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Abstract

More than 80 access to information (ATI) laws exist worldwide. Their primary objectives are to increase transparency and accountability in government. Given the similarity in the components of ATI laws across countries, one could expect per capita usage of the laws to be roughly similar. However, comparing the number of requests in seven countries, we found that far fewer requests are being made in Switzerland and Germany than in Canada, Ireland, Mexico, India, and the UK and that, in contrast to these five, the number is not increasing. Drawing on 28 semi-structured interviews with experts on the Swiss Law on Transparency (LTrans) and German FOI Law (IFG), we offer three primary explanations for the low use of the laws. The first is that few people are aware of the law in either country as a consequence of little promotion of the laws. The second is that people might have more interest in information held at the state or local level than at the federal level. The third is that other avenues to information in Switzerland reduce interest in using the LTrans and a culture of “*amtsgeheimnis*”, or official secrecy, in Germany inhibits the administration from willingly disclosing information. We examine these hypotheses against the situation in the UK, where awareness of the FOI law is known to be high and the number of requests is high and has been on the rise for the past four years.

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Over the past decade more than 50 countries have passed access to information (ATI) laws and more than 20 have drafted ATI legislation; the total number of ATI acts in force worldwide now stands at over 80 (Darbishire et al., 2010; Vleugels, 2010). The overarching aims of these laws, which give people the right to obtain information from government administrative offices, are to increase transparency and accountability in government, and thereby contribute to greater public participation in the political process and higher trust in government (Hazell et al., 2010: 19; Worthy, 2010). Many government officials and members of civil society argue that ATI policies contribute to better governance and stronger democracy through the attainment of these objectives (Article 19 & Fundar, 2010; Singh, 2007; Mendel, 2008).

One of the indicators frequently cited when assessing whether, and to what extent, the objectives of an ATI policy are being achieved is the number of requests made under the law. Although ATI laws are broadly similar across countries, the number of requests varies considerably from one country to another in a given year and the evolution of usage is dissimilar. Some countries have a high number of requests, such as Mexico, where 1.1 requests per 1,000 people were made in 2010 (Federal Institute for Access to Information and Data Protection, 2010); Canada, where 1.05 requests per 1,000 were filed in 2009-10 (Government of Canada, 2010); and the UK, where the central government received 0.72 requests per 1,000 people in 2010 (Government of UK, 2011). By contrast, in 2010 the Swiss federal government received 0.03 requests and the German government 0.02 per 1,000 people. Furthermore, whereas the number of requests has increased over time in Mexico, Canada and the UK, it has remained static in Germany and Switzerland.

Why have there been so few requests for information to the Swiss and German federal administration since the countries' respective ATI laws came into effect in 2006 in comparison to the UK, which implemented only a year before? Although the literature offers some possible explanations, we found that they do not tell the whole story. Therefore, we developed several hypotheses that might explain the low usage of ATI and tested and honed these in 28 elite interviews with Swiss and German experts on the countries' government administrative practices and ATI laws.

This paper begins with an overview of the objectives, parameters, and number of requests made using ATI laws in several countries. It then offers several hypotheses for the low number of requests in Switzerland and Germany, especially in

comparison with that of the UK. It concludes with some limitations and suggestions for future research.

Background

Objectives of ATI

The overarching aims of ATI legislation are to increase transparency and accountability. Advocates of the laws argue that by increasing transparency ATI provides the information necessary for better understanding of government decision-making, and making government officials more accountable to citizens improves the decisions they make because they know their work can be scrutinized. In developing countries supporters and campaigners promote ATI as an anti-corruption tool, while in fledgling and developed democracies alike the achievement of the aforementioned objectives is supposed to contribute to stronger governance.

Governments in both industrialized nations and developing countries have been suffering a crisis of legitimacy over the past several decades. 'Government finds it difficult to legitimate its actions without active public involvement' (Peters, 2001: 47) and giving people the power to hold government to account 'can help to ensure that the legitimacy of governance remains intact or is increased' (Bovens, 2007: 464). In order to hold public servants and administration to account for their actions, however, citizens must know what they are doing. This requires that the relevant information about decisions and actions taken by the administration be available (Mulgan, 2000: 567), which entails a certain degree of transparency. Transparency plays a role in ensuring accountability by providing a path through which the government 'informs the public of their actions and intentions' (Grigorescu, 2003: 644). The public can use the information they obtain to verify that public officials are acting in their interests and make decisions when, for example, voting; conversely, as Bentham posited, a government official should be less likely to misuse power if they know their actions are being monitored (Hood, 2006: 9). Thus, transparency can help combat corruption by increasing accountability.

If, as Oliver argues, '[government's] accountability to the public depends on the availability of information' (Oliver, 1991: 23) and transparency is one way of achieving this, then transparency mechanisms must be put in place (Bellver and Kaufmann, 2005; Piotrowski and Van Ryzin, 2007). These include legislative scrutiny of the executive; administrative means, such as the proactive publication of information, (e.g. through e-government initiatives); and laws. Laws that encourage greater openness include those that protect whistleblowers, those that allow members of the public to attend meetings convened by government officials, and those that grant access to government information.

Where ATI laws are and the driving forces behind them

In 1766 Sweden became the first country to give citizens the legal right to public sector information. The U.S. Freedom of Information (FOI) Act, passed 200 years later, was followed by a handful of laws adopted in the 1970s and 80s, e.g. Norway and Denmark (1970), France and the Netherlands (1978), and Australia, New Zealand and Canada (1982). However, 54 countries passed their ATI law in the last decade, including Mexico, South Africa, India, the UK, Switzerland and Germany (Banisar, 2006; Darbishire et al., 2010). The latter two are among the last European countries to have brought the legislation into force – only Spain, Luxembourg, Cyprus and Malta remain without (Darbishire, 2009).

