PASSIVE TRANSPARENCY REALLY MATTERS? A MULTIPLE CASE STUDY ABOUT THE REFUSAL OF ACCESS TO PUBLIC INFORMATION FROM BRAZILIAN CUSTOMS AREA

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PASSIVE TRANSPARENCY REALLY MATTERS? A MULTIPLE CASE STUDY ABOUT THE REFUSAL OF ACCESS TO PUBLIC INFORMATION FROM BRAZILIAN CUSTOMS AREA

Research-in-Progress

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Abstract

From the perspective of the New Institutional Theory, legal enforcement of public transparency must overcome the culture of secrecy of bureaucracy. Fiscal and banking secrecy contributes to the remarkable presence of the culture of secrecy in bureaus such as Brazilian Federal Revenue Service - RFB, which is identified in the literature as a reference in e-Gov and active transparency practice. The comparative analysis of Brazil in the performance of the transparency policy remains satisfactory and RFB's performance contributes to this. However, is this performance confirmed by the treatment given to the responses to requests for access to information? The research uses public information requested by means of e-SIC in order to investigate the behaviour of agents to deny access to information, through the analysis of the responses in a multiple case study. We expect to contribute with public transparency theory once the requests involve more complex issues than those traditionally observed in the literature, covering all the levels of appeals set in the Brazilian Right to Information Act. Besides, bringing customs area as object of study, provides the possibility to embrace the Street-level bureaucracy discretion, inter-agency collaboration, and the role of the public company responsible for Information Technology development.

Keywords: Culture of Secrecy of Bureaucracy, Interoperability, Inter-Agency Cooperation, Passive Transparency.

1 Introduction

Six years after the Brazilian Right to Information Act (LAI) (Law Nr. 12.527, of November 18th, 2011) came to force, national scientific production dealing with public transparency has grown consistently. Most of it focuses on active transparency as object of study. On the other hand, national scientific production that deals with passive transparency (upon-request or upon-demand) is still small and did not advance in the analysis of the behaviour of all possible levels of appeal against the denial to information access.

The legal protection of fiscal and banking secrecy contributes to the fact that the culture of secrecy (Controladoria-Geral da União [CGU], 2011, pp. 12–13) is present in a remarkable way in Brazilian public banks and in the Federal Revenue Service (RFB), which is an obstacle to the enforcement of transparency, according to the perspective of New-Institutionalist Theory (NIT).

Nonetheless, RFB is identified in the literature as national and international reference in the provision of electronic services to citizens (e-Gov) and on the practice of active transparency (Ministério da Transparência e Controladoria-Geral da União [MTCGU], 2018a). Solutions such as the e-CAC Portal and the delivery of declarations via the internet have contributed to consolidate this image.

However, is this performance generally observed in all RFB's areas of activity? And is it particularly confirmed by the treatment given to the responses to requests for access to information?

The general objective of the present phase of the research is to analyse the content of the responses to the requests in order to evaluate the implementation of transparency policy with a qualitative and in-depth approach. This general objective is split on the following specific objectives:
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a) explore the behaviour of agents responsible for answering requests for access to information in and out the hierarchical structure of one specific Ministry;

b) explore the behaviour of agents responsible for answering requests for access to information throughout the levels of appeal, in order to identify insights about the main aspects studied in the literature; and

c) explore the implementation of RFB’s open data policy.

For the purpose of the research, Customs area will be taken as a different area of RFB’s activity to be explored. It is a novelty in terms of study about public transparency data in which production is much more focused on budget, expenses execution, and on bid and contracts. Besides, the area of foreign trade involves the action and interaction of several federal agencies and from the public company responsible for the development of computerized systems, whose role is considered one of the major institutional challenges for e-Gov. This opens the opportunity to study inter-agency cooperation and systems interoperability as hidden elements that feed the secrecy culture.

The research proposal is a multiple case study, in which each request will be treated as an individual case. The results will be analysed through the lens of NIT, focusing on the implementation of open data public policy, over the items suggested by Souza (2012, p. 21):

a) the grade of knowledge and capacity of the organizations and of those who implement the public policy;

b) the several processes that are part of the implementation, including their points of conflict;

c) the role played by the actors and agents in the implementation; and

d) the level of discretion of the bureaucracy when implement the public policy.

The rest of this research-in-progress paper is organized as follows. Section 2 presents the review of the literature organized in the logical sequence: the theoretical framework; Open Government Data (OGD) policy and the role of Revenue Service; Inefficiency and corruption present on Customs environment; Transparency role and the expectations over Information Technology (IT); and the incipient studies over Passive Transparency. Section 3 introduces the methodology, describing the research context, the data collection and analysis strategies. Section 4 concludes with the expected contributions to theory and to the methodology of Passive Transparency use as research source.

