

## **“Who Wants to Know?” Assessing Discrimination in Transparency and Freedom of Information Regimes**

Freedom of information (FOI) laws represent a bedrock transparency mechanism and constitute a fundamental right. By definition, fundamental rights should be non-discriminatory. Yet are common procedures in some countries, such as the obligation to self-identify when making a FOI request, prompting discrimination in the provision of public information? How common is it for public servants to Google requesters’ names? We revise the legal principle of identity-neutrality in the context of FOI, assess evidence on the question of discrimination, and evaluate the universe of FOI laws around the world, parsing countries into a taxonomy of identification obligations. Most importantly, we test the hypothesis as to whether self-identifying leads to discrimination in access to information. We do so in Brazil, a country that requires formal identification, by sending out more than 500 total requests in two separate field experiments that varied the institutional affiliations of requesters. Although we do find significant evidence of discrimination for female requesters lacking institutional affiliations and some evidence of longer response times for other ‘non-institutional’ identity profiles, our results are ultimately mixed and show that the proposition requires further testing. As a central policy implication, however, the paper marshals significant evidence to suggest that identity obligations may be stifling a more efficacious and broader use of FOI regimes.

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## 1. Introduction

To what degree do governments discriminate based upon *whom* is asking for public records? Several countries have taken precautions to devise requesting systems that are ‘applicant-blind’ (Paterson and McDonagh 2010), yet self-identifying is a formal or informal obligation of disclosure laws in most countries. Where self-identifying is the norm, as in Brazil, public officials have admitted to performing Google searches of requesters, unleashing the potential for conscious or unconscious discrimination based upon requester background, profession, or public persona. It hardly bears affirming that discrimination in the provision of a public service is a serious offense on moral, legal, and professional grounds, much less in the context of a fundamental political right.

It is no leap of logic to assume that self-identifying deters many would-be requesters - especially in developing countries - for fear of recrimination, discrimination, or even intimidation and violence. This should hold true especially at the local level, where requesters are most proximate and easiest to identify. Save very few exceptions, self-identifying is absolutely unnecessary; if freedom of information (FOI) is a political right - comparable to voting - a requester need only provide an email or another anonymous channel for obtaining a response.

Although the politics of identity in the context of transparency and disclosure laws has received the attention of some scholars (Lagunes 2009; Paterson and McDonagh 2010), little is known about the effects of self-identifying on requesters, on responses, the ubiquity of such obligations around the world, or the policy implications of this critical procedural detail.

To what extent are the world’s FOI laws “applicant-blind”? And to what degree does governmental disclosure discriminate on the basis of requesters’ identities? This paper begins to tackle these questions. Our central claim is that the obligation of information-gatherers to self-identify is more common than currently recognized; that even formal protections are often ignored; and that officials discriminate on the basis of identity, influencing whether requesters receive a response, the timeliness of that response, and its quality. If these propositions hold true, one can only imagine the repercussions of this small procedural detail around the world, especially in countries where FOI is a relatively new right - i.e. most countries.

This paper is organized as follows. Before reviewing the literature on identification within the context of transparency, the first section specifies the problem by examining its different manifestations. Having gained a toehold on the scope of the problem, scholarly contributions are examined, including observational inferences on identity within scholarship on FOI, a seminal work on the principle of ‘applicant-blindness’, and a number of field experiments that get at the effect of identity on disclosure.

The second section tests the paper’s central proposition, that identification obligations will lead to discrimination. It lays out two separate studies undertaken in Brazil - a country that formally obligates requesters to divulge their identities - consisting of over 500 FOI requests and testing several different identities and varying levels of reputational salience. The first study finds statistically significant indicators of discrimination for a set of female identities, however, the results for male identities in both experiments one and two indicate non-discrimination. These

results are suggestive, but illustrate that propositions detailed throughout the paper require further testing.

The third section examines the legal obligations associated with identity among the world's FOI laws. We create a taxonomy to better understand which laws formally oblige self-identification, which say nothing on the issue, and which explicitly eschew the obligation to self-identify, among other intermediate 'types'. Based upon this taxonomy, as well as inferences about the regulations used to apply laws in practice, we draw preliminary conclusions about the extent to which obligations to self-identify are retarding a broader and fairer use of transparency systems.

In summary, the paper analyzes to what extent the obligation to self-identify affects public disclosure and how extensive these obligations are. It does so by reviewing scholarship on the subject, looking at evidence from field-experiments in Brazil and documentary evidence from Latin America, and by dividing the world's FOI laws into a typology of stated and implied obligations.

## **2. Review of the Literature on FOI and Discrimination**

Whether it be referred to as the principle of "applicant-blindness", a "right to anonymity", or the "principle of non-discrimination", protections from 'being identified' have become an important topic as of late. The European Union's efforts to promulgate legislation mandating a 'right to be forgotten' - and attendant scholarship on the subject of anonymity - are emblematic of general thematic trends (Ambrose and Ausloos 2013; Bennett 2012; Martin and Fargo 2015; Rosen 2012).

Yet remarkably little scholarship has analyzed the effects and pervasiveness of the need to self-identify when requesting public information. Prior to reviewing what scholarship has directly or indirectly spoken to the issue at hand, the following pages briefly survey experience on the ground to specify the problem. As Michener and Worthy (2015a) observe, most scholarly works examine the *how* and *what* of FOI requests, but the *who* and *why* have received far less attention. These authors note that when contextual factors such as professional identities are revealed, requests take on a very different color, and responses frequently vary depending on who is doing the requesting. Indeed, Roberts' analysis of "amber-lighting" requests in Canada - a means of designating sensitivity - suggests that governments frequently pay as much attention to identities as to what is requested (Roberts, 2006, p.86-93). Because the Canadian Access to Information Act does not permit the revelation of names, information officers tend to query the profession of requesters and flag accordingly (p.91). Yet as Roberts' discussion of the British Columbia FOI Act shows, the law is not always followed (p.97-98):

Requests from legislators, journalists, and advocacy groups were typically classified as highly sensitive, and the identities of requesters were routinely disclosed to communications aides, in violation of provincial privacy law.