The rapid growth in the number of ATI law adoptions since those of the ‘historic pioneers’ (Ackerman and Sandoval-Ballesteros, 2006) can be explained partly by recent global trends. The wave of democratization that took place in Latin America, Asia and Africa in the 1980s and in Eastern Europe after the collapse of the Soviet Union spurred the examination of government secrets held by totalitarian regimes and efforts to combat corruption (Roberts, 2006: 15). Policy diffusion has also played a role in prodding states to adopt an ATI policy. ‘Adopters influence those in the system who have not yet adopted, and as more countries adopt, the pressure on the non-adopters increases’ (Bennett, 1997: 223). However, it is too simplistic to say that countries adopt FOI laws only because others have; ‘other motivations must be present for policymakers to utilize and apply evidence from overseas’ (Bennett, 1997: 229). The Italian ATI law provides an example of this. Labeling it a ‘reform by emulation’, Cain et al. argue that the legislation was imposed ‘from above [in this case public officials trained in the “institutional context of the EU”] or from the side as part of a more general strategy of modernization’ (2003: 121).

Ackerman and Sandoval-Ballesteros identify three forces behind the passage of an ATI law: 1) they are politically motivated; 2) civil society is a big player in pushing for ATI; and 3) international organizations play a significant role in assisting the process (2006). In the UK, the first two were particularly important to the passage of the Freedom of Information Act 2000. As an opposition Member of Parliament Tony Blair spoke with great enthusiasm in 1996 about the Labour Party’s commitment to passing a freedom of information law should it be chosen to lead the government in the next election (Blair, 1996). After coming into power in 1997, however, Labour leadership’s enthusiasm for the legislation waned and it took pressure from the Campaign for Freedom of Information, journalists, and other individuals and organizations to ensure its passage. The Mexican law’s development followed a similar route. Vicente Fox, freshly in office after the historic handover of power to the Institutional Revolutionary Party in 2000, promised an access to information law but the law’s passage was helped along by campaigning on the part of ‘Grupo Oaxaca’ – a gathering of ‘more than 100 journalists, human rights activists, scholars and lawyers...in May 2001’ (Bookman and Amparán, 2009: 13) – which played a major role in shaping the Mexican law by

influencing the ‘conceptualization and drafting of the law’ (Doyle, 2002). In the last several years international human rights organizations such as Article 19, the Carter Center, Transparency International, and Access Info Europe have influenced governments all over the world to adopt ATI policies.

Basic components of ATI laws

ATI laws are based on the same principles and contain similar legal parameters. They are founded on the idea that government administration is obliged to disclose to the public information that it holds and/or creates unless there is a justifiable reason to refuse, according to exceptions (commonly called exemptions) for such things as national security, personal information and commercial confidentiality. The majority of ATI laws mandate that administrative offices disclose requested information within a set timeframe (usually 20 to 30 working days) and grant a requestor access without requiring him to explain why he wants the information. The vast majority of laws grant information access to anyone, although in some only citizens are allowed access (Ecuador and India), while in others residents and citizens can obtain information (Canada and New Zealand) (Tromp, 2008). In addition, some laws require that people make their requests in writing while others allow requests by phone or in person. The majority of laws also assign responsibility of enforcement to an independent oversight body, such as an ombudsman or information commissioner, to ensure proper compliance with the law.

Who uses ATI and for what purposes

Most laws do not require people or organizations to identify the capacity in which they ask for information, e.g. as a journalist or an advocacy group, so it is difficult to know exactly who makes requests and for what purposes. In Canada, where the Treasury Board annually compiles and reports ATI request statistics, including the broad categories of requesters, businesses are consistently the most prolific group of ATI user (Government of Canada 2010). In the United States, amendments to the Freedom of Information Act in 1986 established three categories of requester for the purpose of charging fees appropriate to each level: commercial; educational, noncommercial scientific institutions, and media; and other. Since then it has been possible to obtain a rough breakdown of who is making requests and commercial entities are clearly the group responsible for the most requests (Piotrowski, 2007: 2). What people want to know varies but frequently requested topics include contracts between government bodies and private entities, information about themselves, government policies and procedures, government costs and expenses, and delivery of public services (Glover et al., 2006; Hazell et al., 2010).

Numbers of requests: A comparison

Given that ‘there is... a remarkable degree of cross-national similarity between FOI laws’ (Bennett, 1997: 217), one could expect usage of the laws to be roughly similar. However, we found that the number of LTrans requests made in Switzerland and Germany was low in comparison to other countries. Our comparison was limited to jurisdictions that have collected and published their statistics in a consistent way over time; that include only the number of ATI requests in their official statistics, (i.e. do not include privacy or data protection requests); and that separately provide the number of requests made to federal or central government organizations (if the law applies to all levels of government).

In Table 1 we present the number of requests made in 2010 to central or federal government organizations in the seven countries included in our comparison. An examination of the ratio of requests to population reveals that the number made in the UK, for example, is nearly 25 times that of Switzerland and over 35 times that of Germany (0.72 requests per 1000 people compared to 0.03 requests per 1000 in Switzerland and 0.02 in Germany).

In addition to the absolute number of requests made in 2010, we can observe the evolution of request numbers in the same countries since their laws came into force. Figure 1 presents the number of requests per million inhabitants per month in Mexico, India, Ireland, Canada, the UK, Germany and Switzerland.

