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Publicity, Transparency, and Openness in Public Administration

Publicidad, transparencia y apertura en la Administración Pública

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Abstract

This work addresses the republican principle of publicity and its constitutional corollaries within administrative activity, in light of the recent Access to Information Law and constitutional guidelines. For the smooth functioning of an open society, all state space is subject to the light of transparency. The concept that transparency in Public Administration is essential for it to function more responsibly and effectively is gaining increasing importance in the theory of administrative law.

Keywords

Publicity. Transparency. Opening. Public Administration. Law on Access to Information. Democracy. Rule of law.

Resumen

Este trabajo aborda el principio republicano de publicidad y sus corolarios constitucionales dentro de la actividad administrativa, a la luz de la reciente Ley de Acceso a la Información y los lineamientos constitucionales. Para el funcionamiento fluido de una sociedad abierta, todo espacio estatal está sujeto a la luz de la publicidad. El concepto de que la transparencia en la Administración Pública es fundamental para que funcione de manera más responsable y eficaz está adquiriendo una importancia creciente en la teoría del derecho administrativo.

Palabras clave

Publicidad. Transparencia. Apertura. Administración Pública. Ley de Acceso a la Información. Democracia. Estado de derecho.

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1. INTRODUCTION

The publicity of public affairs is an essential attribute of an institutionalized democratic-constitutional regime, and it allows anyone to monitor and criticize any vices or failures. No one is interested, in an open and well-constituted democratic society, in secret cabinet matters discussed behind closed doors, without the public being aware of and able to monitor them.

N. Bobbio (1986, p. 84) defines democracy as the government of public power in public, naming the secrecy of official spheres as "cryptogovernment", in which the publicity of acts of power represents the true moment of transition of the modern state: from absolute state to state right. In the democratic environment, state secrecy (supported by "state reasons") is an exception regulated by laws that do not allow for an extensive and amplifying interpretation.

The fall of communism and totalitarian regimes in the last quarter of the 20th century resulted in a moral condemnation of the "culture of secrecy" and the lack of access to public information by the body of citizens (demos). This influenced the new democracies into inserting, in the Constitutions, the right of access to public information as a fundamental right, and to develop a whole regulatory legislation.

It is evident to the modern spirit that a government of a democratic type demands, as an indispensable condition of political health, a constant supply of accurate information about public affairs to all citizens and, consequently, a vigorous maintenance of public interest. A healthy political structure of government requires abundant, quick, and true information about what is happening within the State, as well as a frank and free discussion of public problems. This general information will serve to unite citizens around harmonic goals, and enable them to want, as one body.

The State has a primary function that does not depend on its inclusion in any Constitution: to facilitate historic collective action by clarifying the problems that arise in determining the objectives of action. Thus, it stimulates collective thinking, welcomes it, and gives it back more clearly, informing the reasons for the decisions that are made. This participatory and informative circularity makes the collectivity move from a state of diffuse political consciousness to a clearer state of consciousness, a community of knowledge, creating a common political idea, and directly influencing public deliberations. It is in this way that a society attains the purest degree of self-awareness.

It goes without saying that "publicity or access to information", "citizen participation in public deliberations", and "access to justice" constitute the intangible basis of what is conventionally called participatory democracy. And for this very reason, between the right to information and the rights of democratic participation, a true symbiotic relationship is established. Only informed citizens can participate in public debates and put forward their own positions.

The concept that transparency in Public Administration is essential for it to function more responsibly and effectively is gaining increasing importance in administrative law theory (Bugaric, 2004, p. 489). Nor does it escape the modern perception that the supervision of the Executive and Public Administration by the Judiciary and Legislative has proved to be insufficient. Currently, specialists focus on the "Theory of Open Public Administration", which emphasizes the importance of society's participation in the adoption of public policies and access to all information on administrative activities.

In this work, we approach the republican principle of publicity and its constitutional corollaries in the scope of administrative activity, recognizing that it is in the field of Administrative Law that transparency presents its greatest demands (Silva, 2000, p. 653; Pietro, 1997, p. 68; Bulos, 2000, p. 563). This, however, does not imply admitting that legislative, jurisdictional, or political activities do not affect the aforementioned principles. On the contrary, for the fluid functioning of an open society, every state bin is subject to the lights of publicity, but for methodological reasons, we take an aspect of the constitutional principle to better dissect it in the light of administrative democracy (Manganaro, 2011) and the republican spirit.

2- OPEN ADMINISTRATION AND DEMOCRATIC DEFICIT

The traditional model of Public Administration is based on the principle of legality, which means that the Administration can only operate within parameters established by law. The control of this principle is done by the representative body (Legislative) and by the Judiciary. But the legislature does not have enough time to elaborate, in detail, the multiple series of legal norms capable of foreseeing all the legal situations that may arise. It does not have time or competence because given its current numerical structure, it is not only inept and unable to exhaust the task of profiling all sorts of technical details, but it is also impossible to predict the kind of problems that will arise under the rule of any regulation legal, presenting many issues that will not perfectly fit in a determined legislative solution (Laski, 1932b, p. 121). Because of this, nowadays, it is recognized that this external institutional control over the Public Administration is no longer efficient and, mainly, because of that, there is a chronic democratic deficit in the functioning of the Administration.

In addition to the chronic democratic deficit, several other factors have contributed to profound reforms in Public Administration: globalization, democratization, information revolution, and public dissatisfaction with administrative services in general (due to the lack of greater openness, transparency, and efficiency). Together, all these factors increase the need to bring the functioning of Public Administration more into the public domain.

The legal publicist doctrine has been looking for solutions to eliminate, or at least reduce, this democratic deficit that threatens the legitimacy of Public Administration. Several theories or models try to encourage the issue: greater detail and scope of legislation (in an attempt to reduce

administrative discretion), technical discretion, greater judicial control, and the theory of open public administration.

The theory of open administration preaches the importance of society's participation in the adoption of public policies and access to all information regarding administrative activities. Combined with greater judicial oversight, open administration theory can provide a more open, transparent, accountable, and efficient administrative environment. Obviously, one cannot speak of applying a given model to the detriment of others, but of applying the various theories in a combined way under the canopy of a prevailing theory.

The principle of openness, as Bugaric (2004, p. 487) points out, is broader than the principle of transparency, as it refers to the accessibility of public information, while the former covers various forms of active cooperation and communication between the Administration and the public.

