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Review of passive transparency in Brazilian city councils*Balanco da transparência passiva em câmaras municipais brasileiras**Evaluación de la transparencia pasiva en cámaras municipales en Brasil*Fabiano Maury Raupp^{a,*}, José Antonio Gomes de Pinho^b^a Universidade do Estado de Santa Catarina, Florianópolis, SC, Brazil^b Universidade Federal da Bahia, Salvador, BA, Brazil

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Abstract

The goal of this study is to investigate compliance with the requirements of passive transparency in city councils of Brazilian municipalities with populations greater than 300,000 inhabitants. The research is descriptive, operationalized by a survey with predominantly qualitative approach. The data collected from 79 city councils were analyzed using the descriptive analysis technique. Three groups were identified in the city councils analyzed: first, city councils to which it was not possible to submit the request for information; second, city councils to which the request for information was submitted, but there was no reply or the response was insufficient; and third, city councils to which the request for information was submitted and there was satisfactory response. The scenario shows little passive transparency before the technological apparatus was available. There are city councils that violate a series of legal provisions regulating the transparency of government actions. The study stands out for diagnosing the current situation of passive transparency in the city councils of the largest Brazilian municipalities, revealing how the law, in general, can be violated, and not taken seriously.

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Keywords: Transparency; Passive transparency; City councils

Resumo

O estudo teve por objetivo investigar o atendimento às exigências de transparência passiva pelas câmaras de municípios brasileiros com população superior a 300.000 habitantes. A pesquisa é descritiva, operacionalizada por um estudo de levantamento, com abordagem predominantemente qualitativa. Os dados coletados com 79 câmaras municipais foram analisados pela técnica da análise descritiva. Identificaram-se três grupos nas câmaras analisadas: o primeiro refere-se às câmaras em que não foi possível encaminhar o requerimento; o segundo diz respeito às câmaras cujo requerimento foi encaminhado, mas não houve retorno (resposta) ou o retorno foi insuficiente; o terceiro considera às câmaras em que o requerimento foi encaminhado e houve retorno satisfatório. É um cenário que revela pouca transparência passiva diante de um aparato tecnológico disponível. Há câmaras que descumprem uma sucessão de textos legais que regulamentam a transparência dos atos governamentais. O estudo se

* Corresponding author at: Universidade do Estado de Santa Catarina, Avenida Madre Benvenuta, 2037, 88035-001, Florianópolis, SC, Brazil.

E-mail: fabianoraupp@hotmail.com (F.M. Raupp).

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destaca por diagnosticar a atual situação da transparência passiva de câmaras dos maiores municípios brasileiros e revela como a lei, em geral, pode ser descumprida, não levada à sério.

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Palavras-chave: Transparência; Transparência passiva; Câmaras municipais

Resumen

El objeto del estudio es analizar la atención a las exigencias de transparencia pasiva por parte de las cámaras de los municipios brasileños con población superior a 300.000 habitantes. Se llevó a cabo el estudio descriptivo por medio de un análisis predominantemente cualitativo. Los datos obtenidos en las 79 cámaras municipales fueron analizados por la técnica de análisis descriptivo. Se identificaron tres grupos en las cámaras estudiadas: el primero se refiere a las cámaras en las que no fue posible tramitar la petición; el segundo se refiere a las cámaras en que se tramitó la petición, pero no hubo respuesta o la misma fue insuficiente, y el tercero considera a las cámaras en las que se tramitó la petición y hubo una respuesta satisfactoria. Es un escenario que indica poca transparencia pasiva delante de la tecnología disponible. Existen cámaras que no cumplen con una sucesión de textos legales que regulan la transparencia de los actos gubernamentales. El estudio se destaca por diagnosticar la situación actual de la transparencia pasiva de las cámaras de los mayores municipios brasileños, y muestra como la ley, en general, puede ser incumplida y no ser plenamente respetada.

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Palabras clave: Transparencia; Transparencia pasiva; Câmaras municipales

Introduction

Although the term transparency is recent and it has been highlighted in recent years, the concern related to the term has a long history. The formation of the liberal state and representative democracies encouraged the fight against the opacity that prevailed in monarchical regimes and the establishment of accountability of the executive by the legislature (Zuccolotto & Teixeira, 2014). For the authors, despite the importance given to the issue in the past decade, its meaning remains fluid, displaying variations among different areas of knowledge. In part, this is due to the fact that this concept is used in different aspects related to the flow of information.

Zuccolotto and Teixeira (2014) also highlight the low level of transparency shown by subnational Brazilian states, indicating a significant distance between the government and civil society, as little information is released by the states. Therefore, there is a gap between the requirements imposed on government entities regarding active transparency (providing information, regardless of request) and the effective application by the public managers. Without wanting to justify non-compliance with legal requirements, some questions are raised: Would passive transparency (information provided in reply to citizens' requests) be one way to mitigate the failure of governments in relation to the transparency of actions taken in public administration? As it happens to active transparency, is there failure in relation to passive transparency as well?

In terms of academic papers, in a survey done in SPELL base – Scientific Electronic Library Periodicals (www.spell.org.br) on February 6, 2015, using as a search parameter the term “transparency” in the document title, we identified 44 papers specifically on transparency, published in journals, but no work addressed passive transparency. Using the same parameters, on

that same date, we made a survey concerning the issues of the events organized by ANPAD – National Association of Graduate Studies and Research in Administration (www.anpad.org.br), and we identified 35 studies that include the word “transparency” in their titles. However, we did not identify any study that addressed passive transparency. Such surveys reveal a gap in this area of knowledge, contributing to justify this study from an academic point of view. Therefore, the relevance and pertinence of the study lies in three main reasons: firstly, the results may contribute to a situational diagnosis of passive transparency regarding the suitability or not of this instrument to legislation (Raupp, Andrade, & Pinho, 2015); secondly, it is sustained by the fact that active transparency is not yet a reality in the Brazilian context (Araujo & Grossi, 2013; Bairral, Silva, & Alvez, 2015; Cruz, Ferreira, Silva, & Macedo, 2012; Raupp & Pinho, 2011; Leite Filho, Colares, & Andrade, 2015; Raupp, 2014a, 2014b; Souza, Costa Barros, Araujo, & Silva, 2013; Staroscky, Nunes, Leão Lyrio, & Lunkes, 2014; Zuccolotto & Teixeira, 2014), a scenario that encourages research aimed to investigate whether passive transparency can be one way to mitigate this problem; thirdly, related to the second reason, it concerns the gap caused by the lack of studies on passive transparency.

