

## Article

# Political dynamics in policymaking of freedom of information in Brazil

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Freedom of information (FOI) policymaking in Brazil is portrayed as a “successful story.” Data on adherence of the Brazilian legislation to international standards indicates its FOI institutions are in the top-ten group in the substantive dimension of FOI but are the last when it comes to the procedural dimension. What mechanism has driven this process to produce such ambivalence? This study assumes that FOI policymaking in Brazil represented an ambiguous legitimacy-based emulation process, oriented toward homogenization to the international field, but without breaking the governmental control over information. It draws on theoretical work on policy diffusion focusing on emulation and uses theories on conflicts and negotiation for power as drivers of policymaking. The results suggest this process was forged by political dynamics of disputes and compromises, and its outcomes derived from political trade-offs between key actors on controversial issues. Thus, the results materialized the preferences of non-governmental actors for a larger scope and no “eternal secrecy” and assured government offices’ prerogatives on implementation and their final decision on appeals. This case may represent a broader phenomenon, considering that comparative data indicates that this ambivalence in adherence between substantive and procedural dimensions is more significant in Latin America than in other regions.

**Keywords:** political dynamics; freedom of information; transparency; policymaking; policy diffusion.

## Dinâmica Política da Formulação da Política de Acesso à Informação no Brasil

A formulação da política de acesso à informação no Brasil é retratada como uma “história de sucesso”. Dados sobre a aderência da legislação brasileira aos padrões internacionais indica que suas instituições de acesso estão entre as dez primeiras na dimensão substantiva, mas são as últimas entre elas na dimensão processual. Que mecanismo conduziu esse processo para produzir tal ambivalência? Este estudo assume que a formulação da política de acesso no Brasil representou um processo ambíguo de emulação baseado em legitimidade, orientado para a homogeneização frente ao campo internacional, mas sem quebrar o controle governamental da informação. Este artigo se baseia em trabalhos teóricos sobre difusão de políticas com foco na emulação e aborda teorias sobre conflitos e negociação pelo poder como condutores da formulação de políticas. Os resultados sugerem que a dinâmica política de disputas e acomodação de interesses forjaram esse processo e seus resultados derivaram de *trade-offs* políticos entre atores-chave em questões controversas. Desta forma, materializaram as preferências dos

ISSN: 1982-3134 

DOI: <https://doi.org/10.1590/0034-761220230069x>

Article received on February 27, 2023 and accepted on September 21, 2023.

[Original version]

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atores não-governamentais por maior abrangência e nenhum “sigilo eterno”, mas também asseguraram a órgãos públicos as prerrogativas de implementação e decisão final sobre recursos. Este caso pode representar um fenômeno mais amplo, considerando que dados comparativos indicam que essa ambivalência na adesão entre as dimensões substantiva e processual da América Latina é maior do que em outras regiões.

**Palavras-chave:** dinâmica política; acesso à informação; transparência; formulação de política; difusão de políticas.

## Dinámica política de la formulación de la política de acceso a la información en Brasil

La formulación de la política de acceso a la información en Brasil se presenta como una “historia de éxito”. Los datos sobre la adhesión de la legislación brasileña a los estándares internacionales indican que sus instituciones de acceso están entre las diez primeras en la dimensión sustantiva, pero son las últimas entre ellas en la dimensión procesal. ¿Qué mecanismo impulsó este proceso para producir tal ambivalencia? Este estudio asume que la formulación de la política de acceso en Brasil representó un proceso de emulación basado en una legitimidad ambigua, orientado a la homogeneización frente al campo internacional, pero sin romper el control gubernamental de la información. Este artículo se basa en el trabajo teórico sobre la difusión de políticas con un enfoque en la emulación y aborda las teorías del conflicto y la negociación del poder como impulsores de la formulación de políticas. Los resultados sugieren que la dinámica política de disputas y acomodación de intereses forjó este proceso y sus resultados derivaron de las compensaciones políticas entre actores clave en temas controvertidos. De esta manera, materializaron las preferencias de los actores no gubernamentales por mayor alcance y ningún “secreto eterno”, pero también aseguraron a los organismos públicos las prerrogativas de implementación y decisión final sobre los recursos. Este caso puede representar un fenómeno más amplio, considerando que los datos comparativos indican que esta ambivalencia en la adhesión entre las dimensiones sustantiva y procesal en América Latina es mayor que en otras regiones.

**Palabras clave:** dinámica política; acceso a la información; transparencia; formulación de políticas; difusión de políticas.

## 1. INTRODUCTION

A global diffusion of transparency and Freedom Of Information (FOI) policies arose with agendas of human rights and “good governance.” Work on this diffusion indicates it mostly resulted from processes based on policy transfer by learning of international standards founded on the taken-for-granted assumption that “transparency reduces corruption” (S. Costa, 2013; Fox, 2007; Oliveira & F. L. Costa, 2020).

Brazil is portrayed as a “success story” and offers a relevant case study. Data on the adherence of FOI legislation to these standards indicates that Brazil is in the top-ten group in topics associated with the precedence of FOI, entitlement, scope, and promotion. But among the countries in this top position corresponding to the substantive dimension of FOI, Brazil is one of the last concerning procedures for making information available.

How has policymaking of FOI taken place in Brazil? What mechanisms have driven this process to produce such ambivalence? The recent literature on FOI in Brazil concentrates its explanation on the preferences of “winner” coalitions. In short, while studies focused on non-governmental actors analyze the relationship between their behavior and the expansion of FOI, those on pro-government coalitions explore how new institutions reproduce their choices and visions (Michener, 2014; Pereira, 2016).

A preliminary documentary analysis indicated this process took place between 2003 and 2012 through five administrative and legislative decision channels. There were four types of engaged actors: inter-governmental organizations (IGOs), Brazilian and international non-governmental organizations (NGOs), governmental offices, and parliamentary alliances. The most significant controversies among

such actors were related to the following four issues: 1) the scope of FOI, 2) the maximum term of secrecy, 3) the autonomy of the coordination of implementation, and 4) the independence of the final decision on appeals of refusals of access to information (Câmara dos Deputados, 2003; Controladoria-Geral da União [CGU], 2007, 2015; Senado Federal, 2010).

The results of these controversial issues in the new FOI policy correspond to the ambivalence mentioned above. On the one hand, the broad scope of FOI and the 50-year limit of secrecy, eliminating any possibility of “eternal secrecy,” represented a higher adherence to the international standards that empowered NGOs and other social actors. On the other, the non-autonomous coordination and the non-independent final decision depict a lower adherence and the continuity of governmental offices’ prerogatives to control information established in previous institutions. Work on transparency and FOI in Brazil states such outcomes have impacted the engaged actors’ power, discretion, and reputation. Additionally, it highlights that opacity and government monopoly of information have marked the trajectory of the society-government relationship in that country (Angélico, 2012; Cunha, 2017; Jardim, 2000; Michener, 2014; Pereira, 2016).

This study assumes that the policymaking of FOI in Brazil represents an ambiguous legitimacy-based emulation process, oriented towards homogenization in relation to the international field, but without breaking the previous logic of governmental control of information. In this sense, the highlighted ambivalence resulted from the dynamics of disputes and compromise of actors’ power preferences for change (+adherence) or continuity (-adherence) on controversial issues. The aim is to analyze how such political dynamics has forged the policymaking of FOI in Brazil, producing different adherence levels between the substantive and procedural dimensions of the new institutions in relation to the standards that founded them.

It draws on theoretical work on policy diffusion/transfer, focusing on legitimacy-based emulation processes (Bugdahn, 2007; Marsh & Sharman, 2009; Radaelli, 2000). Additionally, it also uses theories and concepts on conflict and negotiation for power as drivers of decision-making as theoretical background about policy processes (Allison & Zelikow, 1999; Peters, 2001; Zittoun, 2014). Considering the outcomes reflect complexities of incremental changes and resistances of institutional systems, it explores ideas about path dependency, on-path change, and increasing returns (Deeg, 2005; Pierson, 2000, 2004).

