

## ***The Swiss federal Law on Transparency: Much ado about nothing?***

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### ***Abstract***

The Swiss Law on Transparency (LTrans), which gives people access to official federal documents upon request, went into force in 2006. Prior to passing the law, the Federal Council expressed its hope that the legislation would contribute to a culture change from secrecy to transparency within the administration and an improvement in the relationship between the state and citizens. In this paper we describe the concerns government administrators had before the law was implemented and their reactions since and seek to answer whether the expectations of the Federal Council have been realized. Through a preliminary analysis of statistics on information requests, interviews with several dozen government administrators, journalists and other experts on the law, and a survey of a broader sample of administrative officials, we show that few requests for information have been made under the law, relative to the number of requests filed in other countries, and government administrators believe that the impact of LTrans has been minimal. Possible explanations for these findings include a low awareness of the law among the public; the beginning of a shift toward transparency before LTrans was implemented; and resistance to disclosure among administrative staff.

## Introduction

The Swiss Law on Transparency (LTrans), which grants people access to Swiss federal government documents upon request, went into force in 2006. Similar to access to information (ATI) laws in other countries, the most explicitly stated objective of LTrans was to increase governmental transparency. During Parliamentary debates prior to passing the law, members of Parliament further claimed that the legislation would contribute to change within the federal administration as well as the relationship between the State and its citizens. However, neither the ways that the law would increase transparency nor the types of change expected were clarified.

We have been studying whether and how the law has increased Swiss governmental transparency and/or brought about other changes to the administration's working practices and behavior by interviewing one of the main categories of LTrans requester – the media, the people who deal with LTrans requests – government administrators, and other experts about their experiences with the law and perceptions of its effects. We have also surveyed a sample of federal employees from whom we sought more general perceptions and opinions about transparency and LTrans.

This paper is based on our preliminary interview and survey findings. We begin with a short explanation of the motivation behind ATI laws and then give a brief synopsis of the history of the Swiss Law on Transparency. Next we describe in more detail the methods we used, followed by a description and preliminary analysis of our findings. Finally, we outline the hypotheses that we have devised to explain why the public are making few requests and conclude with a summary of the paper and plan for the next phase of our study.

## Motivation

Proponents of access to information (ATI) offer different motivations for the laws. Two of the most prominent are: 1) to increase the accountability of public servants to citizens, which should contribute to greater trust; 2) to increase the level of transparency of government actions and decisions so that citizens can make informed decisions when participating in the political process and hold the administration to account.

Over the past several decades the level of citizens' trust in government has fallen and remained low in many advanced democracies, including the U.S., Canada, New Zealand and European countries (Chanley et al. 2000; Deleon 2005). For the past five years EU member country citizens' level of trust in their national government has hovered around 31% (Directorate-General for Communication 2003-2008)<sup>1</sup>. Contributing to the low level of trust have been

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<sup>1</sup> The Eurobarometer's question of Europeans' trust in their national institutions was first asked in the spring 2003 survey. The proportion of Europeans who claimed to trust their national

crises poorly handled by government, scandals, and cases of corruption and fraud in the public and private sectors. Since public trust furthers the stability of a system of governance (Torney-Purta et al. 2004), it is in governments' interests to take steps to enhance it. By giving people a way to monitor the decisions and actions of the public sector should increase the public sector's accountability and people's trust in it.

Accountability is based on the responsiveness and answerability of one actor to another. The actor must explain and justify his decisions and actions and face the consequences if the other party judges those decisions and actions to be unacceptable (Bovens 2007; Gregory 2003). The importance placed on accountability in the public sphere dates back to the foundation of democracy in ancient Athens, when job rotation and various methods of election, including direct voting and drawing lots, were used in order to prevent nepotism and other forms of corruption (Held 2006). With changes to modes of governance systems of accountability have also evolved. In the traditional Weberian model of bureaucracy accountability in the public sector is hierarchical – public servants are accountable to their head of department, the department head is accountable to the legislature, and the legislature is accountable to the citizens (Bovens 2005). Over time, but especially since the application of New Public Management principles in the 1980s and 1990s, accountability in the public sector has shifted to include a horizontal model in which public servants are given more discretion to make autonomous decisions and are held directly accountable by those they serve, including individual citizens and organizations (Verschuere et al. 2006).