These are the reasons that anchor the following research question: To what extent is passive transparency found in Brazilian city councils of municipalities with a population over 300,000 inhabitants? Therefore, the study aimed to investigate compliance with the requirements of passive transparency in city councils of municipalities with a population of 300,000 inhabitants or more. The paper is organized into five sections, beginning with this introduction. It is followed by the theoretical foundation, considered necessary to support the research object. The third section covers the adopted methodological procedures.

The following sections present the research findings and final considerations, respectively.

Theoretical foundation

The theoretical foundations cover discussions on transparency, active and passive transparency and the use of information and communication technologies – ICT to promote transparency. It also refers to formalism and paternalism as possible explanations for the gap between the requirements imposed on government entities regarding transparency and the effective implementation by the leaders.

It is observed that many changes concerning transparency have occurred over the past 20 years. On one hand, if it cannot yet be said that the veil of Brazilian government has been removed completely, on the other, it should be recognized that the current scenario is completely different from 20 years ago, as pointed out by Campos (1990), which can cause an increase of accountability or, at least, create conditions for that to take place (Pinho & Sacramento, 2009). The relationship between transparency and the meaning of accountability is evident in the study of Pinho and Sacramento (2009), who looked up the meaning of the word *accountability* in several dictionaries in order to try to grasp more precisely what the term means in English and how it has been translated into Portuguese. Due to the lack of a word in Portuguese that expresses what *accountability* means, the authors infer that the meaning of the concept involves responsibility (objective and subjective), control, transparency, obligation of accountability, justifications for the actions that have been or ceased to be undertaken, awards and/or punishment (Pinho & Sacramento, 2009). Before moving to the Brazilian situation in particular, it is worth bringing the reflections of Behn (1998), who introduced the discussion of accountability within the emerging paradigm of the new public management in the mid-1990s in the American context. For the author, the “problem of corruption” would be less disturbing than the “performance issue” (Behn, 1998, p. 6). Thus, the “emphasis on producing results” becomes predominant (Behn, 1998, p. 7) and that calls for a “democratic accountability”. It is worth stating that Behn (1998) points out many problems and difficulties in building an effective accountability, which leads to realizing that this concept is difficult to operationalize even within the American context, regarded as an advanced democracy. The author shows the difficulties of allocating responsibilities to public officials involved with public policies, as well as difficulties related to the capacity of civil society to mobilize itself concerning that issue.

The entities that make up the Brazilian government structure are required, by the Federal Constitution (Brasil, 1988), to provide accountability on the use of public funds and to respect the principle of publicity, among other principles of public administration. Therefore, it is evident that there is need for transparency in the accountability of public entities and their bodies in direct and indirect administration (Neto, da Cruz, Ensslin, & Ensslin, 2007). The public sector is compelled to serve the collective interest and, therefore, it should increase the level of transparency so that citizens can see the accountability

and check its performance meets the collective interest (Silva, Pereira, & Araújo, 2014).

For Neto et al. (2007), there are three elements of transparency of public accounts: publicity, understandability and usefulness for decisions. By publicity, Neto et al. (2007) mean the wide dissemination of information to the population, providing low-cost access to multiple media in a language understandable for users. The authors presuppose the opportunity of the information provided, with timing, and within feasible time to support the decisions. The comprehensibility dimension is related, according to the authors, to visual presentation, including information format (statements, reports), and the use of an adequate language. Simplicity and accessible language, targeted to the profile of users, should be pursued to increase understanding of the information. The usefulness for decisions is based on the relevance of the information. The relevance, in turn, may or may not coincide with users’ interests. Associated with relevance, there is the reliability of the information to which users have access, that is, the accuracy guarantee of what is disclosed. Comparability should be fostered amongst periods and amongst entities (Neto et al., 2007).

Within the legal perspective, laws concerning access to information detail how government bodies should proactively provide information to the public, and they also specify how governments should deal with requests for information, pointing out the structures for receiving such requests, the appeal systems and punitive measures for those who do not comply (Angélico & Teixeira, 2012). In recent years, it has been possible to identify a large increase of Access to Information Laws around the world, with more than two-thirds of the approximately 100 laws of this kind being adopted only in the past decade. In Latin America, only Venezuela and Costa Rica have not legislated on access to information. Brazil was one of the last countries to join this movement for transparency (Michener, Moncau, & Velasco, 2014). The Brazilian Access to Information Law, sanctioned on November 18th, 2011, was the 89th national law of that kind. The text established 180 days for the beginning of its validity; therefore, it was indeed applicable in Brazil as of May 16th, 2012 (Angélico & Teixeira, 2012). Raupp (2014a) believes that the publication of the Access to Information Law – LAI (Brasil, 2011) reinforces the need for transparency for public officials, present in the Fiscal Responsibility Law (Brasil, 2000) and the Transparency Law (Brasil, 2009). The LAI established the duty of the Government to spontaneously disclose information of public interest (active transparency), and meet the demands that are made by the population (passive transparency) (Silva, Hoch, & Santos, 2013). The rules of LAI apply to all public bodies, which are part of the direct administration of the Executive, Legislative and Judicial Powers and Autonomous Bodies as well as public companies, joint-stock companies and other entities of indirect public administration (Michener et al., 2014).