"The concept that openness in public administration is essential for it to function more responsibly and effectively is gaining increasing importance in the theory of administrative law" (Bugaric, 2004, p. 489).

3- PUBLICITY AND TRANSPARENCY: DISTINCTION

The terms "publicity" and "transparency" are usually treated as synonyms. But there is a difference that is not just morphological, but also political and historical. Publicity dates back to political discussions and public decision-making, as it did in the Athenian agora and the Roman forum. Transparency is a modern term that requires a diaphanous Public Administration, guaranteeing public access to information, and allowing for public control. Transparency is legitimized by the rule of law, while publicity has its source in democracy[1].

Throughout this study, while recognizing and admitting the differences between the two terms, we will use the principle of publicity to cover all cases.

[1] This foundation of publlicity is highlighted by Bobbio (2011, p. 98-99) when he says: "In order to live and strengthen itself, a democracy needs the maximum extension of the reciprocal trust relationship between citizens, and, therefore, the elimination, so complete as much as possible, of the strategy of simulation and deception (which also means reducing, as luch as possible, the space of secrecy)". Also K. Mannheim, 1969, p. 62.

4. THE DEMOCRATIZING FUNCTION OF THE RIGHT TO ACCESS INFORMATION

The need for citizen participation in administrative decision-making is preached, but without access to all Public Administration information, a kind of data asymmetry is created: on the one hand, the administrative body possesses all data and information, and, on the other, the citizen, called to participate, but without complete clarification or full understanding. With this absurd retention (or "empowerment") of data, the political reasoning of the people becomes difficult. Access to information places the citizen on an equal footing with the Public Administration and reveals itself as part of the democratizing force of transparency and publicity.

As Gerhard Leibholz (1971, p. 248) and Harold J. Laski (1932a, p. 93) say, only if active citizens called to political decision have all the knowledge of the relevant realities will they be able to contribute to the formation of political will in democracy through the formation of a reasonable political judgment. And the freedom of a people depends on the quality of the provided information.

Access to information gives citizens democratic control over the work of authorities, facilitating the discovery of different forms of irregularities, illegal acts, and corruption. At the same time, it gives citizens sufficient political resources to enable them to fully participate, as equal citizens (with equal access to public data and reports), in making all the collective decisions to which they are obligated.

In an excellent comparative political study, Gabriel Almond and G. Bingham Powell (1966, p. 186) argue that popular control over political leaders is the sustaining myth of democracy. The democratic system asserts that "the people" can convey their wishes to political office holders and can, at regular intervals, elect new representatives if the work is not being properly carried out. But without a precise knowledge of the actions of the representatives, and without an understanding of the relationship between these actions and popular objectives, it is impossible to have a meaningful articulation of interests and an exercise of political control.

In order to have a perfect democratic process and, as a result, a perfect democratic government, it is necessary to fulfill some conditions such as effective participation, equal voting, control of the political agenda, inclusiveness and enlightened understanding by the body of citizens (*demos*). This last condition has transparency and access to information as its main supply channel.

Imagine, and the hypothesis is provided by Robert A. Dahl (2012, p. 181), that citizen "P" is poor and citizen "R" is rich. "P" and "R" may have "equal opportunities" to participate in collective decisions, in the sense that both are legally and formally entitled to do so. However, as "R" has much more access than "P" to money, information, publicity, organizations, time, and other political resources, not only will "R" likely participate more than "P", but also its influence on decisions will carry much more weight than that of "P". Access to information, in particular, if you really want

to guarantee "equal opportunity" for all, must take into account the differences between its recipients (poverty, illiteracy, digital exclusion, etc.).

And, how, technically, ensure that the differences between recipients are addressed? Through information technologies (IT) all citizens can access information about public affairs almost immediately in a form and at a level (accessible language, for example) appropriate for each particular citizen. These means can also offer each citizen the opportunity to insert questions in this agenda of information provided to the public (interactivity), generating an attentive demos, with a broad and participatory understanding.

Publicity, of course, is also an efficient instrument for controlling the power exercised by pressure groups and political propagandists. The effort to control the exercise of this hidden force consists only in ordering that it be made public. When we make a law in the United States, says Carl J. Friedrich (1970, p. 132), forcing foreign agents to register and reveal the origin of their resources, we are using exactly this transparency tool to reduce the hidden force that such agents have. The law does not prohibit people from being agents of the Governments of England, Germany, or Russia. It just says that whoever is an agent must register as such, and to clarify where the money comes from. This is done to make it clear that once it is known that a Mr Miller is an agent for Moscow, and that he receives ten thousand dollars from the Russian Government, people will take their precautions when dealing with him, and there will even be those who will refuse up front, and, in this way, the law effectively reduces the agent's influence.

A society endowed with free access to information and informed about all the facts and operations of the administration, under equal conditions, enjoys a much greater capacity for choice than a society subject to ignorance and official secrecy. Furthermore, such an enlightened society does not need to be overseen by the State (statism) or by a paternal authority to choose between two courses of action, one of which would lead to bad consequences, as good and free information would ward off the wrong medium.

5. VISIBILITY OF POWER AND CONTROL OF ITS EXERCISE

According to the lessons of Bobbio (2011, p. 83; 1987, p. 30), the visibility of power and the possibility of controlling its exercise is one of the fundamental principles of the rule of law. The controllability of power stems directly from its visible exercise. But transparency, by itself, does not prevent mistakes or encourage success if the public does not pay attention to what is being done.

And it is for this reason, due to the eventual lack of public engagement and constant vigilance, that the victory of visible power over invisible power is never fully completed: invisible power resists the advances of visible power, invents ever-new ways of hiding.

In a democracy, the more visible an institution, the more power it has. Unlike what happens in exceptional regimes (such as a totalitarian dictatorship), as Arendt (2005, p. 188) teaches, where the only rule is that the more visible a government agency, the less power it has; and the less is known about the existence of an institution, the more powerful it is. True power begins where the secret begins.

Political representation cannot be understood conceptually except in the light provided by transparency. Carl Schmitt (2009, p. 208) emphasizes this conceptual element when he says that representation cannot take place except in the public sphere. There is no political representation that develops in secret and between two people; no representation that is "private matter". A Parliament only has a representative character as long as there is a belief that its activity is carried out under the light of publicity. Secret sessions, agreements, and secret deliberations of any committee or parliamentary group may be as significant and important from a party-political point of view, but they will never have a representative character. It is possible to accept that parliamentary activity that takes place in daylight is just an empty formality and that decisions are substantially taken in secret and away from the public. It may even be that in doing so, the Parliament fulfills some useful functions, but it ceases to be the representative of the political unity of the people.