To hold public servants and administration to account for their actions, citizens must know what they are doing. This requires that the relevant information about decisions made and actions taken by the administration be available (Mulgan 2000, p.567), which in turn equates to a certain degree of transparency. Hood defines governmental transparency as 'government according to fixed and published rules, on the basis of information and procedures that are accessible to the public' (Hood 2001). Transparency plays a role in ensuring accountability by providing a path through which the government 'informs the public of their actions and intentions' (Grigorescu 2003, p.644). The public can use the information they obtain to verify that public officials are acting in their interests and make decisions when, e.g. voting; conversely, as Bentham posited, a government official should be less likely to misuse power if they know their actions are being monitored (Hood 2006, p.9). Thus, transparency functions as a tool against corruption by increasing accountability.

If, as Oliver argues, 'the effectiveness of [government's] accountability to the public depends on the availability of information' (Oliver 1991, p.23), transparency mechanisms must be put in place to make that information

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government fluctuated during the period 2003 to 2008. From spring 2003 to autumn 2003, the percentage dropped from 37% to 31%, while it stood at 32% in spring 2008.

available (Kaufmann & Bellver 2005; Piotrowski & Van Ryzin 2007). Such measures include legislative scrutiny of the executive, administrative means, such as the proactive publication of information, e.g. through e-government initiatives, and laws. Legislation that encourages greater openness includes whistleblower protections, which encourage people to expose wrong-doing on the part of others in public office, open meeting laws, e.g. the U.S. Government in the Sunshine Act, which give people the right to attend meetings held by public officials, and access to information (ATI) legislation.

Over 70 countries have implemented ATI laws. In 1766 Sweden was the first country to give citizens the right to public sector information<sup>2</sup>. The U.S. Freedom of Information Act, passed 200 years later, influenced those countries that followed, e.g. Norway (1970), Australia (1982), Denmark (1985), and the United Kingdom (2000) (Hood 2006; Banisar 2006). Prior to the mid-1990s fewer than 20 national laws existed; since 1998 over 50 nations have granted people the right to access federal or central government information (and in many countries regional or state laws have also been passed).

ATI laws require that administrative offices disclose information requested by the public within a set timeframe (usually 20 to 30 working days), subject to some exceptions (commonly called exemptions). ATI laws are either enshrined in a country's constitution (Philippines), passed as separate legislation (United States, United Kingdom, Switzerland) or both (Albania, Finland, South Africa) (Banisar 2006). Some ATI laws require the proactive disclosure of information, e.g. the UK's publication scheme initiative, while others implicitly encourage it within the spirit of the law<sup>3</sup>. Most contain an independent oversight body, such as an ombudsman or information commissioner who ensure proper compliance with the law when information requesters have complaints about improper procedure or wish to challenge the withholding of information.

The profile of requesters and subject of requests vary from country to country. However, because most laws do not require people or organizations to identify the capacity in which they are asking for information, e.g. as a journalist or an advocacy group, it is difficult to know exactly who is making the requests and for what purposes. Estimates by public servants who respond to requests reveal that private individuals, commercial entities and journalists are among the most prolific users of ATI in Canada, Ireland, the UK and the U.S. (Glover et al. 2006; Amos et al. 2008; McDonagh 2009). What people want to know varies but frequently requested topics include government costs and expenses, policies and procedures, and contracts between government bodies and private entities (Glover et al. 2006).

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<sup>2</sup> A revised law was passed in Sweden in 1949.

<sup>3</sup> The UK FOIA 2000 requires public authorities to publish publication schemes (a list of all categories of information they already make available to the public) electronically and/or in paper form. In addition, many public bodies have created 'disclosure logs', which are online lists of ATI requests and responses, sometimes with the disclosed information included.

