, agricultural subsidies in Mexico, or activism to promote citizen participation in budget processes in Brazil and Peru.
2. **National/international access to information campaigns:** The movements to promote the inclusion of proactive disclosure provisions in the access to information laws of India and Mexico studied in this paper; the campaign for stronger proactive disclosure provisions in the Council of Europe Convention on Access to Official Documents.
3. **Sectoral/regional campaigns:** The access to environmental information movement (resulting in the Aarhus Convention); campaigns for openness to combat corruption (leading to, inter alia, the UN Convention against Corruption); transparency around natural resource extraction (the Publish What You Pay campaign, leading to the Extractive Industries Transparency Initiative); and the aid transparency movement (where organizations such as Publish What You Fund and aidinfo are working to include proactive publication standards into the International Aid Transparency Initiative).
4. **Supranational initiatives:** The efforts to promote transparency of international financial institutions lead by the Global Transparency Initiative coalition, and the work of the One World Trust in evaluating accountability of intergovernmental bodies (along with multinational corporations and international non-governmental organizations).

These movements have secured proactive disclosure provisions in national legal frameworks, treaties, and standard-setting documents. While some of these provisions are sector-specific, others are cross-cutting and apply to all public institutions. As the standards for proactive disclosure evolve, they are increasingly included in national access to information laws, taking their place alongside the right to request and receive information as part of the right to information. Section 3 examines proactive disclosure provisions of national access to information laws, while Section 4 examines how these are reflected in international standards on the right of access to information.

It is now well established that there is a human right of access to information held by public bodies. The right is enshrined in at least 50 national constitutions and international courts have read it into the freedom of expression and information provisions of human rights treaties.⁸ If the only channel for access to information were via requests filed by individuals, huge information inequalities would rapidly arise with different people knowing different things about the functioning of government, with large sections of the population remaining ill informed, to the detriment of society as a whole. Such a system would also place an intolerable burden on public officials who would have to strive to answer huge volumes of requests from information-hungry citizens. Proactive disclosure therefore levels the playing field for access to government-held information.

At the same time as recognizing that access to information is an integral part of the right to information, national legislators and international human rights bodies have been somewhat cautious in defining the precise nature and scope of the proactive disclosure dimension of the right. Hence (as will be examined in Section 4) even new instruments such as the Council of Europe Convention on Access to Official Doc-

uments contain only rather general references to proactive disclosure obligations.

Clearly to publish all information held by public bodies is a huge task and can only be an aspiration at this stage (although as signaled in Section 3.2, there are now some interesting initiatives in that direction). The questions therefore remain: which information should be published, and when and how?

This paper attempts to advance the debate around that question by analyzing the multiple proactive disclosure provisions in national law and international treaties in order to identify the emerging global consensus on the classes of information which should be included in a proactive disclosure regime (Section 4).

The paper examines the practical challenges related to the implementation of proactive disclosure regimes and some of the lessons learned from which principles for making proactive disclosure work in practice can be derived (Section 5). It concludes by identifying some future challenges and areas where additional research is needed (Sections 6).

The **methodology** for the research included a review of reports about the national law and practice on proactive disclosure and related issues in a number of countries including Chile, Estonia, France, Hungary, India, Macedonia, Mexico, Peru, Slovenia, the UK, and the United States. International declarations, jurisprudence, and treaties containing transparency provisions were also reviewed, as was academic literature. This review was supplemented by interviews with civil society practitioners, staff of information commissioners' offices, and government officials.

Four countries whose access to information laws include proactive disclosure provisions were examined in more depth for the standard-setting analysis: India (Right to Information Act of 2005), Mexico (Law on Transparency and Access to Public Information of 2002), Hungary

(e-FOIA, 2005), and the UK (Freedom of Information Act adopted in 2000, entered into force in 2005). While specific legislation is likely to give a much greater level of detail than the general provisions of an access to information law (take, for example, specific legislation on public procurement in many countries), these recent and high profile access to information laws point to emerging minimum standards for proactive disclosure regimes.

The research for this paper identified a lack of comparative mapping of proactive disclosure in national law and practice. This can be accounted for by the multiplicity of legal provisions requiring proactive disclosure at the national level, combined with significant disclosure of information as a matter of good practice. New initiatives to release entire datasets proactively are adding to the complexity of the picture.

There has been some comparative mapping by sector. Perhaps the most comprehensive is the work of the International Budget Partnership which produces a global ranking of budget transparency in 85 countries, the Open Budget Index, every two years.⁹ Similarly the Global Integrity Initiative's annual Integrity Index checks for levels of transparency in a number of areas of public life including elections, public procurement, privatization, and business licensing in 92 countries.¹⁰ More such surveys are needed to arrive at an accurate picture of the volume and nature of government information that is currently disclosed and to be able to identify where attention to increasing transparency is needed.

1.3 Proactive Disclosure as the Future of the Right to Know

This paper was elaborated during 2009, a year which saw a series of significant developments for the right of access to information in gener-

al and proactive disclosure in particular. Some of the highlights are:

- **January 1, 2009:** Mandatory minimum standard proactive disclosure rules come into force in the UK under the Information Commissioner's *Model Publication Scheme* (Section 3.1).
- **January 21, 2009:** President Barack Obama on his first day in office issued a memorandum on the Freedom of Information Act which shifted the U.S. Administration from a presumption of secrecy to one of disclosure in response to FOI requests, and went one step further to urge proactive disclosure:

*"The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely."*¹¹

- **April 14, 2009:** European Court of Human Rights confirms for the first time that there is a fundamental right of access to information linked to the right to freedom of expression and necessary for civil society to hold government bodies accountable and to create forums for public debate (Section 4).
- **April 30, 2009:** European Union rules requiring member states to proactively disclose data on agricultural subsidies come into force (Section 3.2). This is the largest ever proactive disclosure initiative to apply across the 27-member Union.
- **May 21, 2009:** U.S. Government launches *Data.gov* whose purpose is to give direct public access to machine-readable datasets

generated by the Executive Branch of the U.S. Federal Government. An initial 47 datasets are on line, of the thousands planned for release. Openness advocates hail this as an “enormous change in attitude about what ‘public’ means”¹² (Section 3.2).

- **June 10, 2009:** UK government announces that Tim Berners-Lee, one of the inventors of the World Wide Web, is working with to create a single online point of access for government-held public data and how to use the Internet to improve government consultation processes. *Data.gov.uk* was subsequently launched on January 21, 2010 (Section 3.2).
- **June 18, 2009:** World’s first treaty on access to information, the Council of Europe Convention on Access to Official Documents opens for signature; it contains a provision on proactive disclosure (Section 4.2).

- **July 8, 2009:** Indian government announced that it will be broadening the rules for proactive disclosure contained in the Right to Information Act (2005) to increase disclosure in “non-strategic areas” beyond the 18 core disclosure provisions of the act. Civil society groups point out that there is flexibility in the existing provisions and urge better compliance with these.¹³ (Section 3.1).

This paper will consider some of these developments in more depth as it examines the proactive disclosure of information, which some experts are characterizing as “the future of the right to information.” The first section, however, will begin with the historical development of proactive disclosure of public information and examine some of the driving forces that have led to the development of this half of the right of access to information.

The Drivers of Proactive Transparency

Four main driving forces have shaped the development of proactive transparency through history. The first is the government's need to inform the public of laws and decisions—and the public's right to be informed. The second is the demand for information to hold governments accountable at and between elections. The third is the evolution of public participation in decision-making, which depends on information being available. The fourth is ensuring that the public is informed about how to access government services.

Further impetus comes from the Internet, which makes possible rapid and inexpensive proactive disclosure. The Internet has given us e-government, large-scale public consultations, and direct participation in decision-making (e-democracy).¹⁴ Other communication technologies such as mobile phones provide platforms for public bodies to disseminate information to wider audiences; in some developing countries there is greater mobile phone use than Internet access.¹⁵ In many ways, the existence of information and communication technologies (ICTs) is in itself a driving force for greater access to information and can be seen as a fifth driver of proactive transparency, albeit a cross-cutting one.

2.1 Proactive Transparency and the Rule of Law

Governments have always had pragmatic reasons for making information available so that citizens could know and obey the laws of the land, something essential for a rule-of-law state to function effectively. The earliest forms of proactive disclosure were the “criers” or “bellmen” in ancient Greece, who went through the streets announcing news such as victories in battles. In medieval Europe, people would be hired to walk through the streets ringing a bell, banging a drum, or blowing a horn to call for people's attention, and would then read out important news such as royal proclamations, local bylaws, warnings of danger or information about market days; they also played a role in passing news from village to village.¹⁶ Although in many parts of the world the town crier's role has been replaced by newspapers, radio, television, and now the Internet, they still exist in parts of the developing world transmitting news from loudspeakers, sometimes mounted on moving vehicles.¹⁷

With the rise of the mass media, the need for town criers and notices hung in public places decreased but public authorities around the world have preserved this tradition of proactively disseminating information. This is particularly the case with respect to information that impacts directly on people in a limited geographic area: it is common around the world to see notices pinned to fences, gates, or trees announcing, for example, that a minor construction project is planned in that locality and informing the public of the opportunities to present objections to the local authority.

The need to inform the public about legislation, policies and decisions so that they can be obeyed and enforced still underpins much proactive disclosure by government. The principle of the *rule of law* requires that laws be known.¹⁸ Hence, legal regulations can only enter into force once published in an official journal, and administrative decisions are only applicable once received by those concerned.¹⁹ From a human rights perspective, a law must be published in a way that facilitates public knowledge: the principle that “ignorance of the law is no excuse” also places responsibilities on government to disseminate the law.

A typical example of modern democratic practice is France, which has an extensive system for publishing all legislation, norms and regulations. In addition to the traditional Official Journal,²⁰ the main 21st century vehicle is the “Legifrance” website,²¹ which holds French, European and International law, has electronic versions of France’s Official Journal, latest news about laws adopted, and links to the Senate and Congress websites (See Figure 1 for a screenshot). In line with this, France’s 1978 law, one of the first to have some proactive disclosure provisions, required publication of orders, instructions, decisions and interpretations of the law (See also Section 3.1).²²

Promoting public knowledge of laws and policies and informing citizens of their rights was historically at the origin of proactive transparency. The rule of law basis for proactive disclosure still preserves its fundamental importance when defining proactive disclosure rules.

2.2 Proactive Transparency and Accountability

A second driver for proactive transparency has been the public’s demand for information in order to hold governments accountable for their actions and how they spend public funds. This demand led both to rules requiring proactive disclosure and, more recently, to access to information laws.

As concepts of democracy evolved, the rule-of-law motive for proactive transparency was joined by demands for government accountability. In the 18th century the word “transparency” to describe open government was used in the works of political philosophers such as Jean-Jacques Rousseau (1712–1778), who promoted transparency in his plans for the government of Poland in 1772, proposing that all public officeholders should operate “in the eyes of the public” and even wear a uniform so that they could never be anonymous.²³ Similarly, political philosopher Jeremy Bentham (1748–1832) argued that “the more closely we are watched, the better we behave.”²⁴

In spite of this recognition of the link between transparency and honesty or “integrity” in public life, the bureaucratic model of “discreteness and secrecy”²⁵ prevailed, with isolated exceptions such as Sweden’s long tradition of open government.²⁶ Only in the latter part of the 20th century did civil society demands for greater accountability to prevent corruption—combined with the democratic transitions at the

Figure 1: Access to Legislative Information in France

The screenshot displays the Legifrance.gov.fr website. At the top left is the French Republic logo with the motto 'Liberté • Égalité • Fraternité'. The main header features the 'Legifrance.gov.fr' logo and the text 'LE SERVICE PUBLIC DE LA DIFFUSION DU DROIT'. The date '07 August 2009' is shown in the top right. Below the header, there is a 'Actualité' section with two news items regarding legislative changes in New Caledonia and Mayotte. The main content area is divided into several columns:

- Sites juridiques:** A vertical list of links including 'Assemblée parlementaires', 'Juridictions', 'Autorités administratives indépendantes', 'Fonctions publiques (statuts)', 'Éditeurs juridiques', 'Universités - Recherche', 'Portails juridiques', 'Union européenne', 'États membres de l'UE', 'Organisations internationales', and 'États étrangers'.
- Droit français:** A central section with sub-sections:
 - Lois et règlements:** Includes links for 'La Constitution', 'Les codes en vigueur', 'Les autres textes législatifs et réglementaires', and a search box with a 'Chercher' button.
 - Conventions collectives:** Includes 'Les conventions collectives'.
 - Jurisprudence:** Includes links for 'constitutionnelle', 'administrative', and 'judiciaire'.
- Le Journal officiel de la République française:** Includes links for 'Sélection du Journal Officiel', 'Le dernier JO publié', 'Recevoir le JO en ligne', 'Rechercher un JO', 'JO électronique authentifié', and 'Autres publications des JO en ligne'.
- Actualité juridique:** Includes links for 'Dossiers législatifs', 'Actualité européenne', and 'Actualité internationale'.
- Droit européen:** Includes links for 'Traité européens', 'Journal officiel de l'Union européenne', 'Transposition des directives', and 'Jurisprudence européenne'.
- Droit international:** Includes links for 'Traité internationaux' and 'Jurisprudence internationale'.
- Qualité de la réglementation:** Includes links for 'Guide de Légistique', 'Évolution du volume des textes', and 'Codification'.

At the bottom left, there is a 'Service-Public.fr' logo.

end of the Cold War—create increased pressures for proactive disclosure of information.

