Access to information: whose right and whose information?

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> A popular government without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power knowledge gives.
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> – James Madison, letter to W. T. Barry, 4 August 1822

Madison's observation is as valid today as it was when he made it almost 200 years ago. Access to information is still a minefield across the world. As Madison noted, knowledge is power, and those who possess it have the power to rule.

The concept is problematic enough in many industrialised countries, but it is particularly challenging where countries have been under forms of colonial rule – systems marked by a preoccupation with secrecy, with information of the most menial type being scrupulously guarded, and with accountability not to their peoples, but to remote metropolitan capitals. There was no element of trust.

On regaining independence, these countries inherited administrative systems and officials obsessed with secrecy. The same holds true of the transition countries of Central and Eastern Europe, and those elsewhere emerging from various forms of dictatorship or feudalism. Sheltered by secrecy, corruption, repression and human rights abuse abounded – and trust was at zero. This climate persists in many countries, as recent events from Kazakhstan to Zimbabwe have made all too clear. In the former, the authorities have beaten outspoken journalists, while in the latter the Mugabe regime has crushed access to government information and a free press.[1]

An obsession with secrecy persists in leading industrial countries. Witness the absurd spectacle of Sweden being accused by the European Commission of breaching Community Law by making Commission documents available under legislation the Swedes have enjoyed for nearly 250 years.[2] Even modest access proposals provoked a 'bitterly fought and still controversial compromise' in the European Parliament.[3] Meanwhile, in the United States (whose landmark freedom of information legislation has long been a world leader) the White House has sought to block public disclosure of its meetings with Enron and other energy industry officials – illustrating the fact that the struggle for information is, first and last, a struggle for accountability. At the Johannesburg summit on sustainable development, battle raged over whether communities in the developing world should have rights to information

that would empower them to hold multinational corporations to account if and when they pollute the environment and damage the health of their people.[4]

In the developing world the perceived secrecy and lack of accountability of aid donors and international financial institutions have fuelled people's misgivings. The donors have too often appeared to shore up secretive regimes with loans and assistance, the details of which are kept from the citizens they are ostensibly intended to help. In some countries, these citizens are now expected to make good the loans plundered by their former leaders with the apparent acquiescence of the lenders.

These abuses have been compounded by excessive bank secrecy, coupled with offshore financial centres, some of whom advertise their mission as being to help customers (corrupt political leaders among them) to 'keep their assets away from prying eyes'.[5]

Matters are further complicated by the crisis in the industrialised world over accounting practices in the private sector. There, the linking of rewards for senior executives to stock prices – coupled with egregious conflicts of interest on the part of auditors – has enabled scandalous accounting practices and shameless insider trading. We have reached the point now where the public can have no confidence that any given corporation's books present a true and fair statement of its financial affairs, with untold consequences for the savings and pension schemes of a whole generation in much of the developed world and for the sound operation of capital markets.

Behind a mask of apparent openness and accountability to which once-trusted accountancy firms and business analysts were willing collaborators, a raft of corrupt practices has undermined the livelihoods and expectations of millions. Yet by blowing the whistle audit firms risk losing fees as well as being questioned about their own role in devising opaque corporate structures and offshore subsidiaries.[6] Auditors were trusted to provide honest accounts, and this trust was betrayed.[7] Often, their activities were supported by legal advisers, who helped to construct secret corporate partnerships and offshore tax evasion schemes.[8]

Other passengers on the crowded secrecy bandwagon are research institutes, with major cash-strapped universities embracing industrial sponsors. Here there are incalculable risks when, as they invariably must, business interests come into conflict with central tenets of academic inquiry. The funders of university research often claim the right to suppress findings that might work to their disadvantage.[9]

The media, whose role should be to protect us from these abuses, often let us down. True, some media organisations have played key roles in revealing and investigating corruption. But it is equally true that many media organisations have been at the mercy of the advertising policies of business and government alike, with advertisers (both private and public) prepared to abuse their power to place and to withdraw advertising. Huge international media conglomerates have evolved, at times all too willing to do the bidding of governments in order to massage the size of

Campaigning for access to information

Access to information has become the rallying cry for scores of citizens' movements and civil society organisations around the world. From grassroots village associations to transnational campaigns, civil society groups are asserting the right of citizens to know what governments, international organisations and private corporations are doing and how public resources are allocated. Some of these demands directly reflect anti-corruption concerns. Others are more broadly related to improving governance, but because corruption flourishes in darkness, any progress towards opening governments and intergovernmental organisations to outside scrutiny is likely to advance anti-corruption efforts.

Campaigning locally: MKSS, India

One of the most successful civil society campaigns pressing for greater access to official information is Mazdoor Kisan Shakti Sangathan (MKSS), the Association for the Empowerment of Workers and Farmers, based in the state of Rajasthan, India.

MKSS began its activities in the early 1990s in the mostly illiterate village of Devdoogri. Although local citizens had witnessed spending malpractices at first hand, they had no means to document them. With modest funds provided by the community, a core group of activists began to walk from village to village asking basic questions about how much money was supposed to have been allocated to individual communities for development and how it had actually been spent.