Active transparency is one in which the disclosure of information occurs as an initiative of the government entity, regardless of request, as established by the law. The article 8 of the LAI states that “it is the duty of public bodies and entities to promote, regardless of request, the disclosure in a place with easy access,

within their competencies, of information of collective or general interest produced by them or under their custody” (Brasil, 2011). In compliance with art. 8, government bodies and entities “shall use all means and legitimate instruments available to them, being it mandatory the disclosure in official sites” (Brasil, 2011). The disclosure of information shall contain at least:

[...] II – records of any transfers or transfers of financial resources; III – records of expenses; IV – information concerning bidding procedures, including the respective notices and results, as well as all contracts; V – general data for monitoring programs, actions, projects and works of bodies and entities; and VI – answers to society’s frequently asked questions (Brasil, 2011).

Passive transparency is one in which the information is made available according to the demands of society. The article 10 of the LAI mentions that “any interested party may submit request for access to information to bodies and entities referred to in art. 1 of this Law, by any legitimate means, and the application must contain the identification of the applicant and the specification of the required information.” For the application of art. 10 of LAI, the governmental entity should consider:

§ 1st For access to information of public interest, the identification of the applicant may not contain requirements that hinder the request; § 2nd The bodies and entities of public power must enable alternative ways to forward access requests through their official websites on the Internet; and § 3rd any requirements for determining reasons for the request for information of public interest are forbidden.

The article 11 of the Law states that “the public body or entity must authorize or grant immediate access to information”. If immediate access is not possible, § 1 of art. 11 advocates that the body or entity receiving the request shall, within a period not exceeding twenty (20) days:

I – communicate the date, place and way to perform the query, perform the reproduction or obtain the certificate; II – state the reasons, *de facto* or *de jure*, for the refusal of all or part of the intended access; or III – report that it does not have the information, indicate, if possible, the body or entity which holds such information, or even forward the application to that body or entity, notifying the interested party of the submission of his/her information request.

With the Information and Communication Technologies – ICT, especially the Internet, the duty of passive transparency of the State, mechanism by which a citizen requests access to information, can be widely used by public power, ensuring more rapid and less bureaucratized responses (Silva et al., 2013). The spread of ICT enables, therefore, the implementation of instruments in order to make more efficient government management. Its spread to many sectors of the State, such as the Legislative and Executive Powers, aims at the same goals: greater efficiency and transparency (Raupp & Pinho, 2011).

The discussion on transparency of government actions is associated, therefore, to the rapid growth and technological development of computer and communication device industries

(Akutsu & Pinho, 2002). For the authors, the citizen can access this information using the Internet, which allows access from anywhere in the world, 24 h a day, and which might be one of the most effective tools to build a more effective democracy (Akutsu & Pinho, 2002). Most government bodies have now homepages, providing information on policies, projects and government actions, in addition to offering services to citizens. This possibility of interaction and provision of government services to the society, known as e-government, constitutes an instrument to assist the government to perform its functions in an integrated, efficient and transparent manner, providing it a more democratic character, oriented to the citizens. However, it is noteworthy that ICT can facilitate transparency and participation, but it is unable to ban the existence of democratic deficit and accountability itself (Cruz et al., 2012).

Despite the fact that modern ICT makes it possible, building transparency tools (the so-called electronic government, transparency websites, etc.) is a political process that is effective in the context of democratization and the need for political legitimacy of rulers. On the other hand, the institutionalization of government transparency also relates to the country’s integration into the global economy and the consequent requirements for balance of public accounts, necessary for the solvency and credibility of the government for the financial market; which, in turn, triggers restructuring and modernization actions of the state apparatus (Loureiro, Teixeira, & Prado, 2008).

Governments can use transparency websites to disclose a range of information on the Internet, which become available for access to society as a whole. However, for a more transparent and efficient public administration, it is necessary to move to levels beyond those set by legislation (Starosky et al., 2014). Despite legal obligations, transparency is closely related to the “willingness to inform” or even responsibility to be accountable as a result of the responsibility for the management of public resources. Transparency plays the role of bringing the State and society together and expanding the citizen’s level of access to information on public management (Cruz et al., 2012). It is seen as a necessary factor for accountability and, hence, for the consolidation of democracy. Even if its importance is often highlighted, its causes are still unknown, especially within the Brazilian context (Zuccolotto & Teixeira, 2014).

Even with the expectations generated from the use of ICT, several academic papers (Akutsu & Pinho, 2002; Gondin & Raupp, 2015; Justice, 2006; Pérez, Bolívar, & Hernandez, 2008; Pinho, 2008; Styles & Tennyson, 2007; Zuccolotto & Teixeira, 2014) have found a gap between the transparency requirements imposed on government entities and effective compliance by their leaders. This scenario moves toward a “more institutional formalization of democracy and the search for control over the established powers” (Raupp & Pinho, 2012, p. 5). In this context, it is appropriate to insert the theoretical construction of formalism to explain this situation. In order to contextualize this theoretical construct, it is appropriate to point out that, after the war, there were several technical missions from developed countries to Latin America, Asia and Africa in order to overcome “the backwardness and underdevelopment” (Santos, Souza Santos, & Braga, 2013). Without discussing the adequacy