Roberts' focus on the relationship between governmental strategy and requester identities has parallels throughout the literature on FOI. It is also representative of both the indirect attention that identity has received in most of the literature as well as the dominant emphasis on

professional identities. While discriminatory treatment on the basis of profession is egregious, it is only one of many possible sources of discrimination.

Beyond relatively unfocused analyzes on the role of identity in the disclosure process, the extant literature on the subject can be bundled into three different approaches. An analysis of the first two of these approaches constitutes this section's purpose.

The first bundle of works focuses chiefly on normative and legal principles (Paterson and McDonagh 2010) and their application in a few advanced democracies (Donnelly and McDonagh 2011). A second bundle of works sets about gauging the degree of discrimination in FOI regimes through the application of field experiments. These experiments do so directly and indirectly, with varying levels of methodological rigor and inferential success. A third bundle of works approaches the subject of discrimination anecdotally or from experience on the ground. These works are chiefly the product of advocates and are analyzed in the fourth section of the paper in order to elucidate the taxonomy of legal approaches adopted by the world's FOI laws in relation to the question of identity. Notably, none has yet tested the proposition of discrimination within FOI regimes that explicitly mandate applicant identification. Each of these bundles of literature is examined below.

### **Transparency and Applicant Blindness**

In the context of public transparency, the legal analysis of Paterson and McDonagh (2010) represents the seminal scholarly work on 'applicant-blindness'. The authors identify three "identity neutrality principles" (p.507) that guard against an applicant's need to "establish legal standing" (p.506) when exercising the right to information. First is the principle of "applicant-blindness", second, that FOI should be treated as "though it were disclosure to the world" and, third, that "motives and identity should be ignored".<sup>1</sup> This last point is key, because principles of applicant-blindness flow from the logical implications that no justification is needed. After all, the right to information is, save specific exceptions, unconditional.

The authors delineate the chief rationale behind identity neutrality when they state that protections serve "requesters whose motivations might not find favor with those in authority" (p.506). It is important to note that motivations may only be one source of discrimination; another is the relative status of the requester. Influential requesters who "may not find favor with those in authority" might very well receive more attention and better responses; influence raises the possibility that poor responsiveness may be exposed in the media, academic studies, or elite policy circles. What would seem to be a critical question is not just *what* or what *motivations* are in the offing, but also the identity and relative influence of the requester (Michener and Worthy 2015).

It is also important to note that, while McDonagh and Paterson's arguments are applicable internationally, they only examine decisions by courts in Australia and information commissioners in the UK. Among the deliberations of these governmental bodies, a 2007 UK

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<sup>1</sup> On page 506 the authors qualify this principle by stating, "when assessing whether or not disclosure is in the public interest in the context of claims for exemption which require public interest assessments", which may not be relevant to all countries - many of which do not have public interest tests included in their legislation.

report specifically treating the topic of identity requirements vis a vis freedom of information stands out as particularly seminal (United Kingdom Information Commissioner's Office, 2007). While the principle of applicant-blindness is a better-practice rule, exceptions have their place (McDonagh and Paterson 2010, p.507). For example, identities are sought or requested when officials receive repeated vexatious requests, or applicants seek personal data about their own persons, or when requesters ask for fee waivers owing to particular identity-contingent situations.

Principles of "applicant-blindness" in FOI find analogous imperatives in the open-data movement. Non-discrimination is the sixth of "8 Principles of Open Government Data"<sup>2</sup>. Similarly to what occurs with FOI, this principle is routinely flouted in some countries; citizens must provide identification in order to download datasets. The right to anonymity also finds a basis in 'model' access to information laws, such as that of the Organization of American States. This model law contains a separate paragraph, in *italics*,(23:2) stating that no identification should be required unless requesters seek information about themselves (Organization of American States 2010).

### **Field Experiments on FOI and Discrimination**

The most promising means of testing administrative impartiality is through field experiments, of which several have focused specifically on freedom of information. The most relevant of these is a still-unpublished manuscript by scholar Paul Lagunes. One 'normal' persona (with a common last name) and one 'high class' persona (signaling political and economic connections) each sent out a bundled request, consisting of a total of 14 technically and personally-oriented questions, to 120 and 121 randomly chosen federal agencies in Mexico, respectively, for a total of 241 requests (and agencies). The experiment found striking impartiality, with both requesters receiving very similar response rates, denials, and request-to-response times. In other words, the author found no statistically significant evidence of discrimination.

This field experiment possesses several weaknesses, in addition to being a poor test of this paper's central proposition. Unlike most countries, the FOI application procedure in Mexico is largely identity neutral after an initial registration - with all requesting and responding occurring on the applicant-blind INFOMEX platform. The lack of identity cues on this system might imply that bureaucrats are not habituated to routines of 'identity-checking'. Human curiosity and evidence from conversations with administrators in several countries both provide reason to believe that when identity cues are routinely present (e.g. a legal obligation to provide ID), they will be routinely checked. Conversely, one might assume that administrators may be conditioned to pay little attention to identity cues in a system where there are typically few if any traces of identity.

Lagunes' paper contains other questionable oversights. The author claims that agencies were randomly selected. Yet one might imagine that different mixes of agencies might produce different results. We are not able to make even preliminary inferences, however, because the author does not list the respective agencies that received requests from 'influential' and 'common' identities. Lagunes also rejects the possibility that officials among different agencies

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<sup>2</sup> Please refer to the 8 Principles at: <http://opengovdata.org/>

trade information about the requests they receive. This assumption bears further investigation, especially because the requests were sent out over the course of only one week. If only a handful of officials did infer that a test were underway, the potential dissemination of such news could spread quickly, invalidating the experiment due to reactivity (the Hawthorne effect). According to public servants of the Brazilian Ministry of Defense, their own information services (from the three armed forces and the ministry itself) are constantly in contact, especially when requesters send the same request to all institutions. The interviewee stated that when these requests are acknowledged to be the same, there is an official attempt to give a standard answer, even if this means that one of the institutions have more information to offer than the others.

In effect, Lagunes discards the possibility of contamination too easily, especially given that Mexican public institutions are legally mandated to operate dedicated access to information ‘units’; and that Mexico’s federal-level agencies are known for their relative professionalism. Finally, more than a few scholars have inferred or confirmed the existence of routine inter-agency information exchange about requests and requesters (Roberts 2005; Roberts 2006; Hayes, 2009; Snell 2002).