The visibility of power and the possibility of its control, therefore, are part of the essence of a representative democracy.

6. CONSTITUTIONAL AND LEGAL STRUCTURE

In relation to administrative activity, the principle of publicity is expressly provided for in art. 37, caput and § 3, item II, of the Federal Constitution of Brazil:

"The direct and indirect public administration of any of the Powers of the Union, States, Federal District, and Municipalities shall obey the principles of legality, impersonality, morality, publicity, and efficiency...

§3º. - The law will regulate the forms of user participation in direct and indirect public administration, specifically regulating:

II - access by users to administrative records and information on government acts, subject to the provisions of art. 5th, X and XXXIII".

Art. 216, § 2 of the same Constitution provides that: "It is the responsibility of the public administration, in accordance with the law, to manage government documentation and take steps to facilitate its consultation to those who need it".

In art. 5, item XXXIII of the Brazilian Constitution, the expression of publicity is a requirement for full transparency of the public power:

"Everyone has the right to receive information of their private interest, or of collective or general interest, from public bodies, which will be provided within the term of the law, under penalty of liability, except for those whose secrecy is essential to the security of society and the State."

And in its less generic meaning, in art. 5th, inc. XXXIV, subitem "b", it is guaranteed to all, regardless of the payment of fees:

"b) obtaining certificates from public offices, for the defense of rights and clarification of situations of personal interest".

The right to petition and obtain certificates is seen as a means of guaranteeing access to information.

Art. 5, item XXXIII of the Federal Constitution is regulated by Law n. 12.527, dated 11.18.2011 (which revoked Law no. 11.111, dated 05.05.2005). There is still Law n. 8,159, dated 01.08.1991, which provides for the national policy on public and private archives (whose articles 22, 23, and 24 were revoked by Law n. 12.527, dated 11.18.2011); Decree no. 4.553, dated 12.27.2002, which provides for the safeguarding of confidential data, information, documents, and materials of interest to the security of society and the State, within the scope of the Federal Public Administration; Decree no. 4.073 of 01.03.2002, which regulates Law n. 8.159, dated 01.08.1991; Law n. 9.507, dated 11.12.1997, which regulates the right to access information and institutes the procedural rite of habeas data; and Decree n. 7.724 of 05.16.2012, which regulates Law n. 12.527/2012.

Other countries have also set in their Constitutions the right to publicity or the right to access information:

Constitution of Costa Rica (1949):

"Free access to administrative departments for the purpose of obtaining information on matters of public interest is guaranteed. State secrets are excluded from this provision" (art. 30).

Constitution of Belgium:

"Everyone has the right to consult an administrative document and have a copy made, except in the cases and conditions provided for by laws, decrees, or decisions referred to in art. 134" (art. 32).

Constitution of Finland:

"Documents and recordings held by authorities are public, unless their publication has been for compelling reasons restricted by law. Everyone has the right to access public documents and recordings" (art. 12, 2).

Greek Constitution (1975):

"1. Every person, on their own or together with others, will have the right, in compliance with current legislation, to submit written petitions to the public authorities, who will be obliged to take immediate action in accordance with the provisions in force and to give a written and reasoned response to the petitioner under the law.

(...).

3. The request for information obliges the competent authorities to respond, as established by law" (art. 10).

Portuguese Constitution (1976):

"Citizens also have the right to access administrative files and records, without prejudice to the provisions of the law on matters relating to internal and external security, criminal investigation, and the privacy of individuals" (art. 268.2).

Spanish Constitution (1978):

"The law shall regulate: b) the access of citizens to administrative files and records, except insofar as it affects the security and defense of the State, the investigation of crimes, and the privacy of persons" (Art. 105, "b").

Colombian Constitution (1991):

"All persons have the right to access public documents except in cases established by law" (art. 74).

Peruvian Constitution (1993):

"To request information requires, without expression of cause, and to receive it from any public entity, within the legal term, at the cost of the request. Information that affects personal privacy and those that are expressly excluded by law or for national security reasons are excepted" (art. 2.5).

Ecuadorian Constitution:

"The State will guarantee the right to access sources of information; to seek, receive, know, and disseminate objective, truthful, plural, timely information and without prior censorship, of events

of general interest, which preserves the values of the community, especially by journalists and social communicators....

There will be no reservation regarding information that rests in public archives, except for documents for which such reservation is required for reasons of national defense and for other causes expressly established by law "(art. 81).

Slovenian Constitution:

"Except in such cases as are provided by law, everyone has the right to obtain information of a public nature in which he has a well-founded legal interest under law" (art. 39).

And countless other Constitutions can still be listed: Poland (art. 61), Romania (art. 31), South Africa (art. 32), Chile (art. 8), Nicaragua (art. 26).

Currently, more than 80 countries have adopted laws that regulate the right of access to public information. In most developed countries the topic is no longer new, as, for example, in Sweden, whose legislation dates back to 1766, Finland since 1951, United States since 1966, Norway in 1970 ("Freedom of Information Act").

7. ATTRIBUTES OF THE PUBLICITY PRINCIPLE

Relativity

Nothing in the Law is absolute (Donizetti, 2009:361), and there is no absolute right under the Constitution[2]. And the principles of publicity and transparency share this relative nature (constitutional and legal restrictions put them into perspective), including valid exceptions within the Public Administration. And as Y. Dror (1999) says, they have to be considered in relation to other rights and duties. And, in case of conflict, it is necessary to correctly weigh the "value-cost-benefit" of the rights to be realized (or implemented).

The principle of publicity, like all other principles and values, assumes character in the face of conflicting value considerations and can, in certain situations, be restricted. There are other principles that may have more meaning under certain circumstances.

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[2] The Federal Supreme Court (STF) has already demonstrated the inexistence of absolute rights in our legal system: "There are no absolute rights or guarantees in the Brazilian constitutional system, even because reasons of relevant public interest or requirements derived from the principle of coexistence of freedoms legitimize, albeit exceptionally, the adoption, by state bodies, of restrictive measures of individual or collective prerogatives, provided that the terms established by the Federal Constitution are respected" (MS n. 23.452/RJ, rel. Min. Celso de Mello).