As affirmed in a 1999 joint paper from the Organisation for Economic Cooperation and Development (OECD) and the European Union (EU), openness and transparency serve two purposes:

On the one hand, they protect the public interest as they reduce the likelihood of mal-administration and corruption. On the other hand, they are essential for protecting individual rights, as they provide the reasons for the administrative decision.²⁷

The OECD-EU paper then defines the classes of information to be published proactively:

Public registers have to be made accessible to the general public. The agents of authority usually have to identify themselves to the public. Civil servants must accept certain restrictions to earnings from private activities, which have to be disclosed and authorised beforehand in any event. Particularly important to the application of openness is the obligation of public authorities to provide reasons for their decisions.²⁸

An example translating this approach into law comes from Canada, where a series of laws mandate proactive disclosure. In 2003, publication of travel and hospitality expenses was required for senior government officials. In 2004, publication of all contracts worth over CA\$10,000 (US\$9,358) was required, as was information on the reclassification of public service positions. In 2005, proactive disclosure of all grants and contributions over CA\$25,000 (US\$23,395) was introduced as part of the government's "management improvement agenda". Reporting is quarterly and can be accessed through a simple Internet portal on the website of the Treasury Board of Canada Secretariat.²⁹

Creating a level playing field for competition in the market has been another driving force towards proactive disclosure of financial information in post-authoritarian countries. For example, in Chile, achieving probity (honesty) in government in the post-Pinochet transition was seen as important not only for democratization of the state, but also as a key factor in economic growth,³⁰ and lead to adoption of a series of laws with transparency provisions.³¹ Greater transparency of state spending was achieved with the "ChileCompra" electronic public procurement system, established in 2003.³² Financial transparency was expanded in 2006 when Chile's President Bachelet ordered every public body to publish details of the spending of public funds, contracts, and staff information; the decree required that each body link the disclosure of financial data to the ChileCompra system.³³

Making financial information public will not in itself root out corruption but does facilitate review by members of the public, civil society organizations, and journalists.³⁴ The right to have access to information to hold government accountable was confirmed in an April 2009 ruling from the European Court of Human Rights, which said that access to information is essential for civil society to play its "social

watchdog" role and that states have an obligation to eliminate barriers to access information where "*such barriers exist solely because of an information monopoly held by the authorities.*"³⁵ Proactive disclosure therefore plays a crucial role in making social oversight of ongoing governmental activities possible, thereby strengthening accountability to the public.

2.3 Proactive Transparency and Participation

The third driver of proactive transparency is increased citizen participation in decision-making. The decisions can range from the local level (how to make best use of a piece of wasteland, for example) to affecting an entire nation (such as how to develop a country's poverty reduction strategy).

Public participation can change the way public policies are developed, reducing capture by special interest groups, and ensuring that decisions take into account the views and needs of affected communities. Although information alone is not sufficient—additional mechanisms are necessary for receiving input from the public, reviewing it, and providing feedback on how this input was taken into consideration—meaningful participation exercises are contingent on the public having timely access to the same data as the officials making the decision. Participation cannot be effective or equal if individuals have to file requests and wait for an answer.

In countries with high levels of Internet penetration, holding online consultations lowers the barriers to participation. For example, the UK's Department of Health held a consultation which was framed as follows:

The Government has launched a consultation to find out what you think of plans to help improve

*everyone's mental well-being and the services that provide mental health care.*³⁶

The consultation notice is accompanied by relevant background documents opening up for public debate an important area of health care.

In other countries, information for consultations can be disseminated in fliers, on notice boards, and by holding public meetings. These approaches have been used in Latin America for informing the public about participatory budgeting exercises. Direct consultations on budget spending priorities originated in the Brazilian city of Porto Alegre in the late 1980s³⁷ and in the 1990s spread to other countries including Peru, which is the only country in the world to have a national law requiring participatory budgeting.³⁸ That law, adopted in 2003, has transparency as one of its key pillars³⁹ and requires the publication of key budget information.

The combination of the requirements under Peru's participatory budget law and its access to information law⁴⁰ has led to measurable increases in proactive disclosure of information. A June 2009 study found that half the authorities monitored had published at least 70% of legally mandated information on their websites, with the highest score being 91 percent.⁴¹

The role of transparency in facilitating participation has been confirmed by international human rights bodies. In the Americas, the Heads of State of the Organization of American States declared in 2004 that: "Access to information held by the State, subject to constitutional and legal norms, including those on privacy and confidentiality, is an indispensable condition for citizen participation and promotes effective respect for human rights."⁴² The right to participate is contingent on the right of access to information, and that participation can only be satisfactorily achieved through proactive disclosure of information.

2.4 Proactive Transparency, Government Services and e-Government

The fourth driver for proactive transparency is the need to inform the public about government services. This is a corollary of informing the public about the legal rights and obligations, and has been a traditional basis for proactive disclosure. Services may be general or for a specific section of the public (for example, students, businesses, or parents)

Proactive disclosure about public services has been given new impetus in the past decade by ICTs, which turn slow bureaucratic procedures involving lots of paperwork into simple transactions with documents and guidance accessed at the click of a mouse. This is known as "e-government" and according to the World Bank it has "the ability to transform relations with citizens, businesses, and other arms of government."⁴³

One country that has achieved significant advances in e-government is Estonia, which adopted its first "Information Society Strategy" in 1998, just nine years after emerging from the Soviet bloc.⁴⁴ Since then there has been a steady increase in facilitating electronic access to government services, whether it be for paying taxes, applying for parking permits, or commenting on draft legislation. Electronic ID cards, now in the possession of the majority of citizens, can be used to interact with the government through a computer or mobile phone. The Citizens' Portal, a virtual representation of the state on the Internet, gives the public direct access to 20 main registers of the state without leaving their homes.⁴⁵ The Estonian Informatics Centre reports that in 2007 these services were used a total of 43 million times.⁴⁶

Another advantage of ICTs is the speed with which newly created data can reach members of the public. In Estonia, Cabinet meetings have been run live on the Internet and Estonian citizens get to know about policy decisions as little as 30 seconds after they have been made.⁴⁷

E-government should not, however, replace existing disclosure modes in countries with low Internet penetration. Conventional channels—notice boards, informative leaflets, radio, television, and public meetings—or use of mobile phone where relevant, permit the public to learn about services and subventions in areas such as health, education, employment, agriculture, and business, thereby contributing to human and economic development.

This section has reviewed the main driving forces for proactive transparency—the rule of law, accountability, public participation, and access to services. These drivers resulted in proactive transparency both prior to and separately from the adoption of access to information laws. As a result, the right to request and receive information was introduced in an environment where considerable volumes of public information were already available. As the next section will show, there is now a convergence between proactive and reactive disclosure, with the public's right to ask for information having an impact in defining which information is disclosed proactively.

3

Access to Information Laws and Proactive Transparency

Access to information laws primarily regulate the mechanisms by which the public can request information from public institutions.⁴⁸ They usually confirm the right to information along with a presumption in favor of granting access—what is sometimes referred to as the *principle of maximum disclosure*.⁴⁹ They also establish the exceptions to access, such as protection of privacy, commercial secrecy, and national security. Increasingly, as reviewed in this section, these laws incorporate provisions on proactive disclosure, clearly establishing a legal obligation on public authorities not only to respond to requests but also to “push out” information. This section also examines the impact of information requests on decisions about what should be disclosed proactively.

3.1 Incorporating Proactive Disclosure into Access to Information Laws

The world’s earliest access to information laws had only minimal proactive disclosure provisions. For example, in the Netherlands, the “WOB” (Act on public access to government information, 1978) establishes the mechanisms for filing requests and receiving information. It

also includes a general provision on proactive disclosure, requiring that:

*The administrative authority directly concerned shall provide, of its own accord, information on its policy and the preparation and implementation thereof, whenever the provision of such information is in the interests of effective, democratic governance.*⁵⁰

This provision is not, however, the main source of proactive disclosure obligations in the Netherlands; there are hundreds of information-disclosure norms. For example, a recent review of the proactive disclosure of the salaries of public officials and senior staff in state-owned companies revealed over one hundred rules concerning the disclosure of salaries, extra payments, bonuses, and so on.⁵¹

In 1989 when the Berlin Wall fell there were just 12 “access to information” or “freedom of information” laws in the world, to be found mainly in longer-established democracies, and the proactive provisions of these laws remained limited. There are now 80 access to information laws,⁵² reflecting efforts by civil society to redress power balances in formerly authoritarian regimes by empowering citizens with the right to request and receive particular pieces of information.

Including stronger proactive disclosure provisions has been part of this expansion of the

right to information. There seem to be three main reasons for this trend. The first is to establish minimum standards for proactive disclosure applicable to all public bodies. The second is to ease the burden of a new openness regime by anticipating public demand and meeting it through proactive disclosure. The third is the growing recognition that proactive disclosure is an integral part of the right of access to information, ensuring that core information is available in a timely fashion: as the European Court of Human Rights has noted, information “is a perishable commodity and to delay its publication even for a short period may well deprive it of all value and interest.”⁵³

The Mexican Law on Transparency and Access to Public Information (2002)⁵⁴ specifies 17 classes of information for proactive disclosure.⁵⁵ A strong civil society campaign behind the Mexican law helped shape these provisions, as it did in India where right to information advocates were always clear that the right places an obligation on government to publish information proactively as well as to respond to requests. The Indian Right to Information (RTI) Act (2005)⁵⁶ identifies 18 classes of information that should be made public proactively without the need for requests.

India’s RTI Act laid a set of obligations over pre-existing proactive disclosure requirements in other laws. This trend to use access to information laws to harmonize proactive disclosure has led countries to amend their legislation with supplementary acts, defining across-the-board proactive disclosure for all public bodies. For example, Hungary, whose 1992 access to information law was the first in central and eastern Europe, lacked strong proactive provisions. In 2005, in response to the experience of implementing the law, concerned at the burden that requests place on both requesters and public officials, and responding to opportunities created by the Internet, Hungary introduced its Electronic Freedom

of Information Act (e-FOIA).⁵⁷ The e-FOIA requires proactive disclosure by electronic means of core information held by public bodies.⁵⁸

Hungary’s e-FOIA—drafted after input from civil society and academics—sets out the legal requirements in significant detail. For example, it breaks down “organizational and staffing information” into ten classes, and within each class it lists the types of information to be published. There are another 18 classes for information on operation and activities, and a further six classes for financial information.⁵⁹

Setting an obligatory minimum standard for proactive disclosure can also be beneficial in countries with longer democratic traditions where levels of proactive disclosure are variable because practices have evolved but have not been codified in law. In the UK, for example, the Freedom of Information Act initially left it up to each of the over 100,000 bodies covered by the act⁶⁰ to define their proactive disclosure schemes, based on what these bodies had traditionally made available. As a result, standards for proactive disclosure varied enormously across government and between central and local level. For this reason, in 2008 the Information Commissioner’s Office (ICO) used its powers under the act to develop and mandate a minimum set of standards for the publication scheme.⁶¹ Prior to doing this, the ICO established a multi-stakeholder steering group which, over 18 months, held consultations with public authorities at all levels of government and around the country, and ran workshops which members of the public were also able to attend.

The classes of information that have been incorporated into the proactive disclosure requirements of the Hungarian, Indian, Mexican, and UK laws are summarized in Annex A, along with the requirements of international law. By comparing these provisions it is possible to identify a minimum standard for information to be disclosed under a modern democratic pro-

active disclosure regime (Section 4.3). It is important to note that in the four countries studied, consultations with the potential users of the information was given due consideration in defining the proactive disclosure provisions.

3.2 User-driven Proactive Transparency

Another way the public is shaping proactive disclosure policies is through requests for information, which provide public authorities with an indicator of what the public wants to know. If a particular document is requested frequently, it makes good bureaucratic sense to publish it so that future information-seekers do not have to file a request, saving time for both officials and requestors.

Some laws—including those of Mexico, Slovenia, and the United States—establish that frequent requests should result in proactive disclosure. For example, the Mexican Federal Law on Transparency and Access to Public Information (2002)⁶² requires public bodies to publish “relevant and useful information,” and specifies that one way to determine this category is that it “corresponds to the most frequent questions made by the public.” The sophisticated electronic request-tracking system developed in Mexico helps to capture data on frequent requests.⁶³

A similar provision in the U.S. e-FOIA (1996)⁶⁴ requires creation of an index, and publication of, frequently requested records. Specifically the act requires that all agencies “*make available for public inspection and copying ... all records ... [which] have become or are likely to become the subject of subsequent requests for substantially the same records.*”⁶⁵ As a result of this provision, federal websites in the U.S. include a page with links to frequently requested documents.

The use of information obtained under access to information laws can also promote pro-

active disclosure. A large-scale example is the project to make European Union farm subsidies transparent. In Europe, a network of journalists used access to information requests to compile information on exactly who receives every eurocent of the €55 billion of agricultural subsidies spent annually in the EU. The first country to release the data was Denmark in 2004, followed by the UK in 2005. This information was posted on the website *Farmsubsidy.org*.⁶⁶ The resulting stories (and in some cases scandals) about who was getting what money generated a lot of media coverage and put pressure on the less transparent countries of the EU to open up their files. Eventually an EU directive was adopted requiring disclosure by 30 April 2009, resulting in disclosure of a wealth of additional information, making it possible to identify the major recipients of European farm subsidies, whether they be small landholders or large multi-national companies.⁶⁷

Another example of positive feedback comes from the field of budget transparency, where civil society groups have taken state budgets and edited the information in order to present it in a user-friendly format. When civil society in Croatia prepared a citizen version of the budget, the Ministry of Finance adopted this guide as its own, thereby changing the way in which the government presents information.⁶⁸

Innovative, value-added uses of public databases can impact positively on proactive disclosure policies. For example, in 2007, the UK government released data about locations of bicycle accidents. Members of the public linked this information to maps, making it possible for cyclists to plan safer journeys avoiding the black spots. The British government has been moved by such examples to launch new initiatives to release ever-larger volumes of government data proactively.⁶⁹

In the U.S., the demand for greater access to entire datasets so that the public can add value to

the data has resulted in the May 2009 launch of the web portal *Data.gov*, whose goal is “to improve access to Federal data and expand creative use of those data beyond the walls of government by encouraging innovative ideas (e.g., web applications). ... The openness derived from *Data.gov* will strengthen our Nation’s democracy and promote efficiency and effectiveness in Government.”⁷⁰ These are bold claims but independent analysts agree that this is an unprecedented initiative, based on a sophisticated understanding of the added value potential when the public uses these datasets to “build applications, conduct analyses, and perform research”⁷¹ which is also referred to as “collaborative transparency.”⁷²

The UK followed in January 2010 with the launch of *Data.gov.uk*. Similar initiatives have also been launched in Australia—the *data.aus-*

tralia.gov.au website encourages users to “make government information even more useful by mashing-up the data to create something new and exciting!”⁷³—and in New Zealand with *data.govt.nz*. Across the European Union numerous government departments have launched similar direct access to raw datasets. In Denmark, for example, the Danish National IT and Telecom Agency has created a meta-portal to link users to the available data.⁷⁴

This section has looked at proactive disclosure in national access to information laws, the impact of user feedback for proactive disclosure, and how new initiatives are likely to reshape attitudes to, and rules for, proactive transparency. The next section looks at how international efforts are contributing to defining government’s proactive disclosure obligations.