Many government officials insisted that no one had the right to demand such information. Yet with the help of sympathetic officials, MKSS succeeded in obtaining local government accounts. It then organised public readings that made clear that monies were not spent as had been intended. Lists of those paid to work on projects were read out, revealing that many of those being paid had died years before. Lists of project expenditures were read out, but those present declared that the projects had never been implemented.

The MKSS movement quickly expanded. More than 200 villages and 400 organisations participated in a 40-day sit-in in 1996 for the right to information in Rajasthan, demanding transparency in accounts and the return of missing funds.[1] That action broadened into a state-wide campaign involving journalists, politicians and other grassroots movements.

The campaign led to change in 2001, when the government of Rajasthan passed an access to information law. Five other Indian states have since passed similar legislation and the MKSS movement that began in Rajasthan has grown into a National People's Campaign.

Campaigning nationally: Grupo Oaxaca, Mexico

The Grupo Oaxaca arose out of a conference on 'The Right to Information and Democratic Reform', convened in Oaxaca, Mexico, in May 2001. Scholars, lawyers, journalists and NGO representatives met there and agreed to form a technical commission that would press for access to information legislation. President Vicente Fox had included in his election campaign a pledge to submit a law on access to information during his first year in office, but no such law was under preparation at the time of the Oaxaca meeting.

In October 2001, the group presented the Mexican congress with its own draft law intended to guarantee citizens access to government documents, the first time a civil society group had brought a bill to the legislature. The government responded by promising to introduce freedom of information legislation by December 2001.

The drafting of the law then fell to the government's anti-corruption agency, SECODAM, but leaks revealed that

SECODAM's draft was full of exemptions and loopholes. Responsibility was transferred to the government secretariat (Secretaría de Gobernación),[2] and the proposals then became the subject of a month-long dialogue involving congressional representatives. Both houses of the legislature eventually approved a compromise bill unanimously in April 2002.[3]

Campaigning internationally: the World Bank's disclosure policy

Although the World Bank formulated a disclosure policy in 1989 and revised it in 1993, partly in response to civil society pressure, civil society activists argued that the policy was too restrictive. Much information remained shrouded in secrecy, particularly concerning the bank's plans for future projects and programmes. Moreover, 'attempts to gain access to information – by the public and particularly by people directly affected by Bank projects and programmes – were consistently met with refusals and red tape'.[4]

In 2001 civil society groups renewed the campaign for reform. Among the more active groups were the Bank Information Center (United States), Libertad Ciudadana/Poder Ciudadano (Panama), Transparencia (Mexico), regional networks such as the Central and Eastern European Bankwatch Network and chapters of international NGOs such as ActionAid, Oxfam and Transparency International. In April 2001, more than 550 such organisations from more than 100 countries co-signed a letter demanding greater transparency and accountability from the World Bank. In addition, more than 250 groups attended consultations in 19 cities around the world and many submitted written comments to the bank or to their national governments. If the bank were serious about increasing participation, they argued, it must release documents showing what projects or policies were under discussion and release them in time for those most affected to help shape them.

Ranged against the civil society campaign were some of the world's more corrupt and repressive governments, which were unimpressed by claims that they had a responsibility to allow themselves to be held accountable for how they conducted projects involving World Bank or other funding. Most surprising, however, was the resistance from a number of large developing-world democracies. They argued that releasing sensitive information during loan negotiations could frighten markets and drive away private creditors.

A revised World Bank policy on disclosure, implemented in autumn 2001, took some steps towards greater transparency,[5] but in general civil society organisations remain dissatisfied. The bank rejected the idea of releasing draft documents that would enable people outside the institution's immediate circle to provide input into project preparation. It also refused to open meetings of the board of directors to allow for more transparent representation. As the Bank Information Center noted, 'The new policy … represents an unwillingness within the Bank to transform its rhetoric on "inclusive decision-making" into concrete policy commitments.'[6]

The aftermath of September 11th

Though these three experiences involved successes, they also suggest that civil society's struggle for access to information faces obstacles at all levels: local, national and international. Secrecy helps to keep the circle of decision-makers small, saving administrators the trouble of explaining themselves.

The events of September 11th further strengthened the willingness and ability of governments to counter demands for transparency. The United States reacted with particularly strong measures, such as the practice of 'scrubbing' websites: removing information that might aid terrorists in planning attacks. Federal

agencies, including the Environmental Protection Agency, the Nuclear Regulatory Commission and the Internal Revenue Service, as well as a number of state governments, took steps to make information more inaccessible. Even civil society groups engaged in scrubbing: the Federation of American Scientists, a leading NGO proponent of government transparency via its 'Government Security Project', removed information from its website concerning the location of secure intelligence facilities on the grounds that such data were not available elsewhere.[7] The Canadian government also took action to limit information access, enacting a Terrorism Act in November 2001 that allowed the attorney general to overturn releases of information ordered by the information commissioner with only limited judicial review.[8]

Yet the setbacks for access to information are likely to be limited, especially outside the United States. As the recent Mexican legislative success indicates, the right to access to information remains a powerful cause for civil society actors. Although cultures of secrecy are deeply ingrained, what has been most striking in recent years is not the success of governments in retaining control over information, but the ability of civil society to wrest away such control.