In addition to the Lagunes paper, several other attempts to gauge discrimination in the provision of public information are relevant to the current study. The earliest such work is a field experiment from 1973 conducted in several US jurisdictions within and including the state of Illinois (Divorski, Gordon, and Heinz 1973). The study manipulated several discrete variables in combinatorial formats, including the ideological identity of nonprofits created expressly for the study (left & right), the difficulty of requests, the level of ‘threat’ implied by the request, the information requested, whether information was favorable or unfavorable to an agency, and the style of letter, among other factors. This large number of treatments applied to a relatively small sample size (111 requests to 26 agencies) clearly renders individual manipulations difficult to disentangle and diminishes the inferential power of results. Moreover, the authors found response rates about equal for both organizations on the left and right, though the left tended to receive responses with more “information-oriented” and less “propaganda-oriented” content (p.262).

A third work is that of Peisakhin (2012), who attempts to draw inferences about the relative effectiveness of a FOI request versus a bribe for obtaining social benefits near New Delhi, India. The author finds that a FOI request is nearly as effective as bribing and, most relevant to the current study, that FOI nearly “erases” the effect of class on responses - slum dwellers receive information nearly as quickly as middle-class applicants.

A fourth work related to discrimination and FOI is that of Cuillier (2010). The author finds compelling evidence to suggest that FOI requests written in a threatening, legalistic tone are more effective than friendly, informal letters. Cuillier’s emphasis on tone might also serve as a rough proxy for education or profession, meaning that the results could be construed as a form of class discrimination.

Finally, a fifth study, albeit based on a less methodologically reliable design, found widespread discrimination. The Open Society Justice Initiative’s (OSJI) “Transparency & Silence” report (Open Society Justice Initiative 2006) charged discrimination on several levels. Professional and minority distinctions are of particular interest. Of 1926 total requests in 14 countries - 7 countries

with FOI laws, 7 without - nongovernmental organizations received responses 32 percent of the time on average, journalists 26 percent, business people 19 percent, and minorities 11 percent (p.162).

Overall, the field experiments of Lagunes, Divorski et al, Peisakhin, Cuillier, and the OSJI provide mixed evidence on the prevalence of discrimination in FOI regimes. None of these works presents controlled manipulations of identities in a FOI regime where self-identifying is obligated, and therefore we still lack stronger tests of this paper's central proposition - that the obligation to self-identify renders discrimination more probable.

### **3. Field Experiments in Brazil**

#### **Context**

Brazil was one of the last countries to enact a FOI law in Latin America (Michener 2015b). By the criteria of the RTI Rating it is a good law, ranking among the top quintile internationally. On the issue of identification, however, Brazil is extremely formalistic. It obligates full identification, including name, identity number, and contact information. Interviews indicate that these obligations serve as strong disincentives to greater use. An employee of one Rio de Janeiro-based NGO, IBASE, recalled the experience of conducting a participant-based study of transparency in one of the City of Rio de Janeiro's periphery municipalities, Duque de Caxias. People at first agreed to participate, but later refused when they became aware that they would have to formally identify themselves. The same was true of the first of two studies undertaken by the Public Transparency Program at the FGV and presented in this section. The authors attempted to recruit several individuals of humble means to participate in field experiments. A few agreed, only to recant after learning that they would need to volunteer their formal identification.

Many municipalities, states, and even central governments around the world are partly or fully captured by individuals involved in criminal activities - the sorts of officials who tend to have little tolerance for snooping citizens. Karina Banfi, who served for close to a decade as the Executive Director of Latin America's Regional Alliance, saw the fear of using FOI laws as one of the most important obstacles to greater use, and effective transparency (Banfi 2013). Banfi identified the need to self-identify as a primary trigger for this fear, especially in areas steeped in opacity where dark activities proliferate. The irony about the obligation to self-identify, then, is that the jurisdictions most in need of sunlight are the ones least likely to obtain it.

#### **Research Questions and Design**

Several information officers interviewed by the authors admitted that Googling requesters constitutes a routine procedure. After all, Brazil's is a young FOI system with proportionately few requests being received by government agencies, and curiosity is a strong human instinct. Moreover, citizens are unlikely to use fictitious identities, because it is strictly illegal by Brazilian law to impersonate someone else and punishable by prison.

The following pages present two field experiments that evaluate differential treatment for two sets of requesters. Both experiments use the same basic methodology, although the subjects, questions, and agencies queried differ in respects that will be discussed within the coming pages.

All sets of requesters for the experiment were selected based on their institutional affiliation. The first set of requesters are graduate-level researchers from the FGV Rio de Janeiro, one of Brazil's leading universities. We label these requesters 'institutional identities'. The second set of requesters is composed by individuals of humble means with no internet profiles whatsoever - no Facebook, Linked-in, or any other identifiable affiliations. We label these requesters 'non-institutional identities'. We pretested both identities to ensure that identities fell into these two classifications.

We do not claim that institutional identity is a proxy indicator for any individual socioeconomic variable, be it class, education, wealth, or influence; instead, we conceptualize of institutional identity as a general indicator that might be associated with any or several of these variables.

The working assumption is that government administrators who receive requests perform Internet searches to ascertain identities. We assume that consciously or unconsciously, these officials will modulate their responses depending upon requester identities. If this modulation is great enough, it should show statistical significance and give cause to infer discrimination in the provision of public information. The working hypotheses were the following:

Hypotheses (a), (b), (c): Compared with requesters with non-institutional identities, those with institutional identities will (a) receive more responses, (b) more accurate responses, and, (c) receive responses within shorter timeframes.

As indicated above, we measured three outcome variables related to the requests: the fact of a response, the accuracy of the response, and the timeliness of a response. A response is defined as any substantive information about the information requested, except notice of a transfer. Therefore, a response of not having the information or not being able to find the information still counts as a response. However, such a response would receive a zero in accuracy. Accuracy is defined simply as whether officials answered the question directly. If asking for procurement contracts, for example, the government should provide contract information, rather than regulations governing those contracts. All responses were double-coded to ensure maximum inter-coder reliability. In order to verify that differences between groups (of institutional and non-institutional requesters) were statistically significant, we undertook Chi-square tests for response rates and one-way ANOVA for response accuracy and response timeliness.