The methodology adopts process-tracing references with document and bibliographic analysis and interviews as research techniques since it examines how disputes and compromises for underlying power preferences forge the trajectory of policy processes (Beach & Pedersen, 2013; Falletti & Lynch, 2009; Mahoney, 2016). It follows five sections: an overview of the trajectory of FOI in Brazil; theoretical and methodological background; narrating the political dynamics of the policymaking of FOI; demonstration of the political dynamics as a causal mechanism; and final remarks.

## 2. AN OVERVIEW OF THE TRAJECTORY OF FOI IN BRAZIL

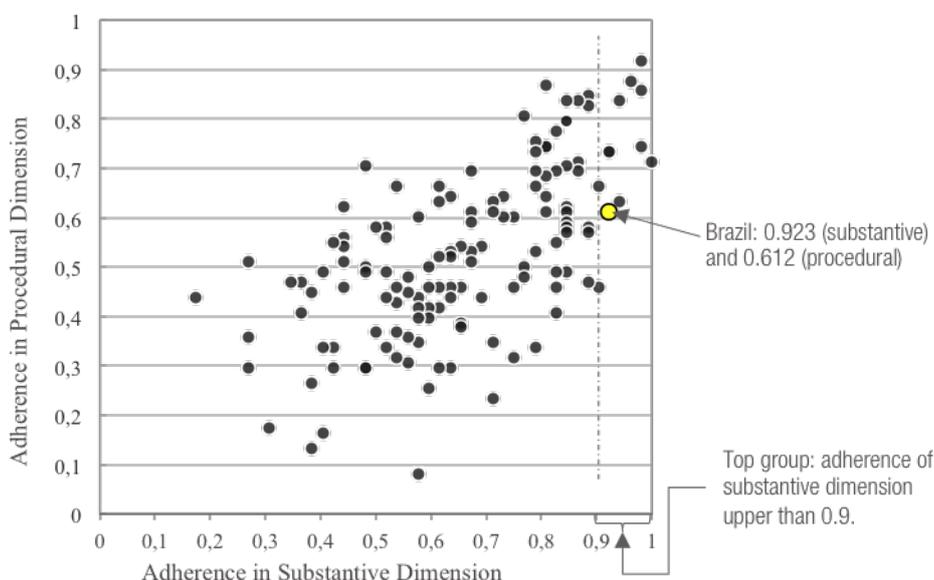
Between the 1990s and 2000s, different organizations started to promote standards and best practices associating FOI and corruption-fighting with human rights and democracy. Although the association between FOI and freedom of expression, the spread of the “good governance” agenda represented the primary driver for the convergence towards such standards in Latin America (Angélico, 2012; Oliveira & F. L. Costa, 2020).

In 1999, Article 19 – an international non-governmental organization for human rights focused on freedom of expression and information – published a document indicating nine principles representing the central core of such standards in this period (Angélico, 2012; Mendel, 2003). These principles affirm 1) maximum disclosure, 2) obligation to publish, 3) open government, 4) limited scope of exceptions, 5) reasonably and fairly access, 6) low costs to requesters, 7) open meetings, 8) disclosure takes precedence, and 9) protection for whistleblowers. As indicated in it, these principles aimed at presenting “a contribution to improving governance and accountability and strengthening democracy across the world” (Article 19, 2016).

The other two significant standards for the convergence to FOI in this region were the OAS Inter-American Convention Against Corruption (Organization of American States [OAS], 1996) and the UN Convention Against Corruption (United Nations, 2004). The first one aimed at promoting integrity, requiring signatories to stimulate the participation of society and NGOs and to create “oversight bodies” aimed at preventing and combating corruption (OAS, 1996). The second convention outlines commitments to foster transparency and FOI, as well as the creation of “preventive anti-corruption bodies” (United Nations, 2004).

Brazil is portrayed as a “success story” of policymaking of FOI based on such standards. Figure 1 shows the results of a comparative analysis of data on the adherence of FOI legislation to international standards that indicates that Brazilian institutions are in the top-ten group in topics associated with the precedence of the right to information, entitlement, scope, and promotion. But among the countries in this top position corresponding to the substantive dimension of FOI, Brazil is one of the last about procedures for making information available (requests, exceptions, appeals, and sanctions).

**FIGURE 1 ADHERENCE LEVELS OF COUNTRIES BETWEEN SUBSTANTIVE (X) AND PROCEDURAL (Y) DIMENSIONS OF FOI**



Note: The value of the substantive dimension attributed to countries corresponds to the sum of variables of right to information, scope, and promotion. And the value of the procedural dimension is the sum of requesting procedures, exceptions, appeals, and sanctions.

Source: Elaborated by the authors based on the Global Right to Information Rating (2022).

The policymaking of FOI in Brazil took place between 2003 and 2012 through five decision channels. The administrative ones were the Council of Public Transparency and Corruption Fighting (Conselho da Transparência Pública e Combate à Corrupção), the “closed meetings” led by the Presidency’s Civil Office (Casa Civil), and the “discussions” on the presidential bill veto and FOI implementation decree. The legislative channels were the Chamber of Deputies (Câmara dos Deputados) and the Federal Senate (Senado Federal).

In this process, there were eight engaged organizations and parliamentary alliances, providing and advocating the international standards and debating directly on their adaptation for domestic institutional arrangements. The position-taking of such actors indicates they constituted two main groups. On the non-government side were Article 19, UNESCO, a Brazilian NGO called *Transparência Brasil*, the Brazilian Association of Investigative Journalism (Abraji), and a formal parliamentary front called *Frente Parlamentar pelo Acesso*, which guided for expansion of the right to information of NGOs and other social actors.

*Transparência Brasil* and *Abraji* were the engaged Brazilian NGOs. The first one was widely recognized for its pioneering in advocacy transparency and corruption-fighting. It also played a central role in the discussion of the first draft of the FOI bill (Abramo, 2009; CGU, 2015). *Abraji* advocated FOI focused on freedom of expression and defense of journalism, promoting seminars and publishing

news, open letters, and protests on the press and social media (Angélico, 2012; Brasil Aberto, 2011).

Frente Parlamentar pelo Acesso was the formal parliamentary alliance of federal deputies that has advocated a broad scope for FOI – all the branches and levels of government – and the elimination of any hypothesis of “eternal secrecy.” The deputy who proposed in 2003 the first FOI bill in the Chamber of Deputies, Reginaldo Lopes, and the rapporteur of the discussion of the FOI bill in that legislative house, Mendes Filho, were members of such an alliance (Article 19, 2007; Abraji, 2017).

On the government side, the first organization was the Office of the Comptroller General (CGU), and the second was the Presidency’s Civil Office (Casa Civil). CGU was the Presidency’s anti-corruption office responsible for implementing conventions and representing Brazil in international forums associated with its legal competencies. This office also has elaborated bills of anti-corruption legislation, has followed their progress in Congress and has developed plans for implementing them. CGU proposed a presidential decree with the assistance of UNESCO to establish rules and procedures for FOI implementation. However, this UN office provided and advocated for standards to reduce government control of information (CGU, 2010).

The Civil Office was responsible for coordinating coalitions of the federal government with political parties. This role was essential for political stability regards that the political system in Brazil imposes on President the need for broad political coalitions to keep governability. This second office also was the one most closely represented the preferences and visions of the President and was responsible for the final decision on presidential bills sent to Congress (Lei nº 10.683, 2003). The role of the Civil Office in the policymaking of FOI was decisive both in the content of results of the abovementioned controversial issues and the pacing of such process.

There are indications in the interviews that the informal “alliance for national security” was constituted by senators oriented to maintain the prerogatives of specific government sectors to control sensitive information related to defense, intelligence services, and foreign policy. This alliance was formed during the analysis of the FOI bill in the Committee on Foreign Relations and National Defense, led by former president Fernando Collor and composed of former president José Sarney and senators Marcelo Crivella, Blairo Maggi, and Sérgio Souza. The preferences of this alliance for controversial issues were, in some points, similar to those of CGU and the Presidency’s Civil Office (Angélico, 2012; Senado Federal, 2010).