Over the first several years of these laws’ implementations three distinct trends are clear: relatively high use from the beginning; gradual uptake; and low, stagnant usage. Ireland, Mexico and the UK make up the first group: a large number of requests made over the first five years, the first of which particularly stands out. However, whereas the UK’s request numbers increased gradually from year three to year five, the number of requests in Mexico has risen steeply, save the second year. The dip in request numbers from year one to two in both Mexico and the UK can be explained by the novelty effect: high interest in using the law at the very

Table 1. Absolute number of access to information (ATI) requests

	Mexico	Canada	UK	India	Ireland	Switzerland	Germany
2010	122,138	35,154 ^a	43,921	529,274	1,849	239	1,557
Population (millions) ^b	111.2	33.5	61.1	1,198	4.2	7.6	82.3
Requests per 1000 people	1.10	1.05	0.72	0.44	0.44	0.03	0.02

Notes. Request numbers were found in government statistical reports on the number of access to information requests made in 2010 (Federal Institute for Access to Information and Data Protection, 2010; Government of UK, 2011; Office of the Information Commissioner, 2011; Government of Switzerland, 2011; Government of Germany, 2010; Government of Canada, 2010; Central Information Commission, 2010).

^aCanadian and Indian statistics are reported on the basis of the April-March fiscal year, while those in the other five countries are calendar year based.

^bThe population of each country was provided by the CIA World Factbook, July 2009 estimates. Retrieved 26 March 2010 from <https://www.cia.gov/library/publications/the-world-factbook/index.html>.

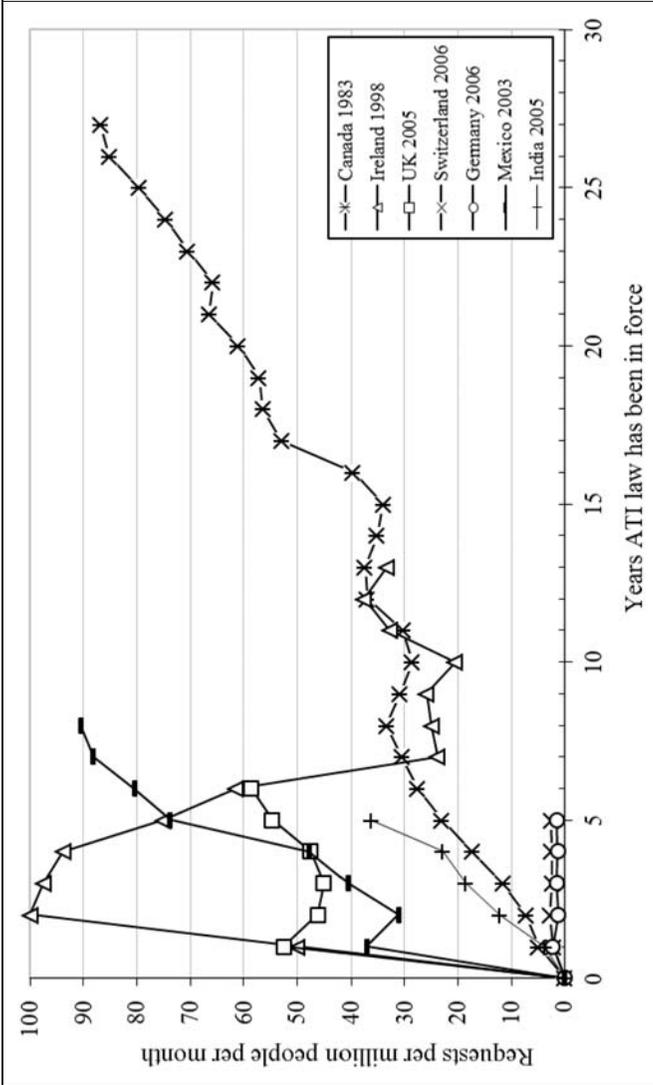


Figure 1. Monthly requests per million people since introduction of access to information (ATI) law at the federal or central government level

Notes: To calculate the data for this graph, we took the total number of requests per year provided in official government statistical reports, divided that amount by total population divided by one million, and then divided this number by 12 (months per year – in order to account for the fact that the Swiss law went into force in July 2006, the Mexican law in June 2003, the Irish law in April 1998, and the Indian law in October 2005). For example, in the first full year of the Swiss law being in force (2007), the total number of reported requests was 249. The population of Switzerland in 2007 was 7.6 million people, which divided by one million is 7.6. The calculation of $249/7.6/12 = 2.73$ is represented in this graph for the first year of the Swiss law's implementation.

beginning, which decreases rapidly in the first year and then climbs again. In Ireland a noticeable drop in numbers occurred after new request fees were instated. The trend in Canada has been a much more gradual increase after a slow start, with occasional dips and a few jumps from year to year. India fits between these two groups with initially low usage but accelerated uptake in the past year. However, the number of requests in Germany and Switzerland has been low from the beginning and has not increased.

Basic explanations for differences in request numbers offered in the literature

Little research has been done on the use of ATI laws (Hazell et al., 2010), especially in countries where the number of requests is known to be low. However, various hypotheses for different levels of use have been offered. One is that people are unlikely to make requests without knowing that they have the right to obtain information from the government. 'One of the most substantial [barriers to the more frequent use of the right to information] is a simple lack of awareness about rights' (Roberts, 2010: 7). Awareness of ATI laws is achieved through promotional efforts on the part of government and information commissioners as well as publicity by the media, interest groups and other civil society actors. Hazell et al. argue that 'promotional measures...are aspects of FOI legislation often missed but as important as access rights' (2009: 6).

Another possible explanation for the difference in request numbers concerns the institutional structures, regions and levels at which decisions that affect the daily life of citizens and residents are made. For most people public authorities' actions and decisions have a more immediate impact on their lives, and are therefore of more interest, than those at the federal or central level of government (Levi and Stoker, 2000: 495; Pearlman, 2010: 40). Thus, if the services most pertinent to citizens (education, health, et cetera) are situated at the local or regional level, it is likely that the central or federal administration will receive fewer requests than those at the lower levels since their competencies are essentially linked to domains that do not directly interest the citizen in more than a marginal way (defense, foreign relations, et cetera).