Both experiments were conducted as part of larger studies, and the research priorities of these studies, which were both thematic and question-driven, took precedence over maximizing the validity of the field experiments. In other words, the experiment was not conducted gratuitously; we sought specific information. The field experiments therefore contain several limitations to be detailed throughout. A third more methodologically robust field experiment is in the works as a means of strengthening our findings.

## Experiment 1

The first experiment involved 322 requests submitted by two sets of identities - a female and male with non-institutional identities and a female and male with institutional identities - across 8 Brazilian jurisdictions: The federal government, the Federal District, the states of Minas Gerais, São Paulo, Rio de Janeiro, and their respective capital cities: Belo Horizonte, São Paulo, and Rio de Janeiro. The intent of the audit was to test compliance with freedom of information obligations applying a large number of questions. These were divided non-exclusively in the following manner and sent out during the course of a month and a half: female identities (both institutional and non-institutional) sent 10 different questions, while male identities sent 45 different questions. The large number of questions and long timeframes serve to minimize the possibility that government agencies infer that they were being evaluated, although numerous questions add noise to our results. All requests were formatted in the exact same manner, with only one key treatment difference in the salutations to be detailed below.

One of the objectives of the study was to better understand the extent to which public servants use Internet searches to inquire into the identity of requesters. The other objective was simply to evaluate the probability of discrimination given explicit cues.

We established only one difference between male and female institutional-identities in framing the request: the female institutional identity openly stated in the request that she was a researcher from a PhD program, giving the street-level bureaucrat a cue about identity. The male institutional identity was also a researcher, and could be identified as such based upon a simple Google search, but the framing of the request said nothing about his institutional affiliation.

Table 1 presents data on requests by identity, sex, and the identity-based division of requests according to level of government (municipal, state, federal).

[Table 1 about here]

Inter-coder reliability for gauging the accuracy of responses was satisfactory ( $\kappa=0,695$ ;  $p\text{-value}=0,000$ ). The scale for accuracy was ordinal, from 0 to 2 points, and was held to strict benchmarks. The score used in the analysis is the simple mean between the two codings.

Among the two female identities, 64 percent of total requests were answered (98/154), and 53 percent (81/154) of the requests earned maximum points for response accuracy. The overall timing of request-to-response was 20 days. However, the differences between the institutional and the non-institutional identities were clear: the *female institutional identity* - which identified herself as a 'PhD student and researcher' - had 73 percent of the requests answered (54/77), with 59 percent (46/77) of them accurate, and with an average timing of request-to-response of 17 days. The *female non-institutional identity*, in turn, had 57 percent of the requests answered (44/77), with 59 percent (35/77) accuracy and with an average timing of request-to-response of 24 days. The chi-square presented significant results for response rate ( $\chi^2=2,8$ ,  $p\text{-value}=0,094$ ) and days for response ( $p\text{-value}=0,065$ ), though it was not-significant in terms of accuracy ( $p\text{-value}=0,717$ ).

Among the two male identities, 74 percent of the requests were answered (124/168), and 59 percent (99/168) were accurate. The overall average number of days to receive a response was 22. The *male institutional identity* received responses to 75 percent of his requests (74/99), with 59 percent (59/99) of them being accurate, and with an average timing of request-to-response of 18 days. The *male non-institutional identity*, in turn, garnered a 72 percent response rate (50/69), with 57 percent (40/69) accurate, and with an average timing of request-to-response of 27 days. It is clear that the differences between male identities were relatively small. The chi-square presented significant results for request-to-response time (p-value = 0.015), although not-significant results for response rates (chi<sup>2</sup>=0.11, p-value =0.740) and response accuracy (p-value=0.731).

[Table 2 about here]

### ***Discussion***

The results show evidence of discrimination between institutional identities and non-institutional identities for females, when the institutional requester self-identifies. These are fairly specific results that are not given to identifying general trends, although it is important to note that discrimination was significant for response rates and response timeframes for the female identities. As the female identities sent out an identical set of questions, we also have greater assurance that the results are not random. The only metric that did not show a significant difference between females was accuracy. One possible explanation is that when responses are given, they are given uniformly and in a nondiscriminatory fashion (again - *when they are given*).

The treatment applied to the female - an identity cue - need be carried out with male identities and with a greater number of observations if we are to extrapolate the inference that, when cued, officials will modulate their responses depending upon the identity in question. The experiment lacks the sort of validity that renders generalizations tenable.

To further investigate the question of male identities, we designed a second experiment.

### **Experiment 2**

A second follow-up field experiment was undertaken to explore the relationship between discrimination and male identities. The field experiment involved 194 requests submitted by two sets of identities - a non-institutional identity and an institutional identity, both male. The audited institutions were all of Brazil's *Ministérios Públicos* (MP / public prosecutors), including agencies at the state and federal levels. In total, 29 different institutions received seven different requests over the course of one month. The requests were highly political, dealing with remuneration and internal policies regarding the hiring of family members (nepotism).

We assumed that the MP would have reasonable response rates because as an institution, the MP is charged with “defending fundamental rights”, and is generally associated with prosecuting transgressions within the state and promoting accountability. As of this writing, only one

specialized coder has gone over the data, but the intention is to re-code all data with two coders to ensure inter-coder reliability.

Table 3 presents data on requests by identity.

[Table 3 about here]

Only 50 percent of requests were answered (98/194), and only 16 percent (32/194) of those responses were deemed accurate. When a response occurred, the average timeframe was 20 days (in general and for each identity), which is well within the legal provisions of the Brazilian FOI law. The *institutional identity* sent out 95 requests, with a 48 percent (46/95) response rate, and with 17 percent accuracy (16/96). The *non-institutional identity* sent out 99 requests, with a 51 percent response-rate (51/99), and 16 percent accuracy (16/99). The data shows differences between identities were minimal, which was confirmed by statistical tests. The tests showed non-significance for all variables tested (response rate:  $\chi^2=0.489$ ,  $p\text{-value}=0.484$ ; response accuracy:  $F(1.96) = 0.91$ ,  $p>0.05$ ,  $p\text{-value}=0.342$ ; request-to-response times:  $F(1.93) = 0.02$ ,  $p>0.05$ ,  $p\text{-value}=0.901$ ).