There were four most disputed issues by such actors through the decision channels whose results in the new institutions correspond to the aforementioned ambivalence. On the one hand, the broad scope of FOI and the 50-years limit of secrecy represented a higher adherence to the international standards that empowered NGOs and other social actors. On the other, the delegation of the coordination of implementation and the final decision on appeals concentrated to government bodies (non-autonomous and non-independent) depict a lower adherence and the maintenance of governmental control of information, representing continuity of the logic of previous institutions.

Work on transparency and FOI in Brazil states such outcomes have impacted the engaged actors’ power, discretion, and reputation. Additionally, it highlights that opacity and government monopoly of information have marked the trajectory of the society-government relationship in that country (Angélico, 2012; Cunha, 2017; Jardim, 2000; Michener, 2014; Pereira, 2016). Box 1 shows such controversial issues indicating the corresponding dimensions of FOI (substantive or procedural) and

how FOI-related previous institutions, international standards, and resulting institutions in Brazil treated each one of these issues.

**BOX 1 CONTROVERSIAL ISSUES IN THE POLICYMAKING OF FOI IN BRAZIL**

Controversial Issues	Dimension	In Brazilian Previous Institutions*	In International Standards	In Brazilian Resulting Institutions
Scope of the right to information	Substantive	All branches at the federal level	All branches/ levels of government	All branches/levels of government
Maximum term of secrecy	Substantive	No limit (“eternal secrecy”)	<u>20-years maximum term</u>	<u>50-years maximum term</u>
Autonomy of the coordination of implementation	Procedural	Power to non-autonomous bodies	Power to autonomous bodies	Power to non-Autonomous bodies
Independence of final decision on appeals	Procedural	Power to non-independent bodies	Power to independent bodies	Power to non-independent bodies

\* Rules established in Decreto nº 5.301 (2004), Lei nº 11.111 (2005), and Medida Provisória nº 226 (2004).

**Source:** Elaborated by the authors based in CGU (2007, 2015), Câmara dos Deputados (2003) and Senado Federal (2010).

**3. THEORETICAL AND METHODOLOGICAL BACKGROUND**

This study assumes the policymaking of FOI in Brazil represented an ambivalent legitimacy-based emulation process, oriented towards homogenization in relation to the international field, but without breaking the logic of the governmental control of information established in previous institutions. The hypothesis is that disputes and compromises of actors’ power preferences have forged such a process producing the highlighted ambivalence in the resulting FOI policy.

Here, it adopts a perspective on policy transfer that considers this concept and its co-related – policy diffusion – to represent phenomena linked to the dialectic structure/agency relationship. As a complex process, it takes place through decisions and actions of multiple players (IGOs, NGOs, public offices, etc.) based on different mechanisms and logics (learning/isomorphism and consequentiality/appropriateness) (Dolowitz & Marsh, 2000; Marsh & Sharman, 2009).

This multiplicity of factors that permeate these processes is linked to the natural tensions between international norms and domestic institutions portrayed by the game of power preferences that involve the engaged actors. In this sense, even policymaking processes resulting from policy transfer based mostly on emulation by isomorphism will reproduce these tensions for power that will be reflected as ambiguities in their results (DiMaggio & Powell, 1991; Marsh & Sharman, 2009; Radaelli, 2000).

As indicated in the hypothesis, it assumes that the Brazilian FOI policy resulted from a legitimacy-based policy transfer of international standards (I) driven mainly by disputes and compromises of

actors' power preferences. This political dynamics that involved the engaged actors represents the causal mechanism (M) that explains how such a process produced the highlighted ambivalence (O) in the resulting policy to the standards that founded it.

Adopting the main points proposed by Beach and Pedersen (2013), Falleti and Lynch (2009), and Mahoney (2016), this hypothesis is represented by the formula "I → M → O." Opening the "black box" of the causal mechanism, "M" is decomposed in the power preferences (P), as the independent variable, power-resources (R) and decision-making rules (D), as intervenient ones. The final formula is "I → (P → R + D) → O." Therefore, it is not only the standards (I) and preferences (P) that matter to outcomes, but also the rules on decision-making and the competencies, reputation, and influence mobilized by the engaged actors.

This study adopts the analytical framework proposed by Beach and Pedersen (2013) as the primary reference to conceptualize the political dynamics of the policymaking of FOI as a causal mechanism. Such five-part framework aims to analyze how power preferences of bureaucracies forged foreign policies resulting from diffusion/transfer processes. These parts characterize the causal transmission indicating: actors' power preferences, battles for the channel, debates within the channel, the mobilization of power-resources, and the reproduction of the "winners" preferences in outcomes (Beach & Pedersen, 2013).

Here, it adapts this reference to comprise governmental and non-governmental organizations and specific groups, as well as the existence of a hierarchy between the power preferences of each actors, and a multi-channel perspective on policy processes that consider the battles for positions in such channels and the impact of exogenous and endogenous shifts. The literature on public administration, policy analysis, and international relations has proposed the study of preferences linked to different types of actors. Governmental organizations seek to improve or guarantee their power positions in the state apparatus, primarily attempting to increase or ensure their competencies and areas of influence (F. L. Costa, 2010; Peters, 1998, 2001). Alliances of members of Congress tend to follow the ideological core of their leaders and, in a significant pragmatic way, the preferences of their supporters and electoral basis. It is a common situation in Brazil due to its political system based on "coalitional presidentialism" and the strength of subnational representations (Nunes, 2010; Power & Zucco, 2011).

The preferences of NGOs are usually more associated with the relevance of their agendas and their protagonism. As such actors depend on donations, it is vital for them the recognition of agendas that they advocate and of their pivotal role in policymaking and implementation. The preferences of IGOs tend to reproduce the need for establishing agendas related to their areas. In this sense, they need to ensure the legitimacy of the standards they provide to keep their influence on the policies and institutions of the countries under their scope (Barnett, 2004; Simmons et al., 2006).

On decision and action channels, Allison and Zelikow (1999) and Blomdahl (2016) indicate they represent regularized spaces for building collective action about particular issues. In this study, these channels represent the specific arenas where formal decisions and actions on certain issues take place through polarizations and coalitions between legitimized actors. The institutions that regulate these channels constitute particular rules regarding the entry of subjects, the participation of decision and advocacy players, and decision-making (Beach & Pedersen, 2013).

Certain actors may have more advantages in debates and decision-making depending on the selected channel. The interpretation of the rules that regulate these channels or target institutions can also produce power and legitimacy benefits for specific actors (Zittoun, 2014). Also, the balance

of power-resources among players in channels is another important source for the explanation. Considering that exogenous and endogenous shifts can affect actors' power preferences and this interpretation game and power-balance, reflections of such shifts on polarizations and coalitions in channels must be considered. Therefore, sequence and intervals between relevant shifts and key actors' movements matter. They reflect disputes and compromises of power preferences representing elements of "causal force" transmission through the causal mechanism of political dynamics.

Outcomes, battles, and negotiations on the "meanings" of subjects and possible results of changes should have emerged during the debates and influenced the final decisions (Beach & Pedersen, 2013). The results of such "games" of interpretation of institutions and mobilization of competencies, reputation, and influence in each one of the channels are transmitted until the last channel, which should produce the outcomes of interest reflecting the arrangement of different actors' position-taking and power preferences (Zittoun, 2014).

The next section narrates the "events of interest" that characterize disputes or compromises of power preferences, collected from documentary research and interviews. The sources of the first one are international guidelines, formal rules, administrative and legislative processes, minutes of meetings, news, and reports of symposia and seminars. About the second one, the people interviewed were members of NGOs and IGOs, public officials, and congress members who participated in such policy transfer. It also used data from previous scientific works on FOI in Brazil. Although the inherent difficulty of grasping information that characterizes political dynamics events, such a methodological combination allows developing causal inferences and obtaining evidence on chains between political phenomena and policy outcomes (Beach & Pedersen, 2013; Falletti & Lynch, 2009; Mahoney, 2016).