2 Foundations

2.1 New Institutional Theory and Transparency

The theoretical lens of this study is based on Orlikowski & Barley (2001, p. 100) suggestion that IT researches would benefit from the expansion of the focus of the engagement with Organizational Studies by the inclusion of insights from Institutional Theory.

According to Scott (2008, p. 430), legal or governmental regulations enforcement has been described by literature as “forms of coercive power, imposing conformity on affected actors, whether individual or collective”. The author arguments that NIT changed this conventional view, taking that the enforcement is “subject to interpretation, manipulation, revision, and elaboration by those subject to them”.

Transparency, understood as a public policy aiming at fostering social participation and control, is commonly studied from the perspective of NIT, in one of its main branches (historical, rational choice, or sociological). In these studies, the issue of legal enforcement is opposed to the bureaucracy’s culture of secrecy.

Legal enforcement is the main determinant of transparency. However, the mere existence of a written norm does not mean that it is automatically institutionalized, from the perspective of NIT (Laia et al., 2011, p. 52). Sacramento & Pinho (2016, p. 210) recall the voracious Brazilian appetite for institutional construction, well represented by those laws that "do not catch on" and are succeeded by others with the same purpose, what highlights the problem of ineptitude of legal enforcement.

This lack of enforcement is most evident when demands derive from citizens’ initiatives. They are seen by bureaucracy as additional work to be avoided (Raupp and Pinho, 2016, p. 297). The competitive
character between the work of producing the information for the external public and that produced to meet the real need of the internal public was already pointed out by Heeks (1998, p. 12). According to the author, the result of this competition would tend to reflect on the reliability of external data.

The Brazilian reality of the implementation of open data policy is similar to the Chilean experience described by Gonzalez-Zapata & Heeks (2016). Experience in which the incentive to adopt the open data policy rests on the bureaucracy's interest in minimizing the workload for producing information for the external public (Gonzalez-Zapata and Heeks, 2016, p. 162). The OGD policy performance of the country and the contribution of the Revenue Service for this are explored in the next subsection.

2.2 Open Government Data and Revenue Service

The comparative analysis of Brazil with other countries over the OGD policy performance continues to be very satisfactory. In the last United Nations E-Government Survey (United Nations Department of Economic and Social Affairs [UNDESA], 2018), the country ranks 44th in the ranking of the E-Government Development Index, out of 193 member countries that were evaluated. Level rated as high in the report (UNDESA, 2018, p. 86). This result is reinforced by independent assessments, such as the Right to Information Rating (Global Right to Information Rating, 2018).

The positive result is also observed in the specific assessment of the central government's performance regarding the treatment to the requests for access to information and appeals levels prescribed in the national law compared to other countries (Worker and Excell, 2014). However, the assessment uses as its main source the statistical reports produced by the own government supervisory agencies.

The RFB is always referenced in the literature as an e-Gov benchmark. Its insertion in the process of construction of electronic government is presented by Rampelotto (2013, p. 46) out of the successful experiences of the e-CAC Portal, the deliveries of Declarations through the internet, the control of tax collection, electronic processes and the public system of digital bookkeeping, developed in partnership with the state and municipal fiscal authorities. The main focus of the author is the services provided by e-CAC Portal (Receita Federal do Brasil [RFB], 2018a) in opposition to the face-to-face service to taxpayers. However, among the services available on the e-CAC Portal there is no one related to foreign trade.

Laia, Cunha, Nogueira, & Mazzon (2011, p. 53) argue that the revenue service area tends to have this leadership role in the governmental technological innovation due to several factors: the support of top management; incentive programs for the modernization of the tax authorities by international organizations (e.g., Inter-American Development Bank); the knowledge base and qualification of staff; and the greater maturity in the use of computational tools due to the natural pioneering of the area. However, less justified by the need to control expenditure, as stated by the authors, and more for revenue collection bias and the necessary control of revenues.

In order to bring Customs area as focus of the study, in the next subsection the bottlenecks that hinders foreign trade and threaten the economic growth of the country are discussed.

2.3 Inefficiency and corruption

The United Nations (as cited in Ali & Mdhillat, 2015, p. 108) points that inefficiency is behind the “mystery of missing trade”. It means, barriers, such as corruption, that hinders international trade and explain the relatively low trade flows in developing countries.