## Background

The Swiss Parliament passed the federal Law on Transparency of the Administration (LTrans) in December 2004 "*to promote the transparency of the mission, organization and activity of the administration. To this end, it contributes to public information by guaranteeing access to official documents*" (Government of Switzerland 2004). The legislation went into force on July 1, 2006. Since 1993 13 of the 26 Swiss cantons ('states') have passed ATI laws, to which the respective cantonal and local authorities are subject, three cantons are in the process of drafting legislation, and one – St. Gallen – has even inserted the principle of transparency in its cantonal constitution.

Switzerland's implementation of LTrans followed six months after the German federal government put into force their *Informationsfreiheitsgesetz* (Freedom of Information Law) on January 1, 2006; as such Switzerland was nearly the last Western/Central European country to implement an ATI law. In passing LTrans, the Swiss government introduced two new aims to their mode of governance – one to improve the relationship between the government and the public and the other to replace an administrative culture of secrecy with transparency (Conseil Fédéral 2003).

The process that led to the passage of LTrans began in 1982 when an expert commission, set up to examine the concept of a global media, included in their final report a recommendation to the Federal Council to adopt a statutory principle of transparency for the activities of the federal administration (Pasquier & Villeneuve 2006). Although this recommendation was not acted upon, it was followed by studies of the issue by two working groups, one established in 1986 and another in 1991 (Conseil Fédéral 2003). Although the Federal Council decided to include the objective of greater proximity to citizens through increased transparency in their government reform framework in 1992, it took eight years to produce a law on people's access to government documents and an additional four of consultation, debate, and modifications before the legislation was passed.

Nearly all Swiss federal government departments, offices and agencies must comply with LTrans by releasing documents requested by members of the public<sup>4</sup>. Anyone, i.e. not just citizens or residents, may make a request in written or oral form. However, the Swiss law specifies that only official, final versions of documents are subject to LTrans requests, in contrast to other countries' laws, e.g. Germany and the United Kingdom, which cover information more generally. LTrans is not retrospective – only documents completed as of July 2006 must be considered for release. Administrative offices have 20 days to respond to a request and may charge if the cost of processing a request exceeds CHF100, the equivalent of one hour of work.

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<sup>4</sup> Exempt institutions include the Financial Market Supervisory Authority, the Swiss National Bank, and the private sector functions of organizations such as Swisscom, Swiss Rail Service (CFF), and Swiss Post.

The calculation of this amount can include photocopies and preparation of documents for release. Nine content-related exemptions protect such categories of information as national security, legal proceedings and personal data. The Swiss Federal Data Protection and Information Commissioner accepts complaints from requesters after they have asked the public body from which they originally requested information to reconsider an unsatisfactory decision. If a requester is still dissatisfied after the Commissioner has issued a recommendation, he may take his case to the Federal Administrative Court.

## Questions and methods

The findings on which this paper is based come from semi-structured interviews with LTrans compliance officers, journalists and other experts on the law as well as a survey of government administrators, which we carried out over the past year for two projects. The objective of the first – a study on Swiss governmental transparency funded by the Swiss National Fund (SNF), ongoing since September 2007 – is to examine whether and to what extent the LTrans has led to any changes in the behavior or working practices of federal administration staff. The second was an evaluation of the LTrans, which we carried out for the Federal Information Commissioner between November 2008 and April 2009. This evaluation, comprised of an analysis of the number of requests, costs of compliance, and appeal cases submitted to the commissioner, is required by law to be completed and publicized by the three-year anniversary of the legislation's coming into force. Although the scope of the evaluation was narrower, the interviews we conducted for each project (as explained below) are applicable to both.