Moving forward

Enabling civil society to prevail requires help from many quarters. One important step is for groups in different countries and regions to communicate with one another, pooling ideas about strategies. Researchers could help considerably by evaluating the transparency policies of governments and international organisations, comparing them to one another and to absolute standards.[9] Though national campaigns should be sustained locally, foreign donors are needed to support transnational networking among civil society groups.

Most important is the role played by civil society groups themselves – they do not always provide information about their personnel, operations, funding sources, expenditures or sometimes even their goals. The groups involved in access to information campaigns tend to be more transparent than many of their counterparts, but they still find themselves tarred by accusations of unaccountability and opacity that are increasingly lodged against the entire civil society sector. Those civil society groups promoting access to information must also require themselves and other activist groups to provide public accounting if, as proponents of openness, they are to safeguard their own legitimacy and credibility.

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1 Safia Sircar, 'Information Is My Right', *Indiatogether*, May 2001, www.indiatogether.org/stories/ncpri.htm.
2 Kate Doyle, 'Freedom of Information in Mexico', Washington, D.C.: The National Security Archive, 2 May 2002, www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB68/index2.html.
3 *Washington Post* (US), 1 May 2002.
4 Lori Udall, 'The World Bank and Public Accountability: Has Anything Changed?', in Jonathan A. Fox and L.D. Brown, eds., *The Struggle for Accountability: The World Bank, NGOs, and Grassroots Movements* (Cambridge, MA: The MIT Press, 1998).
5 The most important was that Poverty Reduction Strategy Papers (PRSPs), which are intended to be the outcome of national discussions involving civil society on how best to reduce poverty, must now be disclosed locally before the World Bank's board can consider them.
6 Bank Information Center, 'The On-going Struggle for World Bank Transparency: The Outcome of the Information Disclosure Policy Review' (Washington, D.C.: Bank Information Center, 4 November 2001).
7 Lou Dolinar, 'Access Denied', *Newday.com* (US), 24 October 2001.
8 David Banisar, 'Freedom of Information and Access to Government Records around the World', July 2002, www.freedominfo.org/survey.
9 The University of Victoria's Centre for Global Studies put out a *'Rethinking Governance' Handbook: An Inventory of Ideas to Enhance Participation, Transparency and Accountability*, which provides an excellent starting point for evaluating the disclosure efforts of international organisations, www.globalcentres.org/html/inventory.html.

their audiences and the potential for increased advertising revenue. These networks have assumed incalculable political power, and they are accountable to none but themselves. The saving grace here is that these conglomerates operate in a competitive environment and there are still independent media organisations that can and do bring to public attention the most egregious instances of abuse by these global media leviathans.

Another danger is the mounting influence of the media oligarchs who have emerged to use their power, not to inform but to serve blatantly partisan and self-serving political and financial ends. The spectacle in Italy of a head of government not only dominating the private media but also with the power to gerrymander the state-owned media institutions bodes ill for democracy. It points not only to the dangers of individual domination of the private media, but also to the dangers inherent in most forms of state-owned and state-controlled media. The often intensely close relationship between media tycoons and powerful political leaders in developing countries and in Central and Eastern Europe frequently blocks the media from fully informing the public on major issues, while equally frequently ensuring that the public receives news and views that serve the business interests of the media owners and their political partners in corruption. The ongoing episodes of political efforts to dominate the media in Central and Eastern Europe are part of a profoundly disturbing trend.[10]

Within news corporations, from Latin America to Central Asia, are individual journalists who have proved willing victims of offers of corporate hospitality and bribes, and who have thought nothing of misusing their power to private ends. Even in the leading industrial countries we have seen reporters grow so close to major corporations that they have failed to do their duty – so many were bullied by Enron that they chose to ignore for months the fact that the demise of one of the world's largest corporations was imminent.[11] The *Financial Times* is among those that complain of 'pious protestations of public interest from sensationalist newspapers that are unscrupulous in their own professional practices'.[12]

Ranged against these battalions has been a lonely and exposed band of whistle-blowers: individuals who risk good reputations, careers and families to bring both public and private sector abuse to public notice. To these we should add the intrepid journalists who have paid with their lives for their dedication to the fight against corruption – providing further evidence of the lengths to which some political elites are prepared to go to protect the status quo. When the Voice of the People Communication Trust in Zimbabwe succeeded in sidestepping a government ban on independent radio stations by having its programmes beamed from the Netherlands, it was quickly the victim of a 'professional incendiary demolition' that destroyed its computers, recording equipment, files and tapes, leaving only the walls of its studios standing.[13]