A final viewpoint is that the use of an ATI law depends greatly on the country's political and social conditions. 'It is extremely important that we do not...fail to recognize the highly idiographic nature of 'freedom of information' in actual practice, taking into account the social and political contexts and the specific histories of different countries, as well as the different character of particular state structures' (Darch and Underwood, 2010:7).

Method

We developed a set of hypotheses for the low use of the Swiss LTrans and German IFG and tested these in 28 half-hour to 1.5 hour face-to-face or telephone

Table 2. List of interviews

1	03.02.09	Swiss journalist
2	03.02.09	Swiss academic
3	03.02.09	Swiss administration official
4	10.02.09	Swiss journalist
5	10.02.09	Swiss administration official
6	10.02.09	Swiss academic
7	18.02.09	Swiss administration official
8	20.02.09	Swiss administration official
9	03.03.09	Swiss journalist
10	09.03.09	Swiss Information Commissioner and staff
11	16.03.09	Swiss academic
12	07.09.10	Swiss commissioner's office staff members
13	09.09.10	Swiss administration official
14	15.09.10	Swiss commissioner's office staff
15	01.10.10	Swiss former journalist
16	05.10.10	Swiss academic
17	05.11.10	Swiss administration official
18	18.11.10	Swiss Information Commissioner
19	16.01.11	German academic/former journalist
20	17.01.11	German lawyer
21	17.01.11	German commissioner's office staff
22	17.01.11	German commissioner's office staff
23	18.01.11	German commissioner's office staff
24	18.01.11	German commissioner's office staff
25	19.01.11	German administration official
26	19.01.11	German administration official
27	21.01.11	German commissioner's office staff
28	21.01.11	German commissioner's office staff

interviews with experts in the two countries between 2009 and 2011. We interviewed Swiss and German federal department officials, members of the Swiss and German academic community, journalists, and members of both the Swiss and German Information Commissioner's offices (see Table 2). We asked each person for their thoughts on why there are so few requests in Switzerland or Germany. We then presented our hypotheses and asked for their opinions on which were most reasonable and logical.

These interviews were part of two larger studies: one on the effects of the Swiss LTrans on the behavior and working practices of federal administrative staff carried out between September 2007 and March 2010 and the second an ongoing

project examining the role of information commissioners in the implementation of ATI laws in Germany, India, Scotland and Switzerland. The overall finding of the former, which consisted of a total 44 interviews with Swiss federal administration officials and an online survey of a wider sample of federal employees, was that few to no changes to the behavior and working practices of federal administrative staff have occurred due to low use of the law (Holsen and Pasquier, 2009).

Discussion

Low awareness

Nearly all of the experts we interviewed in both countries concurred that one of the primary reasons for few requests was a lack of awareness by the public. There are two likely reasons for this: 1) there is no requirement in either law to promote the policy; 2) in Switzerland, there was no campaign for the law by interest groups or the media, nor have these actors made any efforts to raise awareness since its passage. In Germany interest groups did push for the law but did not necessarily receive a lot of media attention for their efforts; nor has there been much mention of the law in news articles since the law came into force.

Neither the LTrans nor the IFG require government or the information commissioner to publicize the law or educate the public about its use. The only effort the information commissioners are required to make in terms of publicizing the work they do on ATI is their annual (Switzerland) and bi-annual (Germany) report. However, these are not widely read by the general public. 'Who reads his reports? [...] Very few people – a certain community,' commented a German expert on IFG. Although both commissioners' offices maintain a website that includes information about their ATI-related work, the overwhelming emphasis on their sites is the work they perform in their capacity as data protection law enforcer.

The push to pass and implement the Swiss law was not fueled by civil society or the media – it was a largely government-driven initiative that entailed 22 years of committee recommendations, consultation, debate, and modifications before it was passed. At no point during the process did the issue of transparency capture the interest of the public or the media to the extent that pressure was applied to speed up the legislative process or influence the text of the law; nor did any interest groups emerge to campaign for the development of the legislation and monitor its implementation.

In Germany the process, which also took 22 years, was fueled mainly by the Green Party; it was a coalition government consisting of the Green and Social Democratic parties that finally succeeded in passing the law. Bolstered by the initiative of a network of civil society organizations to propose and present the government with their own draft law in 2003, the parties took up the cause and formed a group of MPs to write a bill. The coalition managed to pass the bill at the last minute before the government dissolved at the end of 2005. However, as in

Switzerland, the publicity for the effort that went into passing the law was limited and did not capture the people's interest.

In both Switzerland and Germany, relatively little information about ATI has appeared in the press since discussions of the legislation began. From February 2001 to March 2010 only 32 articles referring to the LTrans were published in Swiss newspapers and news magazines, while 88 were printed in German papers and magazines.¹ This leads to one of two conclusions: few journalists use the law in their respective countries or they do not mention that they do in their articles. The former could be explained by the fact that German journalists have had access to information since the 1960s through the 'Landespressegesetz', or state press laws, while in Switzerland reporters have well-established informal avenues for receiving information from the government and administration (Holsen and Pasquier, 2010). Those who do use the law but do not refer to it in their articles in Germany may refrain because people are not familiar with the term 'freedom of information'; in Switzerland, one journalist who said that he often uses the law explained that reporters in Switzerland prefer to hold the means by which they get information close to their chest – to cite the law is tantamount to revealing a tool they prefer to keep to themselves. Since public awareness of ATI grows from these citations (Hayes, 2009), a lack of such references could explain in part low awareness.