4

International and Comparative Standards for Proactive Disclosure

In spite of the increasing consistency in standards for proactive disclosure contained in national access to information laws (Section 3), the international standards are not yet significantly developed. There are, however, useful references in declarations from intergovernmental organizations and in international treaties, which indicate that the obligation to disclose information proactively is an integral part of the right of access to information.

This section will review these international provisions, identify the classes of information whose proactive disclosure they mandate and, by bringing these together with the leading national standards on proactive disclosure, map out the main classes of information that constitute emerging proactive disclosure standards.

4.1 International standard Setting on Proactive Disclosure

Many texts adopted by international bodies refer to “transparency” as a positive feature of good, democratic administration, as noted in Section 2. In addition, a number of international human rights bodies have recently made specific recommendations on proactive disclosure. These recommendations are “soft law,” which

means that they are interpretations of international and constitutional guarantees;⁷⁵ by developing and explaining these standards, they point to good practices that governments are encouraged to adopt and implement.

At the European level, the Special Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE) has noted that there is currently a “Copernican revolution” taking place in the development of the public’s right to know.⁷⁶ Proactive disclosure is posited as an integral part of that shift to a new paradigm for government transparency. The Special Representative recommends:

Government bodies should be required by law affirmatively to publish information about their structures, personnel, activities, rules, guidance, decisions, procurement, and other information of public interest on a regular basis in formats including the use of ICTs and in public reading rooms or libraries to ensure easy and widespread access.⁷⁷

In the Americas, standard setting has been led by the Organization of American States’ Inter-American Juridical Committee,⁷⁸ which in 2008 developed a set of Principles on the Right of Access to Information. Included at Principle 4 is guidance on proactive disclosure:

*Public bodies should disseminate information about their functions and activities—including, but not limited to, their policies, opportunities for consultation, activities which affect members of the public, their budget, and subsidies, benefits and contracts—on a routine and proactive basis, even in the absence of a specific request, and in a manner which ensures that the information is accessible and understandable.*⁷⁹

As the next sub-section shows, these recommendations are now being complemented by the “hard law” of binding treaties.

4.2 Proactive Disclosure in International Treaties

At present, the strongest general provision in international law that refers directly to proactive disclosure is contained in the world’s first binding treaty on access to information, the Council of Europe *Convention on Access to Official Documents*, adopted on 18 June 2009. Article 10 requires that:

*At its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.*⁸⁰

The Explanatory Memorandum to the Convention elaborates on this, stating that citizens need information “to form an opinion on the authorities that govern them and to become involved in the decision-making process. National rules on proactive publication are thus encour-

aged.”⁸¹ Examples of the classes of information that should be published proactively include:

*[I]nformation about their structures, staff, budget, activities, rules, policies, decisions, delegation of authority, information about the right of access and how to request official documents, as well as any other information of public interest.*⁸²

The proposed mechanism is that disclosure be “done on a regular basis and in formats including the use of new information technologies (for example web pages accessible to the public) and in reading rooms or public libraries, in order to ensure easy, widespread access.”⁸³

The Explanatory Memorandum also suggests frequency of requests as a criterion for determining which documents should be published proactively.⁸⁴ As noted in Section 3, frequency of requests can be an effective mechanism for ensuring that proactive disclosure policies match public interest in, and demand for, information.

In addition to the Convention on Access to Official Documents, there are two sector-specific treaties that contain more detail. These are the *United Nations Convention Against Corruption* (UNCAC)⁸⁵ and the 1998 *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (Aarhus Convention),⁸⁶ both of which define specific classes of information which ratifying states should take the initiative to make public.

UNCAC, the first legally binding international anti-corruption instrument, includes proactive disclosure in the chapter on preventing corruption. UNCAC obliges 142 countries to publish information about matters that include: recruitment, promotion and retirement of civil servants; funding of candidatures and political parties; and public procurement systems. UNCAC also requires transparency of anti-corruption policies and the publication of periodic re-

ports on the risks of corruption in the public administration.⁸⁷

The most detailed provisions, however, are to be found in the Aarhus Convention (a UN regional treaty with 44 European states party), which regulates the mechanisms by which members of the public can access information about the environment, particularly when that information is needed for participation in decision-making or to defend environmental rights. The main elements of the Aarhus proactive disclosure requirements are given in Annex B. The Aarhus Convention has four features that make it a useful model for national regimes on proactive disclosure of information:

- Detailed definition of the information which must be collected by public authorities;
- Requirement that registers of information held be kept and made available to the public, thereby facilitating the search for information;
- Detailed list of core classes of information to be made available proactively; and
- Granted the public direct access to databases containing environmental information.

The Aarhus model also makes clear that future standard-setting initiatives on proactive disclosure should consider both the requirement to collect information and specifics on the level of detail to be released.

4.3 An Emerging Minimum Standard for Proactive Disclosure

In principle, all information held by public bodies could be proactively disclosed, subject only to the application of exceptions that are consis-

tent with international law. In practice, legislators and public officials will need to prioritize. The driving forces for proactive transparency reviewed in Section 2—rule of law, accountability, public participation, and the smooth functioning of e-Government—contribute to defining which information should be made available.

Comparing national legislation (Section 3) with the international provisions reviewed in this section, sufficient common features can be identified to suggest an emerging standard for the classes of information that should be disclosed as part of the proactive dimension of the right of access to information:

- **Institutional information:** Legal basis of the institution, internal regulations, functions and powers.
- **Organizational information:** Organizational structure including information on personnel, and the names and contact information of public officials.
- **Operational information:** Strategy and plans, policies, activities, procedures, reports, and evaluations—including the facts and other documents and data being used as a basis for formulating them.
- **Decisions and acts:** Decisions and formal acts, particularly those that directly affect the public—including the data and documents used as the basis for these decisions and acts.
- **Public services information:** Descriptions of services offered to the public, guidance, booklets and leaflets, copies of forms, information on fees and deadlines.
- **Budget information:** Projected budget, actual income and expenditure (including salary information) and other financial information and audit reports.
- **Open meetings information:** Information on meetings, including which are open meetings and how to attend these meetings.

- **Decision-making & public participation:** Information on decision-making procedures including mechanisms for consultations and public participation in decision-making.⁸⁸
- **Subsidies information:** Information on the beneficiaries of subsidies, the objectives, amounts, and implementation.
- **Public procurement information:** Detailed information on public procurement processes, criteria, and outcomes of decision-making on tender applications; copies of contracts, and reports on completion of contracts.
- **Lists, registers, databases:** Information on the lists, registers, and databases held by the public body. Information about whether these lists, registers, and databases are available online and/or for on-site access by members of the public.
- **Information about information held:** An index or register of documents/information held including details of information held in databases.
- **Publications information:** Information on publications issued, including whether

publications are free of charge or the price if they must be purchased.

- **Information about the right to information:** Information on the right of access to information and how to request information, including contact information for the responsible person in each public body.

One open question about this proposed “standard” is whether it can be seen as a minimum, which places immediate obligations on public institutions, or whether it is a goal towards which public bodies should build progressively, leveraging up levels of transparency and meeting targets for increased disclosure over time (for more on progressive implementation see Section 5.7). In the meantime, it is clear that there is a growing international consensus on the classes of information for proactive disclosure, which this should be of value to legislators considering new access to information laws, as well as to civil society advocates aiming to promote a core of proactive disclosure in their countries.

Proactive Transparency in Practice

This section examines the practical considerations related to the implementation of proactive disclosure that may be of relevance for those developing proactive disclosure schemes. The section is based on examination of four country experiences, namely those of India, Mexico, Slovenia and the UK, along with references to other pertinent national examples.⁸⁹

Six issues related to the mechanisms of disclosing information have been identified:

- How to ensure that proactively disclosed information reaches members of the public;
- How to put information where it will be found;
- How to organize information in ways that make it relevant to users;
- How to ensure that in addition to disclosing complete information, core information is presented in a way so that it can be easily understood;
- Whether proactively disclosed information should be free of charge; and
- How to ensure timely disclosure, taking into consideration the need to apply exceptions.

Consideration of each of these issues is followed at Section 5.7 by recommendations.

5.1 Multiple Channels for Pushing Out Information

The important role of the Internet in making large-scale proactive disclosure possible (Section 2) has resulted in an emphasis on use of government websites for publishing information, both in laws and in practice. For public authorities, organizing information for publication on a single website helps internal information management. For many users, particularly those working in civil society, business, or educational establishments with good Internet access, the website of each public authority is a convenient place to search for information. On the other hand, there is a risk that the information will not reach other users who do not have good Internet access.

This concern is reflected in the Indian RTI Act, which refers to “various means of communications, including Internet, so that the public have minimum resort to the use of this Act to obtain information.”⁹⁰ The Act goes on to require that “every information shall be disseminated widely and in such form and manner which is easily accessible to the public” and notes that “all materials shall be disseminated

taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area.” The explanatory note states that “disseminated” means “making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the Internet or any other means, including inspection of offices of any public authority.”

These provisions make sense in a country where Internet penetration is just 7.1 percent,⁹¹ and are necessary to ensure equality of access to proactively disclosed information.⁹² The OSCE—whose 56-member states stretch from Canada, with 84% Internet penetration, to Tajikistan, with 6.7 percent⁹³—recommends that information should be published “in formats including the use of information and communication technologies and in public reading rooms or libraries to ensure easy and widespread access.”⁹⁴

Low levels of Internet access for public authorities themselves, particularly at the local or municipal level, can pose a problem. This was anticipated in Macedonia’s 2006 Law on Free Access to Public Information,⁹⁵ which gives the local authorities alternative means of disclosure including notice and bulletin boards—something that can be preferable in rural areas with low levels of Internet penetration.⁹⁶

Sometimes publishing is not enough and efforts should be made to ensure that proactively disclosed information reaches user communities and affected stakeholders, such as through radio, television, and public meetings.

5.2 Access Points for Proactively Disclosed Information

In countries where the Internet is a primary vehicle for proactive disclosure, the challenge is how to organize it so that information can eas-

ily be found by users. The most common solutions are either to publish information on the websites of each government body or to gather it in a central transparency portal.

The first solution makes sense for bodies with pre-existing websites. In the UK, for example, most public bodies now have a front page button marked “freedom of information” or “access to information” which takes users to a dedicated section on how to request information, as well as details of the proactive “publication scheme.” An example is the UK Ministry of Defence website⁹⁷ (see Figure 2), whose good-practice features include: clear access from the front page to the “Freedom of Information” section; a well-laid out page on how to request information; a disclosure log containing answers to requests previously received; a section on the “Top Choices” items being requested and/or downloaded from the Ministry; and a button by which members of the public can rate the website (at time of writing the rating was 3 out of 5 stars, based on 2,480 votes).

The second solution is a central portal, which has the benefit of providing the public with a one-stop shop for accessing all information whose proactive disclosure is required by law. Central portals overcome the problem of some bodies not having websites, provide a powerful incentive for public bodies to upload their information (since any gaps are more visible), and make it easier for oversight bodies to verify compliance with legal requirements.

Perhaps the most ambitious such portal is the Mexican “Transparency Obligations Portal” (*Portal de Obligaciones de Transparencia*, hereinafter Transparency Portal),⁹⁸ run by the Information Commissioners’ Office (Federal Institute of Access to Information, IFAI by its Spanish acronym), to ensure compliance with the proactive disclosure rules of the Federal Law on Transparency and Access to Information (2002) and to provide the public with direct access to that information.

Figure 2: UK Ministry of Defence Freedom of Information Homepage

Defence | freedom of information

Welcome to the Ministry of Defence (MOD) Freedom of Information Home Page

[The Freedom of Information \(FOI\) Act and MOD](#)
[Charges for Information](#)
[How to Make A Request For Information](#)
[How to Complain](#)

Publication Scheme
 Search the Ministry of Defence Publication Scheme to find the information we proactively publish and view the Guide to Information.
[Publication Scheme](#)

Disclosure Log
 View select replies to requests for information received by the Ministry of Defence and also view the lists of all requests received.
[Disclosure Log](#)

[home](#)
in this section:

- ▶ Announcements
- ▶ Disclosure Log
- ▶ How to make an official request under FOI
- ▶ Publication Scheme

Freedom of Information Top Choices
 These are the top items across the Freedom of Information website including the Publication Scheme and the Disclosure Log.

- **Results for Armed Forces Continuous Attitude Survey**
- **Collision involving HMS SOUTHAMPTON**
- **Grounding of HMS NOTTINGHAM**
- **Internal Communications Survey**
- **About Defence Ministerial Committee**
- **Defence Ministerial Committee publications**
- **UFO Reports 1997 - 2008**
- **HR Strategy Civilian Continuous Attitude Surveys**
- **How to report a UFO sighting**

The Transparency Portal is organized according to the provisions of Article 7 of the law, as shown in Figure 3. Users can select whether to search by information category or by institution, and then enter a more detailed search engine. A quick search in the Directory of Public Officials for a common name picked at random, Juan Gomez, returned 37 federal public employees in a range of positions, including a deputy director of a library and a specialist in hydraulics; contact information such as phone numbers and e-mails is given. The name of the President, Felipe Calderon, returned only one result with no phone number but with his work e-mail address. Cross-referencing the information about

the position of an official with the salaries section of the portal reveals that the net monthly salary for the position of President is 146,830 Mexican Pesos (US\$10,639) and that of a library sub-director (level NA1) is 21,092 Mexican pesos (US\$1,528).