From early 2008 to March 2009 we conducted 44 in-person and telephone interviews with Swiss federal administration officials and 11 interviews with experts on Swiss public administration and the LTrans law, as well as an online quantitative survey of federal employees. Broken down in more detail, we held:

- one to two hour face-to-face semi-structured interviews with 19 civil servants who head their federal office's LTrans compliance effort ('LTrans officers'), the LTrans officer of the General Secretariat of each of the seven federal departments, and a member of the Chancellerie<sup>5</sup> between March and December 2008<sup>6</sup>;
- 30-minute semi-structured telephone interviews with LTrans officers at 17 additional federal office (based on an abbreviated version of the face-to-face interview questionnaire) in November and December 2008;

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<sup>5</sup> The Chancellerie is the staff office for the Federal Council, the country's highest executive governing body that consists of seven Ministers, who share equal power in decision-making for the country at the federal level.

<sup>6</sup> Switzerland has seven federal government departments, each of which is headed by a member of the Federal Council and includes a General Secretariat and between five and eleven separate offices.

- 30-minute to one hour face-to-face or telephone interviews with 11 experts from government (4), the Swiss academic community (4), and media (3), who are either users of the law, have studied the law, or comply with the law.

The questions we posed to government administrators for the FNS study centered on four main subjects:

- preparation for the implementation of LTrans (What steps were taken? How much did preparation cost your office? What concerns did people have about how the law might affect their office/work?);
- data about requests (How many requests have been made? Who is making requests? How do you process an LTrans request?);
- perceptions of the effects, changes, and attitudes engendered by the law (What effects has the law had on your organization? Have you encountered problems with compliance? How do people in your office feel about the law?);
- future plans for compliance (If the number of requests were to increase, how would your office deal with them? Do you have any plans for compliance in the next several months?)

Questions to those interviewed only for the evaluation centered primarily on the first two topics, while those to the experts focused on explanations for findings we had collected from the federal administrators.

We recorded the 27 in-person interviews, transcribed the recordings and coded the transcriptions. We developed the coding scheme according to themes that came up as we transcribed and then created more specific codes as we refined the categories. For the interviews with the 11 experts and 17 phone interviews with federal office LTrans officers we took notes and categorized the responses according to the coding scheme we had developed while transcribing.

We administered the quantitative survey online. The target population was all employees in 24 of the federal offices that had participated in the interview stage of the project. We relied on the LTrans officers whom we had interviewed to distribute an invitation and link to the survey. Though we asked them each to invite 30 colleagues working in various capacities and at different levels of their organization to participate, we had no control over the sample they chose. We believe that 730 federal employees were invited to fill in the survey.

We received responses from 231 federal workers in 21 offices and departments, which translates to a 32% response rate. Nearly 50% of our survey participants identified themselves as mid-level managers, and 37% as non-management staff. Over 80% have worked in public administration for 20 years or less. Ten percent reported that they are responsible for LTrans compliance in their organization, while 55.2% stated that they deal with information requests (of all kinds – not necessarily LTrans) only rarely or

occasionally. However, 87.5% reported knowing the general principles of LTrans or understanding the law well or very well.

## **Findings**

This section is divided into two main parts. In the first we briefly describe how Swiss federal offices and departments prepared for the implementation of LTrans and what their concerns were prior to its coming into force. In the second part we report the number of requests that have been made since July 1, 2006 and the problems that LTrans officers have experienced with implementation. We explore whether LTrans officers' worries have materialized, the attitude federal workers have toward the law, and the changes that LTrans officers have observed in their colleagues' behavior since the law came into force.

### ***Preparation for LTrans***

The approaches to preparing for LTrans implementation varied across federal offices. In a few of the offices a team of two or more people was put in charge of preparing the organization, but in the majority the responsibility fell to the designated LTrans officer. With the exception of one federal department that decided to centralize the treatment of requests made to all of its offices, federal departments and offices proceeded with preparations in a decentralized manner. Most offices drew up their own implementation plan, while in a handful of offices nothing formal was done beyond sending a letter to employees explaining who was in charge of LTrans compliance in their organization. There was no collaboration on the preparation for the law between offices, nor between the departments and their offices – each created its own directives, documents and sample response letters.

