



## Encyclopedic Dictionary of Public Administration

The reference for understanding government action

# TRANSPARENCY

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Transparency is a relational value that applies to all spheres of human activity. In fact, all social relations can be assessed on the basis of this criterion.

In the specific area of administration and management, whether in the public or private sector, transparency generally refers to “an environment in which the objectives of policy, its legal, institutional, and economic framework, policy decisions and their rationale, data and information related to monetary and financial policies, and the terms of agencies’ accountability, are provided to the public in a comprehensible, accessible, and timely manner.”<sup>1</sup> Transparency targets not only on the reasons behind and the substance and purpose of duties and activities, but also the communication that surrounds them; for this reason it is considered a key element of governance.

All aspects of the public sphere must be based on the free circulation of information. In other words, the concerned parties must have direct access to organizations, know and understand their processes and decisions, and be able to obtain information held by these organizations that is deemed of public interest. Transparency, which complements the concepts of integrity and accountability, is thus a prime tool for ensuring incorruptibility. It is even – sometimes to excess<sup>2</sup> – an a priori unassailable state, synonymous with honesty.

In short, the term transparency, whose etymology speaks for itself,<sup>3</sup> refers to the voluntary disclosure of information that shapes, structures or contributes to attitudes, behaviours, actions or discourse, for the purpose of ensuring that they are totally intelligible.<sup>4</sup> Its intrinsic logic is to go beyond the primary figure apprehended by sense perception and to show the entire “landscape” of factors constituting the infrastructure of the tangible object or fact conveyed by this image. Such knowledge alone makes it possible to ascertain how these factors, and the synergy resulting from their combination, explain perceptible reality.

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<sup>1</sup> Definition proposed by the *OECD Glossary of Statistical Terms* <http://stats.oecd.org/glossary/detail.asp?ID=4474>

<sup>2</sup> Eminent US legal expert and well-known Internet freedom advocate Lawrence Lessig came to this conclusion in an article entitled “Against Transparency: The Perils of Openness in Government,” published in the magazine *The New Republic* in 2009.

<sup>3</sup> From the Classical Latin trans- “through” + parere “come in sight, appear.” Online Etymology Dictionary [www.etymonline.com/index.php?l=t&p=27&allowed\\_in\\_frame=0](http://www.etymonline.com/index.php?l=t&p=27&allowed_in_frame=0)

<sup>4</sup> In contrast, keeping such information “secret” reflects an inability to explain the principles of one’s actions or values, either because of lack of intelligence or reflection or because of a desire to disguise unavowable interests (Cléro, 2006).

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### The fairly recent emergence of a concept

It was not until the Age of Enlightenment that the word transparency was used in reference to such things as attitudes, statements, behaviours and actions. With certain aspects of its meaning bordering on related scholarly concepts,<sup>5</sup> the expression complemented the new ideas being discussed at the time (democracy, fundamental rights, public interest, administration of public affairs, etc.). Seized on by the agendas of the time, it came to be construed as an essential condition for the hoped-for break with the capricious opacity of absolutist procedures applied *at the will of the King*. It thereby reflected the ability of institutions and the people who lead them to embody both the letter and the spirit of the principles of equality and legality, which were central to the concept of the rule of law emerging at that time.

In our time, the spontaneous, straightforward and unambiguous presentation of the full details behind positions, policy directions, decisions and actions has become a relational quality, described by some as an almost universally sought-after sign of civilization. Transparency, in both the private and the public sphere, has proven to be essential to the rational bestowal and maintenance of trust.

### An end product of communication

Few properties of relations in the public sphere have been studied as much as those relating to transparency. Most reflection on this question has recognized the crucial supporting role played by communication – in terms of vectors and actors alike. It has been shown that, to avoid merely providing a sketchy “impression” of transparency, the information made available must not only be complete and factual, but also delivered by a credible spokesperson in a manner that is clear, coherent and comprehensible for the audiences concerned.

When transparency is claimed to be an ethical or deontological value, or a personal or institutional value, it is based on similar canons. It will not do to provide incomplete information that produces, voluntarily or through negligence, a partial, embellished or deteriorated image of factual, objective reality. Appropriate communication rules out the use of misleading or specious analogies, as well as all manner of hype and spin; on the contrary, it requires authenticity, legitimacy, truthfulness and sincerity.<sup>6</sup>

### A concept with a history marked by stumbling blocks and resistance

Recognition of the right to “all” relevant information on public affairs and the institutional obligations this entails – in terms not only of the duty to disseminate such information but also of the rights of access and use – has spread gradually.