Little wonder, then, that in societies around the world the notion of 'trust' has shifted radically – be it in government, in the private sector, in the professions, in the

media or in civil society. No longer do people accept the diktat 'Don't challenge me. You can trust me'. So frequently kept in the dark, so regularly misled and so often betrayed, the people now tend to respond, '*Show* me! I must see for myself.' Transparency has become a substitute for trust.[14]

Indeed, the public responds with demands to know not only the sources of political party funding but also the assets, incomes and liabilities of politicians and senior public servants, in a manner unheard of in the past.[15] Paradoxically, these demands are often met with claims that disclosure would represent an unwarranted intrusion into privacy – a defence that further feeds suspicions that politicians are selling out to the highest bidders and that officials are siphoning wealth from the public purse.[16] The claim to privacy is basically the same cry of 'Trust me!' But the fact remains that a cynical public does precisely the opposite. In the absence of reliable information to the contrary, it simply assumes the worst.

If our objective is transparent, accountable and honest governance – government we can trust and a private sector that is trustworthy – then clearly the less information that is kept from us, and the greater the confidence we can have in its accuracy, the more likely we are to achieve our aim.

Information overload

Ordinary citizens need access to government-held information in order to exercise their rights in just about every phase of their lives – whether to gain entry to education, apply for a job, gain access to a poverty alleviation scheme, build or buy a house, start a business or collect a pension. Without it, they are ready prey to the corrupt and the abusive.

Above all, we need access to publicly held information if we are to have confidence in our public institutions and be assured that they are working as they should. Policies and practices of openness can, of themselves, provide much comfort.

Yet the information we need can easily be engulfed in an avalanche of irrelevant information. What do we gain if we suffer from information overload, if the information we receive is not truly informative, if we are simply confronted by a flood of unverifiable 'facts'? In the United States, for example, there is a plethora of data on who makes contributions to election campaigns, yet critical information that provides insights into the political influence gained by major contributors is largely absent.

If we ask for a needle, we do not want to have to look for it in a haystack. That is where the mass media can serve as a filter, their role being to sift and sort the information into manageable forms. Unfortunately, the media's performance has often been inadequate.

The role of the media is hardly helped when governments use their power and their courts to intimidate editors and journalists. Nor is the cause of accuracy advanced when information is distorted by politicians' 'spin doctors'. A vivid

example was provided in Britain when a 'special adviser' to a minister proclaimed on 11 September 2001, a time when public attention was mesmerised by the World Trade Center atrocity, that it was a 'good day to bury bad news'.[17]

Access to information campaigns are often led by media interests, whose claims to access should be beyond argument. Given our uncertain faith in the media, however, we cannot yield to them exclusive ownership of the struggle for access. Far from it. The claims of the citizen are much more compelling. If we ask, 'Who *owns* the information we demand?' the answer must surely be, 'We, the people, not them, the state.'

Information is best viewed as being held by the state on behalf of the people, for use in the best interests of the people. Indeed, the constitution of Brazil goes so far as to enshrine every citizen's right to be provided by public entities with information concerning a citizen's personal interest or information of general or collective interest, the only exception being where the confidentiality of information is essential to the security of the state and society.[18]

Fighting poverty with information

The citizens of India – the world's most populous democracy – are among the most prominent proponents of access to information. In particular, the civil society group Mazdoor Kisan Shakti Sangathan (MKSS) – translated as the Association for the Empowerment of Workers and Farmers – developed a radical interpretation of the notion that citizens have a right both to know how they are governed and to participate actively in the process of auditing their representatives.[19]

By encouraging supportive officials to make information available to them unofficially, MKSS was able to begin documenting the nexus between local politicians, local officials and local contractors, a linkage that was well known but flourished under a veil of secrecy.[20]

What this example clearly demonstrates is that the right to information has a real practical relevance to poor and marginalised people, particularly where civil society activists can help them to access and use it.

Such was the success of the 'social audits' undertaken by MKSS that the state of Rajasthan passed legislation requiring the holding of audits right across the state. But because the public officials who conducted them were not committed to the process, the official audits failed miserably. The officials neglected to provide notice as to why or when the meetings were being held, and made little effort to present information in a comprehensible form.[21] The wilful mismanagement of information by officials protected the corrupt and succeeded in frustrating well-intentioned reforms.

For information to be useful, it must not be aggregated, but made available in detail. To be empowered, parents must know more than the size of a state's education budget; they must be able to ascertain readily the budget for their own children's school. People must also have access to supporting documentation as to how

a particular application was assessed under an anti-poverty scheme, or as to how and to whom funds were disbursed; otherwise, the chances of exposing bias in the handling of an application, or diversions in the disbursement of funds in implementation, are slight. Without rights of access to expense receipts, employment and wage registers, and timely access to building sites, fraud in public works projects also goes undetected. The information must also be physically accessible. In rural areas it matters little what rights to information a person may have if, to get it, he or she has to journey hundreds of kilometres to a capital city.[22]

The Indian experience suggests that NGOs and other activists must be willing to use the information they have gained in order to confront the authorities and so impel public officials to take remedial action. Such activism cannot be left to an unmotivated bureaucracy.