or not of such initiatives, it is worth saying that the results showed that “[in] the underdeveloped nations, nothing seemed to work as planned” (Santos et al., 2013). An important contribution to the understanding of this issue has been found in the studies by Fred Riggs about prismatic societies on the idea that the development resonates differently in peripheral countries. Thus, conventional theoretical models developed to societies based on “homogeneous social structures and prescribed norms”, when transferred to societies based on a “strong degree of heterogeneity, formalism and overlay, such models will be of little use” (Santos et al., 2013). Not aiming at exhausting Riggs’s formulation, this text will focus on the issue of formalism. According to Riggs (Ramos, 1983, p. 252), formalism is shown as “the dissociation between the actual conduct and the prescribed rule which is supposed to regulate it.” According to Riggs, formalism is expressed by the discrepancy between what is prescribed and what is described, between what is present in the constitution, laws and even in the statistics and what actually happens (Santos et al., 2013). It is as if there were a real world and a world of laws, of legal systems. Failure to comply with the rules, within the formalist systems, does not imply sanctions on violators. There is a discrepancy between what the norm prescribes and what actually occurs in social practices by both the government and society (Raupp & Pinho, 2012). The concept of formalism, according to Raupp and Pinho (2012), is helpful to grasp the meaning of homepages, an instrument imported from more developed realities, which are built, within the Brazilian reality, much more for the sake of displaying an adjustment to parameters of advanced democracies, but which, in reality, are far from effectively functioning, since they do not find support in social practices historically constructed by society.

For Machado-da-Silva (2003), in societies such as Brazil, there is the influence of foreign models, which are adopted by decree or by law rather than based on predominant social behavior. The choice of external standard, according to the authors, reveals the expression of formalism, which becomes an institutional mechanism of regulation and legal sanction. Formalism manifests itself when the rules cease to be observed, without mandatory sanctions. The case of websites, according to Raupp and Pinho (2012), manifests an expression of formalism, since there is the importation of a control mechanism of society over the existing powers, which is distant from the reality of the Brazilian society’s behavior. Riggs viewed three stages of society’s evolution: traditional, transitional and modern (Santos et al., 2013). Brazil, even nowadays, not just at the time of Riggs’s formulation, is included in the transitional stage; it is not modern yet, but it is still traditional, as seen below.

It is believed that the distance between the behavior of government officials and legal transparency requirements is also based on patrimonialist elements, due to the reluctance to disclose information. For Akutsu and Pinho (2002), the potential of the Internet to enable the effective exercise of citizenship should be considered in the light of structural features of society and of the State in Brazil, such as patrimonialism. Based on Weber, patrimonialism means the inability or reluctance of the prince, to distinguish between the public and the private spheres (Bresser Pereira, 1997). Schwartzman (1988) has argued

that Brazil can be better explained within a Weberian framework rather than a Marxist one, considering the existence of components based on traditional leaders, still powerful, who do not follow what is dictated by class structures and modern societies. For the author, modern patrimonial regimes are called neo-patrimonialists, which is not simply survival of traditional structures, but a current form of political domination by a social stratum with no property and that has no social honor based on merit. The author also argues that it is within a Weberian framework that one can see that the Brazilian State has as its predominant historical characteristic its neo-patrimonial dimension.

The resistance of patrimonialism can be observed, which is able to absorb modernizing changes in Brazilian society. The neo-patrimonialism is able not only to give life to patrimonialism, but also, so it seems, to strengthen itself, even when the economic situation undergoes considerable changes (Pinho, 1998). Thus, the problem is not of technology, but of political culture, of political development. There is a lot of technology, even though it can and should be expanded, but little democracy, because the technology that could be used for democratic improvement is not aimed at doing so (Pinho, 2008). In other words, it is implanted what is most modern and advanced in relation to the law, but more structural characteristics of society and the State itself conspire against the effectiveness of the law.

In relation to that, it seems appropriate to assert that patrimonialism instills itself in several aspects of the Brazilian political life. Thus, in addition to generating “a promiscuous relationship between (what should be) public and private space”, where public space, seen as the “extension of private space”, becomes “no man’s land, assets to be captured or goods which can be dilapidated” (Sorj, 2001, p. 31). Such persistent phenomenon of the Brazilian reality, given this configuration, also affects the application of the law. Thus, “the feeling of impunity and the arrogance of the dominant groups converge to weaken the formation of a public space and strengthen an attitude of contempt toward the law” (Sorj, 2001, p. 31). And, here, there is an inversion. If, in general, “customs become laws and laws become customs. In Brazil, the custom is not to take the laws seriously” (Sorj, 2001, p. 31). That is to say, the law exists, it is established, but it takes a long way for the law to be actually applied, to see whether it will actually “catch on”, or whether it will be taken seriously. There seems to be the awareness of some comfort in not following the law, ensured by the ineffectiveness of the application of the law, the so-called enforcement, a vital component for accountability.

Methodological procedures

This research is descriptive and it was operationalized by a survey study. The approach to the problem is predominantly qualitative. The empirical object refers to the city councils of municipalities with a population of 300,000 inhabitants or more. Some reasons justify the option for cities with this population size. First, according to Raupp (2014a), municipalities with larger size should have better conditions (financial, human

resources) to build more developed websites, even contemplating the issue of accountability. A second reason relates to the fact that the contact with a city council member in larger cities, when there is any, is more virtual than live, and what would be presented to civil society live shall be disclosed on the websites, and the digital media is responsible for welcoming suggestions and answering citizens' questions (Raupp & Pinho, 2013a). The third reason relates to the fact that this group of municipalities includes most state capitals and, according to Raupp (2014b), in the capitals, there is the expectation that the computer facility processes in the city councils be older and more mature, providing councilors adequate infrastructure. The name of the municipalities, population size and electronic address of the city councils are shown in Table 1.

Considering the option to investigate municipalities with populations greater than 300,000, we ended up with 79 city councils, based on the Census (2010) of the Brazilian Institute of Geography and Statistics – IBGE. The addresses of electronic websites were identified on February 2nd, 2015, based on Google; however, the electronic address of one city council was not found.