None of the offices or departments hired extra staff to deal with LTrans requests; however, in most federal organizations LTrans compliance was added to at least one staff member's official duties. The vast majority of the LTrans officers we interviewed said their work contracts had been modified to state that between five and ten percent of their time would be dedicated to compliance with the law, while a few saw no official change to their work contract. No LTrans officers were aware of material resources purchased specifically for the implementation of LTrans.

Fears surrounding the implementation of LTrans stemmed mainly from uncertainty. Roughly half of the LTrans officers we interviewed stated that before July 2006 they worried about the impact that the law would have on their organization and on their work. Of those who were not worried, one surmised that the lack of fear could be attributed to the attitude of his organization's leadership and the fact that exceptions make it possible to withhold information: *"I think it is the people who introduce [the law in an office]; they could introduce it with fear or say that it's an opportunity...that it's not a problem and anyway there are exemptions."* Another explained that, *"since we're in the habit of working with a lot of information and*

*requests for publications, we have a routine in the office. So we don't have many fears in comparison with other offices where they never had requests for information."*

Other LTrans officers admitted that they feared an increased workload and worried about being asked to disclose certain types of documents. Several expressed that they had worried that they would have more work once the law came into effect. *"The fear that there would be a lot to do was very pronounced,"* stated one officer. Another justified her fears based on the experiences she knew a counterpart organization in the United States had had with the U.S. Freedom of Information Act (FOIA):

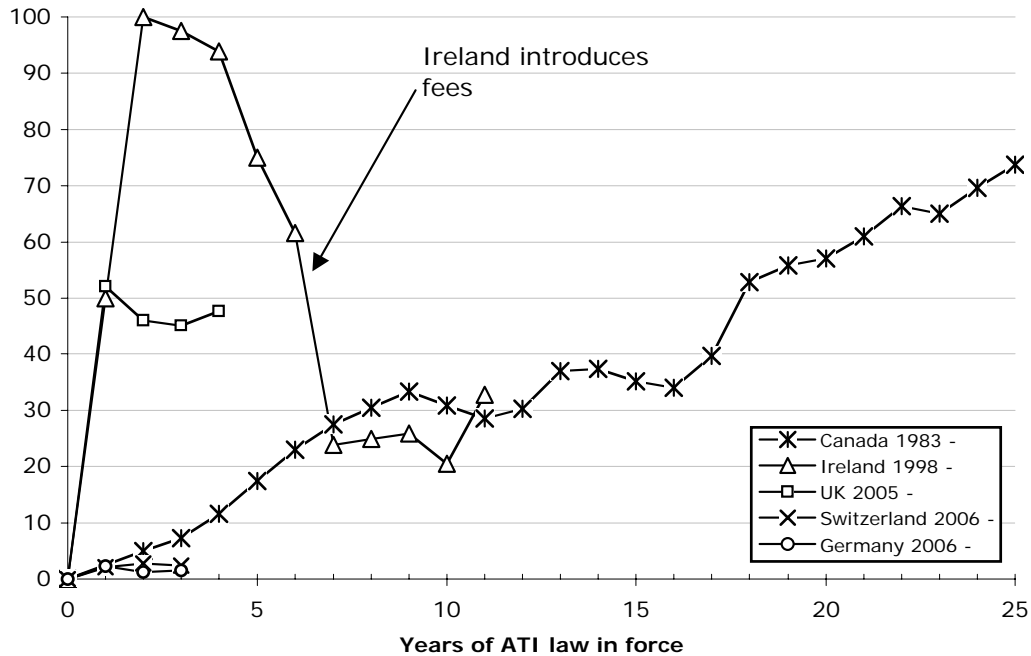
*"We have contacts with partner authorities in, for example, the US and [organization's name withheld] has been struggling with transparency, with the US FOIA. They put huge systems in place with departments and divisions working only on issues related to FOIA because they receive a lot of requests. And so we were quite frightened to see how [LTrans] was going to impact our work."*

Many LTrans officers mentioned that they or their colleagues had feared having to disclose documents for which the context was not clear, which might lead the requester to misunderstand or misinterpret the content. *"[We were] afraid of giving out a document that very quickly would be out of date, or releasing one that contained an error, or having to rewrite certain documents so that the people could understand,"* explained one officer. Others cited fears about having to disclose documents like contracts their office had with external organizations or internal memos.