Item XXXIII, of art. 5º, of the Federal Constitution of Brazil restricts the publicity of some information for security measure of the society and the State. Information that may breach these values is confidential.

In addition to the security of society and the State, other limits or restrictions are imposed on publicity and information such as "respect for the rights or reputation of others" or "the protection of national security, public order, or health or public moral" (art. 13.2, American Convention on Human Rights - Pact of San José, Costa Rica, ratified by Brazil on 09.25.1992 and promulgated through Decree n. 678, dated 6.1.92, published in the Official Gazette of 09.19.1992).

The principle under study must also respect information related to intimacy, private life, honor, and image of people (CF, art. 5, X), imposing the law that "the treatment of personal information must be done in a transparent manner and with respect for intimacy , private life, honor, and image of people, as well as individual freedoms and guarantees...(and) will have their access restricted, regardless of confidentiality classification, (and) may have their disclosure or access by third parties authorized under legal or express consent of the person to whom they refer" (Law No. 12.527/2012, art. 31, § 1st., items. I-II).

As Bugaric (2004, p. 497) teaches, experience has shown that the biggest problem in practice is the differentiation between the general principle of open access and its exceptions. Norway, for example, is preparing a new freedom of information law precisely because its exceptions have been defined too vaguely.

Different laws use two ways to distinguish information that is accessible to the public and information that is not accessible. Some laws use a positive definition and put into law everything that is public information; while others use a negative definition, according to which all information is accessible to the public domain, with the exception of foreseen exceptions.

Between the public and the private, tensions arise that require a work of weighing values or legal assets that are almost always in apparent conflict. This conflict generates uncertainty as to the legality of disclosing information that is on the public/private threshold (Egaña, 1992, p. 13), but, above all, it serves to highlight the relative character of the aforementioned principle.

Conglobate Extension

Transparency affects not only the already finished or in-formation act, but also its fundamentals and the procedures used to achieve it. This principle directly derives from the probity that must guide authorities and public agents in a democratic environment, and also works as a guarantee of probity in all state acts. If agents are honest and their acts are covered with a presumption of probity, there is no plausible justification for them not to be public. In such circumstances, publicity

is a reward and a clear recognition of the servant who fulfills his duties and a deterrent to agents likely to fail to comply with their duties.

The Chilean Constitution, for example, clearly enshrines this understanding:

"The exercise of public functions obliges their holders to strictly comply with the principle of probity in all their actions.

The acts and resolutions of the organs of the State are public, as well as their foundations and the procedures they use. However, only a qualified quorum law may establish the reserve or secrecy of those or of these, when the publicity affects the due fulfillment of the functions of said bodies, the rights of the people, the security of the Nation, or the national interest" (art. 8º.).

With publicity, it is intended that the acts of public bodies and institutions, the grounds on which they are supported, and the procedures according to which they are adopted are notorious, patent, or manifest and not secret, hidden or secluded (González, 2011). A visible, controllable, and responsible government is sought, which proclaims its actions to the winds and makes them available to the public as in a "house of crystal".

Administrative transparency is not restricted to information contained in files, records,m and documents, but also those relating to the entire development of administrative performance and management (function, attributions, procedures, organizational schemes, human, financial, and material resources - Lobo, 2003) . It is also not restricted to physical support (records, files, etc.), extending to electronic or computer media (databases, electronic files, automated files, etc.).

Law n. 12.527/2012, in its art. 7, paragraph 3, says that "the right of access to documents or information contained therein used as a basis for decision-making and the administrative act will be ensured with the publication of the respective decision-making act". It is a clear option for our legislator. As long as the decision-making act has considered all the points or arguments made in the previous acts that led to the decision, we understand that the principle of publicity/transparency was ensured.

Plural or Bifrontal Content

Publicity, along with its restrictions, is a duty of plural content (Perez, 2006, p. 93-94), because it has two aspects: the duty to inform and the duty to remain silent. The duty to remain silent is expressed in two ways: the duty of secrecy, which deals with specific and concrete matters to which the character of reserved persons is conferred, and the duty of confidentiality, which expresses a personal duty of discretion in the handling of data, in order to prevent damage to citizens and public authorities.

There is a tendency in a massive environment to view secrecy and confidentiality with suspicion, even when they are legitimate. And this distrust can turn against democracy itself, as history proves. The totalitarian movement that resulted in totalitarian governments (Nazi and Bolshevism) used its techniques of mass propaganda exploiting everything that was hidden, everything that was kept silent, regardless of intrinsic value or legitimate character or not (Arendt, 2005, p 106). And the mass came to believe that everything that had hitherto been kept secret was the truth (with the additions and conclusions of totalitarian propaganda), lending support to the enemies that were corroding democracy from the inside out (with their own mechanisms).

The effectiveness of this type of publicity, emphasizes Arendt (2005, p. 107), highlights one of the main characteristics of the modern masses. They don't believe in anything visible, nor in the reality of their own experience; they don't trust their eyes and ears, but only their imagination, which can be seduced by anything both universal and congruent in itself. What convinces the masses is not the facts, even if they are made-up facts, but only the coherence with the system of which these facts are a part of.

Informative Character

The publicity of acts, programs, works, services, and propaganda campaigns of public bodies must have an educational, informative or social orientation character, and may not contain names, symbols or images that characterize the personal promotion of authorities or public servants (CF, art. 37, §1.). It is a requirement arising from the principles of impersonality and morality.

The informative or educational nature of publicity presupposes that the dissemination of the acts is made in a clear and easy to understand manner, regardless of the level of culture of the general public. It implies a simplification of administrative language, as taught by F. Manganaro (2011):

"Transparency is not only respect for the procedural rules, but also the comprehensibility of the administrative action by the ordinary citizen".

Complementary Law n. 95, dated 02.26.1998, which provides for the drafting of laws, outlines some guidelines to obtain clarity, precision, and logical order in the drafting of the various laws. The concern is to favor the understanding of the recipients (citizens in general). These rules, mutatis mutandis, can be adopted in the preparation of other acts of the State with the aim of giving transparency an undeniable informative or educational character.