The Transparency Portal results from a commitment to invest in technological solutions to make proactive transparency work in practice and to help the public find the information disclosed. The portal was not foreseen in the 2002 law, but in response to mixed compliance, the IFAI decided to invest the equivalent of US\$300,000 in building it, following a positive experience with the System of Information

Figure 3: Mexico's Transparency Portal

The screenshot shows the 'Portal de Obligaciones de Transparencia' of the 'Administración Pública Federal'. The page features a search bar at the top right and a navigation menu on the left with items like 'INICIO', 'Estructura Orgánica', 'Facultades', 'Directorio', 'Remuneración Mensual', 'Unidad de Enlace', 'Metas y Objetivos', 'Servicios', 'Trámites, requisitos y formatos', 'Presupuesto, Asignado y Ejercido', 'Auditorías', 'Programas de Subsidios', and 'Concesiones, Permisos y Autorizaciones'. The main content area is titled 'Portal de Transparencia y Acceso a la Información Pública Gubernamental' and contains a paragraph about the law's objective, followed by a grid of six sections:

I Estructura orgánica operativa	II Facultades
En esta sección se presenta la estructura orgánica, básica, no básica y homólogos de las dependencias y entidades. Búsqueda por Institución	En esta sección se presentan las facultades y atribuciones de las unidades administrativas de las dependencias y entidades. Búsqueda por APF Búsqueda por Institución
III Directorio	IV Remuneraciones
En esta sección se presenta el directorio de los servidores públicos. Puede ser consultado por orden alfabético, por áreas y por una búsqueda avanzada. Búsqueda por APF Búsqueda por Institución	En esta sección se presenta la remuneración mensual y el sistema de compensación aplicable a los servidores públicos y el personal contratado por honorarios, así como las plazas vacantes de las dependencias y entidades. Búsqueda por APF Búsqueda por Institución
V Unidad de enlace	VI Metas y objetivos

Requests (or *SiSi* by its Spanish acronym), a portal for filing requests.⁹⁹

Launched in early 2007, the Transparency Portal now holds millions of registers (including 1.3 million contracts and 1.6 million entries in the register for concessions, permissions, and authorizations). In 2008 there were almost 14 million consultations.¹⁰⁰ The most popular information is the directory of public servants, the details of the salaries of public servants, the register of concessions and the register of contracts.

For the IFAI, one key to the success of the Transparency Portal has been to require data submission in a standard format, thereby ensuring consistency when searching and cross-referencing. Planned reforms include making the portal more user-friendly and increasing access to historical information.¹⁰¹ Future changes should result in stronger links between, for ex-

ample, budget information and contracts, and allow more sophisticated searches (for example, to enable a search for all the contracts issued by a particular official across all public bodies he or she may have worked in).

Sitting somewhere between the Mexican centralized portal and the UK's decentralized approach, is Hungary's hybrid model: searches can be made on the central portal which then directs the user through to the government body which has published the information; information is not actually stored on the portal. This model relies on each body updating their websites (which has been a problem in practice), but has advantages for users looking for information by giving them both the departmental websites and the central portal's search function.

Whether publishing information via the Internet or using other communication channels,

due attention should be given to ensuring that it is located in places where members of the public will have few problems in finding it.

5.3 Making Information Relevant

The public reaction to central portals has been mixed. For civil society and anti-corruption activists, such portals are exciting since they give access to detailed financial information at the click of a mouse. For the ordinary citizen, however, once initial curiosity about the salaries of the President and their civil servant neighbor has been satisfied, much of the information in central portals is out of context and not relevant to daily life. For this reason, Mexican activists report that the Transparency Portal is well intentioned but “cold and technical.”

Responding to such concerns, while retaining the benefits of centralized portals as, literally, doors by which citizens can “enter government,”¹⁰² a new approach is being taken at the Mexico City level to identify the public’s information needs. This initiative by the Information Commission (InfoDF), civil society (including the NGO Fundar) and government working together, has identified four indicators: 1) the number of requests for particular information; 2) the number of clicks on specific government web pages; 3) feedback from round tables with civil society and the public; and 4) information associated with the exercise of a right, such as the right to water, unemployment benefit, security, or a healthy environment.

In these consultations, one key problem identified was that the public does not always know precisely which government body deals with which services. For example, in the criminal justice system, what are the precise roles of police, prosecutors, judges and penitentiaries and who has which information? As a result, a structure

is currently being developed for “social” or “citizen” portals to complement the Mexico City transparency portal where core financial information is available to the public.¹⁰³ The citizen-oriented portals are organized by themes such as environment, security, or political programs.¹⁰⁴

In Slovenia, an initiative to link the proactive disclosure requirements in the 2003 access to information act with the 2001 e-government and e-democracy strategy, resulted in the “e-Uprava” (e-government) which aims to provide a one-stop access to services organized around “life events” such as the birth of a child, selling a car, or starting a business.¹⁰⁵

To date 71 percent of services are accessible online, putting Slovenia into second place in the EU on an indicator of sophistication and availability of e-services.¹⁰⁶ At the same time, each government body is required to maintain websites which are “at all times accessible, available, rational and user-friendly,”¹⁰⁷ and must publish on these all the information mandated under the 2003 Access to Public Information Act¹⁰⁸ and its implementing regulation.¹⁰⁹ This latter includes information on services, also organized by the logic of “life events, business events, employee events, events for bodies and public sector organizations.”¹¹⁰ The Slovenian Ministry of Public Administration reports that having this information as part of the proactive disclosure requirement as well as the e-government initiative ensures that it exists in digital format and is available to the public via the maximum possible number of channels (hard copies should be available to those without Internet access).

Another approach is to have a number of portals organized by theme or sector. In Canada, information relating to a particular sector of government activity is collected in one place, such as the Canadian Treasury Board portal for proactive disclosure referred to in Section 2.2. Sectoral portals offer a solution to ensuring transparency of a particular class of information

Figure 4: Slovenia's e-government portal (English home page)

The screenshot displays the Slovenian e-government portal (UPRAVA) in English. The main header reads "Welcome to the State Portal of the Republic of Slovenia". Below this, there is a navigation menu with "About Slovenia", "Individuals", and "Businesses". The central content area features a "DID YOU KNOW THAT..." section with a historical fact about the Congress of the Holy Alliance in Ljubljana. To the right, there is a "WHERE IS SLOVENIA" section with a map. The bottom section is divided into "LIFE EVENTS FOR INDIVIDUALS" and "LIFE EVENTS FOR BUSINESSES", each with sub-sections for various services like citizenship, education, and work permits. On the left side, there is a sidebar with a search bar, "My State Portal" options, and "Favourites" including National Insignia, e-Commerce, and Good to Know. On the right side, there are "State Portal news" and "ISPD news" sections.

and place a smaller demand on resources than the panopticon of a single central web portal.

5.4 Comprehensible Information

Another challenge is to ensure that information is also “accessible” in the sense of being clear and comprehensible by the majority of the population.¹¹¹ As noted in Section 4.1, the Organization of American States recommends that information be “understandable.”

As of yet, proactive disclosure provisions in national law do not incorporate this requirement although it is possible to identify good practices. Examples include the citizen budgets mentioned in Section 3.2 and voluntary compliance by public institutions in the UK with the “Plain English Campaign,” first launched in 1979, with the aim of removing jargon from of-

ficial documents (the Ministry of Defence website referred to in Section 3.1 carries the campaign’s *crystal mark* award for clarity).¹¹²

Holding public consultations (See examples of Mexico above and the UK) and evaluating the uses made of information (Section 3.2) contribute to defining which information should be prioritized for disclosure in user-friendly formats.

Making information more easily digestible for the public should not, however, replace having it available in the original format, as this is essential for there to be real transparency. A creative solution to combining both raw data and user-friendly presentation is the use of information design techniques such as mapping. This has been done to good effect by the Government of the District of Columbia in the United States, which has a website dedicated to live data feeds of government information, thereby giving direct access to complete datasets.¹¹³ To make the information more meaningful for the

public, some data sets are mapped onto Google maps, for example the information about issuance of construction permits shown in Figure 5. This system also gives the references that can be used to search for additional information.¹¹⁴

With respect to translation into multiple languages, none of the countries surveyed had formal requirements for information to be in languages other than the official languages of the country or of the local administrative area.¹¹⁵ This should, however, be a consideration in countries where more than one language is spoken and where not all the population uses the main language of the administration. For example, in India the vast majority of federal government information is in English whereas at the state level information is almost always in the official languages of the state; for those who do not speak English, accessing the federal level information is a problem.¹¹⁶

For information to be of optimum public value, it should be published in the languages of user-communities and presented in an accessible way. This should be a priority when planning—and allocating resources to—any proactive disclosure scheme.

5.5 Charges for Proactively Disclosed Information

Charges for information can prove an obstacle to access for members of the public less able to pay. The great benefit of disclosure via the Internet is that, if information is published on a website as an html page to which no password access is required, it is free of charge to those who visit the website. This then raises a question of whether information published proactively in other formats should also be free of charge.

In the UK, public authorities are permitted to charge for the photocopying and post-

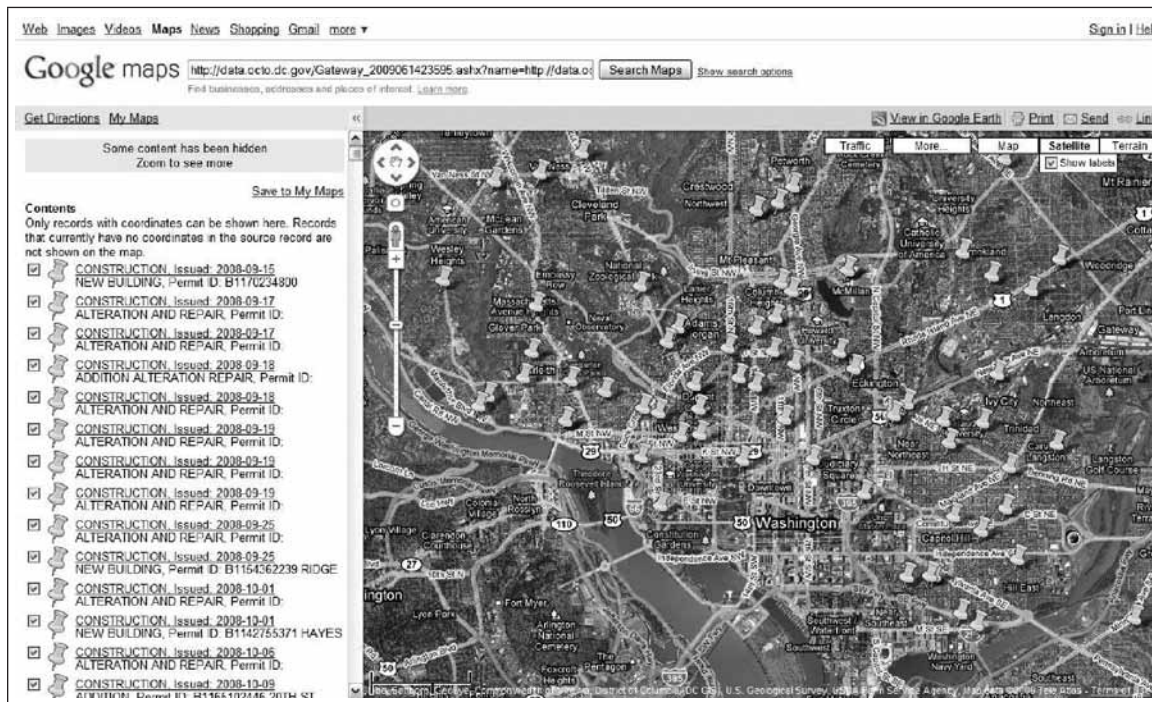
age of information that falls under a publication scheme.¹¹⁷ In India, on the other hand, decisions by the Central Information Commission have established that for information which by law should be proactively disclosed, it is sufficient for requestors who do not have Internet access to make an oral request (that is, there is no need to file a request in writing) and the information should be provided immediately without charging any fee.¹¹⁸ Similarly, the Macedonian *Law on Free Access to Public Information* establishes the principle of free access to proactively disclosed information, irrespective of the format or volume of that information, or whether it is accessed by the Internet or by other means.¹¹⁹

A useful consideration here is that publicly held information has been created with taxpayers' money, so it is appropriate to release it without further charges. In some countries, however, there is a long tradition of charging for certain information collected by government agencies, such as geographic information, statistical data, and even consolidated laws. Although this is seen as a legitimate opportunity to generate additional revenue for the administration, it is questionable in the right-to-information era. One country which has solved this problem is Slovenia, where the Information Commissioner has ruled that access to public databases shall always be free of charge when the use to be made of the information is in the public interest, a ruling which should encourage proactive disclosure of databases.¹²⁰

5.6 Information Management for Timely and Complete Disclosure

In order to ensure that information for proactive disclosure is released in a complete and

Figure 5: Construction Permits in Washington DC



timely fashion, a public authority needs to have good information management systems and needs to plan ahead for proactive disclosure, for example by planning how any legitimate exceptions will be applied to documents and datasets so that information can be released as rapidly as possible.

One of the most common complaints that arise when reviewing compliance with proactive disclosure is that information is not regularly updated, thus undermining public confidence and potentially causing problems for users who might be relying on information that is not accurate. The Hungarian e-FOIA, with its penchant for detail, specifies when each class of information should be updated. So for example, information about tenders has to be continuously updated, whereas other data, such as performance indicators, should be updated quarterly.¹²¹ In practice however, not all bodies regularly update their information, which, reports say, undermines confidence in the central portal.