#### **4. NARRATING THE POLITICAL DYNAMICS OF THE POLICYMAKING OF FOI IN BRAZIL**

In 2003, the first term of President Lula started without a majority in Congress. His party, the Workers Party (PT), was recognized for its commitment to agendas related to human rights, freedom of expression, and integrity. His proposal for the 2002 election was based on a specific corruption prevention program that followed a campaign promoted by *Transparência Brasil* to commit candidates to improve the mechanisms of social control and transparency (Abramo, 2002).

In February 2003, the Workers Party's Federal Deputy Lopes, who was engaged in social movements for human rights, proposed the first version of the FOI bill justifying it was based mainly on the experience of the Mexican legislation and other related institutions (Angélico, 2012). Such a proposal did not indicate categories of information, terms of secrecy, and bodies responsible for FOI implementation and decisions on appeals (Câmara dos Deputados, 2003). Government offices did not participate in this first proposal (Angélico, 2012; Rodrigues, 2004).

The CGU received competencies to foster transparency in May 2003, and the Council of Public Transparency was created to debate and propose improvements for corruption prevention (Decreto nº 4.923, 2003). Its members were the representatives of CGU, who led it, the Presidency's Civil Office, eight other bodies, and seven NGOs, among them *Transparência Brasil* (Decreto nº 4.923, 2003). CGU selected the NGOs for such council based on "the importance that this office attributed to them" related to their efforts to prevent and combat corruption (Decreto nº 4.923, 2003).

In June 2005, President Lula promulgated Act 11,111 (Lei nº 11.111, 2005), which maintained criteria of previous legislation that allowed the “ultra-secret” classification to be renewed without limit, representing a hypothesis of “eternal secrecy” (Abraji, 2017). This law attributed to a joint commission led by the Presidency’s Civil Office and composed of non-independent federal executive bodies, the responsibility for the decision on classified information (Lei nº 11.111, 2005).

Since then, Abraji expanded a campaign started in 2003 against “eternal secrecy” (Abraji, 2017). In the next month, from a suggestion of *Transparência Brasil*, the Council of Public Transparency started to discuss a new proposal for an FOI bill (CGU, 2015; Abramo, 2009, 2018). The reputation of this NGO allowed its representative to be the rapporteur for this debate (CGU, 2015). Evidence shows the members had been aware of the Deputy Lopes’ FOI bill, but there is no information that they sought to push forward that proposal in the Chamber of Deputies (Angélico, 2012; CGU, 2015).

The resulting proposal on such a council indicates all branches at the three levels of government as the scope and a 30-years maximum term of secrecy. However, it did not reproduce statements of Article 19’s principles and Mexican FOI related to the autonomy of the coordination on implementation and the independence of the final decision on appeals (Abramo, 2009, 2018). This text was sent to the analysis of the Presidency’s Civil Office in June 2006, and the council members, except CGU, did not get any information about it until March 2009 (Abramo, 2009; CGU, 2015).

During the “closed meetings” led by Presidency’s Civil Office, some events increased the pressure for a Brazilian FOI Act. Relevant corruption scandals marked the campaign for the re-election of president Lula in 2006, and he promised to present the FOI bill to Congress as soon as possible (Abramo, 2009). In 2007, his second mandate started with a comfortable majority in Congress. Since this year, the advocating of Article 19, Abraji and other NGOs have sought to expand the coalition for FOI, resulting in the creation of the *Frente Parlamentar* in Congress (Article 19, 2007).

At the beginning of 2009, Presidency’s Civil Office sent its new FOI bill to the Council of Public Transparency members highlighting it reflected the core ideas of the Mexican FOI Act (CGU, 2015). In March 2009, these members and other Brazilian and international NGOs stated four main criticisms of such a proposal:

- a) The reduction of the scope in the new version that became limited to the Federal Executive Branch, which was the primary claim of the *Transparência Brasil*.
- b) The fact that the CGU, and not an independent body, would be responsible for the FOI implementation coordination and the examination of refusals at the first appeal level.
- c) The final decision on appeals would be given to the Joint Commission for Information Reassessment, called CMRI, which like the previous commission created by Act 11,111 (Lei nº 11.111, 2005), would be led by the Presidency’s Civil Office and composed of non-independent federal executive bodies.
- d) The CMRI’s power to renew without limits the classification of “ultra-secret” information represented an “eternal secrecy,” hypothesis that was the primary criticism of Abraji, Article 19, UNESCO, and *Frente Parlamentar* (Abramo, 2009, 2017; Angélico, 2012; Article 19, 2009).

In April 2009, Abraji promoted a seminar aimed at debating such criticisms. The participants were the headers of the Presidency's Civil Office, CGU, the Chamber of Deputies, and the Federal Supreme Court, representatives of Mexico, Chile, and the U. S., and NGOs and IGOs, such as *Transparência Brasil* and UNESCO (Article 19, 2009; *Contas Abertas*, 2009; *FreedomInfo*, 2009). At that time, the official press published news indicating that the preparation of that FOI bill would have been an initiative of government offices. That fact started a reaction from *Transparência Brasil*, which has claimed the recognition of its leadership role in that process (Abramo, 2009, 2018). Under such criticisms, Presidency's Civil Office and CGU changed the proposal expanding the scope to all branches and government levels. President Lula sent the bill to Congress in May 2009 (Câmara dos Deputados, 2003).

CGU remained as the central body for implementing FOI and examining appeals at the first level based on three arguments. First, this office had competencies to implement international standards and represent Brazil in corruption prevention and fighting subjects. Second, its results in projects and activities of CGU aimed at fostering proactive transparency were widely recognized, including by UNESCO and *Transparência Brasil*. Third, creating a new autonomous body would generate changes in budget law that would have only taken effect if predicted in the previous year.

There are indications on the interviews that limiting the FOI scope to the Federal Executive Branch and the composition of the CMRI aimed at reducing resistance from representatives of subnational governments and members of other branches. There is also information that such composition resulted from a political decision of the Presidency's Civil Office, which had a hierarchical superiority over all other ministries, including CGU. This way, it could be aimed at keeping under its control the final decision on access to information held by bodies of the Federal Executive Branch.

The debate and approval of the FOI bill in the Chamber of Deputies between May 2009 and April 2010 was closely followed by CGU. Deputy Lopes requested adding this bill to his previous proposal and its debate in a "special committee." These requests were approved, and this legislative process, which had almost no progress, became vigorously debated. The rapporteur indicated was Deputy Mendes Filho, a journalist very associated with NGOs advocating freedom of expression, such as Abraji and Article 19, and one member of Frente Parlamentar (Abraji, 2017; Angélico, 2012). During this period, CGU cultivated its reputation based on the positive results of its anticorruption policies emphasizing initiatives for proactive transparency, mainly the Transparency Portal (Portal da Transparência) (CGU, 2009).

In public hearings, representatives of CGU, the Presidency's Civil Office, and federal executive bodies indicated the excellent results of this first office. Representatives of UNESCO, *Transparência Brasil*, Article 19, and Abraji stated the importance of the FOI bill sent by President Lula. Despite this, they also highlighted the limitation related to the continuity of the "eternal secrecy" and the empowerment of CGU and the Presidency's Civil Office as the head of CMRI (Câmara dos Deputados, 2003).

The FOI bill was approved and sent to Federal Senate in April 2010 with no changes related to the non-autonomous coordination of implementation. However, there were three amendments approved by the special committee. First, bodies that refused access to information on human rights or budget should send the information on such refusal to prosecutors and courts of accounts, respectively.

Second, CMRI would also be composed of representatives of other branches at the federal level, which would not be subordinated to the Presidency's Civil Office. Third, the limitation of one only renewal of "ultra-secret" classification, eliminating the "eternal secrecy" (Câmara dos Deputados, 2003).

These amendments did not please government offices and other bodies of the Federal Executive Branch. The two last were the most controversial for the progress in the Federal Senate (Angélico, 2012). Even with this modification, CGU signed a Cooperation Project with UNESCO aimed at preparing an FOI implementation plan for the Federal Executive Branch that would be formalized by presidential decrees (CGU, 2010).