Table 4 presents average response and accuracy rates and request-to-response times.

[Table 4 about here]

### ***Discussion***

The results show non-significance for all hypotheses, which means that we cannot affirm discrimination. One possibility is that the Ministerio Público is indeed non-discriminatory in its responses. The other possibility has to do with the low response rates and the relative politicization of requests: public servants may be more likely to discriminate when requests target easier, nonpolitical information; conversely, when information is highly politicized even influential members of the public may receive poor responses.

## **4. A Taxonomy of Identification Obligations under FOI Laws**

Given suggestive evidence of discrimination in the provision of public information in Brazil and other parts of the world, this section analyzes the extent to which FOI laws around the world contain identity neutral provisions. The taxonomy presented in Table 5 divides the world's FOI laws into five different classifications, labeled "Full ID" (identification), "Omission", "Tacit", "Personal Details", and "Applicant Neutral". Data regarding questions of identification is based on the Global Right to Information Rating (RTI Rating) evaluation of individual laws and, more specifically, on the 14th of 61 criteria used to assess the strength of laws. A score of up to two points out of the RTI Rating's 150 possible points is assigned for meeting the following criteria: "Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery)".

We created this taxonomy by analyzing the database of the RTI Rating and their brief analysis of item 14, on identity. We searched FOI laws by country when there were missing data or doubts about the evaluation.

The taxonomy is explained below:

1. **Full ID** - The FOI requesting process explicitly mandates that applicants provide an identification number, such as a social security or other type of formal identification, typically alongside other identifying details, such as name and full contact details. In legal terms, this means that attempts to provide a fictitious identity are usually punishable by law. The only possibility of not being identified would be to employ a third-party as the applicant.
2. **Omissions** - The FOI requesting process does not stipulate any identification requirements, which leaves open the possibility of administrative discretion in obligating requesters to provide identification.
3. **Tacit** - The FOI requesting process strongly suggests or leaves open the need for official identification. Various manifestations exist. The laws of Angola, Portugal, and Montenegro require a signature in the request. Other laws, such as those of Ecuador, Iceland, and South Africa, ask from requesters “general identification”, or “full particulars” in the case of Guinea and Jordan. Other laws, such as Jordan’s stipulate “any data the government requires”, and still others, such as those of the Dominican Republic and Nepal, require applicants to detail the motives of the request.
4. **Personal Details** - The FOI requesting process mandates identification requirements, but not an identification number. Requirements vary from country to country. These systems sometimes leave open the possibility of using a fictitious name, but typically the legal ramifications of such strategies are unclear and vary from country to country.
5. **Anonymous** - The FOI requesting process explicitly does not require an ID number or other form of identification. The Swedish law, for example, states that “no public authority is permitted to inquire into a person’s identity on account of a request, to examine an official document, or inquire into the purpose of his or her request, except insofar as such an inquiry is necessary to enable the authority to judge whether there is any obstacle to release of the document.”

It is worth noting that the RTI query on identity (number 14), is worth just over one percent of the RTI Rating’s total score, notwithstanding its status as a lynchpin provision for an effective and fair FOI regime (Michener 2015b). It is also worth noting that some of the scores on the RTI Rating were inconsistent with the stipulated criteria, principally in the sense that non-compliant countries received the maximum score. This irregularity occurred principally in the case of countries whose laws omitted any details on identity. We were forced to supplement data on the RTI Rating with a textual analysis of laws when scores were deemed inconsistent. It is hardly justifiable to give a country full points for omitting the question of identity, as it opens up the possibility for broad administrative discretion in demanding identifying documents. In effect, only countries that explicitly mandate anonymity should be receiving full points, and the two-point allowance seems grossly disproportionate to the critical importance of this procedural detail.

[Table 5 about here]

Table 5 should make clear that most laws omit details about identification or require personal details without explicit requirements about identification. Yet within any one classification there is significant variation.

The obligation to provide personal details is often minimally onerous. In Guatemala, for example, the Minister of the Economy and other government offices use a platform that asks for a name, email, and phone number. What is most striking is that the ‘name field’ specifies, “name, initials, or pseudonym”, thus signaling that the use of a fictional name or short-form is perfectly acceptable. By contrast, Kyrgyzstan and Latvia ask for surname, name, father’s name, date of birth, and place of residence. Yemen even asks for information about the applicant’s work place.

This same variation applies to omissions. France’s FOI law says nothing at all about identity, whereas the Canadian Access to Information Act (AIA) makes several suggestive forays towards protection. Article 6 of the AIA states that the applicant “shall provide sufficient detail to enable an experienced employee of the institution with a reasonable effort to identify the record”. No mention of requester identification is made. At the same time, Article 4 ([b], 2.1) states: “The head of a government institution shall, *without regard to the identity of a person making a request* for access to a record under the control of the institution, make every reasonable effort to assist the person in connection with the request.” (italics ours). “Without regard” is not a prohibition on asking for identity, it simply suggests that identity should be ignored while serving the requester. In this sense, the Canadian AIA showcases how the question of applicant identity frequently occupies legal grey zones.

### **Caveats are the Rule**

Getting around the need to self-identify through the use of third party requesters or created identities may in some freedom of information (FOI) systems be possible, but such tactics obviously ‘denature’ the legitimate intention of FOI, namely, for citizens to inform, be informed, or question government activities or performance.

Yet even some of the ‘top performing’ systems have their drawbacks. Mexico’s centralized INFOMEX internet-based platform is often distinguished as an international model in online requesting platforms. However, the registration process does require citizens to provide a host of personal information. This data is centralized in the National Institute for Access to Information (INAI) and unavailable to individual agencies, which renders the requesting and appealing process - once registered - largely identity-neutral. The problem here is that citizens may not take the time to read the INFOMEX’s disclaimers regarding identity-protections and may be intimidated by requirements to divulge personal details upon registration. The tradeoff is clear: the INAI seeks to promote a measure of requester accountability to guard against abuses (e.g. swamping agencies in hundreds of requests), and it also seeks statistical information on requesters to advance research and development and better serve the public. But the registration process likely deters would-be requesters.