The UK Information Commissioner's guidance for a Model Publication Scheme recommends that public bodies should "review and update [information] on a regular basis."¹²² A good practice example is that of the UK Ministry of Defence website (Section 5.2): many of the articles and reports on the site carry a date indicating when the information was uploaded.

Indicating when information will "expire" is important if it is only valid for a fixed period of time (for example, when a public consultation will close, or when an opportunity to apply for subsidies will end), so that people do not lose opportunities or act based on outdated information.

Information can be compiled in ways that facilitate rapid disclosure. The Washington DC contracts database in this section is an example of this: when new information is added to the database, it comes online automatically. Hence the database has disclosure "designed in."

A potential obstacle to timely disclosure is the need to apply exceptions to documents or datasets before releasing them. Given the importance of some of the core classes of information to be released under proactive disclosure regimes, legislators may choose to exclude certain classes of information from the scope of the exceptions regime or define precisely the limits of the exceptions. For example, requiring contracts to be published with a certain level of detail, or ordering the proactive disclosure of the expenses claims of public officials, even where previously some of this information might have been exempted on “commercial confidentiality” or “privacy” grounds will prevent doubts about the exceptions delaying or blocking proactive disclosure of the information by all public institutions.

On the other hand, where exceptions might apply, the information will have to be redacted prior to proactive disclosure. For example, France’s access to administrative documents law anticipates the severing of proactively disclosed information, requiring that “unless otherwise specified by law, administrative documents ... may not be made public until they have been subject to a process by which it becomes impossible to identify the names of individual persons or in general to access personal data. When information is stored electronically, it is possible to anticipate disclosure when building databases. For example, if a register of information containing the names of private individuals is to be made public, one solution is to build the database in a way that permits officials to see the names while members of the public can see the remainder of the information but not identify the individuals, thereby respecting personal data protection rules.”¹²³

As proactive disclosure becomes an increasingly important aspect of the right to information, more thought and resources should be dedicated to the management and structuring

of information to assure rapid release while at the same time guaranteeing that any important interests to be protected by exceptions are not negatively affected.

5.7 Proactive Disclosure Principles

The issues reviewed in this section lead to a number of guiding principles for the design and implementation of proactive disclosure regimes so that information is:

1. **Available:** Public information should be proactively disclosed through multiple communication channels to ensure that it reaches relevant sectors of the population. Hence, proactive disclosure should make full use of, but not be limited to, the Internet. Information should also be actively disseminated by other means, including notice boards, leaflets, public libraries, mobile phones, radio, and TV, and at public meetings where appropriate.
2. **Findable:** Information proactively disclosed on the Internet, or using other formats and communications channels, should be organized so that it is easy to find. User’s information needs should be a primary consideration when determining where to publish information, including whether to opt for departmental, central, or sectoral web portals.
3. **Relevant:** Relevance has two dimensions: that the information itself is of value (the classes of information) and that it is organized in ways meaningful to the end user (logic of presentation). Consultations with stakeholders—including civil society, businesses, and members of the public—are recommended to arrive at solutions which make sense to potential users, such as organization

by type of service, by policy issue, by life events, or by thematic areas. The goal should be that citizens can quickly and easily locate the information that corresponds to their needs.

4. **Comprehensible:** Core information from public bodies should be disclosed in full, and information of particular public interest should be made available in a way which is comprehensible for members of the general public. This principle requires that information be presented clearly in the major languages of user communities. At a minimum, information should be available in all the official languages of the state or region; where there are significant numbers of speakers of other languages, information should also be prepared and disclosed in those languages.
5. **Low cost or free:** Proactively disclosed information should be available free of charge if made available electronically, and core classes of information (laws, the budget, annual reports, forms for accessing services)

should never be charged for even if provided in hard copy or other formats (for example, in Braille). Charges for copies or postage for other proactively disclosed information may be levied but must be reasonable and according to pre-established fees.

6. **Up to date:** Information is of little value if it is not timely and correct. Proactively disclosed information should be regularly updated and all electronic or hard copies should make clear when the information was released or updated. Information should be created and stored in ways that anticipates disclosure and therefore the design of information platforms should take into account the need to sever information that can be subject to legitimate exceptions.

This section looked at the considerations that impact on the accessibility and quality of information released under proactive disclosure. The next section focuses on the structural considerations for public authorities setting up or strengthening a proactive disclosure regime.

6

Funding, Promoting, Monitoring and Enforcing Proactive Disclosure

The human and financial resources that lie behind a proactive disclosure system are essential to its effective functioning. This section examines issues of resources, training, and oversight.

6.1 Funds to Get Information Flowing

Typically proactive disclosure regimes have high start-up costs but, over time, having such systems in place is likely to save money.¹²⁴ Linking proactive disclosure to e-government (services) and e-democracy (participation), rather than having them run in parallel, can reduce costs while ensuring that the information disclosed responds to the needs of the public. Even where individual information requests received via e-mail or through the post still have to be processed, it becomes much easier for officials to respond when the information is already on the web or in a manual. Proactive disclosure thereby supports effective record management.

For countries planning to use the Internet as the primary vehicle for disclosing information, information will need to be in digital format. Resources may therefore be needed for digitizing slightly older information (the scanning of

documents over five to ten years old for example). The cost of this can be weighed against the increased internal benefits of better information management, as internal filing systems are ordered and digitized, and from the increased ability to share information not only with members of the public but also with other public bodies, as well as the reduced burden of responding to requests from the public.

6.2 Progressive Implementation

It may also be appropriate to roll out proactive disclosure over time. This was done in Peru, where central government bodies were required to establish websites within one year of the adoption of the law, but other regional and local bodies were given up to two years from the next regional or municipal elections.¹²⁵ Another approach would be to start with the obligation to ensure disclosure of core information that is not subject to any exceptions and can be published immediately. Subsequently, as capacity grows, access can be provided to more complex datasets or those that may contain some sensitive information that needs to be severed.

6.3 Training Officials and Raising Public Awareness

For a proactive disclosure regime to be effective, public officials need to be trained and the public needs to know about the availability and location of the proactively disclosed information. The responsibility for these tasks can be assigned to the information commission or commissioner where such a body exists, or another relevant public institution.

The main tasks which need to be carried out, particularly in the early years of an expanded proactive disclosure regime, are supporting public bodies as they prepare information for disclosure, training public officials, giving guidance, disseminating lessons learned and best practices, and educating members of the public so that they know where to look for information.

6.4 Monitoring Levels of Proactive Disclosure

Monitoring will provide feedback on how well the implementation of proactive disclosure is advancing. It makes sense that information commissioners or similar bodies have responsibility for monitoring proactive disclosure. External experts can also undertake research and monitoring of levels of disclosure. From the countries considered in this paper, there are limited examples of monitoring of proactive disclosure by official or oversight bodies:

In the UK, monitoring of levels of proactive disclosure by the Information Commissioner's Office led it to make the decision to move from a voluntary to a mandatory minimum standard when it was found that the quality of proactive disclosure was uneven across government.

In Mexico, monitoring by the IFAI of levels of compliance with the proactive disclosure obligations showed high levels of compliance by the federal administration rising from 80.6% in 2004 to 95.5% in 2007.¹²⁶ The introduction of the Transparency Portal (Section 5.2) in 2007 led to a more sophisticated indicator and compliance dropped to 82.2%.¹²⁷

Other oversight bodies do not report similar statistics. Nevertheless, a number of civil society and private sector monitoring studies in India have found very poor levels of compliance with the proactive disclosure provisions of the Indian RTI Act, being as low as 30%, with information out of date where it is published. This is attributed to poor records management, lack of training, and low awareness of obligations under the RTI Act. One survey found that 43% of Public Information Officers were not aware of the proactive disclosure requirements at all.¹²⁸

6.5 Enforcing Proactive Disclosure

For a proactive disclosure regime to be effective, there need to be mechanisms by which it's enforced and non-compliance sanctioned. A number of information commissioners or commissions, including those in the UK, Mexico and India have oversight of the provisions on proactive disclosure.

In India, for example, members of the public can take complaints to the national—or state-level information commissions as relevant for violations of their right to information under India's RTI Act, including where there is a failure to publish information proactively. The information commissions can in turn order that public authorities take appropriate measures. One such measure is publishing and disseminating “detailed, complete and unambiguous infor-

mation” within a fixed time (for example, the Indian Embassy in Washington DC was ordered in December 2008 to update its website within 30 days).¹²⁹ Another measure is the conversion of records to electronic form, suitably catalogued and indexed, in order to ensure ready availability on the Internet. The Commission can order that particular classes of information should be published if these are deemed to fall within the provisions of the RTI Act, and can impose sanctions on public bodies if it believes that failures were deliberate.¹³⁰

The oversight by information commissions is more complex when proactive disclosure provisions are spread across a number of laws. This situation is solved in France by giving the Commission on Access to Administrative Documents oversight of the relevant provisions of 23 laws apart from the Law on Access to Administrative Documents.¹³¹

Ensuring that information commissioners or commissions have oversight over compliance with all proactive disclosure provisions in all laws is recommended to ensure that all public bodies comply with proactive disclosure obligations, and also to permit members of the public to raise concerns about failures to disclose information proactively—even if they are not sure under which law the information should have been published.

6.6 Recommendations for Implementation of Proactive Disclosure Regimes

The systems for introducing or expanding proactive disclosure regimes need to be:

1. **Well-Resourced:** Sufficient resources should be dedicated to setting up or expanding proactive disclosure regimes. It is important that the short-term demand on time and money does not prove an obstacle that undermines the long-term benefits of proactive disclosure.
2. **Progressive:** New proactive disclosure regimes should aim to build on an initial base of core classes of information that meets pressing public information needs, gradually increasing the volume and scope of material released.
3. **Promoted:** Public officials should be trained on how to comply with proactive disclosure rules, how to prepare information for release, how to apply exceptions, and how to make most effective use of both ICTs and traditional dissemination channels. Public education campaigns should sensitize people to the existence and location of information so that it can be found and used.
4. **Monitored:** Data should be collected on the levels of proactive disclosure in order to identify which bodies have been successful in rolling out proactive disclosure schemes, which are facing problems, and to try to identify the underlying reasons behind lack of compliance and how to overcome them.
5. **Enforced:** Oversight bodies should have the power to review compliance with proactive disclosure, should receive regular reports, should undertake *ex officio* investigations and receive complaints from the public, and should be empowered to order appropriate action to ensure compliance.

Conclusions and Recommendations for Future Research

The history, law, and practice reviewed in this paper demonstrate that proactive disclosure is integral to the transparency that underpins good government, and in that sense has always been part of the right to information, even preceding the more recent development of access to information laws.

The precise standards for what information should be proactively disclosed are still being defined, but it is possible to identify common classes of information which should form the minimum of any national access to information regime. Further comparative mapping is needed to map out core classes of proactive disclosure in a larger number of jurisdictions in order to refine this standard.

Further research and standard-setting work is also needed to refine the level of detail of what must be disclosed as mandated by proactive disclosure rule. This could perhaps be best achieved by looking at standards in particular sectors. For example, taking public procurement contracts or assets declarations and establishing agreed minimum standards for what should be contained in the published version of these documents. The work done on the Aarhus Convention and current initiatives to define levels of detail for classes of information for aid transparency are examples of how this is of value in specific sectors.

From surveying proactive disclosure in practice, it is possible to identify the principles that should govern implementation. Further research is needed on the experience of implementing proactive disclosure regimes, including study at the departmental level of best practices and lessons learned. Information commissioners or other oversight bodies need to gather more detailed empirical data on levels of compliance with proactive disclosure rules.

Research is also needed into the start-up and maintenance costs for proactive disclosure regimes, and how to best allocate limited resources to scale up proactive transparency. A deeper understanding of the impacts of proactive disclosure on reducing the burden of requests (or possibly of stimulating yet more requests!) could be studied in order to plan for the resources needed to achieve transparency through proactive disclosure.

In order for disclosure to be “designed in” to government data as it is compiled and as documents and databases are created, due consideration needs to be given to how exceptions will be applied so that information can be released as rapidly and easily as possible, on a large scale, without the need for extensive review by public officials. Further research is needed into the current best practice solutions for how to do this from both a legal and a technical perspective.

The collection of comparative and empirical data recommended here will significantly contribute to the standard-setting work on proactive disclosure that awaits governments, international bodies, information commissioners, and civil society. Future standard setting should take

into account data on the public use of and demand for information, as well as the needs and interests of all sectors of society. If done effectively, the result will be greater and more equal access to information whose use and reuse will be of benefit to society as a whole.