Legislating for access to information

Article 19 of the Universal Declaration of Human Rights – a universal right of all 'to seek, receive and impart information …' – is a starting point for legislating for access to information, but it only takes us so far. It is aimed at curtailing government censorship rather than promoting government transparency.[23] Thus the task of the reformer is to place flesh on the bones of Article 19, and to do so for social as well as economic reasons.

Fundamentally, all information belongs to the public and it should be in the public domain unless compelling reasons exist to withhold it. The ideal approach is seen in Brazil: to create a legal requirement that official information must be made available to anyone who seeks it unless there is good reason to withhold it .[24]

Any freedom of information law will have to prescribe limits, and it is easy for the 'state security' card to be overplayed. An official secrets act can follow hard on the heels of a progressive access to information act, effectively reclaiming most, perhaps all, of the ground previously conceded.[25] Singapore even prosecuted the *Business Times* for publishing nothing more threatening than an official prediction of the country's likely economic growth – material freely available in other industrialised countries – and then curtailed the circulation of the *Economist* when it criticised the move.[26]

Few recent debates about the opposition between the needs of a society to have access to information and the demands of a state for security have been as significant as those in the United States over the secrecy that the Justice Department has forced in the name of the 'war on terrorism'. While there may be a seemingly compelling logic to holding suspects and alleged terrorists in secret, there is the danger that a greater societal imperative will be undermined. Of great relevance is the recent opinion of Judge Damon J. Keith of the U.S. Court of Appeals for the Sixth Circuit, who warns that 'democracies die behind closed doors'. He writes that the First Amendment and a free press protect the 'people's right to know' that their gov-

Whistleblowing in South Africa

One major obstacle in the fight against corruption is the reluctance of individuals to 'blow the whistle' on corrupt activities. Fear of retribution from employers or colleagues dissuades many from reporting cases of corruption. In South Africa, whistleblowers are often seen as troublemakers or, in the South African vernacular, *impimpis* (apartheid-era informants). In addition to being stigmatised as traitors, whistleblowers who reported misconduct before the introduction of the Protected Disclosures Act in 2000 found no legal protection or support from their government.

A parliamentary committee produced a draft law after a series of scandals in which whistleblowers suffered because of their actions, including several who were hounded from their jobs. Modelled on the British Public Interest Disclosure Act of 1998, the law provides legal recourse to whistleblowers who suffer professional loss as a result of their actions. The Protected Disclosures Act, which came into force in February 2001, sets out procedures by which both public and private sector employees who report unlawful or corrupt activities by their employer or colleagues are protected from reprisals. The law is intended to encourage honest employees to report wrongdoing.

But for such a law to work at least three things must happen. First, there must be the political will to confront a culture that scorns whistleblowers. Second, employers must be trained to implement a viable whistleblowing policy that allows employees to raise concerns without fear of reprisal. Third, workers themselves must know and understand their rights under the law in order to be able to report misconduct in a proper manner.

After helping to draft the new law, the Open Democracy Advice Centre (ODAC) is now addressing these three aspects in an effort to put the law to work. ODAC's mission is 'to promote open and transparent democracy; foster a culture of corporate and government accountability; and assist people to realise their human rights'. By offering free legal advice, ODAC seeks to help individuals deal with the difficult choices they face when deciding whether to blow the whistle or remain silent. The group monitors and advocates effective implementation of the law and provides training for employers in both the public and private sectors. To help whistleblowers, ODAC also established a legal helpline (0800-Lalela, meaning 'Listen' in the Xhosa language), based on the model employed by the British NGO Public Concern at Work.

The new law is essential to the promotion of access to information. Under protection of the law, whistleblowers are better able to get information about corruption out into the public domain. Civil society groups such as ODAC and Transparency South Africa recognise the value of the law and are redoubling their efforts to put the legislation into practice.

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ernment is acting fairly and lawfully. 'When government begins closing doors,' he continues, 'it selectively controls information rightfully belonging to the people. Selective information is misinformation.' Further: 'A government operating in the shadow of secrecy stands in complete opposition to the society envisioned by the framers of our Constitution.'[27]

Just as it is difficult to fine-tune limits on access to information in the security arena, so too are there complications in terms of personal privacy. The values societies

place on personal privacy are varied and often shaped by their differing histories. The fact that in Sweden one can see the income tax return of a next-door neighbour may be unlikely to convince others elsewhere of the desirability of such openness.

Public figures often claim the right not to have their private lives exposed in the mass media. As courts around the world are tending to the view that public figures are, *ipso facto*, public, citizens and the media seem to be winning this argument.[28] Consequently, in a growing number of countries public figures are having to put up with greater scrutiny of their private lives than might be permitted in the case of ordinary citizens; politicians, in particular, have to be more robust when it comes to defamation and be accorded far less protection.