### ***De Jure v. De Facto***

INFOMEX and other examples make clear that protections are easier to inscribe into law than to uphold in practice. Authoritarian institutional legacies or practical obstacles to receiving information often mean that identity protections are flouted in practice.

India is one of the few formally anonymous systems. But as most responses are sent by postage, applicants can often be traced by real or assumed physical addresses.<sup>3</sup> It is little surprise, then, that being an advocate or requesting public information is a dangerous proposition in India; the country even has its own Wikipedia page of attacks on RTI applicants and activists.<sup>4</sup>

Non-compliance with regulations concerning identification appear to be common. In one FOI audit conducted in Ecuador, requesters were asked for photocopies of identification, photos, and even a bribe (Centro de Archivos y Acceso a la Información Pública, 2011, p.31). Yet there are also signs that activists can help authorities identify and correct non-compliance. In 2010 Lagos Lira distinguished Chile's Carabineros national police force as breaching identity requirements of the country's FOI law. While Chile's law does ask for personal identification, no ID number is required. Lagos Lira noted that the Carabinero's online platform required that applicants provide a national identity document and check a declaration of truth statement (*Obstáculos a La Información Pública: Una Revisión de Casos Ciudadanos* 2010, p.16). Both of these requirements are no longer present on the Carabineros' requesting platform.<sup>5</sup> In effect, non-compliance may be a simple question of ignorance or half-hearted attempts to get away with more than is required by law. What this implies is that a first step in correcting non-compliance should be drawing attention to the fact of non-compliance and demanding changes.

### ***Beyond Laws: Additional Obligations Imposed by Regulations***

The difficulties associated with the question of identity go beyond what laws or agencies mandate. It may also be the case that a *law* stipulates no identity requirements, but that *regulations* approved to operationalize the application of the law in question do. Table 6 illustrates all FOI measures in Latin America, indicating the number of the law, its taxonomic classification, regulations approved to apply the law in practice, whether the regulation applies additional identity obligations, what these obligations are and how they change the classification of the law. Countries that impose additional obligations through the regulation include Chile, Colombia, the Dominican Republic, Ecuador, and El Salvador - all of which are marked in light grey. Of these countries, only one changes classification, Colombia - from omission to tacit, the rationale being that the inclusion of "criminal liability for the misuse of information" implies that identification will be required. Yet even countries that do not change classifications impose some strikingly onerous obligations. Such is the case of El Salvador, which requires a scanned copy of identification or that it be presented in person. Ironically, the RTI Rating ranks El Salvador as the 5th strongest FOI law in the world, scoring 122 out of a total 150 points.

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<sup>3</sup> Personal communication with Prashant Sharma, May 2015.

<sup>4</sup> [http://en.wikipedia.org/wiki/Attacks\\_on\\_RTI\\_activists\\_in\\_India](http://en.wikipedia.org/wiki/Attacks_on_RTI_activists_in_India)

<sup>5</sup> See, <http://transparenciaw.carabineros.cl/registro1.php>

The problem of inconsonant regulation may be particularly acute in countries that have ‘constitutional laws’, and where individual jurisdictions are left to approve their own regulation. In the state of Rio de Janeiro, Brazil, regulation to operationalize the national law includes several illegal elements, including a “waiver of criminal responsibility” to be printed, signed, and submitted by information-seekers, and the obligation to present requests in person (Michener 2014). Both obligations brazenly flout provisions in the national law and serve little purpose beyond intimidating would-be requesters.

[Table 6 about here]

### ***Democratizing the Requesting Process***

A last consideration is encouraging greater use of transparency legislation. As numerous studies have documented, disclosure laws are barely used in some countries (Michener and Pereira 2015). A report on the Dominican Republic provides a rationale for why. Similar to many countries around the world and within Latin America, the history of the Dominican Republic is checkered by authoritarian regimes and oligarchic democrats. A participatory study of access to information’s impact in the Dominican Republic noted that the reluctance of citizens to ask for public information has to do with “fear of reprisal,” which is partly due to “the legacy of dictatorship” (Skoufias, Narita, and Narayan 2014). In effect, the obligation to present identification is threatening because it is suggestive of an authoritarian ‘monitory’ apparatus that may exact retribution.

## **5. Conclusion**

In analyzing the dynamics of transparency, Albert Meijer poses a key question about the de facto operation of governmental transparency: “How do institutional rules influence the construction of government transparency? How can institutional rules be used strategically to strengthen—or limit—government transparency?” (Meijer 2012, p.437).

One of the key means of limiting disclosure is through procedural details, of which requiring citizens to identify themselves is perhaps the most consequential. This paper represents a first attempt to illuminate the scope and potential pitfalls of self-identifying as an obligation for accessing public information. The taxonomy of identity requirements outlined in this paper makes clear that most of the world’s laws require some form of identification, whether it be a name or a formal identity number. It also shows that a good number of laws are worryingly silent on the issue of identity and that the regulations accompanying laws frequently impose additional identity requirements. The literature review makes clear that, although advocates, scholars, and legal authorities have generally come to the consensus that identity obligations will consciously or unconsciously result in some form of discrimination, the empirical evidence is still unclear. This paper’s results by no means bring closure to this critical knowledge gap. The first experiment did show significant discrimination for a set of female requesters, with the institutional identity receiving significantly more and faster responses than the non-institutional identity. Yet in both the first and second experiments, the male requesters showed few signs of differential treatment.

Our ambition is to draw a measure of closure to the question of discrimination, at least for Brazil. The next experiment we intend to perform will focus on the experimental design as opposed to the current studies, both of which prioritized thematic and substantive questions over the field experiment. In the future, we will apply a limited number of questions across a broader range of jurisdictions and agencies, using both female and male identities. We encourage researchers in other countries to pursue similar lines of inquiry. There is both a need and a great potential to combine results of similar FOI audits and publish meta-studies on the subject.

