

Chapter 9

The Information Access Law as a Full Constitutional Citizenship Instrument

Marcilio Barenco Correa de Mello

Ministério Público de Contas do Estado de Minas Gerais, Brazil

ABSTRACT

This chapter addresses the right of access to information, reinforced as a fundamental rule for citizens in the Brazilian constitutional norm of 1988, now regulated, more closely, from the enactment of the law on access to information in 2011. It represents an important legislative instrument of reinforcement of the principle of publicity, as well as the main infraconstitutional standard guaranteeing access to information. The requirement of a clear and transparent accountability environment by the public manager is a republican assumption of massive participation by society. This is because the right of access to information of a public nature provides a better control of public expenditures, while allowing, on the other hand, promotion of social control of a diffuse nature. It should be pointed out that, with greater knowledge of their own rights, the citizen goes through a faster inclusion process, either in the subjectivation of a minimal role of rights that he does not know, or in the clarification of his duties as a participant in the process of state maintenance.

INTRODUCTION

The advent in 2011 of the Law of Access to Information in Brazil, represented significant advance public policy of government transparency, providing the legislating awakening of reaffirmation of constitutional citizenship, whether the regulation of freedom of information as a constitutional fundamental right, whether as a form greater efficiency to the principle of publicity, to allow access to any citizen to information previously reserved for gestational decision spheres of public administrations federal, state, county and municipal.

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But much has to speak. Democracy while based on the “power of the people, by the people and for the people” challenges the encouragement of public transparency in order to re-found the popular legitimacy as a perennial form of citizenship. The access to information law gained new ally the principle of publicity (Art. 37, CR / 88), with guidelines imposed on public bodies to publicize their data in apertus locus, which contains at least provide clear accounts, concise, intelligent and intelligible.

Another band, after almost seven years of the right legislative innovation study released by the Union of the Comptroller General (CGU) subordinate to the federal executive branch, in disclosure of the 3rd Assessment Scale of Brazil Transparent Index - Open Data. Brazil (n.d.) it found that 69.8% of the 2,238 municipalities surveyed - a total of 5,570 - were graded below 5 (regular). Only 209 municipalities surveyed - corresponding 9% of the total - had a satisfactory note (between grades 9 and 10), including 14 municipalities headquarters of Capital Units of the Federation (out of 27).

The figures draw the gap between the standard cogent Act prescribed by law and pragmatism of its fulfillment. Much is revealed, above all, the failure of internal and external control bodies, allowing insurmountable obstacle to access of information to citizens in the ambience of “local government”, now jettisoning them full active political participation, now jettisoning them of salutary social control - here diffuse character - dependent passive public transparency¹ as relevant in times of substitutes deviation scandals of public money and corrupting practices.

But not only. Failure to comply with the Access to Information Act (LAI) administration by public officials - active public transparency² - revela that participatory presence of the population is in its infancy, not only demands and CLAIMS public data open goals but as a true policy of good governance and approach an essentially dialogic public administration. The greater the transparency, the greater the concern of constitutional citizenship, a virtuous two-way street. Depriving the citizens of basic information on economics, finance, government, politics, people, family, society, science, technology, communication, budget, health, education, security, among others, provides up increasingly vilification to “right to the future” of future generations yet unborn.

Collaboration and active participation of society in acts of management and control require revisiting the institute of dialogical public administration, especially from the perspective of classical doctrine of Peter Häberle (1997) in the erection of an “open society the interpreters of the Constitution” where the classical view (restricted to judges and courts) of posthumous contours of constitutional hermeneutics welcomes innovative contributions of the people who has legitimacy to coin the norm, perhaps interpret it, serving as a guidance level for the legislator / judging.

The information transmutes is ancillary element to the essential to the full exercise of constitutional citizenship, without which amputate up “senses” indispensable to the creation of a protective network of society, whether in support of their rights, is in favor of the exchequer which is constituted by efforts of the citizens themselves.

In this vein, public managers need to elect the active and passive public transparency as issues of “agenda”, not only uplifts them to themselves the title of good managers, but mainly for inclusion of citizenship as the basis of participation popular active.

Such foundations are due to obligations treatise that Brazil is a signatory own and forced to comply. If we consider that the foundation of the Inter-American System of Human Rights - the Pact of San José, Costa Rica - signed in 1969 by the Federative Republic of Brazil, which entered into force in mid-1978 already aquilatava prescription of free peering, receive and disseminating information and ideas of any kind (Pact of San José, n.d.). We see that apparent “youth” of the right of access to information under Brazilian law is more “late” than current.

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