Pleas to secure 'commercially sensitive information' by constraining public rights to information are common. Yet, as a matter of principle, citizens assuredly have the democratic right to know about the details of commercial arrangements entered into between their government and its suppliers, all the more so in an era of privatisation in which traditional public sector activities are passing into private hands. Whereas confidentiality may characterise lawful transactions within the private sector, it may be utterly indefensible when public money is at stake.[29]

Perhaps the most problematic area of all is the extent to which citizens should have access to policy advice. Advocates of limiting such access argue that policy recommendations from civil servants to their ministers need to be delivered fearlessly; exposing such exchanges to public view would be detrimental to an essential atmosphere of confidence and would ultimately undermine effective decision-making. Accordingly, internal official documents are often exempted from freedom of information requirements. Yet the fact is that countries that have made this information available tend not only to have encountered few, if any, problems, but also to score consistently well in Transparency International's annual Corruption Perceptions Index.[30]

In cases of dispute

Once we have a legal right to information with an appropriate breadth of scope, how then should competing interests be resolved in any particular case of dispute? How easy should it be for political, as opposed to public, interests to intrude when a citizen – or a journalist – makes a request?

In some countries, ministers enjoy discretionary power to decline requests for information. Clearly, no minister should have this authority, as it can be effortlessly abused. Information should never be withheld if its release might be inconvenient or embarrassing to the minister or the department. Nor should ministers be able to block access with claims that information is none of the requester's business, or that it could be 'misunderstood'.[31]

Some countries allow for a right of appeal to an independent information commissioner, an ombudsman or an appeals body. Systems of governance may vary, but

there is always a wholly unacceptable conflict of interest whenever an official is the judge in his or her own cause.

Information campaigns and records management

Should people always have to ask for the information to which they are entitled? Public authorities should not simply wait until they are asked for information. They should develop policies that take essential information to the people before they ask for it. Such positive actions can be much more cost-effective, and of greater practical utility, than is the case when departments wait passively for the submission of inquiries.[32] Such a proactive strategy is particularly advantageous to governments whose resources are slender. By making information available in offices and other public places, the calls on staff time to respond to individual queries can be greatly reduced – and citizens can learn of their rights without even being aware of their entitlement to know.[33]

When we campaign for greater access to information we must at the same time campaign for improved records management. There seems little point in having access to information that is chaotic and unreliable. Clearly there needs to be systematic, complete and dependable record keeping.

But as governments open up, reformers must be prepared to take the world as it is, not as they would like it to be. Old records may be so chaotic as to render rights of access highly time consuming, if not wholly fruitless. Indeed, in Mexico, where a freedom of information law was enacted in April 2002, a report stated that 'public records, transcripts and notes from important meetings have been purposefully kept from public view, leaving almost no official record of how key decisions have been made. In many cases, official records have been destroyed or taken home by officials when they left office.'[34]

In such cases, transitional arrangements are essential if citizens' faith in their newly won rights is not to be lost as soon as they try to exercise them. Rather than allowing existing poor records management systems to be used as a reason to block reform completely, it may be better to draw a line and start afresh, with rights of access not being retroactive in areas where the existing system simply cannot deliver with reliability.

Whatever the course adopted, a clear duty must be imposed on the providers that information be complete, coherent and understandable by its target audience. Invariably, the cost factor is raised as an argument against reform. Should those asking for information be required to meet the costs of preparing the replies? If so, should there be limits? Obviously, high fees deter requests and so undermine the whole purpose of the exercise. Fortunately, governments are learning that the benefits of openness can outweigh any related costs. Furthermore, wherever legislation has been passed, only nominal processing fees tend to be required.

Information and the private sector

The private sector, too, has its own needs for access to complete and reliable publicly held information, notably that relating to public procurement rules and exercises, which some countries are starting to make available through the Internet.[35]

Even though information held by the private sector itself is governed by considerations quite different from those applying in the public arena, certain categories of information must be made available to consumers, suppliers and employees. Examples range from accurately labelled food to honestly prepared accounts, from professional audit and financial services to employer-held personal files.

The public rightly expects greater accountability whenever private entities carry out public functions or where a traditional state function is privatised. Private agencies cannot be permitted to obscure political accountability; on the contrary, citizens are entitled to know much more about public–private undertakings than about activities that are entirely confined to the private sector. After all, such state-funded activities involve taxpayers' money.

Citizens are also entitled to expect honest financial information from publicly listed corporations. We should look to private sector auditors to discharge their duties independently of their clients and with a view to the public interest rather than that of senior managers. The financial reports they produce are vital to the welfare of citizens, and they perform a public function by providing information that gives a true picture of the financial health of the companies they audit.[36]

To their credit, leading corporations in their orthodox business role are starting to accept the legitimacy of public concern and in some cases are responding by promoting access to information policies.[37] Indeed, accountability by the private sector to the public at large lies at the very heart of the growing corporate social responsibility movement.

A culture change

Even if the benefits of openness are rightly understood as overwhelming, the prospect of rights of access to information can appear threatening to officials accustomed to regarding their files as confidential and thus safe from the eyes of an inquisitive public.