About the progress of the FOI bill in the Federal Senate, between May 2010 and October 2011, it was marked by the change of the head of the federal government. President Rousseff, the former Minister of the Presidency's Civil Office, had a high popular approval and the most significant support coalition in that legislative house since the re-democratization. That bill had regular progress in its three first committees in the Federal Senate. For the public hearings, senators did not invite any NGOs. However, they listened to the representative of the Ministry of Foreign Affairs, as well as, CGU and UNESCO, which have spoken in the Chamber of Deputies (Senado Federal, 2010).

In the fourth and last one, the Committee on Foreign Relations and National Defense, there was an intensive debate on such a bill between April and October 2011, even with no public hearing. Former president Fernando Collor led this committee and took the rapporteur position to discuss the FOI bill (Senado Federal, 2010). During this debate, Collor and senators Marcelo Crivella, Blairo Maggi, Sérgio Souza, and the other former president, José Sarney, who was also the president of Congress, constituted an informal alliance (Angélico, 2012; Brasil Aberto, 2011; Senado Federal, 2010).

On the one hand, there are indications in the interviews that this "alliance for national security" represented the fears and resistances of opposition parties and government sectors that held sensitive information associated with defense, intelligence services, and foreign policies. On the other hand, its power over the pace of the FOI bill's approval in this last committee allowed some members to bargain on different issues, including leadership positions in state-owned companies.

The progress slowed, and the former president Fernando Collor and other "alliance for national security" members proposed substantial amendments. These modifications proposed restoring the "eternal secrecy," reducing scope, decentralizing the coordination of implementation, and giving the final decision on appeals to a commission composed of all the chiefs of armed forces and representatives of all branches at the federal level (Angélico, 2012; Senado Federal, 2010). In June 2011, Abraji, Transparência Brasil, and Article 19 started a vast campaign to preserve the text approved by the Chamber of Deputies (Brasil Aberto, 2011).

Evidence points out that the invitation made in July 2011 by the U.S. government for Brazil to share the leadership of the global initiative "Open Government Program" (OGP) drove the Presidency's Civil Office and CGU to mobilize the federal government's political support to approve the FOI bill. One of the requirements for OGP co-leadership was the existence of adherent FOI legislation (Angélico, 2012).

Considering that any changes in this last legislative house would make it necessary to review the bill in the Chamber of Deputies, the Presidency's Civil Office and CGU got to bring it to a rapid vote to overturn the amendments of the "Alliance for National Security." Such decision of government offices

to speed the approval of the FOI bill focusing on OGP co-leadership resulted in the maintenance of the text of the Frente Parlamentar that enlarged the FOI scope, establishing a 50-years maximum term of secrecy and giving independence to the final decision on appeals (Angélico, 2012).

President Rousseff promulgated the FOI Act on November 18th, 2011, which was the same day that she created the Commission of Truth (Comissão da Verdade) aimed at investigating human rights abuses that occurred during the civil-military dictatorship (1964-1985) (Angélico, 2012). This promulgation took place with the presidential veto on two changes included by the special committee in the Chamber of Deputies:

- a) The first veto eliminated the obligation that bodies that refused access to information on human rights or budget should send information on such refusal to prosecutors or courts of account.
- b) The second excluded the shared composition of CMRI with representatives of other branches at the federal level (Mensagem nº 523, 2011).

Such veto proposed by CGU, Presidency's Civil Office, and other ministries reinforced the preferences of such government offices to monopolize the final decision on refusals related to the Federal Executive Branch. There are indications in the interviews that the lack of claims about them points out that prosecutors and courts of accounts had no more significant interest in FOI policy.

The FOI implementation decree, which CGU elaborated with the assistance of UNESCO (CGU, 2010), established that Presidency's Civil Office would lead the CMRI, and such a commission would be composed only of bodies of the Federal Executive Branch (Decreto nº 7.724, 2012). It confirmed that CGU would be the office of such a Branch responsible for coordinating FOI implementation and for first-level examining appeals. Presidency's Civil Office remained as leader of CMRI. This commission comprised greater participation of sectors that held sensitive information (defense, foreign relations, and intelligence services) (Decreto nº 7.724, 2012).

## 5. DEMONSTRATION OF THE POLITICAL DYNAMICS AS A CAUSAL MECHANISM

Focusing on the political dynamics narrated in the previous section, the demonstration of the causal mechanism demands 1) revealing the dispute and compromise events; 2) how the actors' power preferences guided these events; and 3) how the outcomes reflect the contradictions and trade-offs between these preferences.

In this sense, this demonstration comprises the role of such political dynamics in the whole process, indicating the preferences, powers mobilized, and impacts of decision rules that explain partial results of each one of the decision channels. This demonstration is based on the following information:

- a) Box 1 shows the results of controversial issues from each decision channel and key actors who had their corresponding preferences met, summarizing the contents of Boxes A, B, and, C in the Appendix;
- b) Box A in the Appendix shows the key actors, their guidance, priorities and secondary preferences on the controversial issues, and power-resources;

- c) Box B in the Appendix brings information on the parts of the political dynamics mechanism of each channel and its outputs representing inputs to the next;
- d) Box C, in the Appendix shows the outcomes of interest indicating their correspondences with the final power preferences, divided into priorities and secondary preferences on the controversial issues.

The information in the above mentioned boxes corresponds to the variables of the formula “ $I \rightarrow (P \rightarrow R + D) \rightarrow O$ ,” which represents the hypothesis that the Brazilian FOI policy resulted from an ambiguous legitimacy-based policy transfer of international standards (I) driven by disputes and compromises of power preferences (P) of the engaged actors, mediated by their power-resources (R) and by the applicable decision-making rules (D) of each of the decision channels in the policy-making path, producing ambivalences (O) in the resulting policy in relation to the standards that founded it.

Findings in previous boxes indicate that the proposed mechanism adequately explains the ambivalence produced by the policymaking of FOI. They show the transmission of causal forces between actors’ preferences and their reproduction through the various channels. Box 1, below, and Box C, in the Appendix, indicates that the Brazilian FOI Act and its implementing decree resulted from a silent and extensive compromise between the priorities of the engaged actors.

**BOX 2 EVOLUTION OF CONTROVERSIAL ISSUES IN EACH CHANNEL AND ACTORS WITH PREFERENCES MET**

		Decision Channels				
Controversial issues		<b>Council of Public Transparency (2005-2006)</b> • <i>Actors with their preferences met by the result</i>	<b>Meetings of the Presidency’s Civil Office (2008-2009)</b> • <i>Actors with their preferences met by the result</i>	<b>Chamber of Deputies (2009-2010)</b> • <i>Actors with their preferences met by the result</i>	<b>Federal Senate (2010-2011)</b> • <i>Actors with their preferences met by the result</i>	<b>Veto and Implementation Decree (2011-2012)</b> • <i>Actors with their preferences met by the result</i>
	Scope	<b>All levels of government and branches</b> • <i>Transparência Brasil</i> • <i>ABRAJI</i>	→ <b>Federal Executive Branch</b> • <i>Transparência Brasil</i> • <i>ABRAJI</i> • <i>Article 19</i> • <i>UNESCO</i>	→ <b>All levels of government and branches</b> • <i>Transparência Brasil</i> • <i>ABRAJI</i> • <i>Article 19</i> • <i>UNESCO</i> • <i>Frente Parlamentar</i>	→ <b>All levels of government and branches</b> • <i>Transparência Brasil</i> • <i>ABRAJI</i> , • <i>Article 19</i> • <i>UNESCO</i> • <i>Frente Parlamentar</i>	→ <b>All levels of government and branches</b> • <i>Transparência Brasil</i> • <i>ABRAJI</i> , • <i>Article 19</i> • <i>UNESCO</i> • <i>Frente Parlamentar</i>