In the UK, where awareness of the law has been measured in annual surveys since before the law came into force, the proportion of the population who report knowing of the FOIA 2000, albeit prompted, rose from 74% in 2004 to 85% in 2009 (Information Commissioner's Office, 2010, p.18). Their awareness likely comes from publicity by the information commissioner, who is legally responsible for educating the public about the law; the media, who published over 5,500 newspaper articles in national broadsheets and tabloids between 2005 and 2007 either about the FOI Act or using information obtained through FOI from central government and referring explicitly to the Act (Hazell et al., 2010); and interest groups and other civil society organizations such as the National Council for Voluntary Organisations and the Campaign for Freedom of Information (CFOI), which has focused on 'raising awareness of [the FOI Act's] use among civil society' since the law came into effect and, thanks to a strong relationship with the media, has received much publicity for its work (Puddephatt, 2009: 36).

Useful information closer to home

In federal Switzerland and Germany the proximity of regional authorities to the people and relative distance of the federal administration might promote more use of state ATI laws than the federal ATI law. Several of the experts interviewed reasoned that the distance (figurative and literal) between citizens and federal government is greater than that of the distance between the people and their local government; that information is more easily obtained at the local level through informal channels than at the federal level through formal requests; and that topics

at the local level, such as education and health, are of more immediate interest to people.

Unfortunately, there is only spotty information available on the subject of how many requests are made in the Swiss cantons and German Länder that have implemented ATI laws. The results of evaluations of the Geneva, Berne and Vaud cantonal laws on access to information undertaken over the past few years make it difficult to categorically support the hypothesis that people use the regional laws to a greater extent than the federal legislation. The results of these studies show that wildly varying numbers of requests have been made to individual cantonal authorities – from none to more than 100 per year (Meilland, 2010; Wicki, 2010). In the German state of Nordrhein-Westfalen, whose Ministry of the Interior and Communities carried out an evaluation of the state's IFG in 2004, 2,177 requests were made from January 1, 2002 to December 31, 2003, while the state authorities of Brandenburg received only 258 from 1998 to the end of 2005 (Department of the Interior Nordrhein-Westfalen, 2004; Fanning, 2006). One German commissioner's office member offered the hypothesis that requests to federal offices tend to be made by larger organizations, i.e. IGOs, are more political in nature and therefore more of a "threat" to the administration than those by individuals who are interested in information that regional government holds for personal reasons and are unlikely to publicize it.

In contrast, in the UK, whose FOI Act covers the entire public sector, the proportion of requests at the central level was estimated to be only 25 per cent of the total number made in 2009. While over 40,000 requests went to government departments and offices in central government, an estimated 164,500 were made to local authorities (Government of UK, 2010; Amos et al., 2010). This supports the hypothesis that local topics stimulate more interest than those at the central or federal level – perhaps the same is true in Switzerland and Germany.

Other paths to information in Switzerland and amtsgeheimnis in Germany

A third set of hypotheses for the lack of requests are the particularities of the political situation in Switzerland and the entrenched tradition of secrecy in the German administration. In Switzerland there are several other paths people can take to obtain government information; in Germany, they have little hope of freeing information from a traditionally secretive administration (Perritt and Rustad, 2000: 408; Reese, 1977; Interviews 19, 21, 28).

Particularities of the political system. ATI laws are one means of accessing information in order to participate in public life and politics. However, these laws do not represent the only way for people to obtain information from government. The Swiss political system offers a number of points of access for different actors interested and/or involved in public policy making. With the principle of concordance, the principal political parties divide power at the executive level, which gives all political players direct access to information. This differs from the majority of

Western democracies that are led by one or more parties that are in opposition to other parties. In the case of a majority-opposition system, legislation on transparency can be used by the opposition to obtain information held almost exclusively by those in power. An estimated 800-900 were made per year by Members of Parliament in the UK between 2005 and 2008 (Worthy and Hazell, 2010). In the Swiss government, by contrast, all principal parties can obtain all relevant information directly from their ministers so there is little if any need for them to use the LTrans.

The Swiss political system also allows and encourages the involvement of stakeholders throughout the process of a law's development. The administration systematically consults with organizations and businesses during the pre-parliamentary phase, giving them the bill in question and inviting their comments and suggestions. This is called the consultation process. Throughout it stakeholders have access to a large amount of information (external expertise, administrative reports, raw data, et cetera). The flip-side of this is the slowness of the decision-making process in Switzerland, which is explained in large part by the numerous actors and myriad levels to which decisions go, reducing the urgent nature of obtaining information. The system supports many cycles of revisions of a law before it is finally passed.

Finally, the Swiss parliamentary system is a 'miliz system'. This means that Parliament is made up of people active in numerous other activities, including day jobs, through which they are able to gather information and bring it to the policy discussion table. This makes it relatively simple for citizens who are not involved in politics to informally contribute to or receive information from someone directly connected to the government.

In Germany the tradition of *amtsgeheimnis*, or official secrecy, is thought to have a detrimental effect on the willingness of the administration to disclose information. Believed to have originated from a tradition of authoritarian public administration, the administration's discretion in divulging information is supported by the federal Constitution, the Administrative Court Procedure Code, the Civil Service Code and the Criminal Code². Further evidence to support this hypothesis can be found in the fact that the IFG is one of very few German federal laws written by parliamentarians rather than the administration, who were opposed to the legislation (Interview 28). Since it was passed, this German culture of secrecy, well known even in other countries (Blanton, 2002), has continued to inhibit the administration from disclosing information that they produce, hold and consider their own. Said one German interviewee, 'If I talk to government officials or people from the executive branch, they are speaking about "my folders" or "my files". "You want to look into MY files?"' (Interview 19)

Other possible explanations for little use

It is possible that exemptions in the Swiss law discourage people from asking for information in the first place or from making repeat requests once one has

been refused. In 2010 52 per cent of requests in Switzerland were denied either completely or in part, compared to 40 per cent in the UK. In addition, the fact that the Swiss law is not retrospective means that federal officials must consider only documents completed on or after July 1, 2006, for disclosure. However, the 'heavy exemption use' hypothesis does not hold in Germany, where the proportion of refused requests – 40 per cent in 2010 – was the same as the UK's and the law is retrospective.