The inefficiency shows up on the low quality of customs services, long waiting hours at the border, protectionist trade policies (Ali & Mdhillat, 2015, p. 109; Fredriksson, 2014, p. 257). Crotty (2012) adds to this list some general factors as causes of corruption in customs administration (e.g. extensive intervention of the Government in the economy, cultural norms and practices, excessive discretionary power).

Some authors (e.g. de Jong & Bogmans, 2011) take that corruption could work to facilitate (“grease the wheel”) international trade, specially imports. These studies are opposed to the view that corruption induces costs and inefficiencies (“sand the wheel”) and therefore deaccelerates economic growth (Ali & Mdhillat, 2015, p. 109), distorts distribution of benefits, stimulate officials to create red tape (Rose-
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Ackerman, 2006), discourage investments of multinationals, and may causes additional expenses such as storage (Ndonga, 2013, p. 28).

Hors (1990, p. 10) lists three preconditions that creates opportunity for corruption: “a discretionary interface between customs officers and private operators; the possibility for customs officers to operate within a network of accomplices; and a lack of efficient controls”.

The Street-Level Bureaucracy (SLB) discretion, that gives room to these kinds of misbehaviour, has been studied with different interests. For instance, comparison between a common-law governed country and a codified civil law one (Ferreira, Medeiros, Bright, & Crumpton, 2016), politically sensitive requests by specific groups of petitioners (Roberts, 2002), customs corruption (Ndonga, 2013), answerability (Sacramento & Pinho, 2016).

We can take the discretionary power as the necessary precondition, that goes beyond the face-to-face interaction with customs officers. It can be expanded to fit Fredriksson’s (2014, p. 257) view, that would include, besides the actual implementation of the cargo clearance, the lobby against legislators, and the inclusion of supervisors “in order to influence the complexity of the procedure”.

Therefore, there is a new variable for transparency enforcement: the specific willingness of managers to implement it. Bureaucracy's discretion at the tips that is difficult to control, since it can rely on the justification of high complexity of the environment or of the demand (Ferreira et al., 2016). IT plays a fundamental role to enhance transparency, what is discussed in the next subsection.

2.4 Transparency and Information Technology

Automation is a key element to reduce monopoly power and the official discretion, since it reduces face-to-face interaction, and to improve control and accountability (Ndonga, 2013, p. 29; Widdowson, 2013, p. 14; McLinden, 2005, p. 72).

Therefore, the expectations over the introduction of computerized support for the processing of customs documents are high. Among others, it is expected: correct rates of duties and taxes be applied; exemptions be granted only to duly authorized organizations, goods and services; required information and documentation be presented; timeframes for payment be met; payments charge procedures; management information tools (Crotty, 2012).

However, as stressed by authors like Hors (1990) and McLinden (2005), computer systems need to be well designed and secured through specific measures, otherwise they can be “vulnerable to attack and manipulation from both inside and outside the organization” (McLinden, 2005, p. 77), opening the way for even wider frauds (Hors, 1990, p. 49).

Laia et al. (2011, p. 52) state that the insulation of Information and Communication Technology policies does not provide enforcement conditions that stimulate the integration of public bodies and entities. And analysing from the perspective of Institutional Theory, the authors conclude that the costs of "keeping things as they are" are less than those to meet the challenges of coordinating efforts. (Laia et al., 2011, p. 56). What, in the end, contributes for the low interoperability of the systems.

If it is already a challenge to break the cultural barrier of a single bureau, so that enforcement of norms occurs more easily, and institutionalization does occur, imagine when dealing with an area or information system that is fed by data produced by different bodies, perhaps from different spheres of government. Hypothesis that is very common and practically inherent to the state activity, that is not carried out in isolation within a single bureau, ministry, power and even of sphere of government. Moreover, if this multifaceted character of the data sources of a given system is not enough, the role of public IT companies, responsible for the development, implementation and maintenance of information systems, is considered one of the major institutional challenges for e-Gov. So, the enforcement of public transparency gains two other competing elements: inter-agency cooperation and systems interoperability (Cunha and Pinto, 2012, p. 74).

In the final subsection, we introduce the potential use of the requests of access to information as research source.
2.5 Passive Transparency

Raupp & Pinho (2016) develop descriptive studies to evaluate the possibility of forwarding requests for access, using a simple standard request test. This methodology is similar to the one used in studies to monitor compliance with the LAI by the Executive, Legislative and Judiciary, as carried out by non-governmental-organization (NGO) Artigo 19 (2015) or by Michener, Moncau, & Velasco (2016). It is also present on the methodology developed by the CGU, named Brazil Transparent Scale (MTCGU, 2018b), which ranks the performance of states and municipalities on the compliance of passive transparency.