Continue

Decision Channels					
Controversial issues	<b>Council of Public Transparency (2005-2006)</b> • <i>Actors with their preferences met by the result</i>	<b>Meetings of the Presidency's Civil Office (2008-2009)</b> • <i>Actors with their preferences met by the result</i>	<b>Chamber of Deputies (2009-2010)</b> • <i>Actors with their preferences met by the result</i>	<b>Federal Senate (2010-2011)</b> • <i>Actors with their preferences met by the result</i>	<b>Veto and Implementation Decree (2011-2012)</b> • <i>Actors with their preferences met by the result</i>
	<b>30 years</b> • <i>Transparência Brasil</i> • <i>ABRAJI</i>	→ <b>“Eternal secrecy”</b> • <i>Presidency's Civil Office</i> • <i>CGU*</i>	→ <b>50 years</b> • <i>Frente Parlamentar</i> • <i>ABRAJI</i> • <i>Article 19</i> • <i>UNESCO</i> • <i>Transparência Brasil</i>	→ <b>50 years</b> • <i>Frente Parlamentar</i> • <i>ABRAJI</i> • <i>Article 19</i> • <i>UNESCO</i> • <i>Transparência Brasil</i>	→ <b>50 years</b> • <i>Frente Parlamentar</i> • <i>ABRAJI</i> • <i>Article 19</i> • <i>UNESCO</i> • <i>Transparência Brasil</i>
	<b>Inter-branches collegiates by levels of government</b> • <i>Transparência Brasil</i> • <i>CGU</i> • <i>ABRAJI</i>	→ <b>Body of each branch and level of government</b> • <i>CGU</i> • <i>Presidency's Civil Office</i> • <i>Transparência Brasil</i>	→ <b>Body of each branch and level of government</b> • <i>CGU</i> • <i>Presidency's Civil Office</i> • <i>Frente Parlamentar</i> • <i>UNESCO</i> • <i>Transparência Brasil</i>	→ <b>Body of each branch and level of government</b> • <i>CGU</i> • <i>Presidency's Civil Office</i> • <i>Frente Parlamentar</i> • <i>UNESCO</i> • <i>Transparência Brasil</i>	→ <b>Body of each branch and level of government</b> • <i>CGU</i> • <i>Presidency's Civil Office</i> • <i>Transparência Brasil**</i> • <i>UNESCO***</i>
<b>Final Decision on Appeals</b>	→ <b>There is no information</b>	→ <b>Collegiate of each branch and level of government</b> • <i>Presidency's Civil Office</i> • <i>CGU</i>	→ <b>Collegiate of all branches by levels of government</b> • <i>Frente Parlamentar</i> • <i>ABRAJI</i> • <i>Article 19</i> • <i>UNESCO</i> • <i>Transparência Brasil</i>	→ <b>Collegiate of all branches by levels of government</b> • <i>Frente Parlamentar</i> • <i>ABRAJI</i> • <i>Article 19</i> • <i>UNESCO</i> • <i>Transparência Brasil</i>	→ <b>Collegiate of each branch and level of government</b> • <i>Presidency's Civil Office</i> • <i>CGU*</i>

**Notes:** Summarizing Boxes A, B, and C in the Appendix.

\* There are indications that these pragmatic preferences decrease resistance to FOI bill approval.

\*\* During a public hearing in the Chamber of Deputies, representatives of *Transparência Brasil* indicated different positions on this issue.

\*\*\* Despite providing and advocating human rights standards, UNESCO has a pragmatic approach to maintaining its influence, including assisting CGU in the FOI implementation decree.

**Source:** Elaborated by the authors.

Focusing on the actors outside government that provided the international standards or advocated them, it is necessary to consider the little resistance against the “mismatch” that the empowerment of CGU and the Presidency’s Civil Office represented to the 5<sup>th</sup> Article 19’s principle. Even though the UN can not formally affect countries’ sovereignty and NGOs usually have less bargaining power with governments, their efforts to eliminate “eternal secrecy” have been considerable. It indicates that such organizations may consider some principles and standards more important than others, and fighting for all of them may result in the non-adoption of the more relevant ones. Following this idea of secondary preferences of the non-government side, it should be noted that these actors admitted that the CGU would be the best organization to lead the FOI implementation in the Federal Executive Branch, even if it reduced the adherence to the standards.

There are some critical issues regarding the political trade-off for the governmental organizations, which have given up the “eternal secrecy” to keep the power on the coordination of implementation and final decision on refusals of access to information held by federal executive bodies.

First, the Brazilian FOI Act extinguished the secrecy of the information on abuses of human rights, making them accessible to anyone, which represented one of the most significant commitments of the Workers Party and former presidents Lula and Rousseff.

Second, this new law has extinguished the “eternal secrecy,” but classification deadlines allowed ultra-secret information to remain under restricted access for up to 50 years, which allows “classified” information to remain secret for a period of up to 2.5 times longer than recommended by international standards.

Third, although the preference of the “Alliance for National Security” that the final decision on appeals was given to a commission with a greater presence of the armed forces was not met, the resulting commission was constituted with greater participation of government sectors that held sensitive information (defense, intelligence services, and foreign policies). About such an alliance, it is also necessary to emphasize the information that some of its members may have slowed down the pace of the FOI bill in the last committee in the Senate for possible cross-power-preferences related to positions in state-owned companies.

The last point refers to the changes in government offices’ positions after the U.S. government’s invitation to the OGP co-leadership. The immediate priority related to the fast approval of the FOI bill made such offices abandon temporarily their first preference associated with the final decision on appeals. The moment following Congress’s approval, they then proposed that the President impose a veto against the text of the CMRI’s composition and then establish a new composition through a presidential decree - which represents a possible strategy of “substitutive presidential veto”, since excludes by veto and includes by decree a text that was contained in a law approved by Congress.

This revealing of political dynamics causal mechanism – which explains how the ambivalences in the adherence of the FOI policy in Brazil to the international standards that founded it resulted from disputes and compromise of power preferences between international and national non-state actors and Brazilian governmental organizations engaged in the policymaking process – contributes to studies on freedom of information and the literature on policy transfer.

About the research agenda on FOI, the ambivalence of causal mechanism outcomes indicates that politics and institutions matter and there were no “winners taking all.” Although new rules

and procedures characterize the maintenance of the governmental control of information, they also reproduce the preferences of the non-state actors to limit such power. And still dealing with gains for studies on FOI, it is relevant to point out that the same standards and international actors engaged in the policymaking in Brazil also influenced the diffusion of FOI in other Latin American countries. The comparative data used in the graph of Figure 1 indicate that the “gap” between the adherence level in topics associated with the substantive dimension and those related to procedures for “making information available” in this region - not only in Brazil - is greater than in the rest of the world.

Regarding contributions to literature on policy transfer (and diffusion, convergence, translation, etc.), even assuming these policy phenomena as isomorphic movements based on the logic of appropriateness, this study demonstrates that such processes do not represent pure emulation mechanisms with no contradictions. As indicated, the Brazilian FOI policy resulted from a policy transfer that reproduced in its tracing and outcomes the ambiguities of dialectic structure-agency processes involving the inherent tensions between international and domestic institutions that took place through the games of power preferences of engaged actors.

## 6. FINAL REMARKS

This study pointed out that political dynamics forged the policymaking of FOI in Brazil, indicating its outcome describes the product of a political trade-off between the engaged actors on the controversial issues. It assumes that the Brazilian FOI policy resulted from an ambiguous legitimacy-based policy transfer of international standards (I) driven by dispute and compromise on power preferences (P) of the engaged actors, mediated by their power-resources (R) and by the applicable decision-making rules (D), producing ambivalences (O) in the resulting policy in relation to the standards that founded it, which is represented by the formula “ $I \rightarrow (P \rightarrow R + D) \rightarrow O$ .”

Observing this resulting FOI policy, it materialized the most significant preferences of organizations and groups for human rights and freedom of information related to the expansion of the scope of the right to information and the elimination of any possibility of “eternal secrecy.” On the other, it assured the continuity of government offices’ prerogatives for coordinating the implementation and “giving the final word” on appeals. Such results explain the ambivalence in adherence between topics related to the substantive dimension of the right to information in the Brazilian FOI policy and procedures for “making information available.”

This revealing of political dynamics causal mechanism demonstrates that relevant aspects of the policymaking of FOI in Brazil contribute to work on freedom of information and the literature on policy transfer.