Fees may also be a deterrent to access in both countries. In Switzerland only 6 of 44 departments reported charging for giving out information between 2006 and 2010, but the total amount charged in 2009-10 – 3850 francs – was nearly three times as much as in 2008 and over twice that of 2007 (Pasquier and Meillard, 2009; Government of Switzerland, 2010). In Germany in 2010, 10 per cent of all requests to federal offices required the requester to pay a fee, nearly half of which were over 100 Euros (Federal Ministry of the Interior, 2010). In addition to the issue of fees, according to a German expert on the law (personal communication, 2 May 2011), 'people who use the law often experience difficulties [which] is no invitation to follow their example and go through the hassle with German bureaucracy'.

Limits of this paper

There are several limits to this paper. First, we have neither data on the information needs of the population nor their opinion of the government's level of transparency in Switzerland and Germany. Although the survey of Swiss federal administrators revealed that 65 per cent believe the administration rates to be between 7 and 10 on a transparency scale of 1 to 10 (Holsen and Pasquier, 2009), collecting data about what the people themselves know about their respective countries' ATI policies and why they do or do not use them clearly would be helpful to drawing a more accurate picture of their usage.

Second, the observations made about the number of requests must be qualified by the fact that there is no concrete definition of an ATI request in any of these countries and that government offices often have different ways of acknowledging and recording requests. Thus, the number of requests made in Switzerland and Germany might be much higher if the guidelines for recording requests in the UK, for example, were applied by their government officials.

Third, the use of the number of requests as an indicator of a law's 'success' is debated in the literature. Vleugels argues that 'the volume of requests is one of the important indicators to assess the health of the FOI climate in a country or territory' (2010: 14). Allan and Currie argue that ATI laws should include a requirement to record the number of requests and other statistics about them 'with the aim of identifying and remedying defects in the legislation and/or in official compliance with it' (2007). However, Hazell et al. claim that 'the number of requests made under a country's FOI regime is not a good indicator of the health of that regime' (2009: 27), while Darch and Underwood reasonably ask 'what number would represent an appropriate level of demand?' (2010: 57). While we agree that the number

of requests is not the only statistic by which a law should be evaluated, we believe it provides an interesting point of departure for research on the topic of ATI. More comprehensive study of the topic, which could help address whether an ATI policy is 'successful' or not, could include an examination of: the strength of the law (e.g. the breadth and number of exemptions, whether fees are required to make a request, and whether any extra components, such as a section on proactive dissemination, are included; see Mendel, 2008) and a comprehensive evaluation of the policy's implementation in order to understand how it works in practice – both from the requesters' and administration's point of view. These could all be folded into a broader analysis of whether a certain ATI policy is achieving its aims of greater transparency and accountability.

Fourth, our research does not establish in a systematic way a direct connection between the number of requests and the potential explanatory factors mentioned. This topic needs further and more detailed work: first to validate and, if need be, complete the list of explanatory factors; second, to research additional indicators to support our hypotheses.

Fifth, it is very difficult to weigh the respective importance of each explanatory factor. Is the level of awareness of the law much more important than the fact that there are other ways to get information in explaining the number of requests filed in a country? We do not know. It is therefore very difficult to generalize the results and the impact of each factor must be studied case by case.

To what extent one uses the number of requests to assess the effectiveness of a law is one thing; using the statistic to begin an examination of a law is another. We acknowledge that there are any number of explanations for little use – we have touched on only those that seem most logical and obvious. Our sample of countries is also small and the explanations we devised may not hold in other jurisdictions.

Conclusions

The Swiss and German federal governments have received few requests under their respective ATI laws. Comparing the number of requests made in these two countries with those made in others, both in absolute terms and per capita over time, the low level of usage is stark. We hypothesize that there are several explanations for the low number of requests, which can be placed in one of two groups – those linked to the law and its implementation, and those connected to the country's political, historical, and institutional characteristics.

Our first hypothesis is that there is a lack of awareness of ATI in both countries. This stems from the absence of a legal requirement to promote the law, and little use of the law by the media. The second hypothesis is that people may just not be interested in the information that the federal administration holds but may be making use of the cantonal or state laws due to more vested interest in local issues. A third set of hypotheses is that other paths to information in Switzerland reduce the need to use LTrans, while a state tradition of secrecy in

Germany makes it difficult to shift the mindset among the administration to one of openness and transparency.

A few questions remain, however, in addition to those presented in the ‘limits of this paper’ section. If businesses are the largest group of requesters in Canada and the U.S., are commercial entities using the Swiss and German laws at all and, if not, why not? Second, might there simply be a lack of public interest in participation beyond voting, as Hazell found in Australia, Canada, and New Zealand in the first few years of their laws’ implementation, or an absence of a cultural predisposition to ask for government information, as Cain et al. suggest in the Italian case? Third, in an age of Wikileaks, will governments become even more suspicious of those who want information and grant less access, even through legally mandated means?

If experience in other countries is any guide, people will become more aware of the Swiss and German ATI laws over time, which should boost the number of requests. However, if the hypotheses about the lack of people’s need of the law hold, then perhaps the number of requests will remain steady or even decline. This has implications for countries that have just set out on the ATI path or are thinking of doing so – first, promotion of the law is necessary to prompt use of the policy; second, federal administration may find itself eclipsed by interests at the state/local government level; and third, institutional, political and historical factors may impact use in unforeseen ways.

Notes

1. Original research conducted by the authors using Lexis-Nexis, who input French and German terms in the search engine to query the Swiss press and German terms to locate articles on the subject in the German press.
2. I am grateful to my colleague Tom McClean at the LSE for bringing this point to my attention.