Annex A: Classes Information Comparative

Classes of Information	Types of Information	Council of Europe						
		OSCE	OAS	Hungary	India	Mexico	UK	
Institutional Information	Legal basis of the institution, internal regulations, functions and powers	✓	✓	✓	✓	✓	✓	✓
Organizational Information	<ul style="list-style-type: none"> Organizational structure including information on personnel, names and contact information of public officials Salary information 	✓ x	✓ x	✓ x	✓ ✓	✓ ✓	✓ ✓	✓ some
Operational Information	Strategy and plans, policies, activities, procedures	✓	✓	✓	✓	✓	✓	✓
Decisions and Acts	Decisions and formal acts, particularly those that directly affect the public	✓	✓	✓	✓	✓	✓	✓
Public Services Information	Descriptions of services offered to the public, guidance, booklets and leaflets, copies of forms, information on fees and deadlines	✓	✓	✓	✓	✓	✓	✓
Budget Information	Projected budget, actual income and expenditure and other financial information, audit reports and evaluations	✓	✓	✓	✓	✓	✓	✓

(continued on next page)

Classes of Information	Types of Information	Council of Europe						
		OSCE	OAS	Hungary	India	Mexico	UK	
Subsidies Information	Information on the beneficiaries of subsidies, the objectives, amounts and implementation	<i>See budget info</i>	<i>See budget info</i>	✓	✓	✓	✓	<i>See budget info</i>
Public Procurement information	Detailed information on public procurement processes, criteria and outcomes of decision-making on tender applications; copies of contracts, reports on contracts and other spending of public funds	✓	✓	✓	✓	✓	✓	✓
Decision-Making & Public Participation	Information decision-making procedures Information on mechanisms for consultations and/or public participation in decision-making	✓ x	✓	✓	✓	✓	✓	✓
Open meetings information	Information on meetings including which are open meetings and how to attend these meetings	x	x	x	✓	✓	x	x
Lists, Registers, Databases	Information on the lists, registers, and databases held by the public body. Information about whether these lists and registers and databases are available on-line and/or for on-site access by members of the public. Information on the databases accessible on line	x	x	x	✓	✓	✓	✓
Publications Information	Information on publications issued, including whether publications are free of charge or the price if must be purchased	x	x	x	✓	x	x	✓

(continued on next page)

Classes of Information	Types of Information	Council of Europe						
		OSCE	OAS	Hungary	India	Mexico	UK	
Information about Information Held	An index or register of documents/information held; details of information held in databases	✓	x	x	✓	✓	✓	✓
Information about the Right to Information	Information on the right of access to information and how to request information, including contact information for the responsible person in each public body	✓	x	x	✓	✓	✓	✓

Annex B:

Summary of the Proactive Disclosure Features of the Aarhus Convention

The Aarhus Convention has four features that make it particularly unusual and a positive model for national regimes on proactive disclosure of information.

First, the Aarhus Convention mandates the collection of specific classes of information about the environment. These classes of information include information on the state of the environment (including the state of the air, water, and soil), information about factors which might affect the environment (substances, energy, noise, radiation), information about plans which might affect the environment (policies, legislation, programs) and information about the state of human health and living conditions (including buildings and cultural sites) which might be affected.¹³² Public authorities are required to keep this information up to date.¹³³

Second, the Aarhus Convention requires public bodies to inform the public of the information that they hold and how it may be accessed.¹³⁴ This should be done, *inter alia*, by maintaining lists, registers and files on the information held and making the information contained in these lists and registers available free of charge.¹³⁵

Third, parties to the Aarhus Convention should ensure that certain information is made public including:

- Facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals.
- Explanatory material on environmental activities.
- Information on the performance of public functions or the provision of public services relating to the environment by government at all levels.
- Information which enables consumers to make informed environmental choices.
- Legislation and policy documents such as documents on strategies, policies, programs and action plans relating to the environment, and progress reports on their implementation, prepared at various levels of government.
- International treaties, conventions and agreements on environmental issues.
- Other significant international documents on environmental issues, as appropriate.¹³⁶

In addition, under an additional protocol adopted in 2003, parties are required to establish and make publicly accessible national “pollutant release and transfer registers” which are inventories of pollution from industrial sites and other sources. According to the Aarhus Convention Secretariat, the goal is that by “regulating

information on pollution, rather than pollution directly, the Protocol is expected to exert a significant downward pressure on levels of pollution, as no company will want to be identified as among the biggest polluters.”¹³⁷

Fourth, parties to the Aarhus Convention are required progressively to make environmental information available through electronic databases “which are easily accessible to the public through the public telecommunications network,”¹³⁸ a forward looking provision adopted in 1998 anticipated the ever-increasing spread of the internet and its value as a tool for rapidly and cheaply delivering information to the public.

At a minimum the information to be made electronically accessible should include:

- Reports on the state of the environment to be published regularly and at least every four years;
- Texts of legislation on or relating to the environment;
- Policies, plans and programs on or relating to the environment, and environmental agreements; and
- Other information, to the extent that the availability of such information in this form would facilitate the application of national law implementing this Convention.

Endnotes

¹ This paper considers access to information held by all government branches, including the executive/administration, the judicial, and legislative branches, as well as private bodies performing public functions or operating with public funds; these are referred to as *public bodies* or sometimes *public institutions* or *public authorities*.

² It could be considered that there are other ways that information enters the public domain, such as classified information which is leaked to the media, but this paper considers the two main mechanisms which are regulated by law and/or defined by good practice, such as in access to information or freedom of information laws. Paid advertising by government bodies in order to communicate with the public, for example to announce open tenders, is considered to be part of proactive disclosure although it is not specifically examined in this paper.

³ Proactive disclosure is also known as *active disclosure* (this term is used in the United States for example) and as *suo moto* disclosure, from the Latin for “upon its own initiative” (this term is used in India).

⁴ Proactive disclosure by public bodies is distinct from the obligations that government places on private bodies to disclose information, such as nutritional labeling on food, warning notices with medicines, financial reporting by companies to shareholders, or car safety ratings. These are referred to as “targeted transparency” requirements by researchers Archon Fung, Mary Graham, and David Weil at the Harvard Kennedy School of Government. See www.transparencypolicy.net.

⁵ An example of this has been the public disclosure of land ownership records in rural areas of India. Interview by e-mail with Shekhar Singh, January 2010.

⁶ In some countries, such as Mexico, information requesters have the option of filing requests anonymously, but this is an unusual option. It was argued that in India anonymous requests would detract from the incentive to mobilize people against corruption and to confront the corrupt.

⁷ Examples would be public officials who should provide information on tenders to companies that ask for them or provide subsidies to farmers, but who withhold information in order to control the allocation of resources.

⁸ Right2INFO.org, Good Law and Practice, edited by Sandra Coliver, Open Society Justice Initiative, www.Right2INFO.org, page on Constitutional Provisions, last accessed on 27 March 2010. This website contains sections on the access to information provisions of national constitutions, details of national laws, and relevant comparative analysis about the right to information.

⁹ The International Budget Partnership’s Open Budget Index, page on Open Budget Index 2008 Rankings, at: <http://openbudgetindex.org/files/Rankings2008-Revised.pdf>, last accessed on 27 March 2010. Interestingly, some newer democracies emerge as leaders, with countries such as Brazil, Slovenia, Poland, Peru, South Korea, the Czech Republic and Sri Lanka, all scoring higher than Germany for the indicators which measure the quantity and quality of budget information that is proactively disclosed.

¹⁰ Global Integrity Initiative, Global Integrity Report: 2009, www.globalintegrity.org, last accessed on 27 March 2010. The surveys also assess accountability of each of the executive, legislative, and judicial branches through indicators such as disclosure of assets declarations.

¹¹ The White House, President Barack Obama’s *Memorandum for Heads of Executive Departments and Agencies*, http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/, last accessed on 27 March 2010. A second, complementary memo on “Transparency and Open Government”, also issued on 21 January 2009, expanded this commitment: “My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public. Executive departments and agencies should also solicit public feedback to identify information of greatest use to the public.” See http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/, last accessed on 27 March 2010.

¹² Ellen Miller, Executive Director of the Sunlight Foundation, cited in Wired Magazine, <http://www.wired.com/wiredscience/2009/05/datagov-launches-to-mixed-reviews/>.

¹³ Communiqué of Commonwealth Human Rights Initiative, 8 July 2009, on file with the author.

¹⁴ An example of electronic democracy is the holding of elections over the Internet. On 4 March 2007, Estonia held

the world's first national general elections with an Internet voting option. A total of 30,275 citizens used this option to vote for candidates to the Estonian Parliament. In Switzerland, e-voting has been used in canton-level referenda. Hence, not only is information delivered to the public by the Internet, but it is the channel by which the public responds to that information.

¹⁵ In Africa one third of the population has a mobile phone. The Guardian newspaper, Africa calling: mobile phone usage sees record rise after huge investment, 22 October 2009, <http://www.guardian.co.uk/technology/2009/oct/22/africa-mobile-phones-usage-rise>, last accessed 27 March 2010.

¹⁶ See Wikipedia, *Town Crier*, http://en.wikipedia.org/wiki/Town_crier, last accessed 27 March 2010.

¹⁷ See Wikipedia, *Crieur public* (in French), http://fr.wikipedia.org/wiki/Crieur_public, last accessed 27 March 2010.

¹⁸ In Europe this principle was recently affirmed by the European Court of Justice which struck down a secret regulation adopted by the European Union about what passengers may and may not carry onto aircraft. The Court stated that "the principle of legal certainty requires that ... rules enable those concerned to know precisely the extent of the obligations which are imposed on them. Individuals must be able to ascertain unequivocally what their rights and obligations are and take steps accordingly." Case C-345/06 Gottfried Heinrich, Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat im Land Niederösterreich, 10 March 2009. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0345:EN:HTML>, last accessed 27 March 2010.

¹⁹ Organisation for Economic Cooperation and Development, *European Principles For Public Administration*, OECD and the European Union, 1999, Sigma Papers: No. 27, Paris, page 12, <http://www.sigmaxweb.org/dataoecd/26/30/36972467.pdf>, last accessed 27 March 2010.

²⁰ The French Official Journal, *Les Journaux Officiels*, <http://www.journal-officiel.gouv.fr/>, last accessed 27 March 2010.

²¹ The French government legal database *Legifrance* can be found at <http://www.legifrance.gouv.fr/>, last accessed 27 March 2010. The key laws of the French state (codes) are also published in English and Spanish.

²² It is relevant to note that France's 1978 law on access to administrative documents does not apply to the legislative branch of government.

²³ Hood, Christopher (2007) "What happens when transparency meets blame-avoidance?", *Public Management Review*, 9:2, 191–210, to be found at: <http://dx.doi.org/10.1080/14719030701340275>, page 193–194. Hood cites Rousseau (1772/1985: 72) and notes that philosophers Jeremy Bentham, Immanuel Kant, and earlier Baruch de Spinoza put forward similar ideas. It should be noted that these pre-twentieth century concepts of transparency also include the notion of government according to stable and known rules, and the notion of maximum social openness (everyone under scrutiny by everyone else), as well as

the notion of open government in the sense of public access to government documents.

²⁴ *Ibid.*

²⁵ Organisation for Economic Cooperation and Development, *European Principles For Public Administration*, OECD and the European Union, 1999, Sigma Papers: No. 27, Paris, page 12, <http://www.sigmaxweb.org/dataoecd/26/30/36972467.pdf>, last accessed 27 March 2010.

²⁶ Sweden was the first country in the world to establish in law the right of access to information, as part of the 1766 Freedom of the Press Act, which has constitutional status and preceded most countries' access to information laws by over 200 years.

²⁷ Organisation for Economic Cooperation and Development, *European Principles For Public Administration*, supra note 25, page 11.

²⁸ *Ibid* page 12.

²⁹ Treasury Board of Canada Secretariat <http://www.tbs-sct.gc.ca/pd-dp/gr-rg/index-eng.asp>, last accessed on 27 March 2010.

³⁰ For a useful overview, in Spanish, see *Transparencia y Acceso a Información Pública en Chile: Evolución y Relevancia del Consejo Para La Transparencia*, by Felipe del Solar, Executive Secretary of the Chilean Government Commission for Probity and Transparency, <http://www.probidadytransparencia.gob.cl/>, last accessed 27 March 2010. In January 2010, Chile became the second Latin American country after Mexico to join the OECD as reported by the BBC World Service, *Chile joins the OECD's economic club*, 13 January 2010, http://www.bbc.co.uk/worldservice/business/2010/01/100112_chile_oecd_biz.shtml, last accessed 27 March 2010.

³¹ Chile's Probity Law (*Ley de Probidad*, 19.653), in Spanish, <http://www.leychile.cl/Navegar?idNorma=149264>, last accessed 28 March 2010, and the Chilean Administrative Procedures (*Ley 19.880 Orgánica Constitucional de Bases de los Procedimientos Administrativos de los Órganos de la Administración del Estado*), in Spanish, at: http://transparencia.minagri.gob.cl/descargas/marco_normativo/LEY_19880_Procedimiento_administrativo.pdf, last accessed 27 March 2010, Article 13 of which establishes the principle of transparency and publicity of administrative acts.

³² ChileCompra, <http://www.chilecompra.cl/english/whatischilecompra.html>, last accessed 27 March 2010. This website reports that, by 2008, 900 public agencies were trading more than USD 5 billion and conducting almost half million tendering processes over the internet each year, generating more than 1.6 million purchase orders. The system has become a model for other countries in Latin America (see for example the Mexican "Compranet" system <http://www.compranet.gob.mx>) and won acclaim for promoting transparency and e-government (ChileCompra was a 2008 finalist in the prestigious Stockholm Challenge which rewards public interest applications of information technologies, see www.stockholmchallenge.org) as well as praise from civil society for ensuring inclusion of micro-entrepreneurs and environmental criteria in its systems.

³³ ChileCompra review "Informa", No. 38, 2006, first article, <http://foros.chilecompra.cl/mail/informativo/1/n38/index.html>,

last accessed 28 March 2010. Monitoring by civil society shows that implementation is not perfect: a 2007 study found that no public body had published all the required information with scores ranging from 38% to 80%. See the NGO Corporación Participa, <http://www.participa.cl/wp-content/uploads/2007/10/transparencia-activa.JPG>, last accessed 27 March 2010.

³⁴ Sometimes proactively published information does reveal problems. In Serbia in January 2010 civil society groups spotted that a large public enterprise involved in activities such as coal mining had announced tenders via the obligatory public procurement portal for a range of luxury goods including brandy, ties, handkerchiefs, and “leather business gallantry”, with purchase prices ranging from €3,000 to €30,000. Information from Transparency Serbia, www.transparentnost.org.rs, last accessed 27 March 2010; screenshots of the 22 January 2010 announcements (in Serbian) on file with the author.

³⁵ European Court of Human Rights decision of 14 April 2009 in case of *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, paragraph 36, <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=849278&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

³⁶ UK Department of Health, http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_103144, last accessed on 27 March 2010.