At first glance it seems surprising that no campaigns have emerged to contest identity requirements in accessing governmental information. Yet seen from a historic perspectives, FOI around the world is generally an embryonic right, and advocates are focused on the bigger questions, on ‘macro’ levels of abstraction. We still think of the provision of public transparency monolithically: governments either provide it or they do not; they provide little transparency, or they provide a lot. Yet this paper suggests that perhaps we should be looking more closely at micro-foundations. Obligations to self-identify may be serving as a serious deterrent to greater use of FOI laws, especially at the local level.

One question that we do not broach in this paper is whether large-scale use of FOI laws is practically desirable. Greater transparency is considered an unalloyed good by many, but it also imposes serious costs on government in political and bureaucratic terms. Making the requesting process ‘easy’ and excusing requesters from any accountability - by making identification optional - may not be the most salubrious option. Perhaps the Mexican system, which requires a one-time identity registration with a centralized authority, after which requests are effectively ‘identity-neutral’, is in effect the best of both worlds.

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| Table 1. Experiment 1 - Requests by Identity, Sex, and Level of Government |                      |                          |                             |
|--|----------------------|--------------------------|-----------------------------|
|  | <b>Institutional</b> | <b>Non-institutional</b> | <b>Total Requestsby Sex</b> |
| <b>Female identities</b>   | 77                   | 77                       | 154                         |
| <b>Male identities</b>   | 99                   | 69                       | 168                         |
| <b>Total Requests by Identity Set</b>                                      | 176                  | 146                      | 322                         |
| <b>% Requests to Federal Level</b>   | 50%                  | 50%                      |                             |
| <b>% Requeststo State Level</b>  | 55%                  | 45%                      |                             |
| <b>% Requests to Municipal Level</b>                                       | 56%                  | 44%                      |                             |

Table 2. Experiment 1 - Response Rates, Accuracy Rates, and Average Request-to-Response Time in Days

|                          | Institutional identities |            |             |                          | Non-institutional identities |            |             |                          | Total       |            |             |                          |
|--------------------------|--------------------------|------------|-------------|--------------------------|------------------------------|------------|-------------|--------------------------|-------------|------------|-------------|--------------------------|
|                          | N° requests              | N° answers | N° Accurate | Average days-to-response | N° requests                  | N° answers | N° Accurate | Average days-to-response | N° requests | N° answers | N° Accurate | Average days-to-response |
| <b>Female Identities</b> | 77                       | 54         | 46          | 17                       | 77                           | 44         | 35          | 24                       | 154         | 98         | 81          | 20                       |
| <b>%</b>                 | 100%                     | 70%        | 60%         |                          | 100%                         | 57%        | 45%         |                          | 100%        | 64%        | 53%         |                          |
| <b>Male Identities</b>   | 99                       | 74         | 59          | 18                       | 69                           | 50         | 40          | 27                       | 168         | 124        | 99          |                          |
| <b>%</b>                 | 100%                     | 75%        | 60%         |                          | 100%                         | 72%        | 58%         |                          | 100%        | 74%        | 59%         |                          |

| Table 3. Experiment 2 - Requests by Identity |                       |
|--|-----------------------|
|  | <b>N° of Requests</b> |
| <b>Institutional</b>                         | 95                    |
| <b>Non-institutional</b>                     | 99                    |
| <b>Total Requests</b>                        | 194                   |

Table 4. Experiment 2 - Response Rates, Accuracy and Average Days-to-Response by Identity

|                 | Institutional identity |            |             |                          | Non-institutional identity |            |             |                          | Total       |            |             |                          |
|-----------------|------------------------|------------|-------------|--------------------------|----------------------------|------------|-------------|--------------------------|-------------|------------|-------------|--------------------------|
|                 | N° requests            | N° Answers | N° Accurate | Average days-to-response | N° requests                | N° Answers | N° Accurate | Average days-to-response | N° requests | N° Answers | N° Accurate | Average days-to-response |
| <b>Requests</b> | 95                     | 46         | 16          | 20                       | 99                         | 51         | 16          | 20                       | 194         | 97         | 32          | 20                       |
| <b>%</b>        | 100%                   | 48%        | 17%         |                          | 100%                       | 52%        | 16%         |                          | 100%        | 50%        | 16%         |                          |

Table 5 - Taxonomy of Identification Obligations in FOI Laws Around the World

| Full ID     |                                       | Open Question |                                       | Tacit              |                                       | Personal               |                                       | Anonymous |                                       |
|-------------|---------------------------------------|---------------|---------------------------------------|--------------------|---------------------------------------|------------------------|---------------------------------------|-----------|---------------------------------------|
| Country     | ID points - Total points (RTI Rating) | Country       | ID points - Total points (RTI Rating) | Country            | ID points - Total points (RTI Rating) | Country                | ID points - Total points (RTI Rating) | Country   | ID points - Total points (RTI Rating) |
| Brazil      | 1 - 108                               | Albania       | 2 - 69                                | Angola             | 2 - 76                                | Australia              | 1 - 83                                | Finland   | 2 - 105                               |
| El Salvador | 2 - 122                               | Antigua       | 2 - 113                               | Argentina          | 2 - 66                                | Azerbaijan             | 2 - 115                               | India     | 2 - 128                               |
| Greece      | 1 - 65                                | Austria       | 2 - 37                                | Armenia            | 0 - 96                                | Bangladesh             | 2 - 107                               | Sweden    | 2 - 92                                |
| Malta       | 0 - 78                                | Belgium       | 2 - 59                                | Czech Republic     | 0 - 72                                | Bosnia and Herzegovina | 2 - 102                               |           |                                       |
| Mongolia    | 0 - 80                                | Belize        | 2 - 83                                | Dominican Republic | 2 - 59                                | Bulgaria               | 2 - 91                                |           |                                       |
| Nicaragua   | 0 - 111                               | Canada        | 2 - 79                                | Ecuador            | 2 - 73                                | Chile                  | 2 - 93                                |           |                                       |
| Pakistan    | 0 - 66                                | Colombia      | 2 - 102                               | Guinea             | 0 - 64                                | China                  | 2 - 70                                |           |                                       |
| Panama      | 0 - 100                               | Cook Islands  | 0 - 69                                | Honduras           | 2 - 83                                | Croatia                | 2 - 112                               |           |                                       |
| Peru        | 1 - 93                                | Denmark       | 2 - 64                                | Iceland            | 2 - 64                                | Estonia                | 2 - 94                                |           |                                       |
| South Korea | 1 - 82                                | Ethiopia      | 2 - 112                               | Israel             | 2 - 66                                | Indonesia              | 2 - 101                               |           |                                       |
| Spain       | 1 - 73                                | France        | 1 - 64                                | Italy              | 1 - 57                                | Ireland                | 2 - 92                                |           |                                       |
| Taiwan      | 0 - 58                                | Georgia       | 2 - 97                                | Jordan             | 0 - 53                                | Japan                  | 2 - 65                                |           |                                       |
|             |                                       | Germany       | 0 - 52                                | Moldova            | 2 - 110                               | Kyrgyzstan             | 1 - 101                               |           |                                       |
|             |                                       | Guatemala     | 2 - 94                                | Montenegro         | 1 - 89                                | Latvia                 | 0 - 72                                |           |                                       |
|             |                                       | Guyana        | 0 - 69                                | Nepal              | 0 - 104                               | Lithuania              | 1 - 64                                |           |                                       |
|             |                                       | Hungary       | 0 - 87                                | New Zealand        | 2 - 94                                | Macedonia              | 2 - 113                               |           |                                       |
|             |                                       | Jamaica       | 2 - 88                                | Portugal           | 2 - 73                                | Mexico                 | 2 - 117                               |           |                                       |
|             |                                       | Kosovo        | 2 - 106                               | South Africa       | 2 - 109                               | Romania                | 2 - 83                                |           |                                       |