References

- Ackerman J and Sandoval-Ballesteros I (2006) The global explosion of freedom of information laws. *Administrative Law Review* 58(1): 85–130.
- Allan K and Currie I (2007) Enforcing access to information and privacy rights: evaluating proposals for an information protection regulator for South Africa. *South African Journal on Human Rights* 23(3): 563–579.
- Amos J, Worthy B, Bourke G, Colquhoun A and Levoyer E (2010) *FOIA 2000 and Local Government in 2009: The Experience of Local Authorities in England*. London: The Constitution Unit. Available at <http://www.ucl.ac.uk/constitution-unit/research/foi/foi-and-local-government/2009-foi-officials-survey>.
- Article 19 & Fundar (2010) *Mexico’s Access to Information Index*. Mexico City. Retrieved 30 April 2010 from www.article19.org/pdfs/press/mexico-access-to-information-index.pdf.
- Banisar D (2006) *Freedom of Information around the World 2006: A Global Survey of access to Government Information Laws*. Privacy International. Available at http://www.freedominfo.org/documents/global_survey2006.pdf.

- Bellver A and Kaufmann D (2005) *Transparenting Transparency: Initial Empirics and Policy Applications*. World Bank. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=808664.
- Bennett C (1997) Understanding ripple effects: the cross-national adoption of policy instruments for bureaucratic accountability. *Governance* 10(3): 213–233.
- Blair T (1996) *Speech by the Rt. Hon. Tony Blair MP at the Campaign for Freedom of Information's Annual Awards ceremony*. Retrieved 7 August 2008 from <http://www.foi.org.uk/blairawards.html>.
- Blanton T (2002) The world's right to know. *Foreign Policy* 131: 50–58.
- Bookman Z and Amparán JPG (2009) Two steps forward, one step back: assessing the implementation of Mexico's Freedom of Information Act. *Mexican Law Review* 1(2): 3–51.
- Bovens M (2007) Analysing and assessing accountability: a conceptual framework. *European Law Journal*. 13(4): 447–468.
- Cain BE, Egan P and Fabbri S (2003) Towards more open democracies: the expansion of freedom of information laws. In: Cain BE, Dalton RJ and Scarrow SJ (eds) *Democracy Transformed? Expanding Political Opportunities in Advanced Industrial Democracies*. New York: Oxford University Press, 115–139.
- Central Information Commission (2010) *Ministry-wise and Public Authority-wise Abstract of Annual Returns [Internet]*. Available at <http://rtiar.nic.in/rtiar09/reportspublic/abstract.asp>.
- Darbishire H (2009) Spain: Poised on verge of adopting an access to information law - but is it a right? *Open Government Journal* 5(2): 3–4.
- Darbishire H, Anderica V, Gray J (2010) Beyond Access: Open Government Data and the “Right to Reuse” (Draft for Consultation).
- Darch C and Underwood PG (2010) *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness: Demand, Compliance and Democratic Behaviours*. Oxford: Chandos Publishing.
- Department of the Interior Nordrhein-Westfalen (2004) *Nordrhein-Westfalen Freedom of Information Law: Report on the law's effects (Evaluation). 1 January 2002 to 31 December 2003*. Germany: Düsseldorf.
- Doyle K (2002) *Mexico Passes New Freedom of Information Law*. Mexico City: National Security Archive. Retrieved 16 February 2010 from <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB68/index3.html>.
- Fanning M (2006) The FOI Officer: A key role in both the support and evaluation of the right of access to information held by public authorities. *IFG Circular: Points of Interest on Freedom of Information Law (17/2006)*. Online Consultants International: Karlsruhe. Available at <http://fiz1.fh-potsdam.de/volltext/ifg/08259a.pdf>.
- Federal Institute for Access to Information and Data Protection (2010) *Statistics*. Mexico City: IFAI. Retrieved 19 July 2010 from <http://www.ifai.org.mx/Estadisticas/#estadisticas>.
- Glover M, Holsen S, Macdonald C, Rahman M and Simpson D (2006) *Freedom of Information: History, Experience and Records and Information Management Implications in the USA, Canada and the United Kingdom*. Pittsburgh, PA: ARMA International Educational Foundation.
- Government of Canada (2010) *Access to Information Act and Privacy Act Bulletins*. (2003–2010). Ottawa: Treasury Board of Canada. Retrieved 18 May 2010 from <http://www.infosource.gc.ca/bulletin/bulletin-eng.asp>.