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<sup>5</sup> In particular, the concept of “translucence,” which refers to the quality or condition of being translucent – i.e., allowing the passage of light, yet diffusing it so as not to render bodies lying beyond clearly visible. *Compact Edition of the Oxford English Dictionary*.

<sup>6</sup> Attributes that no doubt prompted Jean-Jacques Rousseau to view transparency as “the virtue of beautiful souls.”

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Generally speaking, recognition of this right is traced back to the adoption of the *Declaration of the Rights of Man and of the Citizen* in France in 1789<sup>7</sup> or, in the Anglo-Saxon tradition, to the adoption of the First Amendment to the United States Constitution in 1791. However, in the many countries that were content to adopt similar high-minded measures – a move that was no doubt *de rigueur* but ultimately, in this instance, of purely symbolic import – the effects of such recognition took an exceedingly long time to appear.

Clearly, in the absence of concrete legal, administrative and technical mechanisms for effectively implementing this right, only common law court hearings could ensure it took effect. However, even when a court recognized that the motion brought before it concerned an enforceable right, the proceedings were cumbersome, complex and indeed costly.

### A landmark initiative

Although, on the whole, this public governance context was dominated by reasoning modelled on the passivities of legal logic, it should be noted that Sweden adopted the *Freedom of the Press Act* (*Förordning om frihet att skriva och för Press*, or ordinance on freedom of writing and the press) as early as 1776. That same year, Finland, which was then a “province” of Sweden, passed the *Act on the Freedom of Publishing and Right of Access to Official Records* (*Laki ammatillisesta Kustannustoiminta ja oikeus tutustua virallisiin asiakirjoihin*), whose title was even more revealing with regard to the legislation’s target objective.

These measures, which took effect immediately and were based on a desire for a proactive approach, were adopted at the instigation of Anders Chydenius (1729-1803), a Finn known as the “father of Swedish liberalism.” In practical terms, they granted all subjects of the realm the right to access the documents of bodies representing public authorities, allowed these documents to be discussed publicly and made it possible to refer to them in various legal motions.

As a result of these normative frameworks, public governance came to play an active role in informing citizens. This would have a lasting impact on the political culture and customs of Scandinavian countries and have a decisive influence on the adoption of similar practices in other parts of the world – albeit more than 200 years later.<sup>8</sup>

### Measures hidden from view for many years

The ordinances enacted in 1776 were the first legal instruments approved by a parliamentary body to require that public authorities disseminate information on their handling of public affairs. This official service, which was supported by procedures that were innovative for the time, laid the very first groundwork enabling citizens to gather information, hold debates and exercise direct oversight.

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<sup>7</sup> Article 15 stipulates that “Society has the right to ask a public official for an accounting of his administration.” In addition, as a result of the French Revolution, the Constitution stipulated that laws and regulations, as well as rulings and decrees, had to be published, that reasons had to be given for legal decisions and that [all] jurisdictional hearings, such as parliamentary proceedings, had to be held in public (Frydman, 2007).

<sup>8</sup> It was not until the beginning of this century that principles pertaining to practices of this type were formally recognized by the United Nations Special Rapporteur on Freedom of Opinion and Expression (2000 Annual Report, E/CN.4/2000/63).

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Even though this mode of operation was known beyond the borders of Scandinavia, it remained confined to this region for many years. While the reasons for this unsought-after isolation are shrouded in North Sea mists, the effects on the rest of Europe and the areas coming under its influence were rock-hard: populations were deprived of practices with a proven record of effectiveness in respect of facilitating the direct monitoring of government action and, as a result, ongoing oversight over the probity of political decision-makers and policymakers.<sup>9</sup>

A similar gap could be observed when it came time to lift restrictions on the dissemination of information imposed on democracies during World War II and to modernize the mechanisms for providing access to public information. Indeed, Sweden was, in 1949, the first country to pass legislation in this regard, followed by Finland, in 1951. Fifteen years later, in 1966, similar ideas made their way to North America, where they led to the adoption of the highly influential *Freedom of Information Act* (FOIA) in the United States. Through this Act, the US lent genuine legitimacy to this concrete mode of government transparency, and a few continental European countries, including France, followed suit in the 1970s.<sup>10</sup> Similar legal frameworks have also been adopted by many countries in recent years, including the UK in 2000 and Germany and India in 2005.