After identifying the municipalities and the electronic addresses of their city councils, the stage of data collection was started. Based on the theme passive transparency, in which the citizen makes a request for information to a governmental entity, we designed a single application to be forwarded to the city councils, with the following content: "Considering the assumptions of Law No. 12,527/2011, I request a list of all contracts with a waiver of bidding in 2014, with details of value and mode of waiver of the bidding process." This is a relevant issue, which can direct the way by which part of the expenses is incurred by city councils and which has been the object of recurring transgressions of law, in general, in all the spheres of the *res publica*. The request was sent to the city councils on February 6th and 7th, 2015. It was possible to forward the request to 68 councils, using an electronic form for 38 of them and e-mail (obtained in the electronic website) for 30. For 11 city councils, it was not possible to forward the request due to problems with the website.

The collected data were analyzed using the descriptive analysis technique, which, according to Contradiopoulos, Champagne, Potvin, Denis, and Boyle, 1994, serves to explain the behavior of a variable, in this case the (un)fulfillment of passive transparency, in a given population: the city councils of municipalities with a population of 300,000 inhabitants or more. Electronic spreadsheets were used to tabulate the data.

The construction of the research entails some limitations. The first one refers to the selected cases, conducting the research findings to the empirical object investigated, without generalizations to other city councils or entities from other spheres in Brazil. The second limitation is related to the lack of studies on the subject, especially related to passive transparency, making it difficult to compare results to other references. The third limitation is related to the speed changes of ICT and the very information and services available in the websites, i.e., the data indicate the reality of the collection period. In addition, there is the fact that few studies are devoted to the work of the municipal legislature, to the rules that determine the process of interaction

between the executive and legislative powers, and to how the actions of the political actors of the local legislature are guided (Kerbaui, 2005).

Results

The results identified three groups in the analyzed city councils: the first refers to the city councils where it was not possible to submit the application; the second concerns the city councils to which the application was submitted, but there was no reply or the response was insufficient; the third one encompasses the city councils to which the application was submitted and there was satisfactory response. The names of the city councils were coded to preserve anonymity. After the individual analysis, an assessment of the (in) transparency in the investigated websites was carried out.

The infringement at the source

The LAI, in its art. 10, § 1, states that "the bodies and entities of public power should enable NA option for routing access requests through their official websites on the Internet." Out of the 79 investigated city councils, 11 did not meet the determined criteria: in 3 websites (T2, J3 and V3), it was not possible to find an electronic form and/or contact e-mail to forward the request; the e-mail sent to two city councils (S1 and G2) returned twice; in 2 websites (O1 and F3), an electronic form was found, however, it was not possible to send it; in two other websites (A3 and S3), we could not access the page content; 1 website (H2) was being developed; and the e-mail address of one city council was not found (A4). It is surprising that this group includes five Brazilian state capitals and other city councils located in large cities in more developed regions. In other words, it should not be expected to find problems of technological resource limitations in these city councils. Considering the 5 Brazilian Regions, there are 2 municipalities in the North, 7 in the Northeast, and 2 in the Southeast. In this group, there are no municipalities in the South and Midwest. Noteworthy is the concentration of municipalities in the Northeast (63.64% of the group), although it should be highlighted that out of the total set (79 municipalities), this region has 17 (21.52%) municipalities. The fact that the Northeast Region does not display the largest number of municipalities in the whole set could lead to the assumption that it should not present the largest number of municipalities in this group. Since this is a group of municipalities that do not have channels for requesting information, it is assumed that the technological development is not as intense in the Northeast as compared to the other regions.

If there are no technological conditions, as properly structured websites, citizens cannot send the information request. This is a group of city councils in which the infringement occurs at the source, which does not allow the public entity to become aware of the need for information, for instance, the websites that have an electronic form, but in which it was not possible to send it. It is worth wondering whether the technicians who structured the website had already done tests to make sure that the form works. A similar situation occurs with the e-mails that

Table 1

Municipalities, population size and electronic address of the city councils.