All these studies can measure well aspects related to passive transparency. However, once they involve samples of respondent offices and the requirement of treatment and data analysis uniformity, they tend to restrict requests to questions, in theory, of simple understanding and easy attendance. What biases favourably the assessed performance over the quality of the responses.

An initiative that deserves to be highlighted is the one from the NGO Article 19 (Artigo 19, 2017). The paper presents and discusses the positive and negative aspects of five "paradigmatic” access to information cases, what indicates the potential of using case study as a scientific research method. And that is the proposal of the research which methodology is described in the following section.

3 Methodology

The research proposal is a Multiple Case Study, in which each request will be treated as an individual case. The research problem favours the choice of the method, because it is a contemporary phenomenon, which we intend to study in depth, and in which we have sufficient access to the data (Yin, 2015).

3.1 Research Context

The research was carried out by means of requests for access to information formulated through the Electronic System of the Citizen Information Service (e-SIC) (Brasil, 2018) from Brazilian federal government.

The LAI provides that the response to a request must be given immediately, if available, or within 20 days, extendable for further 10 days. In case of denial of the request for access to information, there are four appeals levels: 1st - Authority hierarchically superior to the one that issued the decision; 2nd - Minister of State of the area; 3rd - General Comptroller Office (CGU); and 4th - Joint Committee of Information Reassessment (CMRI).

Appeals must be reviewed and responded to within five days. The only exception to this rule is the appeal submitted to the last level, limited to the 3rd ordinary monthly meeting of CMRI, subsequent to the date of the assessment of the appeal. In the federal government, the CMRI is composed exclusively of Ministers (ten).

The area of foreign trade involves the action and interaction of several federal agencies. Each participating body, within its area of competence, feeds and interacts with the Foreign Trade Integrated System (Siscomex), as managers (RFB, Foreign Trade Secretary and Central Bank) or as consenting bodies.

In addition to the RFB the research delimited the study on the performance of the Chamber of Foreign Trade (CAMEX), a collegiate body of the structure of the Presidency of the Republic, which is responsible for negotiating and setting the import and export tax rates.

Besides, a third fundamental actor in this process of management of the Siscomex was considered, the Federal Service of Data Processing (Serpro), that is a public company responsible for the development of computerized systems. Therefore, the research scenario is portrayed in Figure 1.
3.2 Data Collection Strategy

The research used the public consultation of import tax rates available on the page of the RFB through the Customs Tables System (RFB, 2018). Therefore, data that is not protected by fiscal secrecy. The first stage of the research (Galhardo and Souza, 2018) raised information to prove the updating and consistency of data available in active transparency, and to confirm that the Customs Tables System database would be available in open format.

The process of collecting information by the submission of the requests, through the e-SIC, started on December 6, 2016. Initially, three requests of basic information related to the overall objective of the research were formulated. We asked the policy for updating the Customs Tables System; the sectors responsible for dialogue, follow-up and feeding of the CAMEX Resolutions; and a description of the auditing routine and certification of the rates in the corporate foreign trade systems.

Starting on these more simple questions, a process of analysis of the answers, apprehension and deepening of knowledge about the subject matter of the study began. It took place through research to the legislation, the guidelines on the RFB and CAMEX website, technical texts, expert consultation, and to the own jurisprudence formed in the Bank of Precedents of decisions of the CGU and the CMRI (Acesso à Informação Governo Federal, 2018). In addition, the information provided, or justifications presented for its denial, in each request, began to feed back the process of formulating new requests, some of which are more of a complex nature, in order to deepen or clarify some information, and to achieve internal and external consistency. The strategy was detailed in Galhardo and Souza (2018).

We submitted 25 requests in the period of December 6, 2016 to July 7, 2017, related to the major areas of: Systems management, Risk management, Database requests, Internal and external information consistency, Consequences to importers, and Open data policy.

Considering the set of 25 requests for access to information, the information gathering process took about six months until the second level of appeals (06/12/2016 to 13/06/2017). That is, still within the ministerial structure of the body to which the request was addressed. From this point on, what is observed is a disproportionately lengthy period in the response of the appeals by CGU and CMRI (06/12/2016 to 15/02/2018).