Table 5 - Typology of Identification Necessity in FOI laws (**continuation**)

| Full ID |                                       | Open Question                    |                                       | Tacit       |                                       | Personal            |                                       | Anonymous |                                       |
|---------|---------------------------------------|----------------------------------|---------------------------------------|-------------|---------------------------------------|---------------------|---------------------------------------|-----------|---------------------------------------|
| Country | ID points - Total points (RTI Rating) | Country                          | ID points - Total points (RTI Rating) | Country     | ID points - Total points (RTI Rating) | Country             | ID points - Total points (RTI Rating) | Country   | ID points - Total points (RTI Rating) |
|         |                                       | Liberia                          | 2 - 124                               | Switzerland | 2 - 77                                | Russia              | 2 - 98                                |           |                                       |
|         |                                       | Liechtenstein                    | 0 - 39                                | Uganda      | 2 - 97                                | Serbia              | 2 - 135                               |           |                                       |
|         |                                       | Netherlands                      | 2 - 83                                | Uruguay     | 2 - 91                                | Sierra Leone        | 2 - 122                               |           |                                       |
|         |                                       | Niger                            | 0 - 74                                |             |                                       | Slovakia            | 2 - 70                                |           |                                       |
|         |                                       | Nigeria                          | 0 - 88                                |             |                                       | Slovenia            | 2 - 129                               |           |                                       |
|         |                                       | Norway                           | 2 - 78                                |             |                                       | Tajikistan          | 2 - 49                                |           |                                       |
|         |                                       | Poland                           | 0 - 62                                |             |                                       | Trinidad and Tobago | 2 - 89                                |           |                                       |
|         |                                       | Rwanda                           | 0 - 82                                |             |                                       | Tunisia             | 2 - 90                                |           |                                       |
|         |                                       | Saint Vincent and the Grenadines | 2 - 70                                |             |                                       | Turkey              | 2 - 72                                |           |                                       |
|         |                                       | Thailand                         | 2 - 76                                |             |                                       | Ukraine             | 2 - 108                               |           |                                       |
|         |                                       | United States of America         | 2 - 89                                |             |                                       | United Kingdom      | 2 - 99                                |           |                                       |
|         |                                       | Zimbabwe                         | 0 - 70                                |             |                                       | Yemen               | 1 - 103                               |           |                                       |

Table 6. Additional Identity Requirements Imposed by Regulation to Apply the Law

| Country                   | FOI Measure  | Classification of Law | Regulation  | Extra Obligations Imposed by Regulation? | Classification of Decree, Extra obligations                                |
|---------------------------|--|-----------------------|---|--|--|
| <b>Argentina</b>          | No FOI law, only executive order (decreto)                                   | N/A                   | Decree 1172/2003  | N/A                                      | Personal Details   |
| <b>Brazil</b>             | 12.527/2011  | Full ID               | Decree 7.724/2012   | No                                       | N/A  |
| <b>Chile</b>              | 20.285/2009  | Personal Details      | Decree 13/2009  | Yes                                      | Personal Details/Tacit (Art.28 - electronic or written signature)          |
| <b>Colombia</b>           | 1712/2014  | Omission              | Decree 105/2015   | Yes                                      | Tacit (Art. 29 - criminal liability of misuse of information)              |
| <b>Costa Rica</b>         | No FOI law, only administrative regulation                                   |                       |   |  |  |
| <b>Dominican Republic</b> | 200/2004   | Tacit                 | Decree 130/2005   | Yes                                      | Tacit (Art. 13 -requests must be presented in person and must be written)  |
| <b>Ecuador</b>            | 337/2004   | Tacit                 | Decree 2471/2004  | Yes                                      | Tacit (Art.11 - the address of the requester)                              |
| <b>El Salvador</b>        | Decree 534/2010  | Full ID               | Decree 136/2011   | Yes                                      | Full ID (Art. 52 identity document must be scanned or presented in person) |
| <b>Guatemala</b>          | Decree 57/2008   | Personal Details      | No Decree   | No                                       | N/A  |
| <b>Mexico</b>             | Ley federal de transparencia y acceso a la información pública gubernamental | Personal Details      | Reglamento de la ley federal de transparencia y acceso a la información pública gubernamental | No                                       | N/A  |
| <b>Nicaragua</b>          | 621/2007   | Full ID               | Decree 81/2007  | No                                       | N/A  |
| <b>Panama</b>             | 33/2013  | Full ID               | No Decree   | N/A                                      | N/A  |
| <b>Uruguay</b>            | 18.381/2008  | Tacit                 | Decreto Reglamentario de la Ley 18.381  | No                                       | N/A  |
| <b>Venezuela</b>          | No FOI measure   |                       |   |  |  |