N.	Municipality	Population ^a	Electronic address ^b
1	São Paulo – SP	11,253,503	<www.camara.sp.gov.br>
2	Rio de Janeiro – RJ	6,320,446	<www.camara.rj.gov.br>
3	Salvador – BA	2,675,656	<www.cms.ba.gov.br>
4	Brasília – DF	2,570,160	<www.cl.df.gov.br>
5	Fortaleza – CE	2,452,185	<www.cmfor.ce.gov.br>
6	Belo Horizonte – MG	2,375,151	<www.cmbh.mg.gov.br>
7	Manaus – AM	1,802,014	<www.cmm.am.gov.br>
8	Curitiba – PR	1,751,907	<www.cmc.pr.gov.br>
9	Recife – PE	1,537,704	<www.recife.pe.leg.br>
10	Porto Alegre – RS	1,409,351	<www.camarapoa.rs.gov.br>
11	Belém – PA	1,393,399	<www.cmb.pa.gov.br>
12	Goiânia – GO	1,302,001	<www.camara.go.gov.br>
13	Guarulhos – SP	1,221,979	<www.camaraguarulhos.sp.gov.br>
14	Campinas – SP	1,080,113	<www.campinas.sp.leg.br>
15	São Luís – MA	1,014,837	<www.saoluis.ma.leg.br>
16	São Gonçalo – RJ	999,728	<www.camaradesaogoncalo.rj.gov.br>
17	Maceió – AL	932,748	<www.camarademaceio.al.gov.br>
18	Duque de Caxias – RJ	855,048	<www.cmdc.rj.gov.br>
19	Teresina – PI	814,230	<www.teresina.pi.leg.br>
20	Natal – RN	803,739	<www.cmnat.rn.gov.br>
21	Nova Iguaçu – RJ	796,257	<www.cmni.rj.gov.br>
22	Campo Grande – MS	786,797	<www.camara.ms.gov.br>
23	São Bernardo do Campo – SP	765,463	<www.camarasbc.sp.gov.br>
24	João Pessoa – PB	723,515	<www.cmjp.pb.gov.br>
25	Santo André – SP	676,407	<www.cmsandre.sp.gov.br>
26	Osasco – SP	666,740	<www.camaraosasco.sp.gov.br>
27	Jaboatão dos Guararapes – PE	644,620	<www.camarajaboatao.pe.gov.br>
28	São José dos Campos – SP	629,921	<www.camarasjc.sp.gov.br>
29	Ribeirão Preto – SP	604,682	<www.camararibeiraopreto.sp.gov.br>
30	Uberlândia – MG	604,013	<www.camarauberlandia.mg.gov.br>
31	Contagem – MG	603,442	<www.cmc.mg.gov.br>
32	Sorocaba – SP	586,625	<www.camarasorocaba.sp.gov.br>
33	Aracaju – SE	571,149	<www.cmaju.se.gov.br>
34	Feira de Santana – BA	556,642	<www.camarafeiradesantana.ba.gov.br>
35	Cuiabá – MT	551,098	<www.camaracba.mt.gov.br>
36	Juiz de Fora – MG	516,247	<www.camarajf.mg.gov.br>
37	Joinville – SC	515,288	<www.cvj.sc.gov.br>
38	Londrina – PR	506,701	<www.cml.pr.gov.br>
39	Niterói – RJ	487,562	<www.camaraniteroi.rj.gov.br>
40	Ananindeua – PA	471,980	<www.cma.pa.gov.br>
41	Belford Roxo – RJ	469,332	<www.cmbr.rj.gov.br>
42	Campos dos Goytacazes – RJ	463,731	<www.camaracampos.rj.gov.br>
43	São João de Meriti – RJ	458,673	<www.camaradesaojoaodemeriti.rj.gov.br>
44	Aparecida de Goiânia – GO	455,657	<www.camaradeaparecida.go.gov.br>
45	Caxias do Sul – RS	435,564	<www.camaracaxias.rs.gov.br>
46	Porto Velho – RO	428,527	<www.portovelho.ro.leg.br>
47	Florianópolis – SC	421,240	<www.cmf.sc.gov.br>
48	Santos – SP	419,400	<www.camarasantos.sp.gov.br/publico>
49	Mauá – SP	417,064	<www.camaramaua.sp.gov.br>
50	Vila Velha – ES	414,586	<www.cmvv.es.gov.br>
51	Serra – ES	409,267	<www.camaraserra.web470.uni5.net/>
52	São José do Rio Preto – SP	408,258	<www.riopreto.sp.leg.br>
53	Macapá – AP	398,204	<www.cmm.ap.gov.br>
54	Mogi das Cruzes – SP	387,779	<www.cmmc.sp.gov.br>
55	Diadema – SP	386,089	<www.cmdiadema.sp.gov.br>
56	Campina Grande – PB	385,213	<www.camaracg.pb.gov.br>
57	Betim – MG	378,089	<www.camarabetim.mg.gov.br>
58	Olinda – PE	377,779	<www.camaraolinda.pe.gov.br>
59	Jundiaí – SP	370,126	<www.jundiai.sp.leg.br>
60	Carapicuíba – SP	369,584	<www.camaracarapicuiiba.sp.gov.br>
61	Piracicaba – SP	364,571	<www.camarapiracicaba.sp.gov.br>
62	Montes Claros – MG	361,915	<www.cmmoc.mg.gov.br>
63	Maringá – PR	357,077	<www.cmm.pr.gov.br>
64	Cariacica – ES	348,738	<www.camaracariacica.es.gov.br>

Table 1 (Continued)

N.	Municipality	Population ^a	Electronic address ^b
65	Bauru – SP	343,937	<www.camarabauru.sp.gov.br>
66	Rio Branco – AC	336,038	<www.riobranco.ac.leg.br/cmrb2013>
67	Anápolis – GO	334,613	<www.camaraanapolis.go.gov.br>
68	São Vicente – SP	332,445	<www.camarasaovicente.sp.gov.br>
69	Pelotas – RS	328,275	<www.camarapel.rs.gov.br>
70	Vitória – ES	327,801	<www.cmv.es.gov.br>
71	Caucaia – CE	325,441	<www.cmcaucaia.ce.gov.br>
72	Canoas – RS	323,827	<www.camaraconoas.rs.gov.br>
73	Itaquaquecetuba – SP	321,770	<www.camaraitaquaquecetuba.sp.gov.br>
74	Franca – SP	318,640	<www.camarafranca.sp.gov.br>
75	Caruaru – PE	314,912	<www.camaracaruaru.pe.gov.br/2013>
76	Ponta Grossa – PR	311,611	<www.cmpg.pr.gov.br>
77	Blumenau – SC	309,011	<www.camarablu.sc.gov.br>
78	Vitória da Conquista – BA	306,866	<www.camaravc.com.br/site>
79	Paulista – PE	300,466	Not found

Source:

^a Based on data from IBGE (Censo Demográfico, 2010).

^b Data from Google.

were sent, but were returned to sender. City councils with no websites, with websites under maintenance, or with no possibility of access infringe even the active transparency, because, according to art. 8, government bodies “should use all legitimate means and instruments available to them, with mandatory disclosure on official websites”. This already shows the state of the art of the empirical object investigated here.