3.3 Data analysis strategy

Table 1 presents the quantities of documents in each step of the request for information access, per destinations office. The 25 requests for access to information resulted a total of 70 documents containing answers, some of which are accompanied by enclosed documents.
Table 1. Quantity of documents in each event per destination office

<table>
<thead>
<tr>
<th>Event</th>
<th>RFB</th>
<th>CAMEX</th>
<th>SERPRO</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requests</td>
<td>21</td>
<td>2</td>
<td>2</td>
<td>25</td>
</tr>
<tr>
<td>Answers to requests</td>
<td>21</td>
<td>2</td>
<td>2</td>
<td>25</td>
</tr>
<tr>
<td>Appeal to 1st level</td>
<td>14</td>
<td>1</td>
<td>1</td>
<td>16</td>
</tr>
<tr>
<td>Answers to 1st appeal</td>
<td>9</td>
<td>1</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td>Appeal to 2nd level</td>
<td>12</td>
<td>1</td>
<td>0</td>
<td>13</td>
</tr>
<tr>
<td>Answers to 2nd appeal</td>
<td>11</td>
<td>1</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Appeal to CGU</td>
<td>11</td>
<td>1</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Answers from CGU</td>
<td>11</td>
<td>1</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Appeal to CMRI</td>
<td>9</td>
<td>1</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>Answers from CMRI</td>
<td>9</td>
<td>1</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>Total requests/appeals</td>
<td>67</td>
<td>6</td>
<td>3</td>
<td>76</td>
</tr>
<tr>
<td>Total answers</td>
<td>61</td>
<td>6</td>
<td>3</td>
<td>70</td>
</tr>
</tbody>
</table>

The thematic analysis strategy of the responses will take two approaches. The first, will consider the whole set of answers for the analysis of the behaviour of the respondents split in two groups. One comprising the first answer up to the 2nd appeal answer, corresponding to the levels belonging to a same Ministry, that we call internal environment. The other, comprising the external environment, with CGU and CMRI appeal responses.

This approach will enable the analysis of the behaviour of each group of administration’s environments, permitting, for instance, to investigate the reasons for the distortion of the response time, among other issues that could require a longitudinal perspective.

The second approach will consider each answer or group of answers, regardless the level of same, aiming at identifying insights about the main aspects studied in the literature. For instance: the secrecy culture, SLB discretion, Inter-agency cooperation, interoperability of systems, public company responsible for the development of computerized systems, and OGD policy.

Figure 2 shows a picture of the analysis strategy.

![Analysis Strategy picture](image-url)
4 Expected Contribution and Conclusion

We expect that this step of research contributes as a methodological reference for the use of requests for access to information through e-SIC as source of data for scientific research with a qualitative approach. Moreover, we expect that the insights about the difficulties encountered goes beyond the already well-portrayed obstacles in the literature related to accessibility, usability of the pages, and the technicality of the language used.

Based on the results of the thematic analysis of the responses, we hope to confirm part of the critics and perceptions observed in the literature review and, hopefully, to bring some novel ones that can be deepened through surveys and interviews with the agents who signed the answers, the authorities who approved them, and with stakeholders involved in the process, like the public company responsible for IT system, importing companies, and customs brokers.

First, we expect to find evidences that SLB discretion changes the course of transparency policy through the manipulation of the reasons for the denial of access, confirming literature diagnosis. And, when comparing the behaviour of agents inside and outside the hierarchical structure of one specific Ministry, we expect to show that the levels of appeals set in a Right to Information Act, like the Brazilian one, may not be so effective to guarantee the compliance of transparency policy as expected.

Moreover, we expect that the difficulties of inter-agency cooperation and management of system interoperability appear as main justification behind the denial of access to information, rather than a pure matter of culture of secrecy of bureaucracy.

We hope to contribute to the studies about the conduct of the Open Data Policy by the federal executive bodies, particularly with Commitment 1 of the 3rd Brazilian Action Plan of the Open Government Partnership (OGP) (MTCGU, 2016, p. 20): "Identify and implement a mechanism to recognize problems that can be solved or mitigated by means of government's offer of data, that meets the expectations of plaintiffs and suppliers". However, we look forward to bringing some doubts about the effectiveness of passive transparency as a channel for this purpose.

And alert that the assessment of the compliance of passive transparency policy by a country, based on official statistics and reports, taking solely quantitative figures and time framing of the responses, requires alternative methodologies to actually evaluate citizens' satisfaction.

At last, we expect that overall analysis support the conclusion that the success of a request of access to public information is a function of: who is requesting, the complexity degree of the requests; the central or distributed responsibilities of source data; the inter-agency cooperation dependency; and the operational capacity of the public company responsible for the development of computerized systems.
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