### An as-yet unfinished evolution

Why did it take so long for Scandinavia's exemplary practices to be emulated elsewhere? The chronology proposed by Archon Fung and his colleagues from the Harvard School of Public Administration is very useful for understanding why Scandinavian practices spread so slowly to countries that advocated democratic values and for gaining insight into the current situation (Fung, Graham and Weil, 2007). These authors discuss these questions from the standpoint of public and administrative policies and have identified three generations of measures that government apparatuses strive to apply in a coherent and integrated manner in all societies that thirst for transparency.

### The first generation of transparency measures

The first measures naturally targeted two basic aspects of public management: the conditions that had to be met by the administrative acts of public administrations, and the attitudes and behaviours expected during the official monitoring and oversight activities (i.e., audits) conducted among political-administrative apparatuses.

As regards the transparency requirements for administrative acts that are binding on citizens, rules were gradually adopted for the declaration of standards (e.g., compulsory public consultations), the issuing of penalties, the reporting of violations and the obligation to inform

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<sup>9</sup> Practices of this type are now found in nearly 90 countries, including several territories falling within the sphere of influence of the former USSR, an authoritarian federal regime that imploded when *glasnos* (literally "openness" but translated as "transparency") was decreed in the 1990s. In those areas, however, such practices are subject to generally restrictive conditions.

<sup>10</sup> Quebec has also been as a pioneer in this area, with its *Act respecting access to documents held by public bodies and the protection of personal information* (R.S.Q., c. A-2.1). Adopted in 1982, this Act created the Commission d'accès à l'information du Québec (CAI), mandating it to administer the statutory framework. The Quebec law prompted Canada to adopt similar legislation in 1985 and has served as a reference for various US states and other Canadian provinces (Fouquette-L'Anglais, 2010).

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alleged offenders of the remedies available to them. As for the question of monitoring and oversight, a legal framework was usually adopted as soon as a rule of law regime was introduced, in order to specify the objects, nature and purpose of institutionalized (internal or external) audits of government action and the agents of such action.

Under this type of regime, statements concerning organizational transparency have included the compulsory standards and rules of professional conduct that must be observed by public office holders or employees.

### **Recommendations stemming from institutional auditing**

In regard to the important topic of the auditing of the administrative apparatus, the criteria that foster transparency are based on the logic of the bureaucratic system, which, it should be noted, views hierarchical structures with firmly separated echelons as being essential to internal transparency.

The conditions associated with auditing subject to administrative law require public administrations to show that they are completely open and transparent when it comes to oversight by competent hierarchical authorities or investigations by external bodies specifically mandated for that purpose. The conclusions of these so-called external audits are made public and, depending on the system of government, are studied to determine whether the situations observed comply with prescribed standards. Hearings concerning these findings are generally held under the auspices of Parliament because of the recognition, by the political system, of the control that Parliament exerts over government (and its administration).

### **The transparency of communication concerning the results of so-called “external” audits**

Oversight activities by representatives of the public are encountered in political systems that have usually already promulgated principles and rules pertaining to freedom of information and freedom of the press.

As is the case with other events of a public nature, this exercise in accountability is covered by the media, who communicate and comment freely upon the findings of the audit reports (confirming compliance or non-compliance with legal standards or ethical values) as well as the parliamentary debates that these reports give rise to. The media, by freely and independently discharging their responsibility of reporting on the administration of public affairs – and using easily understandable language to discuss what is often highly technical information – presumably provides the public with insights and shapes its perceptions.

Obviously, it should be acknowledged that this media coverage contributes to achieving some of the sought-after transparency. And, as an ancillary benefit in democratic systems, the quality of the coverage actually provided enables the public to assess the rigour and efficiency of the media outlets involved – that is, to gauge their real capacity to play the “fourth estate” role that has been the object of strong, persistent demands. At the same time, however, there is no denying that during periods dominated by monopolies or the drive for profit, the claims surrounding such capacity have proven to be greatly exaggerated.

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### Further additions to an array of tools that had become deficient

By the late 20th century, most democratic societies had finished enacting their first prescriptive measures.

At the institutional level, laws of general application,<sup>11</sup> often based on the Scandinavian model, were introduced to standardize broader access to information on the workings of government apparatuses (budgetary principles and processes, government procurement, appointments, etc.) and on the conduct of the main categories of elected or appointed public officeholders.