³⁷ A useful overview and history can be found at the Participatory Budget Unit website: <http://www.participatorybudgeting.org.uk/faqs>, last accessed on 27 March 2010. Usually only a portion of the budget will be allocated to the participatory process in order to permit public input but also to ensure that core services are not affected. For example, the maximum percentage allocated by cities in Brazil has been 18 per cent of the investment budget. Typically the range is between 2 and 10 per cent of a city’s overall budget. See also, UN Habitat, *72 Frequently Asked Questions About Participatory Budgeting*, Urban Government Toolkit Series, <http://www.unhabitat.org/documents/faqqPP.pdf>, last accessed 27 March 2010.

³⁸ A scanned copy of the law can be found, in Spanish, on the website of the Peruvian congress: <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/28056.pdf> and a machine readable copy can be found at: http://www.transparencia.org.pe/documentos/ley_marco_del_presupuesto_participativo_28056.pdf, both last accessed 27 March 2010.

³⁹ The other pillars of the law are participation, equality, tolerance, efficiency and effectiveness, equity, competitiveness, and respect for agreements.

⁴⁰ These obligations are mandated under Peru’s 2002 Law on Transparency and Access to Information, Article 5, which requires each public body to have a website with basic information including in particular budget information. The Law, in Spanish can be found at: http://www.pcm.gob.pe/transparencia/Ley_de_Transparencia_y_Aceso_a_la_InformacionPublica.pdf, last accessed 27 March 2010.

⁴¹ See reports by the organisation *Propuesta Ciudadana*, Publications page, in Spanish, <http://www.propuestaciudadana.org.pe/n-publicaciones.shtml>. The results are taken from the June 2009 report *Boletín de Vigilancia de los Portales de Transparencia*

2009, <http://www.participaperu.org.pe/apc-aa/archivos-aa/3c6b51ada688b58c57cb18308d59d73/BoletinGPCPortalesTransparencia9na.pdf>, both pages last accessed 27 March 2010.

⁴² Organisation of American States, Heads of State *Declaration of Nueva León*, <http://www.summit-americas.org/SpecialSummit/Declarations/Declaration%20of%20Nuevo%20Leon%20-%20final.pdf>, last accessed 27 March 2010. This declaration was also cited by the Inter-American Court of Human Rights in the case *Claude-Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paragraph 80*, as part of the court’s argument that information is essential for participation, <http://www.corteidh.or.cr/casos.cfm?idCaso=245&CFID=70001&CFTOKEN=76351320>, last accessed 27 March 2010.

⁴³ World Bank e-government portal, Welcome page, <http://go.worldbank.org/6WT3UPVG80>, last accessed 27 March 2010.

⁴⁴ European Union, e-Government in Estonia, e-Government factsheets, October 2008, <http://www.epractice.eu/files/media/media731.pdf>, p. 7, last accessed 27 March 2010. Estonia’s “Information Society Strategy” made universal internet access a priority and established the “Principles of the Estonian Information Policy”, along with a complementary action plan.

⁴⁵ Government of the Republic of Estonia, e-Estonia page, <http://www.valitsus.ee/?id=5450>, last accessed 27 March 2010. See the English language presentation about the portal to be found at the <http://www.ria.ee/xroad/presentation/>, last accessed 27 March 2010.

⁴⁶ Estonian Informatics Centre, Data Exchange Layer X-Road page, <http://www.ria.ee/27309>, last accessed 27 March 2010.

⁴⁷ BBC World Service, *Estonia Opens Politics to the Web*, 7 May 2004, <http://news.bbc.co.uk/2/hi/technology/3690661.stm>, last accessed 28 March 2010. According to an Estonian government advisor, the use of ICTs reduced the time of Cabinet meetings significantly, from as much as 10 hours to as little as 45 minutes.

⁴⁸ Typically, access to information laws establish rules on where and how to file requests, the timeframes for receiving answers, costs for copies, the grounds on which public authorities may refuse to disclose information (exceptions), as well as oversight bodies and appeals mechanisms. For examples of access to information laws from around the world see www.Right2INFO.org, supra note 8.

⁴⁹ “The principle of maximum disclosure establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only where there is an overriding risk of harm to a legitimate interest.” Toby Mendel, 2008. *Freedom of Information: A Comparative Legal Survey*, p. 25, published by Unesco, at: http://portal.unesco.org/ci/en/file_download.php/fa422efc11c9f9b15f9374a5eac31c7efreedom_info_laws.pdf, last accessed 27 March 2010. Mendel argues that international law on freedom of expression and information requires that ATI laws enshrine the principle of maximum disclosure.

⁵⁰ Government of the Netherlands, Ministry of Interior and Kingdom, English language version of the Dutch Act on Public Access to Information (1991, text valid as of 20 May 2008), <http://www.minbzk.nl/bzk2006uk/subjects/constitution-and/publications/4327/act-on-public-access>, Section 8, last accessed 28 March 2010.

⁵¹ As reported by Dutch freedom of information expert Roger Vleugels to the FOI Advocates Network on 10 April 2009.

⁵² Details can be found on the resource sites www.freedominfo.org and www.right2Info.org.

⁵³ European Court of Human Rights cited in the Parliamentary Assembly of the Council of Europe's Opinion on the future Convention on Access to Official Documents, prepared by Committee on Legal Affairs and Human Rights appointed Rapporteur: Mr Klaas de Vries, paragraph A.6, available at <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11698.htm>, last accessed 28 March 2010.

⁵⁴ Mexico's Federal Transparency and Access to Public Information Act, adopted 11 June 2002 and last amended 6 June 2006, in Spanish, <http://www.ifai.org.mx/transparencia/LFTAIPG.pdf>, last accessed 28 March 2010.

⁵⁵ *Ibid.*, Article 7. As per Article 7, the information to be made available and kept up to date by the subjects compelled by the Law includes: I. Their organizational structure; II. The powers of each administrative unit; III. A directory of their public servants, from the level of the head of department or equivalent and below; IV. Monthly salary per position, including the bonus system; V. The liaison unit's address, as well as the electronic address where all requests for access to information can be received; VI. The goals and objectives of the administrative units, as per their operational programs; VII. The services they offer; VIII. Their procedures, requirements and forms; IX. Information on budgetary allotments, as well as the corresponding fiscal reports. In the case of the Executive Branch, this information is to be made available for each agency and entity by the Secretariat of the Treasury and Public Credit, which should also inform the public about the economic situation, public finance and the public debt in the terms established by the budget; X. The findings of budget audits for all departments and entities, and the corresponding explanations, if applicable; XI. The design, execution, amounts granted and access criteria to subsidy programs, as well as the list of beneficiaries of social programs; XII. All licenses, permits or authorizations granted, with their recipients specified; XIII. All contracts signed, detailing for each: a) The public works, goods acquired or leased, and the contracted service; in the case of studies or research, the specific subject must be indicated; b) The amount; c) The name of the provider, contractor or the individual or entity to whom the contract has been granted, and d) The term to complete the contract; XIV. The regulatory framework applicable to each subject compelled by the Law; XV. The reports that each subject must generate, according to the Law; XVI. Mechanisms for citizen participation, if applicable; XVII. Any other information that may be useful or considered rel-

evant, in addition to information based on statistical data, and that answers the public's most frequently asked questions.

⁵⁶ India's Right to Information Act, 21 June 2005, No. 22 of 2005, Section 4, <http://righttoinformation.gov.in/rti-act.pdf>, last accessed 28 March 2008.

⁵⁷ Hungary's Act XC of 2005 on the Freedom of Information by Electronic Means http://abiweb.obh.hu/dpc/index.php?menu=gyoker/relevant/national/2005_XC, last accessed 28 March 2010.

⁵⁸ Although the name is similar, the Hungarian e-FOIA differs from the United States' e-FOIA of 1996, as the latter was updated in the 1966 FOIA to permit information to be accessed in electronic format. The U.S. e-FOIA did, however, also require that all agencies publish (1) an index of all major information systems of the agency; (2) a description of major information and record locator systems maintained by the agency; and (3) a handbook for obtaining various types and categories of public information from the agency. For a description and the law see <http://www.gwu.edu/~nsarchiv/nsa/efoiacom.html>, last accessed 28 March 2010.

⁵⁹ An example of the level of detail required by the Hungarian e-FOIA is that each public authority must publish and update quarterly information including the "Name (type) and subject matter of contracts pertaining to the procurement of goods, construction investment projects, ordering services, sale of assets, utilisation of assets, transfer of assets or rights and titles as well as concessions of a value specified in separate legal regulation, affecting using public funds or linked to the management of assets belonging to public finances, the names of the contracting parties, the value of the contract, in the event of contracts concluded for specific periods, the periods of the contract." This information must be kept in the archive for at least one year after updating.

⁶⁰ "The [UK FOI] Act applies to over 100,000 public authorities. These include central government departments, local authorities, schools, colleges and universities, the health service, the police and a range of other public bodies." UK Ministry of Justice, 2009. *The fourth annual report on the operation of the Freedom of Information Act in central government*, p.1, <http://www.justice.gov.uk/publications/docs/freedom-of-information-annual-report-2008.pdf>, last accessed 28 March 2010.

⁶¹ UK Information Commissioner, Model Publication Scheme page, http://www.ico.gov.uk/Home/what_we_cover/freedom_of_information/publication_schemes.aspx, last accessed 28 March 2010.

⁶² Mexico's Federal Law on Transparency and Access to Public Information, *supra* note 54, at Article 7.XVII.

⁶³ At time of writing, the answers to 437,189 requests could be accessed via the website of the Mexican Information Commission, www.ifai.org.mx, last accessed 28 March 2010.

⁶⁴ United States of America, Electronic Freedom of Information Act Amendments, e-FOIA 1996, Public Law 104-231—Oct 2, 1996, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=104_cong_public_

laws&docid=f:publ231.104.pdf, last accessed 28 March 2010. This law, which amends the U.S. Freedom of Information Act, aims to “use new technology to enhance public access to agency records and information.”

⁶⁵ See The Freedom of Information Act 5 U.S.C. § 552, As Amended By Public Law No. 104–231, 110 Stat. 3048, at § 552.a.2.D, http://www.usdoj.gov/oip/foia_updates/Vol_XVII_4/page2.htm, last accessed 28 March 2010.

⁶⁶ See *Farmsubsidy.org* at <http://www.farmsubsidy.org/about/>.

⁶⁷ *Ibid.* A good summary can also be found in The Guardian, *Press forces EU Subsidies issue*, 7 February 2007, <http://www.guardian.co.uk/media/2007/feb/07/pressandpublishing.newmedia1>, last accessed 28 March 2010. This information in turn makes it possible for the public to engage in a genuine debate about the common agricultural policy in a way that was not possible before because the information was not available. Similar initiatives are now being developed at the national level in a number of countries, such as the “Subsidios al Campo” project in Mexico, which also uses access to information requests to track spending on agricultural subsidies. See <http://www.subsidiosalcampo.org.mx/>, last accessed 28 March 2010.

⁶⁸ International Budget Partnership, *Open Budget Survey 2008, Full Report*, p. 31, <http://www.openbudgetindex.org/index.cfm?fa=fullReport>, last accessed 28 March 2010.

⁶⁹ In June 2009, the UK’s Cabinet Office commissioned one of the inventors of the World Wide Web, Tim Berners-Lee, to explore how to create a single online point of access for government-held public data and how to use the internet to improve government consultation processes. See the UK government press release, 10 June 2009, at http://www.cabinetoffice.gov.uk/newsroom/news_releases/2009/090610_web.aspx, last accessed 28 March 2010.

⁷⁰ United States Government, *Data.gov, About page*, <http://www.data.gov/about>, last accessed 28 March 2010.

⁷¹ *Ibid.*

⁷² See the Sunshine Review’s Collaborative Transparency wiki at http://sunshinereview.org/index.php/Collaborative_transparency_projects, last accessed 28 March 2010.

⁷³ Australian Government, *data.gov.au*, beta version, <http://data.australia.gov.au/>, last accessed 28 March 2010. Examples of recently released datasets include a list of arts organizations receiving public funding in 2009, and the National Public Toilet Map which shows the location of more than 14,000 public and private public toilet facilities with data such as opening hours, availability of baby change rooms, and accessibility for people with disabilities.

⁷⁴ Danish Government, *Digitaliser.dk*, English about page, <http://digitaliser.dk/resource/432461>, last accessed 28 March 2010. The website explains that the literal translation is Digitise.dk and that it is a social network and tool for development, knowledge sharing and a forum for the digitisation of Denmark.

⁷⁵ “Soft law consists of rules issued by law-making bodies that do not comply with procedural formalities necessary to give the rules legal status yet nonetheless may influence the behavior of other law-making bodies and of the public.” Jacob E. Gersen and Eric A. Posner, *Soft Law*, Uni-

versity of Chicago, Public Law and Legal Theory Working Paper No. 213. Available at SSRN: <http://ssrn.com/abstract=1113537>, last accessed 28 March 2010.

⁷⁶ Organization for Security and Cooperation in Europe, *Access to information by the media in the OSCE region: trends and recommendations*, 30 April 2007, page 1, http://www.osce.org/documents/rfm/2007/05/24250_en.pdf, last accessed 28 March 2010.

⁷⁷ *Ibid.*, p. 4.

⁷⁸ Organization of American States, Inter-American Juridical Committee, http://www.oas.org/cji/eng/inter_american_juridical_committee.htm, last accessed 28 March 2010. These principles were developed following consultations with civil society organisations to which Access Info Europe contributed.

⁷⁹ OAS Inter-American Juridical Committee, *Principles on the Right of Access to Information*, http://www.oas.org/cji/eng/CJI-RES_147_LXXIII-O-08_eng.pdf, last accessed 28 March 2010.

⁸⁰ Council of Europe, *Convention on Access to Official Documents*, 18 June 2009, <http://conventions.coe.int/Treaty/EN/Treaties/Html/205.htm>, last accessed 28 March 2010. Opened for signature on 18 June 2009, to date the Convention has been signed by 12 states out of the 47 members of the Council of Europe, of which two—Norway and Hungary—had ratified by 31 January 2010.