In art. 11 of the aforementioned Law are stamped with precious rules:

For clarity:

a) use words and expressions in their common sense, except when the standard deals with a technical subject, in which case the proper nomenclature of the area in which it is legislating will be used;

b) use short, concise sentences;

c) build the sentences in direct order, avoiding preciosity, neologism, and unnecessary adjectives;

d) seek uniformity of tense throughout the text of legal norms, giving preference to the present tense or the simple future of the present;

e) use punctuation resources judiciously, avoiding stylistic abuses;

II - for accuracy:

a) articulate the language, technical or common, in order to provide a perfect understanding of the objective of the law, and to allow its text to clearly demonstrate the content and scope that the legislator intends to give to the rule;

b) express the idea, when repeated in the text, using the same words, avoiding the use of synonymy for merely stylistic purposes;

c) avoid the use of expression or word that gives double meaning to the text;

d) choose terms that have the same sense and meaning in most of the national territory, avoiding the use of local or regional expressions;

e) use only acronyms established by use, observing the principle that the first reference in the text is accompanied by an explanation of its meaning;

f) spell out, in full, any references to numbers and percentages, except date, law number, and in cases where there is damage to the understanding of the text;

g) expressly indicate the referenced device, instead of using the expressions 'previous', 'next', or equivalent;

III - to obtain logical order:

a) gather under the aggregation categories - subsection, section, chapter, title and book - only the provisions related to the object of the law;

b) restrict the content of each article of law to a single subject or principle;

c) express through the paragraphs the complementary aspects to the rule set out in the main section of the article and the exceptions to the rule established by this;

d) promote discriminations and enumerations through articles, paragraphs, and items.

Instrumental Character

Publicity, or the right of access to administrative information, is not an end in itself, but a means, an instrument that exists to enable or guarantee the realization of other social values capable of stimulating the individual and collective development (material and spiritual) of the community ; it is a sine qua non for the exercise of other fundamental rights: right to information (CF, art. 5, item XIV), right to political participation, right to expression and opinion.

Universal Active Legitimacy

Who can request information from public bodies? According to the constitutional text, there is no doubt: "everyone has the right to receive from public bodies information of their private interest, or of collective or general interest..." (art. 5, item XXXIII). The active legitimacy resulting from the exercise of the principle of publicity is universal, it concerns each and every one of us.

The comparative constitutional law, in general, as revealed by Pérez/Makowiak (2011), suppresses the requirement of subjective interest in active legitimacy to request constant information in public bodies. Contemporary constitutional provisions, without exception, legitimize: "Everyone..." (Greece), "citizens..." (Portugal and Spain), "all people..." (Colombia), "soliciting without expression of cause..." (Peru), "everyone has the right..." (Belgium), "everyone has the right of access..." (Finland).

Nor could it be otherwise, under penalty of rendering unfeasible constitutional guarantees such as, for example, popular action. The Brazilian Constitution (art. 5, inc. LXXIII) establishes that "any citizen is a legitimate party to file a class action aimed at annulling an act harmful to the public property or entity in which the State participates, to administrative morality...". Without having access to information from public bodies, how can citizens assess whether there has been damage to public property or administrative morality? Aware of the difficulty, the legislator determined that to instruct the initial public action, the citizen can request, from public bodies (and other similar entities), the certificates and information he deems necessary, simply indicating the purpose of the same (Law n. 4.717 of 06.29.1965, art. 1, §4.).

8. CLASSIFICATION

Official Publicity (Publication)

It is the publication of administrative acts in the official body so that they can take effect. Official publication (or disclosure) is not a formative element, but a requirement for the effectiveness of the act, being important for the analysis of nullity, voidability, or validation. With the publication, the objective is, simply, to make public and to comply with the procedural rules (enabling a fictitious knowledge and the resulting assumptions[3]), there is no concern to inform, in a clear and understandable way to the public.

This type of publicity lacks real visibility and general intelligibility of administrative action.

Wide Publicity

It is the duty to provide information to the public authorities, as provided for in item XXXIII, of art. 5, of the Federal Constitution of Brazil. Here, all the characteristics that give the necessary amplitude to publicity are present: informative character (intelligibility), plural content, conglobating extension, and universal active legitimacy.

Publicity, in the broad sense, in turn, is divided into proactive[4] and reactive publicity. The first is the obligation of public bodies, on their own initiative, to publish and make information about their activities, measures, and policies available to everyone. Reactive or passive broad publicity is the right of citizens to request any type of information from public bodies (regardless of the existence of any reason to be demonstrated – Novelino, 2008, p. 365) and, consequently, receive an answer, immediately or within a period established by law.

Strict Publicity

It is the right to obtain certificates from public agencies for the defense of rights and clarification of situations of personal interest (Brazilian Constitution, art. 5, item XXXIV, subitem "b").

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[3] An example of these presumptions is the one derived from the principle of mandatory law. The publicity of the law, through its publication by the Official Press (Official Gazette) and by the equally official electronic media, allows the Public Power to demand compliance with the laws. With this publicity there is the absolute presumption (juris et de jure) that its recipients know it, and cannot excuse itself from complying with it, on the basis of ignorance (lack of knowledge of its existence) or error (incomplete or distorted knowledge of its text) - Colucci, 2009.

[4] Also called "active transparency", as provided for in the Decree n. 7.724/2012, art. 7º e ss.

9. THE DUTY TO PROVIDE INFORMATION

The right to information is an attribute whose ownership belongs to every human being, without exception or arbitrary restriction. This right encompasses, simultaneously, the free exercise (without prior censorship) of the following three essential faculties: seeking news, accessing public and private sources, national or foreign, open to all; transmition or broadcast of messages with such news in any form and through any means of communication; and, finally, the ability to receive these messages. The right to investigate, the right to inform, and the right to be informed are, in short, the face of the Right to Information (Egaña, 1992, p. 15) whose reverse is the duty to provide information.

The right to information and the corresponding duty to provide information by the Public Administration is a corollary of the principle of publicity. According to art. 2 of Law n. 9,507/97, it is exercised upon application[5] addressed to the agency or depositary entity of the registry or database, and must be granted or rejected within 48 (forty-eight) hours, with communication of the decision to the interested party within 24 (twenty-four) hours, as well as the indication of the day and time when you will learn about the information, which will be provided free of charge (art. 3 and 21).

In case of refusal or omission by the administrative authority to provide the information, the interested party is assured habeas data, provided for in art. 5, item LXXII, of the Federal Constitution of Brazil, which may be filed: I – to ensure knowledge of information relating to the person of the petitioner, contained in the registry or database of government entities or of a public nature; II - for the rectification of data, when it is not preferred to do so through confidential, judicial, or administrative process; III - for the annotation in the interested party's settlements, of contestation or explanation about true but justifiable data that is pending, judicial or friendly.