- Government of Germany (2010) *IFG Requests 2010 Made across all Federal Offices*. Berlin: Federal Ministry of the Interior. Available at http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/Politik_Gesellschaft/Verwaltungsrecht/IFG_Statistik_2010.pdf?__blob=publicationFile.
- Government of Switzerland (2010) Activities Report 2009/2010 of the Federal Data Protection and Information Commissioner. Bern: OFCL. Available at <http://www.edoeb.admin.ch/dokumentation/00445/00509/01615/index.html?lang=fr>.
- Government of Switzerland (2011) *Activities Report 2010/2011 of the Federal Data Protection and Information Commissioner*. Bern: OFCL. Available at <http://www.edoeb.admin.ch/dokumentation/00445/00509/01732/index.html?lang=fr>.
- Government of UK (2011) *Freedom of Information Act 2000: Statistics on Implementation in Central Government (2010 Annual and Q4: October - December 2010)*. London: Ministry of Justice. Retrieved 10 July 2008 from <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/2010%20Annual%20and%20Q4%20FOI%20bulletin%20vfinal.pdf>.
- Grigorescu A (2003) International organizations and government transparency: linking the international and domestic realms. *International Studies Quarterly* 47: 643–667.
- Hayes J (2009) *A Shock to the System: Journalism, Government and the Freedom of Information Act 2000*. Oxford: Reuters Institute for the Study of Journalism.
- Hazell R, Worthy B and Bourke G (2009) *Measuring Access to Information: Report Prepared for the World Bank*. London: The Constitution Unit, UCL.
- Hazell R, Worthy B and Glover M (2010) *Does FOI Work? The Impact of the Freedom of Information Act on Central Government in the UK*. Hampshire: Palgrave Macmillan.
- Holsen S, Pasquier M (2009) The Swiss federal Law on Transparency: much ado about nothing? Paper presented at the 5th Transatlantic Dialogue Conference 11-13 June 2009, Washington D.C.
- Holsen S and Pasquier M (2010) The Swiss federal Law on Transparency: much ado about nothing? *The Future of Governance: Selected Papers from the Fifth Transatlantic Dialogue on Public Administration Conference*. Washington DC: National Center for Public Performance (NCPD) on behalf of the European Group for Public Administration (EGPA) and the American Society for Public Administration (ASPA), 151–167.
- Hood Christopher (2006) Transparency in historical perspective, in Hood C, Heald, D (eds) *Transparency: The Key to Better Governance?* Oxford: British Academy/Oxford University Press.
- Information Commissioner's Office (2010) *Annual Report Summary 2010*. London. Available at http://www.ico.gov.uk/upload/documents/library/corporate/practical_application/annual_report_summary_2010.pdf.
- Levi M and Stoker L (2000) Political trust and trustworthiness. *Annual Review of Political Science* 3(1): 475–507.
- Meilland P (2010) *The principle of transparency in the Canton of Vaud*. Evaluation of chapters 1, 3, 4, and 6 of the law on information of 24 September 2002. Swiss Graduate School of Public Administration: Lausanne.
- Mendel T (2008) *Freedom of Information: a comparative legal survey*. (Second Edition, Revised and Updated). Paris: UNESCO.
- Government of UK (2010) *Freedom of Information Act 2000: 2009 Annual Statistics on implementation in central government*. London: Ministry of Justice. Available at <http://www.justice.gov.uk/publications/docs/foi-statistics-report-2009.pdf>.

- Mulgan R (2000) "Accountability": an ever-expanding concept? *Public Administration* 78(3): 555–573.
- Office of the Information Commissioner (2011) Annual Report 2010. Dublin: Government of Ireland. Available at <http://www.oic.gov.ie/en/Publications/AnnualReports/AnnualReport2010/online/index.html>.
- Oliver D (1991) *Government in the United Kingdom: The Search for Accountability, Effectiveness and Citizenship*. Open University Press.
- Pasquier M, Meilland P (2009) *Evaluation of the law on transparency*. Lausanne, Switzerland: IDHEAP.
- Pearlman MW (2010) *Piercing the Veil of Secrecy: Lessons in the Fight for Freedom of Information* (1st ed). New Britain, CT: LawFirst Publishing/Connecticut Bar Association.
- Perritt HH and Rustad Z (2000) Freedom of information spreads to Europe. *Government Information Quarterly* 17(4): 403–417.
- Peters BG (2001) "Accountability" entry. In: Clarke PB and Foweraker J (eds) *Encyclopedia of Democratic Thought*. London: Routledge, 1–3.
- Piotrowski SJ (2007) *Governmental Transparency in the Path of Administrative Reform*. Albany, NY: SUNY Press.
- Piotrowski SJ and Van Ryzin GG (2007) Citizen attitudes toward transparency in local government. *The American Review of Public Administration* 37(3): 306–323.
- Puddephatt A (2009) *Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws: The Cases of Bulgaria, India, Mexico, South Africa and the United Kingdom*. World Bank Institute.
- Reese J (1977) The Federal Republic of Germany. *Government Secrecy in Democracies*. New York: New York University Press, 216–233.
- Roberts A (2006) *Blacked Out Government Secrecy in the Information Age*. New York: Cambridge University Press.
- Roberts A (2010) A great and revolutionary law? The first four years of India's Right to Information Act. *Public Administration Review*. Forthcoming; Suffolk University Law School Research Paper No.10-02. Retrieved 27 January 2010 from <http://ssrn.com/abstract=1527858>.
- Singh S (2007) India: grassroots initiatives. In: Florini A (ed.) *The Right to Know: Transparency for an Open World*. New York: Columbia University Press, 19–53.
- Tromp SL (2008) *World FOI Chart*. Retrieved 5 February 2010 from <http://www3.telus.net/index100/foi>.
- Vleugels R (2010) *Fringe Special: Overview of All FOI Laws*. Retrieved 16 September 2010 from <http://www.bigwobber.nl/wp-content/uploads/2010/09/Fringe-Special-Overview-FOIA-sep-16-2010.pdf>.
- Wicki M (2010) *Public authorities in a glass house: An evaluation of Articles 27 to 31 of the Bern Freedom of Information Law*. Lausanne, Switzerland: Swiss Graduate School of Public Administration. Available at [http://www.idheap.ch/idheap.nsf/ed6f7e242e9019a7c12569ff0038e8f9/3bcd3b777d97a158c125771200291f41/\\$FILE/Wicki%20M.%20%282010%29%20Beh%20C3%B6rden%20im%20Glashaus.%20Working%20Paper.pdf](http://www.idheap.ch/idheap.nsf/ed6f7e242e9019a7c12569ff0038e8f9/3bcd3b777d97a158c125771200291f41/$FILE/Wicki%20M.%20%282010%29%20Beh%20C3%B6rden%20im%20Glashaus.%20Working%20Paper.pdf).
- Worthy B (2010) More open but not more trusted? The effect of the Freedom of Information Act 2000 on the United Kingdom central government. *Governance* 23(4): 561–582.

Worthy B, Hazell R (2010) *The Sword: How MPs and Peers Have Used Freedom of Information in the UK*. Paper presented at the 8th Annual Holyrood FOI Conference, 15th December 2010, Edinburgh.

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