⁸¹ Explanatory Report to the draft Council of Europe Convention on Access to Official Documents, paragraph 71, <http://conventions.coe.int/Treaty/EN/Reports/Html/205.htm>, last accessed 28 March 2010. It will be noted that the recommendation from the OSCE Representative on Freedom of the Media which was submitted to the drafters of the Convention has been taken into consideration in defining the classes of information.

⁸² *Ibid.*, Paragraph 72.

⁸³ *Ibid.*, Paragraph 71.

⁸⁴ *Ibid.*, Paragraph 73.

⁸⁵ United Nations Convention against Corruption, adopted by UN General Assembly Resolution, 58/4 of 31 October 2003, http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, last accessed 28 March 2010.

⁸⁶ Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Adopted at Aarhus, Denmark, 25 June 1998, <http://www.unece.org/env/pp/documents/cep43e.pdf>, last accessed 28 March 2010.

⁸⁷ The requirements of the UNCAC’s Chapter II on Preventive Measures include transparency of: anti-corruption policies (Article 5.1); recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials (Article 7.1); funding of candidatures for elected public office and, where applicable, the funding of political parties (Article 7.4); systems to prevent conflicts of interest (Article 7.3); procurement systems (Article 9.1); management of public finances (Article 9.2); organisation, functioning and decision-making processes of public administration (Article 10 and 10.a); decisions and legal acts that concern members of

the public (Article 10.b); periodic reports on the risks of corruption in its public administration (Article 10.c); and decision-making processes (Article 13).

⁸⁸ Public participation opportunities differ from open meetings information. Although open meetings allow the public to follow what is happening in government, for example by sitting in during the sessions of an elected assembly, they do not automatically provide opportunities to contribute to the discussions.

⁸⁹ These countries were chosen because they have conducted some innovative standard-setting on access to information in recent years, and because they represent a mix of countries from different continents with a range of political histories.

⁹⁰ India's Right to Information Act (2005), *supra* note 56, Article 2.5.

⁹¹ Internet World Stats at <http://www.internetworldstats.com/asia.htm#in>.

⁹² At the same time, requiring Internet publication can also be a useful incentive for advancing digitization of the administration and stimulating the internal organization of information. Hence in numerous countries there is a requirement to digitize information. Such is the case in India where Section 4.1 of the Right to Information Act which requires that records be computerized and, subject to resources, connected to the digital networks to permit information sharing. Monitoring by civil society (the NGO the Commonwealth Human Rights Initiative) has found that some bodies have achieved this but others have failed to allocate the necessary budget provisions to improve their records management. An example of a body which has made good progress with scanning documents so that they are available as part of the proactively disclosed materials regard is the Police, which also has a database for all standing orders that can be accessed in each police station and by the public. Report from CHRI "Auditing Compliance of Delhi Police with their Proactive Disclosure Obligations under Section 4(1)(b) of the Right to Information Act, 2005" on file with the author.

⁹³ Internet World Stats <http://www.internetworldstats.com>.

⁹⁴ The OSCE Office of the Representative on Freedom of the Media (OSCE RFOM), <http://www.osce.org/fom/>. Comments on the Draft European Convention on Access to Official Documents of the Council Of Europe, 11 September 2007, document on file with the author.

⁹⁵ Macedonia's Law on Free Access to Public Information at <http://www.sinf.gov.mk/english/default.htm>.

⁹⁶ Overall Macedonia has a reasonably high level of 44 percent Internet penetration. See Internet World Stats, data for Europe updated on 31 March 2009 at <http://www.internetworldstats.com/stats4.htm#europe>, last accessed 28 March 2010.

⁹⁷ UK Ministry of Defence at <http://www.mod.uk/Defenceinternet/FreedomOfInformation>.

⁹⁸ The Mexican Transparency Portal, in Spanish, can be found at <http://portaltransparencia.gob.mx/pot/>.

⁹⁹ The SiSi system (2003–2009) is now called INFO-MEX, and can be found at <https://www.infomex.org.mx/gobiernofederal/home.action>, last accessed 28 March 2010.

¹⁰⁰ The IFAI counts actual consultations where files are opened, not just hits to the website. The total for 2008 was 13,978,771 and for the first half of 2009 5,344,070. The data was provided to the author by the IFAI in the documentation "*T tal de consultas por fracci n*" provided to the author on 23 July 2009.

¹⁰¹ Interview with Jos  Luis Marzal Ruiz, Director General de Coordinaci n y Vigilancia de la Administraci n P blica, IFAI, 23 July 2009.

¹⁰² See InfoDF's criteria for evaluation of websites of public bodies, at the document, in Spanish entitled *Criterios de evaluaci n de la informaci n p blica de oficio publicada en los portales de internet de los Entes P blicos del DF*, 2008, page 4, http://www.infodf.org.mx/web/index2.php?option=com_docman&task=doc_view&gid=109&Itemid=293, last accessed 28 March 2010.

¹⁰³ Mexico City government, "Ventanilla Unica" or "single window", <http://www.transparencia2008.df.gob.mx/index.jsp>, last accessed 28 March 2010.

¹⁰⁴ See Mexico City government website "Useful environmental information within your reach" <http://www.transparenciamedioambiente.df.gob.mx/>.

¹⁰⁵ Slovenia's e-Government, or *e-Uprava*, portal is available in Slovenian, English, Hungarian and Italian (Slovenia has Hungarian and Italian minorities), <http://e-uprava.gov.si/e-uprava/en/portal.euprava>, last accessed 28 March 2010. We note that the title for the link "work and employment" is duplicated in the English version but seems not to be in the Slovenian, Italian and Hungarian versions.

¹⁰⁶ European Commission, *The User Challenge: Benchmarking The Supply Of Online Public Services*, September 2007, prepared by consulting firm Gapgemini, page 5, http://ec.europa.eu/information_society/europe/i2010/docs/benchmarking/egov_benchmark_2007.pdf, last accessed 28 March 2010.

¹⁰⁷ Slovenia's Decree on Provision and Re-use of Information, Official Gazette RS, No. 76/05 of 12 August 2005, article 14.1, at http://www.mju.gov.si/en/freedom_of_public_information, last accessed 28 March 2010.

¹⁰⁸ Slovenian Access to Public Information Act (2003), consolidated version, Official Gazette RS, No. 51/06 of 18 May 2006, in English at <http://www.ip-rs.si/index.php?id=324>, last accessed 28 March 2010. The information categories are similar to those of the laws analyzed in Section 3.

¹⁰⁹ Decree on Provision and Re-use of Information, *supra* note 107, articles 2–6 and 8–11.

¹¹⁰ *Ibid.* article 11(3).

¹¹¹ In this regard, Christopher Hood cites jurist Lon Fuller: "in his classic *The Morality of Law* [Fuller] discusses the tension between accessibility and reliability in the law—two different dimensions of transparency. Accessibility means making law accessible to the public at large by writing it in everyday language that is readily intelligible to laypersons, while reliability means writing it in precise and technical language such that judges and law courts interpret it in consistent ways, even if such language means little to the general reader. Increasing accessibility will tend to reduce reliability and vice-versa." Hood (2007) "What happens when transparency meets blame-avoidance?", Public

Management Review, 9: 2, 191–210, to be found at: <http://dx.doi.org/10.1080/14719030701340275>, page 194.

¹¹² See the Plain English Campaign <http://www.plainenglish.co.uk/>, last accessed 28 March 2010. Their stated goal is “campaigning against gobbledygook, jargon and misleading public information. We have helped many government departments and other official organisations with their documents, reports and publications. We believe that everyone should have access to clear and concise information.” Today the Campaign’s crystal mark award for clarity appears on over 17,500 documents worldwide. Public bodies which produce complex or confusing documents risk getting a “Golden Bull” award.

¹¹³ District of Columbia Data Catalog, <http://data.ocio.dc.gov/>, last accessed 28 March 2010.

¹¹⁴ The DC Data Catalog map at: http://maps.google.com/?q=http://data.ocio.dc.gov/Gateway_2009061423595.ashx?name=http://data.ocio.dc.gov/feeds/dca_building_permits/dca_building_permits_current.kml, last accessed 28 March 2010.

¹¹⁵ These requirements are usually contained in other laws than the access to information law.

¹¹⁶ In India the opposite can also be true: a recent survey found that for the many states which have one or more languages other than Hindi and English, researchers had difficulty getting information in either of these national languages.

¹¹⁷ UK Information Commissioner’s Office Model Publication Scheme, *supra* note 61.

¹¹⁸ India’s Central Information Commission Decision of 9.4.2009 in case of complaint F. No. CIC/WB/C/2008/00115/LS and others.

¹¹⁹ Macedonian Law on Free Access to Public Information *supra* note 95, Article 10.

¹²⁰ The case that raised this issue in Slovenia followed a request by the Slovenian Speleological Society to topographic maps produced by the Slovenian Mapping Agency. The commissioner ruled that the information should be provided free of charge in order that the Speleological Society could produce the world’s first online caves registry which includes 9262 caves and links to another 4293 documents. Most other countries in the European Union allow public bodies to charge even for non-commercial reuse of public sector information, but in Slovenia this is now clearly prohibited. The decision, in Slovenian only, can be found at [http://www.ip-rs.si/informacije-javnega-znacaja/iskalnik-po-odlocbah/odlocbe-informacije-javnega-znacaja/?tx_jzdecisions_pi1\[showUid\]=229&tx_jzdecisions_pi1\[highlightWord\]=raziskovanje%20jam&Hash=5b26f278d5](http://www.ip-rs.si/informacije-javnega-znacaja/iskalnik-po-odlocbah/odlocbe-informacije-javnega-znacaja/?tx_jzdecisions_pi1[showUid]=229&tx_jzdecisions_pi1[highlightWord]=raziskovanje%20jam&Hash=5b26f278d5), last accessed 28 March 2010. Links to the maps can be found at the Ljubljana Caving Society (Društvo za raziskovanje jam Ljubljana) at <http://dzrjl.speleo.net/>, last accessed 28 March 2010.

¹²¹ Hungary’s Act XC of 2005 on the Freedom of Information by Electronic Means, *supra* note 57, Articles 5, 8 and General Publication Scheme annexed to the law.

¹²² UK Information Commissioner’s Office Model Publication Scheme, *supra* note 61.

¹²³ This paper does not examine this issue in detail but the author notes that there are now technical means by which

databases can be constructed in order to ensure that key fields of data such as personal data are not disclosed even when the public is given direct access to the remainder of the database.

¹²⁴ For an analysis of the role of budgeting in achieving transparency policy goals, see Alfonso Hernández-Valdez, *Budgeting Implications for ATI: The Mexican Case*, published by the World Bank Institute, 2009, <http://siteresources.worldbank.org/EXTGOVACC/Resources/budgetingImplicationsforATILegislation.pdf>, last accessed 28 March 2010. It is noted that for signatories to the UN Convention against Corruption, technical assistance funds are available, which could be used for implementing the proactive disclosure provisions of the Convention.

¹²⁵ Peru’s Law on Transparency and Access to Public Information, *supra* note 38, Article 6. For local government bodies this obligation had to be complied with only provided that technological and budget means were available.

¹²⁶ In Mexico, at the Mexico City level, the Information Commission has developed a series of indicators for measuring the proactive disclosure requirements, see the report *Results of the first evaluation of the public information that public bodies should automatically present in their internet portals* (in Spanish), July 2009, http://www.infodf.org.mx/nueva_ley/22/6/2009/evaluacion_portales2009.pdf, last accessed 28 March 2010.

¹²⁷ Accountability Initiative, 2009. RTI Brief, *Proactive Disclosure—Best Practices from Mexico*, available at: <http://www.accountabilityindia.org/pdf/AIRTIBriefVol1.pdf>, last accessed 12 May 2010.

¹²⁸ Alasdair Roberts, A Great and Revolutionary Law? The First Four Years of India’s Right to Information Act, 9 January 2010. Public Administration Review; Suffolk University Law School Research Paper No. 10–02, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527858, last accessed 28 March 2010.

¹²⁹ Central Information Commission, File No. RC/UG/35826mpu dated 21.12.2008 (Chanderkant J Karira Vs Indian Embassy, Washington).

¹³⁰ See for example ruling in Central Information Commission in case of File No. CIC/WB/C/2008/00115/LS, Ms. Parminder Kaur and others (joined cases) at <http://cic.gov.in/CIC-Orders/LS-09042009-10.pdf>, last accessed 28 March 2010.

¹³¹ France’s Commission on Access to Administrative Documents (CADA), website page listing the legal texts which relate to the CADA’s work, in French, <http://www.cada.fr/fr/texte/frame.htm>, last accessed 28 March 2010.

¹³² Aarhus Convention Article 2.3

¹³³ Aarhus Convention Article 5.1.a

¹³⁴ Aarhus Convention Article 5.2.a

¹³⁵ Aarhus Convention Article 5.2.b/5.2.c

¹³⁶ Aarhus Convention Article 5.5 and 5.7

¹³⁷ See information on Kiev Protocol on Pollutant Release and Transfer Registers at <http://www.unece.org/env/pp/prtr.htm>.

¹³⁸ Aarhus Convention Article 5.3

About the World Bank Institute's Governance Practice

Governance is one of seven priority themes in the World Bank Institute's recently launched renewal strategy—a strategy that responds to client demand for peer-to-peer learning by grounding WBI's work in the distillation and dissemination of practitioner experiences. The Institute is committed to building knowledge and capacity on the “how to” of governance reforms, with emphasis on supporting and sustaining multi-stakeholder engagement in bringing about such reforms.

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The Practice focuses on three thematic areas: governance of extractive industries, procurement reform, and access to information. A fourth program supports anti-corruption programs for Parliamentarians, the Judiciary and the Private Sector. A Mobilizing Stakeholders for Reform group links stakeholder groups in support of these priority areas, documents and codifies knowledge, and builds capacity in cross-cutting areas. And lastly—but importantly—a Leadership Development Program focuses on strengthening the capacity of potential leaders to harness the energies of stakeholder groups and to and channel these efforts toward reform.

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