A culture change is needed among civil servants – from the most junior staff through to the responsible minister. They must come to understand that, although in the past their administrations may have seemed to function adequately, the introduction of access to information policies can increase the quality of administration significantly. Such policies foster a public sector ethic of 'service to the public', enhance job satisfaction and raise the esteem in which public servants are held by the communities they serve and in which they live.

An agenda for reform

What, then, should be our aims?

From our governments, we need clearly articulated and extensively disseminated policies on access to information that ensure the widest possible access for citizens and media alike – at the local no less than the national level.[38] Our legal right to access public information must be formally guaranteed.

Records management systems must ensure that the information to which citizens are entitled is accurate, complete and readily accessible.

Essential information must be carried to the people in easily understandable forms and languages. Public information policies must provide for open political party funding practices, with the disclosure of donors and donations. We must also have access to declarations of assets and interests by senior public figures.

We must attain formal guarantees of freedom of speech, press freedom and an absence of repressive libel laws. Honest journalists must be able to report professionally and be unaffected by 'sponsorship' and self-interest. State-owned media, where its existence is justified to protect the public interest, must be run independently of editorial control by a ruling party. Given that the systems the chief archivist manages and the records he or she holds provide the paper trails crucial for exposing mismanagement and corruption, we must question why these posts are so junior and so under-resourced. Let us ask why the post of chief archivist is not accorded constitutional protection, and why it is not placed on a par with a supreme court judge or a supreme audit institution, so vital is its role in guaranteeing both accountability and public access.

At the international level, bilateral and multilateral agencies must make full information available about their loans and development assistance – not just in terms of total loans but also down to the level of the local projects being funded by them. In a similar way, private sector policies must promote access to the information held by corporations.

Nor must we overlook the need for formal guarantees to protect complainants, should they be forced to act as whistleblowers.

Conclusion

Nearly two centuries on from James Madison, the struggle over access to information, presently handicapped by September 11th and the 'war against terrorism', is set to continue. Secrecy still strikes at the concerns of civil society everywhere, and most significantly it perpetuates an environment in which corruption can flourish unhindered – a direct threat to every one of us, and a menace that continues to undermine the democratic gains of the past decade. Is it too much for us to hope that, as societies become more open, trust in their institutions will flourish?

The playwright and thinker George Bernard Shaw asserted that 'the right to know is like the right to live. It is fundamental and unconditional in its assumption

that knowledge, like life, is a desirable thing.'[39] For much the same reasons, the architects of our global movement against corruption took 'transparency' to serve as the war cry on our battle-flag.

1 *Washington Post* (US), 30 August 2002.
2 www.cfoi.org.uk/sweden1.html. Freedom of information has been enshrined in Swedish law since 1766. The Swedish government has continued to push the issue forward, most recently through its Open Sweden initiative, intended to improve application of the law and increase public awareness. See www.oppnasverige.gov.se/page/1/42.html.
3 *Guardian* (Britain), 4 May 2001.
4 *Guardian* (Britain), 29 August 2002.
5 See 'Keep Your Assets away from Prying Eyes … Ten Good Reasons to Choose Dominica', an advertisement on the website of Safe Haven Offshore Limited, June 2000, www.safehavenoffshore.com/10reasons.htm.
6 The International Accounting Standards Committee Foundation, the body likely to be setting rules for all European-listed companies from 2005, has been criticised for its failure to disclose the names of more than 100 corporate donors. Concern emerged when it appeared that Enron had considered donating to the committee if this would enable it to help shape IASC's policies. *Financial Times* (Britain), 4 March 2002.
7 Enron and Arthur Andersen were a case in point. Internal audit was combined with external audit while tens of millions of dollars of debt were hidden and millions in profits conjured up from business lines still in their infancy. *Wall Street Journal* (US), 16 April 2002. Far from trusting private sector leaders, the Securities and Exchange Commission proposed that such leaders be compelled, under threat of criminal sanctions, to certify accurate quarterly reports of their businesses' positions. *Financial Times* (Britain), 13 June 2002.
8 Former SEC chairman Arthur Levitt writes: 'Lawyers, who can play crucial roles in revealing or obscuring financial problems, should review their own ethics codes. Under the American Bar Association's ethical standards, lawyers who uncover wrongdoing by clients cannot report it to the SEC or local authorities. This inherent conflict needs to be addressed.' *New York Times* (US), 17 January 2002.
9 *Guardian* (Britain), 11 June 2002.
10 *New York Times* (US), 31 August 2002.
11 'Enron was also a failure of journalism. If business is more powerful, we need better business reporting to hold it to account … The signs were there for anyone who cared to look … [but] most publications only started to take Enron's problems seriously … when the game was already up.' Richard Lambert, editor of the *Financial Times* (Britain) from 1991 to 2001, critiqued the performance of his own profession in 'Enron and the Press', *Prospect Magazine* (Britain), March 2002.
12 13 June 2002.
13 *Times* (Britain), 30 August 2002.
14 The reverse is the thesis of Prof. Onora O'Neill in her 2002 Reith Lectures, namely that 'the deluge of information thrown at us in the name of openness leaves us less capable of gauging the truth than ever'. See 'Trust Is the First Casualty of the Cult of Transparency', *Guardian* (Britain), 24 April 2002. The lectures are published by Cambridge University Press.
15 Mexican president Vicente Fox has responded to such demands by voluntarily disclosing his personal financial assets on the Internet. VOA News (US), 3 May 2002.
16 *Financial Times* (Britain), 29 August 2002; www.transparency.org/cgi-bin/dcn-read.pl?citID=45105.
17 Spin doctor Jo Moore's infamous comment helped trigger a reappraisal of the role of politically appointed 'special advisers' in the British civil service by the Wicks Committee (still sitting at the time of writing). *Guardian* (Britain), 9 October 2001. She was later dismissed over timing the issuing of bad news on a day dominated by a state funeral.
18 Brazilian Constitution, Article 5, Item 33.
19 For a full account, see Rob Jenkins and Anne Marie Goetz, 'Accounts and Accountability: Theoretical Implications of the Right-to-Information in India', *Third World Quarterly,* vol. 20, no. 3 (1999).
20 BBC News (Britain), 14 June 2002.
21 'Critique of State Government Initiated Social Audit Campaigns and Public Hearings (Jan Sunwais)', note prepared for MKSS for the workshop on 'Institutionalisation of Social Audit and Public Vigilance' held on 7 January 2002.
22 Compare with a similar case in Tanzania, reported at the TI workshop 'Information for Accountability Workshop', Tanzania, 27–28 March 2000; www.transparency.org/working_papers/thematic/proceedings.html.
23 See Jenkins and Goetz.
24 Brazilian Constitution, Article 5, Item 33. Such is also the case in New Zealand's Official Information Act, 1982. The act reversed the principle of secrecy set out in the Official Secrets Act 1951, which it repealed.