10. RESTRICTIONS ON PUBLICITY OR FORMS OF RESERVATION OF ACCESS TO INFORMATION

Restrictions on publicity are necessary in a democratic society, being guided by supra-individual socio-political rights such as national, society or state security (in the public sphere), or very personal rights such as honor, intimacy, or private life (in the private sphere). Among the various options to achieve this goal, the one that restricts the protected right to a lesser extent should be chosen (González, 2011). That is, the restriction must be proportional to the interest that justifies

[5] No major formalities are required for this application, such as file or protocol number, full names, exact date, etc., as it is difficult for citizens to have accurate information from the documentation contained in the files of public bodies. Requiring specifics in the application would be a way of defrauding the constitutional norm (art. 5, item XXXIII).

it, and it must be able to achieve the legitimate objective, interfering as little as possible in the effective exercise of the right.

Secrecy, as an exception and justified by supra-individual or very personal socio-political rights, is part of every legitimate legal system. It may happen, however, that secrecy is not legitimate, ceasing to be an instrument of effectiveness of public decisions to be an end in itself. By becoming illegitimate in this way, secrecy becomes an element of pure power, as those who rely on secrecy know what others ignore, thus reinforcing, through such inequality, the capacity for action, submission through fear, Or deceit through concealment (Egaña, 1992, p. 18) of data, information, and knowledge.

Although used indiscriminately, and confused with the same meaning by common sense and even by experts in the legal field, there is a relevant difference between the terms "secret" and "secrecy". Secret is the substance, content or data that cannot be revealed; secrecy is the form of protection of the secret, even subject to gradations that imply a greater or lesser obligation (commitment) to not disclose the secret.

Below are some legitimate ways to reserve access to information.

Security of Society and the State

In the administrative sphere, publicity and the duty to provide information may be restricted, pursuant to art. 5, XXXIII, of the Federal Constitution of Brazil - which establishes that everyone has the right to receive information of their private interest, or collective or general interest, from public bodies - when "essential to the security of Society and the State".

The constitutional precept is regulated by Law n. 12527/2011, that in art. 4th. provides, as an impediment to access to public documents, exclusively the cases in which secrecy is or remains essential to the security of society and the State. Art. 4th. of Law n. 8,159, dated 01.08.1991 (which provides for the national policy on public archives) reproduces the same command.

It is easy to consider as an example of legitimate refusal to provide information a situation in which the administrator intends to obtain, from the police, information about the amount of weapons made available to the institution, what strategy has been adopted for the distribution of policing throughout the city, how many policemen are working during the morning and night shifts, and other information that should not be passed on to any interested party under penalty of compromising public safety (Pires, 2009, p. 154), or the "security of society"[6].

[6] Law n. 7.170, of 12.14.1983 (National Security Law), art. 21, says it constitutes a crime: "Revealing a secret obtained by reason of a position, employment or public function, in relation to plans, actions or military or police operations against rebels, insurgents, or revolutionaries".

State security can be translated into threats to the country's sovereignty, territorial integrity, or international relations; security and operability of personnel, equipment, material and facilities of the Armed Forces and security; negotiation strategies or procedures regarding security in the transmission of data and information involving other foreign States or international organizations.

According to Decree n. 7724/2012 (art. 25), information considered essential to the security of society or the State, whose disclosure or unrestricted access may: I-put at risk the national defense and sovereignty or the integrity of the national territory; II- impair or jeopardize the conduct of negotiations or the country's international relations; III- damaging or jeopardizing information provided in a confidential manner by other States and international organizations; I- putting the life, safety, or health of the population at risk; V- offer a high risk to the country's financial, economic, or monetary stability; VI- impair or cause risk to strategic plans or operations of the Armed Forces; VII- damaging or causing risk to scientific or technological research and development projects, as well as to systems, assets, facilities, or areas of national strategic interest; VIII- putting at risk the security of institutions or high national or foreign authorities and their families; IX- commit ongoing intelligence, investigation, or inspection activities related to the prevention or repression of infringements.

Confidentiality is indisputably valid in certain actions of public bodies, whether political, judicial, controllers, military, or police. This happens with the secret of the suffrage that sends the citizen as part of the electoral body; the reservation in government and parliamentary deliberations that affect national security; the secrecy of the country's defense plans; the study and effective application of monetary, financial, sanitary, and other measures that must be silenced so as not to harm the effects aimed with them; diplomatic discretion; confidentiality in judicial and police inquiries in criminal proceedings (Egaña, 1992, p. 14); the hermetic nature of intelligence operations.

People's Rights or Reputation, National Security, Public Order, Public Health, or Morals

Although wide, publicity cannot be unlimited or absolute. In addition to the security of society and the State, other limits or restrictions are imposed on publicity and information such as "respect for the rights or reputation of others", "the protection of national security, public order, or public health or morals" (art. 13.2, American Convention on Human Rights - Pact of San José, Costa Rica, ratified by Brazil on 09.25.1992 and promulgated through Decree n. 678, dated 06.11.92, published in the Official Gazette of 09.11.92).

Intimacy, Private Life, Honor, and People's Image

It is inscribed in the Federal Constitution of Brazil that intimacy, private life, honor, and the image of people are inviolable (art. 5, item X). That is, the transparency imperative must respect these constitutionally protected values.

Law n. 12.527, of November 18, 2011, which regulates the final part of art. 5, XXXIII, establishes that "the handling of personal information must be done in a transparent manner and with respect for the intimacy, private life, honor and image of people, as well as individual freedoms and guarantees...(and) will have their access restricted, regardless of the classification of secrecy (e) may have their disclosure or access by third parties authorized in the light of a legal provision or express consent of the person to whom they refer" (art. 31, § 1st., incs. I and II).

If in public life, the right to information prevails; in private life, the right to intimacy prevails. In the private sphere, intimacy is protected as a very inalienable personal attribute, which publicity does not fit, because in such a case, it seeks to satisfy simple public curiosity, without the purpose of legitimate information.

If the freedom of the ancients consisted of the right to participate in public life (with its bonus and burden), the freedom of the moderns consisted of the right to take refuge in private life (in the sphere of intimacy), without being disturbed by anyone (to be let alone, or *diritto di essere lasciato soli*).