At the same time, tools for achieving the anticipated transparency were improved with the introduction of major reforms of the management framework used in the public sector. Aimed at disclosing information on government performance, the most fully developed reform measures even stipulated that the anonymity of public servants should be reduced, particularly by requiring administrative authorities to report publicly on the effectiveness and efficiency of their management and on the quality of its results.

### The second generation of measures

The second generation of transparency policies includes so-called “targeted transparency” measures. These measures emerged not only because of the greater diversity and complexity of spheres of government action, but also because of a structural vision prevailing in complex societies concerning the growing interdependency and cooperation (whether necessary or imposed) between public administrations and private-sector businesses.

Chronologically, the lasting integration of first-generation transparency practices becomes apparent only once these practices have reached maturity. Their specific contents take the form of regulated technical communications that directly address a wide audience – i.e., that are not intended only for government authorities or, obviously, solely for the purpose of providing information on the internal management and auditing of entities whose action is deemed to affect conditions in the public sphere.

The normative framework for targeted transparency requires the disclosure of factual information by both public and private institutions. Depending on the topics deemed to be of public interest, communications must provide substantiated information either on the general state of affairs, operations or workings, or on the nature and trends of the interests at play, the means that have been mobilized, the modes of production and operation used, and the results achieved by the organizations or individuals in charge. Depending on the sectors targeted, these officially recorded

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<sup>11</sup> For example:

Adoption of government organization (organic) laws and normative laws on access to information and privacy;

Appointment of ombudsmen or mediators;

Introduction of lobbying guidelines and controls;

Appointment of an authority responsible for auditing and reporting publicly on the enforcement of rules of professional conduct;

Compulsory declaration of interests by elected officials and public administrators and regulatory framework for their post-employment;

Increase in public inquiries (commissions of inquiry, parliamentary task forces or expert commissions) on a range of topics in order to focus attention on matters of the public interest.



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and widely accessible communications may provide information not only on the status of the players involved and decision-making processes but also on the source and management of direct inputs and outputs or induced externalities, etc.

This mode of transparency thus imposes, via legal norms, the production and broad dissemination of standardized and comparable information on products or practices and even their impacts on the public sphere. The normative framework for these communications is determined by the government, based on the effects or results (be they targeted or not) of the activities carried out by the various components of civil society or by public administrations.<sup>12</sup>

In short, the various mechanisms in place strive to take into account all of the players whose presence and legitimate action (whether planned or not) gives cause for concern or is likely to do so or even to create obstacles or stumbling blocks to the smooth running of society. The final goal of these measures is to boost the shared capacity to anticipate and understand the risks or dysfunctions that are likely to undermine the confidence of citizens, particularly in the ability of society-wide institutions to play their recognized role as ultimate guardians.

### **In search of defining features: a third generation of measures**

The third generation of public transparency policies appeared at the turn of the 21st century. These initiatives were the direct result of progress in the area of information and communications technologies (ICTs), whose utility stemmed in particular from their rapid penetration of all environments as a means of transmission for transmitting and a potential support of interaction.

Indeed, these mechanisms are usually grouped together under the evocative name of “Transparency 2.0.” They differ from those advocated earlier in that they are designed not only to offer access to government-administered information and enable users to understand it, but also to provide, on an ongoing basis, means for interacting and directly participating in the handling of questions of public interest.

Nonetheless, conditions must be created to preserve the essence of the still fragile values of the democratic heritage of the law-based societies that advocate such values. Making the case for public disclosure a century ago, Justice Brandeis famously remarked that “Sunlight is...the best of disinfectants.”<sup>13</sup> Today, however, such light has come to be viewed as having the potential to kill all living and thus fragile organisms that expose themselves to it without taking minimum precautions.

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<sup>12</sup> Depending on the geographic area concerned, the information may relate to topics such as the performance of the school system, contagious diseases and their progress, errors in the healthcare system, toxic industrial waste, the number and causes of transportation accidents, economic results and outlook, etc. or the names of business owners who bid on government contracts and of contributors to political parties, the certified résumés of candidates for public office, their assets and, sometimes, those of their families.

<sup>13</sup> A famous quotation by Justice Louis Brandeis, a member of the Supreme Court of the United States (1916-1939), which has become a rallying cry of US movements for unconditional government transparency.

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