25 Zimbabwe combined the two approaches into one act, giving an apparently 'liberal' title to a highly repressive set of provisions. Licence fees set under the act are described as 'absolutely outrageous' and likely to induce several international agencies to close their Zimbabwe operations. *Daily Telegraph* (Britain), 17 June 2002. Others have been forced out, such as the BBC.

26 The Singapore *Business Times* editor was prosecuted with others under the country's Official Secrets Act for publishing 'flash' GDP estimates – early calculations of the most recent economic growth – before they were officially released. When the *Economist* commented mockingly on the prosecutions, it set in train a confrontation with the government that led to the magazine's circulation being curtailed in Singapore. 'Newspapers: a Ban Is Not a Ban unless Restricted' by Francis T. Seow (former Solicitor-General of Singapore), April 1998, www.sfdonline.org/Link%20Pages/Link%20Folders/Press%20Freedom/seow.html.

27 *New York Times* (US), 2 September 2002.

28 *Times* (Britain), 29 March 2002: 'The *Mirror* was entitled to show that [Naomi Campbell, a model] was lying about not being a drug addict and receiving treatment. But the newspaper went too far in publishing sensitive personal data.' Progress is far from universal, as Zimbabwe's laws forbidding criticism of its president make plain.

29 *Guardian* (Britain), 18 June 2002: 'False accounting exposes private cash for public services as a theft from the taxpayer.'

30 The Nordic countries and New Zealand invariably head the list as the world's cleanest countries.

31 New Zealand State Services Commission, 1995.

32 Such a requirement is now imposed on local authorities in Britain. See the website of the Standards Board for England at www.standardsboard.co.uk/guidance/guidance_index.htm.

33 For example, in Indonesia, the World Bank has encouraged the erection of billboards on development sites carrying details of the particular project under way. The local community can then follow the process and monitor the undertaking. See Jenkins and Goetz.

34 *Washington Post* (US), 1 May 2002.

35 A good example is the OPEN system of the South Korean city of Seoul; www.transparency.org/building_coalitions/public/local_goverment/projects_topic/procurement.html. For more, see the essay on e-government in this volume.

36 'The ethical dimension – especially the question of the duties owed to people other than their clients – does not seem to have arisen,' wrote Peter Martin in 'Accountants' Moral Duty', *Financial Times* (Britain), 17 January 2002. See also *Financial Times*, 5 March 2002.

37 One such initiative is by NIREX (www.nirex.co.uk/ipublicn), a corporation 'working to develop safe and environmentally responsible solutions for the management of radioactive waste'. Its web-based 'transparency policy' commits the corporation to 'a policy of openness'. It also has a policy of responding to individual requests and provides for a right of appeal to an independent review panel.

38 TI Russia is one TI chapter that is working with local authorities to this end. In Britain, legislation now requires local authorities to have proactive information policies (Local Government Act 2000: www.hmso.gov.uk/acts/acts2000/20000022.htm).

39 'Preface on Doctors: the Flaw in the Argument', in *The Doctor's Dilemma*, 1913.