Regarding the research agenda on FOI, the ambivalence indicates that politics and institutions matter in explaining the analyzed policymaking process. Actors’ behaviors were highly oriented to power and legitimacy, and “no winners were taking all.” It is also relevant to highlight that the same standards and international actors engaged policymaking in Brazil have also influenced the diffusion of FOI in other Latin American countries. Moreover, the “gap” between the adherence level of substantive dimension and procedures for “making information available” in this region - not only in Brazil - is greater than in the rest of the world.

About contributions to literature on policy transfer (and diffusion, convergence, translation, etc.), even assuming these policy phenomena as isomorphic movements based on the logic of appropriateness, this study suggests that such processes do not represent pure emulation mechanisms with no contradictions. As indicated, the Brazilian FOI policy resulted from a policy transfer that reproduced in its tracing and outcomes the ambiguities of dialectic structure-agency processes involving the inherent tensions between international and domestic institutions that took place through the games of power preferences of engaged actors.

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**DATA AVAILABILITY**

The dataset supporting this study's results is available upon request of information to the corresponding author, Temístocles Murilo de Oliveira Júnior (tmurilo@edu.ulisboa.pt), or to governmental and non-governmental organizations mentioned in it. Interviews content is not publicly available due to containing information that compromises the privacy of the research participants.

**ACKNOWLEDGMENTS**

The authors acknowledge comments and suggestions by Richard Deeg, Frederico Lustosa da Costa, Francisco Duarte, Tulia Falleti, Fernando Filgueiras, Jonathan Fox, Eduardo Gomes, Charles Pessanha, and Matthew Taylor. Data, findings, and analyses herein are the authors' responsibility and do not reflect opinions or views of any governmental, intergovernmental, or non-governmental organization.

## APPENDIX

### BOX A THE ENGAGED ACTORS, GUIDANCE IN THE PROCESS, PREFERENCES FOR THE CONTROVERSIAL ISSUES, AND POWER-RESOURCES

Actors	Engagement guidance in the policymaking of FOI	Priorities for the controversial issues in the policymaking	Secondary preferences for the controversial issues	Power-resources available and mobilized
Article 19	Ensure freedom of expression and promote its FOI standards	<ol style="list-style-type: none"> <li>20-Year maximum term</li> <li>Broad scope</li> </ol>	<ol style="list-style-type: none"> <li>Independent decision on appeals</li> <li>Autonomous coordination of implementation</li> </ol>	<ul style="list-style-type: none"> <li>Reputation as a “standard provider”</li> <li>Influence of media</li> </ul>
UNESCO	Guarantee human rights and enhance its area of influence	<ol style="list-style-type: none"> <li>20-Year maximum term</li> <li>Broad scope</li> </ol>	<ol style="list-style-type: none"> <li>Independent decision on appeals</li> <li>Autonomous coordination of implementation</li> </ol>	<ul style="list-style-type: none"> <li>Reputation as a “standard provider”</li> <li>Influence on national government</li> </ul>
Transparência Brasil	Expand the scope of transparency in Brazil	<ol style="list-style-type: none"> <li>Broad scope</li> <li>30-Years maximum</li> </ol>	<ol style="list-style-type: none"> <li>Independent decision on appeals</li> <li>CGU coordinating the implementation</li> </ol>	<ul style="list-style-type: none"> <li>Reputation as a defender of transparency</li> <li>Influence of media</li> </ul>
Abraji	Guarantee freedom of expression	<ol style="list-style-type: none"> <li>20-Years maximum</li> <li>Broad scope</li> </ol>	<ol style="list-style-type: none"> <li>Independent decision on appeals</li> <li>Autonomous coordination of implementation</li> </ol>	<ul style="list-style-type: none"> <li>Reputation as a defender of freedom of expression</li> <li>Influence of media</li> </ul>
Frente Parlamentar	Guarantee freedom of information to affirm its ideological core and the interest of its political supporters	<ol style="list-style-type: none"> <li>50-Years maximum</li> <li>Broad scope</li> </ol>	<ol style="list-style-type: none"> <li>Independent decision on appeals</li> <li>CGU coordinating the implementation</li> </ol>	<ul style="list-style-type: none"> <li>Representation of interests in Congress</li> <li>Authorship of the FOI bill in the Chamber</li> </ul>

*Continue*

Actors	Engagement guidance in the policymaking of FOI	Priorities for the controversial issues in the policymaking	Secondary preferences for the controversial issues	Power-resources available and mobilized
CGU	Strengthen the corruption prevention to ensure its central role as an anti-corruption agency	<ol style="list-style-type: none"> <li>1. CGU coordinating the implementation</li> <li>2. Presidency's Civil Office decides on appeals</li> </ol>	<ol style="list-style-type: none"> <li>3. Restricted scope</li> <li>4. Eternal secrecy</li> </ol>	<ul style="list-style-type: none"> <li>• Prerogatives of the anti-corruption agency</li> <li>• Reputation for positive results</li> </ul>
Presidency's Civil Office	Meeting the commitments and keeping coalitions of the federal government in Congress	<ol style="list-style-type: none"> <li>1. Presidency's Civil Office decides on appeals</li> <li>2. CGU coordinating the implementation</li> </ol>	<ol style="list-style-type: none"> <li>3. Restricted scope</li> <li>4. Eternal secrecy</li> </ol>	<ul style="list-style-type: none"> <li>• Prerogatives as political coordinator of the federal government</li> </ul>
"Alliance for National Security"	Ensure "eternal secrecy" and government control of information	<ol style="list-style-type: none"> <li>1. Eternal secrecy</li> <li>2. Chiefs of armed forces deciding on appeals</li> </ol>	<ol style="list-style-type: none"> <li>3. Non-autonomous and decentralized coordination.</li> <li>4. Restricted scope</li> </ol>	<ul style="list-style-type: none"> <li>• Representation of interests in parliament</li> </ul>

Source: Elaborated by the authors.

**BOX B DISPUTES AND COMPROMISES IN DECISION CHANNELS**

Decision Channel	Council of Public Transparency (2005-2006)	Meetings Presidency's Civil Office (2006-2009)	Chamber of Deputies (2009-2010)	Federal Senate (2010-2011)	Presidential Veto and Implementation Decree (2011-2012)
<b>Battle for channels and power positions in channels</b>	<ul style="list-style-type: none"> <li>- CGU led the council and chose members</li> <li>- <i>Transparência Brasil</i> got the rapporteur position of the bill</li> </ul>	<ul style="list-style-type: none"> <li>- Presidency's Civil Office "closed" the discussion</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Frente Parlamentar</i> requested the creation of a commission composed of its members and got the rapporteur position</li> </ul>	<ul style="list-style-type: none"> <li>- The chairman of the CRE, a former President of Brazil and a member of the "Alliance for National Security," took the rapporteur position in the discussion of the FOI bill</li> </ul>	<ul style="list-style-type: none"> <li>- CGU was in the leading position in the elaboration of the FOI implementation decree assisted by UNESCO</li> </ul>
<b>Issues under conflict and negotiation (actors)</b>	<ul style="list-style-type: none"> <li>- Scope (<i>Transparência Brasil</i>)</li> <li>- Maximum term of secrecy (<i>Transparência Brasil</i>)</li> </ul>	<ul style="list-style-type: none"> <li>- Scope (<i>Transparência Brasil versus</i> government offices)</li> <li>- Eternal secrecy (Abraji and Article 19 <i>versus</i> government offices)</li> <li>* 'protagonism' (<i>Transparência Brasil versus</i> CGU)</li> </ul>	<ul style="list-style-type: none"> <li>- Scope, maximum term, and independence on appeals (<i>Frente, Abraji, Article 19, UNESCO, Transparência Brasil versus</i> government office)</li> <li>- Autonomous coordination (Abraji, Article 19, and UNESCO <i>versus Frente, Transparência Brasil, and</i> government office)</li> </ul>	<ul style="list-style-type: none"> <li>- Maximum term and scope ("Alliance for National Security" <i>versus</i> NGOs)</li> <li>- Coordination and independence on appeals ("Alliance for National Security" <i>versus</i> government offices)</li> <li>** pace of approval [bargain for state-owned directorship + 'deadline for the OGP] ("Alliance for National Security" <i>versus</i> government offices)</li> </ul>	<ul style="list-style-type: none"> <li>- Independence on appeals (match CGU + Presidency's Civil Office)</li> <li>*** 'end of the obligation to send information to the prosecutors and courts of accounts on denial of access to information on human rights and budget' (match CGU + Presidency's Civil Office)</li> </ul>