There are some situations provided for by law in which there can be no opposition to accessing personal information. Are they:

I - prevention and medical diagnosis, when the person is physically or legally incapable, and for use solely and exclusively for medical treatment;

II - carrying out statistics and scientific research of evident public or general interest, provided for by law, the identification of the person to which the information refers being prohibited;

III - compliance with a court order;

IV - defense of human rights; or

V - protection of the preponderant public and general interest.

In Brazil, unfortunately, there is no normative framework that protects privacy and intimacy as opposed to transparency. In countries such as Belgium, there is a specific law on privacy protection (Law of 11.12.1998; Decree of 13.02.2001). The notion of "respect" suggests that privacy does not enjoy absolute protection, but it has a space where it cannot be interfered with by society or the State.

Administrator's Personal Promotion

There is also a peculiar restriction of publicity made in favor of the principles of morality and impersonality in which: "The publicity of acts, programs, works, services and campaigns of public

bodies must have an educational, informative or social orientation, and may not contain names, symbols or images that characterize the personal promotion of authorities or public servants" (Federal Constitution of Brazil, art. 37, § 1).

11. CAUTION IN APPLYING THE PRINCIPLES (OR THE PATHOLOGIES IN THE EXAGGERATED APPLICATION OF TRANSPARENCY AND PUBLICITY)

Yehezkel Dror, a professor at the Hebrew University of Jerusalem (1999, web), in a precious study ("Transparency and openness of quality democracy"), says that administrative transparency and openness are serious principles, but they cannot captivate or subdue thought. They are comparable to what the ancient Greek called "pharmacon", which is a product that, if taken in correct doses, cures, but if ingested in large quantities turns into poison. If applied carefully, transparency and openness are valid recommendations, both substantially and instrumentally. However, it is a big mistake to think that the greater the transparency and openness will always be better.

Dror highlights and proposes a relativistic approach to the expansion of administrative transparency, publicity, and openness.

Transparency and publicity form an instrument that favors efficiency and effectiveness, forcing the government to be more careful with public scrutiny. However, the requirements of efficiency and effectiveness are not automatically served by more transparency or greater publicity or openness. There is a danger that public administrators will be influenced by the constant (and sometimes irrational) demand for greater transparency, acting in accordance with legal formalities, so as to protect themselves from criticism rather than substantially serving the public.

The professor indicates four steps for the correct application of these principles: 1- the nature of transparency and openness as values and instruments must be clarified; 2- some pathologies of transparency and openness must be diagnosed in order to be avoided; 3- some preconditions for increasing transparency and openness need to be explored; 4- the increase in transparency and openness must be thought about and rethought within the larger context of a "quality democracy".

In countries with democracy in the process of consolidation, there is a clear tendency to increase publicity and transparency. However, in these countries, prudence is also needed to prevent fully justified efforts to overcome anti-democratic governance traditions and deep-rooted bureaucratic habits from being frustrated by the overdose of the aforementioned principles.

The application of these principles in an expansive and thoughtless way generates some undesirable consequences that Professor Dror calls "pathologies".

The main pathology is allowing a "bubble blow" (artificial needs, "factoids", media pressure) to dominate substantive achievements. Recent democracies have a strong tendency to place emphasis on "image building", due to the pervasive influence of the media and the competition between different institutions for legitimacy and political space. The dosages of transparency and publicity, instead of serving the substantial achievements of citizenship, lend themselves to the subordinate institutional and corporate work of "image engineering".

This pathology can lead to other serious forms, such as dual record keeping (a "two-box" type), with documents previously prepared to be exposed to the public in contrast to the "real" material (kept secret by the transparency curtain). This is not only intrinsically wrong, but it has contagious effects by legitimizing corrupt practices.

Another serious pathology is the repression of serious administrative work, which necessarily involves the adoption of unpopular alternatives, and the criticism of politically pleasing ideas. As there is a serious risk that these measures or actions will come into the publicity and be used as a weapon against the government in the political arena, then the natural reaction is to try to inhibit frank administrative discourse and the serious work of public servants, with grave consequences for the quality of services provided by the Administration.

These are just a few of the devices invisible power uses to resist visible power. N. Bobbio (1987, p. 30) observes that the victory of visible power over invisible power is never fully completed: invisible power resists the advances of visible power, invents ever-new ways of hiding and seeing without being seen.

12. PARTIAL ACCESS PRINCIPLE

When a document contains the requested information together with other information covered by the access restrictions provided for by law, the public agents must separate the confidential information from that which can be freely transferred, but they cannot deny access to all the information.

Law no. 12527/2011 provides this principle when it states that: "When full access to the information is not authorized because it is partially confidential, access to the non-confidential part is ensured by means of a certificate, extract, or copy with concealment of the confidential part" (art. 7, paragraph 2).

13. CLASSIFICATION ACCORDING TO THE DEGREE OF SECRECY

Confidential data or information are classified as top secret, secret, and reserved, based on their content or intrinsic elements. In the classification of documents, as far as possible, the least restrictive criterion is used.

Under Law n. 11.111 of 05.05.2005, there were four levels of secrecy (top secret, secret, confidential, and reserved), and the maximum terms were longer. With the new regime implemented by Law n. 12.572/2012, there was a reduction from four levels to three levels of secrecy, with the reduction of the maximum terms for keeping this information (with clear inspiration from Finnish and North American legislation).

The degree of secrecy must be expressly qualified by a competent public authority, based on a law that sets the parameters within which classification is applicable. The scale of secrecy cannot depend on the discretion of the server that holds the data, and it must be fixed prior to requesting information.

Top Secret Data

Data or information relating to national sovereignty and territorial integrity, military plans and operations, the country's international relations, research, and scientific and technological development projects of interest to national defense may be classified as top secret, as well as economic programs which unauthorized knowledge could cause exceptionally serious damage to the security of society and State.

The following authorities are competent to classify in the ultra-secret degree (Law n. 12.527/2011, art. 27; Decree n. 4.553 of 12.27.2002, art. 6): the President of the Republic; the Vice President of the Republic; the Ministers of State (and authorities with the same prerogatives); the Navy, Army and Air Force Commanders; and the Heads of Permanent Diplomatic and Consular Missions abroad.

In exceptional cases, the competence of these authorities may be delegated to a public agent on a mission abroad. Subdelegation is prohibited.

The duration of the classification in top secret is 25 years. After this period, the data can be made public.

The top secret document is considered, by its nature, a confidential controlled document submitted to additional control measures such as: identification of recipients in a protocol and proper receipt, upon dissemination; drawing up of a custody term and registration in a specific protocol; annual drawing up of an inventory term, by the issuing agency or entity and by the receiving agency or entity; and drawing up of a transfer term, whenever its custody is transferred.