We observed that these websites do not have adequate technological resources, since they do not display the necessary conditions to allow for information request. It is possible to say that technology is a problem in this group, since it is not a mechanism by which the citizen requests access to information (Silva et al., 2013). This situation seems to contradict Pinho's argument (2008) that there is enough technology, but not enough democracy. However, it can also be suggested the hypothesis that technology, in this case the lack of it, can be an obstacle for democracy. In other words, to prevent the achievement of democracy, technological constraints are created, being it easier to give explanations on technological limitations rather than on limitations on the exercise of democracy. There is not any construction of passive transparency tools made possible by ICT (Loureiro et al., 2008). Similarly, it is difficult to figure out progress to levels beyond those set by the law when the government entity does not meet even the minimum criterion: the legal requirement (Starosky et al., 2014.). The websites do exist, but their existence seems only to meet a requirement of the modernity, necessary to legitimize the city councils in relation to the dominant technological standard (Raupp & Pinho, 2013b).

The infringement continues

The second group of city councils includes those to which the request was submitted, but there was no reply or it was insufficient, considering the time period established by law. Sending the request was successful to 68 city councils. Out of these, 56 failed to comply with legal requirements and demonstrated lack of ability to facilitate passive transparency, since:

- 47 city councils did not reply, B1, E1, F1, I1, J1, K1, L1, M1, N1, P1, Q1, R1, T1, U1, V1, W1, X1, Y1, A2, B2, D2, F2, I2, J2, M2, N2, O2, P2, R2, S2, U2, Y2, Z2, B3, C3, D3, E3, K3, L3, N3 O3 P3, Q3, U3, W3, X3 and Z3;
- 08 city councils contacted us, but they did not respond to the request: A1, G1, Z1, C2, L2, Q2, V2, and R3;
- 01 city council responded unsatisfactorily: E2.

Regarding the Brazilian Regions, there were 4 municipalities in the North, 9 in the Northeast, 7 in the South, 31 in the Southeast, and 5 municipalities in the Midwest. This set virtually provides a mosaic of the entire country, obviously with more emphasis and participation of municipalities in the Southeast, where urbanization occurs more intensely, but it does not avoid taking place in all regions. Even displaying channels for information request, these municipalities did not respond to the request made, which emphatically demonstrates that it is useless to have technological apparatus, in compliance with digital modernity, if it is not used for a higher purpose, in this case contributing to develop transparency channels.

Even having the necessary technology and the possibility to forward the request for information, the number of city councils that did not return the submitted request is significant. A smaller set of city councils (08) contacted us after receiving the request, saying they would provide the information; however, they did not forward the reply within the time limit set by the LAI. It is noteworthy that, among the city councils that replied, but sent no later response, many demanded identification with personal documents so that information could be made available. Some even requested that the request be made *in loco*, at the city council's headquarters. These are possible barriers to access information.

As far as the city council whose response was regarded as unsatisfactory, they sent the following text: “The response we have gotten from the Procurement Department is that their duty is to publish in the *Diário Oficial* (. . .) in the Legislative section. Therefore, if you have so much interest, please, consult the 2014 *Diário Oficial*. Sincerely, (. . .)”. It was known that such

information could be accessed in the *Diário Oficial*. However, considering the publication of one year (2014), there were too many pages that should be read to find the requested information. We argue that being transparent also means facilitating access to information and making it available so that it is easy to locate, as stated by Neto et al. (2007).

In this set of city councils, websites take an electronic wall profile, but they should be a space for transparency instead. They respond to a request, a boost of modernity, expressed by a dominant technological demand, but they do not contribute to the development of transparency (Raupp & Pinho, 2013b). There is the understanding that the law is recent and they can have the excuse that the city councils have not had enough time to adjust themselves yet. However, this is not the first legislation to require transparency, and it is not at all a new issue. The Fiscal Responsibility Law and the Transparency Law, passed a few years ago, already display some of the demands established by the Access to Information Law (Raupp & Pinho, 2014). The problem of unsuitability and infringement of the Law seems to be better explained by historical political components and by political culture than by technological reasons (Raupp & Pinho, 2013b).

Who follows it?

Among the city councils that responded satisfactorily (12), 09 provided the information immediately, as the following: C1, H1, K2, W2, X2, G3, H3, I3 and T3. As the LAI does not specify a deadline for “immediate access to information”, we took into account those who responded within the first 05 days. The other city councils (03) provided the information some time between the first 05 days and the legal deadline, as the following: D1, M3, and Y3.

In the analysis by region, there is one municipality in the Northeast, 4 in the South, 6 in the Southeast and one in the Midwest. In this group, there is no municipality in the North. The South and Southeast Regions together account for 10 municipalities, representing 83.33% of the municipalities that responded satisfactorily to the researchers’ request. It is a small group of city councils that meet the demands for passive transparency. Among these, some cases deserve mention. The C1 city council not only provided a report containing the list of all contracts with bidding waiver in 2014, with details of value and bidding process mode, but they also highlighted situations that commonly trigger bidding waiver in the city council. The D1 city council already prepares an annual report containing the contracts, detailing the specifications of each one. The I3 city council offers a “Citizen Information Service”, which, despite requesting the applicant’s registration, provided the information in a specific area. Such a result seems to indicate a surreal situation in which there is an inversion between the rule and the exception. The smallest part of the investigated objects complies with the law. Thus, does the rule confirm the exception? On the other hand, the result may also indicate that, if these city councils responded to the request, then it does not seem impossible to meet the law, which leads to question strongly the reasons for the other city councils not to meet, or partially or poorly meet the law. Among the city

Table 2

Synthesis of the passive (in)transparency in city councils.

City council groups	N.	Percentage
No possibility of sending the request	11	13.92%
No reply or insufficient response to the request	56	70.89%
Satisfactory response to the request	12	15.19%
Total	79	100.00%

Source: Research data (2015).

councils that comply with the law, three are located in Brazilian capitals. Other city councils are located in large cities and in more developed regions. A similar situation was identified in the group whose infringement occurred at the source, as seen earlier.