Continue

Decision Channel	Council of Public Transparency (2005-2006)	Meetings Presidency's Civil Office (2006-2009)	Chamber of Deputies (2009-2010)	Federal Senate (2010-2011)	Presidential Veto and Implementation Decree (2011-2012)
<b>Exogenous/ endogenous shifts</b>	- Approval of Act 11,111 maintaining "eternal secrecy" and a non-independent commission	- 2 <sup>nd</sup> mandate of Lula with the majority - UN HR Council claimed that Brazil approved an FOI Act	[None]	- 1 <sup>st</sup> mandate of Rousseff with the largest majority. - US invited Brazil to share the leadership of the OGP	[None]
<b>Power-resources mobilized (actors)</b>	- Reputation ( <i>Transparência Brasil</i> ) - Legal competencies to lead the council and choose its NGOs members (CGU) - Media influence (Abraji and Article 19)	- Legal competencies to close meetings and keep preferences on 3 of 4 issues (Presidency's Civil Office, CGU) - Reputation and media influence to open the FOI bill ( <i>Transparência Brasil</i> , Abraji, and Article 19)	- Prerogatives of Chamber rules to add the FOI bill sent by president Lula to the previous bill ( <i>Frente Parlamentar</i> ) - The reputation of positive results of the <i>Portal da Transparência</i> (CGU) - Reputation and media influence ( <i>Transparência Brasil</i> , Abraji, and Article 19)	- Majority to amend and define the pace ("Alliance for National Security"). - political support in the Congress (government offices) - Reputation (CGU and UNESCO) - Reputation and media influence ( <i>Transparência Brasil</i> , Abraji, and Article 19)	- Legal competencies to propose veto and define the implementation plan (Presidency's Civil Office, and CGU) - Reputation (CGU) - Reputation and influence as an FOI standard provider (UNESCO)

Continue

Decision Channel		Council of Public Transparency (2005-2006)	Meetings Presidency's Civil Office (2006-2009)	Chamber of Deputies (2009-2010)	Federal Senate (2010-2011)	Presidential Veto and Implementation Decree (2011-2012)
Partial/Final Results	Scope (substantive dimension)	Broad (+adherence)	Restricted (-adherence)	Broad (+adherence)	Broad (+adherence)	<b>Broad scope (+ adherence)</b>
	Maximum term (procedural dimension)	30-years (+adherence)	"Eternal secrecy" (-adherence)	50-years (partial adherence) <sup>****</sup>	50-years (partial adherence) <sup>****</sup>	<b>50-years maximum term of secrecy (partial adherence)<sup>****</sup></b>
	Coordination (procedural dimension)	[None]	Non-autonomous (-adherence)	Non-autonomous (-adherence)	Non-autonomous (-adherence)	<b>Non-autonomous coordination of implementation (- adherence)</b>
	Final decision (procedural dimension)	[None]	Non-independent (-adherence)	Independent (+adherence)	Independent (+adherence)	<b>Non-independent final decision on appeals (- adherence)</b>

\* The dispute for the "protagonism" did not represent one of the highlighted controversial issues, but its existence indicates battles for reputation and "legitimacy" that characterizes political dynamics events.

\*\* Although this issue was not among the controversial ones, it was essential to the political dynamics of the policymaking of FOI. It changed the government office's immediate priority, forcing them to abandon temporarily their first preference related to the final decision on appeals.

\*\*\* This veto proposed by the CGU and the Civil House indicates the preference of such government bodies for the composition of the CMRI only with bodies from the federal Executive Branch.

\*\*\*\* The 50-years maximum term represents 2.5 times more than the 20-years recommended by Article 19's standards.

**Source:** Elaborated by the authors.

**BOX C OUTCOMES ASSOCIATED WITH THE PRIORITIES AND SECONDARY PREFERENCES**

Actors	Priorities ✓ approved / ✗ disapproved / ✓ ✗ partial (observations)	Secondary preferences ✓ approved / ✗ disapproved / ✓ ✗ partial (observations)
Article 19	<ul style="list-style-type: none"> <li>✓ Exclusion of any possibilities of “eternal secrecy”</li> <li>✓ A broader scope of transparency</li> </ul>	<ul style="list-style-type: none"> <li>✗ Autonomous coordination of implementation</li> <li>✗ Independent final decision on appeals</li> </ul>
UNESCO	<ul style="list-style-type: none"> <li>✓ Exclusion of any possibilities of “eternal secrecy</li> <li>✓ A broader scope of transparency</li> </ul>	<ul style="list-style-type: none"> <li>✗ Autonomous coordination of implementation*</li> <li>✗ Independent final decision on appeals</li> </ul>
Transparência Brasil	<ul style="list-style-type: none"> <li>✓ A broader scope of transparency</li> <li>✓ Exclusion of any possibilities of “eternal secrecy”</li> </ul>	<ul style="list-style-type: none"> <li>✓ CGU coordinating implementation**</li> <li>✗ Independent final decision on appeals</li> </ul>
Abraji	<ul style="list-style-type: none"> <li>✓ Exclusion of any possibilities of “eternal secrecy”</li> <li>✓ A broader scope of transparency</li> </ul>	<ul style="list-style-type: none"> <li>✗ Autonomous coordination of implementation</li> <li>✗ Independent final decision on appeals</li> </ul>
Frente Parlamentar	<ul style="list-style-type: none"> <li>✓ Exclusion of any possibilities of “eternal secrecy”</li> <li>✓ A broader scope of transparency</li> </ul>	<ul style="list-style-type: none"> <li>✗ Independent final decision on appeals***</li> <li>✗ CGU coordinating implementation</li> </ul>
CGU	<ul style="list-style-type: none"> <li>✓ Coordinate FOI implementation in the Federal Executive Branch</li> <li>✓ Presidency’s Civil Office with the final decision on appeals in the Federal Executive Branch****</li> </ul>	<ul style="list-style-type: none"> <li>✓ ✗ Maintenance of “eternal secrecy” (50-years represents 2.5 times more than recommended)</li> <li>✗ A scope focused on Federal Executive Branch****</li> </ul>
Presidency’s Civil Office	<ul style="list-style-type: none"> <li>✓ Decide on appeals at the last level in the Federal Executive Branch</li> <li>✓ CGU coordinating FOI implementation in the Federal Executive Branch****</li> </ul>	<ul style="list-style-type: none"> <li>✓ ✗ Maintenance of “eternal secrecy” (50-years represents 2.5 times more than recommended)</li> <li>✗ A scope focused on the Federal Executive Branch****</li> </ul>
“Alliance for National Security”	<ul style="list-style-type: none"> <li>✓ ✗ Maintenance of “eternal secrecy” (50-years represents 2.5 times more than recommended)</li> <li>✓ ✗ Chiefs of military forces deciding on appeals (commission with a greater presence of bodies that held sensitive information)</li> </ul>	<ul style="list-style-type: none"> <li>✓ ✗ Non-autonomous and decentralized coordination</li> <li>✗ A scope focused on Federal Executive Branch</li> </ul>

\* Despite providing and advocating human rights standards, UNESCO has a pragmatic approach to maintaining its influence, including assisting CGU in the FOI implementation decree.

\*\* During a public hearing in the Chamber of Deputies, representatives of Transparência Brasil indicated different positions on this issue.

\*\*\* The committees and public hearings reports do not indicate unanimity among Deputies on this front on these issues.

\*\*\*\* There are indications that these pragmatic preferences decrease resistance to FOI bill approval.

Source: Elaborated by the authors.