Secret Data

Data or information relating to systems, facilities, programs, projects, plans or operations of interest to national defense, diplomatic and intelligence matters, and plans or strategic details, programs or facilities may be classified as secret when unauthorized knowledge may cause serious damage to the security of society and State.

In addition to the authorities that can classify data or information in the ultra-secret level, those that can classify, within the scope of the Federal Public Administration, as secret, are the authorities that exercise management, command, leadership, or advisory functions.

The term of the classification in secret is up to 15 years. After this period, the data can be made public.

Reserved Data

Data or information whose unauthorized disclosure could compromise the plans, operations, or objectives foreseen or referred to therein are considered to be reserved.

Authorities with competence for top secret and secret data, and civil servants who carry out functions of direction, command or leadership, or hierarchical superior, in accordance with the specific regulations of each organ, can classify in such a degree of secrecy.

The duration of the classification in reserved is up to 5 years. After this period, the data can be made public.

14. INFORMATION REGARDING HUMAN RIGHTS VIOLATIONS

Information on conduct that implies a violation of human rights, committed by public agents or on the orders of public authorities, in accordance with the new regulatory framework, cannot be classified in any degree of secrecy nor could access to them be denied.

Also, information necessary for the judicial or administrative protection of fundamental rights cannot be denied. However, the interested party must demonstrate the link between the information requested and the right to be guaranteed.

It is a disciplinary offense or an act of administrative impropriety for any public agent to destroy or, in any way, take away documents relating to possible human rights violations by State agents. If such conduct is practiced by a natural person or private entity who holds information due to a relationship of any kind with the Public Authority, it will be subject to a warning, fine, termination of the relationship with the Public Authority, temporary suspension from participating in a bidding process and impediment to contract with the public administration for a period not exceeding two

years, and declaration of unfitness to bid or contract with the public administration, until rehabilitation is promoted before the authority that applied the penalty.

15. CONCLUSIONS

Transparency, as we said throughout the study, is of the essence for a democratic-constitutional regime, integrating the value system of liberal democracy and human rights in which government acts must be manifest and visible, with open debates capable of generating in all, a high standard of public morality (Nelson, 1980, p. 129), with every citizen having the right to know what is happening in government and, as a result, the right to freely criticize.

The power of publicity is the ultimate weapon of a democratic State (Lipson, 1964, p. 597), and a condition for the community, when exercising its options, is to be sufficiently informed, being able to observe and criticize everything that is wrong. Thus, it can be said that a society devoid of information, without an enlightened citizenship, is not fully free.

Despite the constitutional positivization of the principle of publicity and transparency, clearly visible threats[7] are hidden in the political and administrative horizon: exceptions and restrictions. There are so many and so indeterminate from the conceptual point of view that, paradoxically, we can glimpse an invisible government wielding, without rigorous control, a series of ultra-secret, secret, and reserved acts.

The problem is not located in the secrecy itself, as an instrumental category and at the service of the values that justify it, but in its dysfunctionality, as it becomes a purpose in itself. Although, in a Rule of Law and Democratic regime, there is a reduction in the effects of this dysfunctionality, in any case it is still affected, mainly due to the fact that it is governed by bureaucratic criteria that restrict publicity to strengthen knowledge arising from the "secret of the position"[8].

Only where publicity and transparency reign can there also be the responsibility of those in government (administrators, legislators, judges, etc.) and the awareness of responsibility in the governed. In all, democracy is, according to its fundamental principle, a matter of emancipated,

[7] There is, to use the words of Ernesto Jinesta Lobo (2003), a dialectical struggle between administrative light and darkness, between visible and invisible power.

[8] According to Bobbio (1986, p. 105), "power is all the more effective the more it knows, sees, and kearns without letting itself be seen", that is, the power that hides and hides itself. The tendency to keep things secret, to make them a cult and a mystery, in order to obtain advantages over the common of men, has been throughout history, always very strong in the human spirit (Wells, 1968, p. 319). And bureaucracy, which according to R. MacIver (1965, p. 241),is one of the most common annoyances in every administration, gets stronger when it is protected by the walls of secrecy.

informed citizens, not of an ignorant, apathetic mass, driven only by irrational emotions and desires that, by well-intentioned or malicious rulers (Hesse, 1998, p. 133), on the question of his own fate, is left in obscurity.

It is obvious that transparency, by itself, as J. Stuart Mill (1964, p. 25) believed, does not prevent evil or encourage good if the public does not pay attention to what is being done; but without transparency, how could you prevent or animate what you are not allowed to see?

Having made these considerations, in addition to the classifications and speculations throughout this study, some topical conclusions can be aligned:

Publicity or the right of access to information by public bodies constitutes a fundamental right of plural, instrumental, relative, informative content, with universal active legitimacy and conglobate extension.

II- Restrictions on publicity and transparency are necessary in a democratic society, being delimited by supra-individual socio-political rights such as national, society, or state security (in the public sphere), or very personal rights such as honor, intimacy, or private life (in the private sphere). They must also be proportionate to the interests that justify them and must be able to achieve the legitimate objective, interfering as little as possible in the effective exercise of the right. Furthermore, they are regulated by laws that do not allow for extensive interpretation.

Restrictions or exceptions to publicity and transparency should never be adopted to protect the Public Administration from criticism or exposure for a ruinous performance, or to induce a certain ideology or way of thinking.

Secrecy, in all its gradations (top secret, secret, and reserved) has an inextensible, exceptional, and restrictive character, and must be confined to the specified cases.

III- The right to equality is also enhanced by the principle of publicity and the duty to provide information, as there is now a common treatment of citizens in their relations with the Public Administration, everyone having equal access to data and information, no longer being simple "managed" (with their singularities before the Administration) and becoming "citizens".

IV- Given this fundamental right, the State undertakes to refrain from interfering with access to information and, on the other hand, puts itself in the contingency of facilitating it through specific policies (providing, for example, access to information to the poorer sectors of society, and creating conditions for informed participation in the design of public policies that affect their lives).

V- Administrative transparency can provide generalized control by citizens over the legality, efficiency, and morality of administrative action, reinforcing participatory democracy. Furthermore,

it can eliminate inveterate beliefs in citizens about the improper behavior of the Public Administration, establishing a relationship of trust.

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