Synthesis of the passive (in)transparency in city councils

The empirical evidence presented in the three previous sections reveals an inventory, not exciting at all, of the passive (in)transparency in city councils, which is summarized in Table 2.

According to Table 2, 68 (84.81%) city councils of municipalities with a population over 300,000 inhabitants present passive intransparency. These are distributed as follows: for 11 (13.92%) city councils, it was not even possible to send the request simply for lack of a form; for 56 (70.89%) city councils, sending the request was possible, however, there was no reply or the response was insufficient. Only 12 (15.19%) city councils satisfactorily responded to the request. The findings of this research do not confirm the Silva, Hoch and Santos’s assumption (2013) that, with ICT, especially the Internet, the duty of passive transparency of the State, mechanism by which citizens request access to information, is widely exercised by public powers, guaranteeing more rapid and less bureaucratic responses. This leads to confirming the need to separate technology from the exercise of political participation and transparency. As it was seen, in some cases, the necessary technology is not even present. In others, the majority, the responses are not provided or, when they are, they are insufficient to meet the request that was formulated and forwarded to the city councils. Thus, there seems to be a technological mind (when there is) and a political mind, the head that thinks of meeting the demands of civil society toward increasing transparency. In few cases, as seen, these minds are aligned, establishing a dialog and proximity.

Analyzing this gap in the light of formalism, it is clear that there exists distance between the actual conduct and the prescribed standard (Ramos, 1983), which can demonstrate that “changes precede customs, laws anticipate collective practices, and their learning ends up being slow and painful” (Machado-da-Silva, 2003, p. 191). These locations also seem to approach the patrimonialist model: resistance to modernizing impulses, of Weberian bureaucracy (professional, meritocratic, impersonality), resistance to the advance of capitalism and, consequently, maintenance of conservative power structures (patronage, populism, patriarchy, etc.). Therefore, they also resist the impulses of accountability (Raupp & Pinho, 2013b). From what was

observed in this empirical investigation, the law “struggles to catch on”, it does not seem to be taken seriously, as pointed out by Sorj (2001). On one hand, there is a group where not even minimal technological requirements are implanted, and despite being a small group, it is relevant, considering the size of the municipalities to which they relate. On the other hand, there is also a small group of city councils where the law has effectively “caught on”. In the middle between these two extremes, there is a wide gray area with 70.89% of the city councils where the law seems to fail, occupying a place between the situation of “catching on” and not being taken seriously. Thinking about the metaphor of the ignition of a car, we can say that it might start or not. So, complying with the law depends on many factors, such as, among others, the development of a civic culture, rising education levels, a more active role of civil society, increased enforcement (one of the dimensions of accountability), and the ability to punish the infringers. Seeing all that as an ongoing process, much is still open in Brazilian society.

Conclusion

The study aimed to investigate compliance with the requirements of passive transparency by city councils of municipalities with a population of 300,000 inhabitants or more. Most city councils (84.81%) infringe the legal requirements and are passively intransparent. Few city councils (15.19%) satisfactorily responded the submitted request. Thus, the gap between the transparency requirements imposed on government bodies and the effective compliance by their leaders is not a prerogative of active transparency, but it also occurs with passive transparency, as this research has showed. And, as an attempt to answer the inquiries made at the beginning of this article, it is not possible yet to say that passive transparency is a way to mitigate the failure of governments in relation to transparency of actions taken in public administration. Moreover, it can be stated that, as it happens with active transparency, there is also infringement in relation to passive transparency. The data obtained in this research seem to be even more worrying when one considers that the investigation involved the city councils of the largest municipalities, expected to be the most developed ones within the national context.

It is noteworthy that the low level of compliance with the passive requirements can be explained by the characteristics of formalism and patrimonialism, discussed in the theoretical foundation. In addition to formalism and the persistent patrimonialism, it seems to be possible to make the following reflection: passive transparency can be seen as one found in a more developed, more participatory society, which is not the case of Brazilian society. On the other hand, by incorporating Behn's reflections, seen above, showing the difficulties of building and operating accountability, of which transparency is a component, it could serve as a “consolation”, but it also serves as a warning having accountability (and more specifically transparency) contaminated by patrimonialism and formalism, i.e., more structural and resilient features of the Brazilian social construction.

Thus, the state entities are satisfied to meet the requirements of the law in general, as it is the case of the LAI. The law

weighs like Damocles' sword and, for better or worse, there is an attempt to comply with it. But, what is not established by the law, what derives from civil society's initiative, can be seen as extra, additional work, which these state entities try to avoid. On the other hand, we identified meeting the demands of civil society in 15.19% of cases. Within a pessimistic perspective, these data reveal a scenario that is not encouraging for transparency concerning the law in Brazil. On the other hand, within a realistic perspective, based on the effective knowledge of how things work in Brazil, these data may indicate the existence of a movement toward passive transparency.

Thus, there is little passive transparency considering the available technology, showing, once again, that technology is not an obstacle to transparency. Even being demanded by legal requirements, local city councils infringe a series of regulations concerning the transparency of government actions. On that path, the study stands out for diagnosing the current situation of passive transparency in city councils of the largest municipalities, revealing how the law, in general, might be infringed, not taken seriously. At the same time, sharing a more optimistic thought, it shows that a process of compliance with the law and citizenship through passive transparency might be in progress, which should be seen as a bearer of good news in Brazilian historical trajectory.

Further research, with wider range of municipalities and other points of view, for example, in order to identify the factors that explain the ability of the local administrations of the largest municipalities to build passive transparency, are strongly encouraged. That will allow for a better understanding of this issue within this field of knowledge. It is hoped that the findings of this research can inspire new theoretical and empirical efforts, since it is, as the title itself claims, a first diagnosis.

Conflicts of interest

The authors declare no conflicts of interest.

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