### ***Post LTrans introduction***

In the six months after LTrans came into force (July-December 2006), federal government organizations received 95 requests, while 249 were made in 2007 and 221 in 2008. These figures are low compared to the number of ATI requests made at the federal or central government level in other countries. The relative number of requests made in Switzerland in each of the first three years of the law was roughly the same as in Germany and Canada, but far lower than in the United Kingdom or Ireland (see Figure 1). During 2008 the offices and General Secretariat of each of the seven federal departments together received between 11 (Department of Economics) and 60 requests (Department of Energy, Transport and the Environment). However, the average number per office and General Secretariat was only three and many organizations received no requests at all. Half of the LTrans officers we interviewed said they had expected more requests than they have received since July 2006.

**Figure 1: ATI requests received since introduction of law at the federal or central (UK, Ireland) government level<sup>7</sup>**



Of the total number of requests (595) made in Switzerland since the law's inception 11% have been appealed to the Commissioner. This is a much higher proportion than in the UK, where only an estimated 1% of requests reach the appeal level, and Ireland, where 5% of all requests made to public bodies in 2008 were appealed.

These figures only tell a rough story about the use of LTrans in Switzerland – they do not take into account the complexity of how requests are classified and counted. One problem is that a definition of an LTrans request is not included in the law. This means that interpretations of what an LTrans request is and whether a request for information should be classified as such vary widely across federal administration. Some organizations treat all information requests received through an online form (standardized across many offices) as LTrans requests: *'If someone uses the internet form to present their request to the office, then that is an LTrans request; it's certain, even if it doesn't require any work. In most cases it's something else but officially it's considered under LTrans,'* stated one LTrans officer. Others consider only those that specifically mention the law as LTrans requests: *'If the person who makes the request doesn't invoke LTrans, it won't be*

<sup>7</sup> To calculate the data for this graph, we took the total number of requests per year provided in official government statistical reports, divided that amount by total population divided by one million, and then divided this number by 12 (months per year – in order to account for the fact that the Swiss law went into force in July 2006 and the Irish law in April 1998). For example, in the first full year of the Swiss law being in force (2007), the total number of reported requests was 249. The population of Switzerland in 2007 was estimated to be 7.6 million people, which divided by one million is 7.6. The calculation of  $249/7.6/12 = 2.73$ , which is represented in this graph for the first year of the Swiss law's implementation.

*classified as a request under the law and I won't be informed about it.'* Still others reported that they consider any request for information that requires some work as an LTrans request. *'For me it is a request when it requires making a decision - if it is a document that has not been published until now that requires me to speak with different people about whether it includes secret issues, or if I have to ask myself if there would be a problem making it public.'* The fact that federal organizations have different ways of identifying an LTrans request may explain the low number of requests – it may be that they receive far more requests for information than are evident in the statistics because they do not register them all under LTrans.

Requesters are not required to reveal the capacity under which they make their requests; thus, it is impossible to obtain an accurate count of who is using LTrans. However, many requesters' identities are clear from their correspondence with the administration, e.g. journalists who use email addresses that include their employer's name - 'john.doe@newspapername.ch'. According to LTrans officers' estimates, the two most prolific types of requester are journalists and members of campaign or lobby groups.

Federal administrators' perceptions of LTrans and its effects since July 2006 have been mostly positive or neutral. The fears that many LTrans officers had before the law came into force seem to have disappeared. According to responses by interviewees and survey respondents, the concern of more work was unfounded, in large part because federal departments and offices have received relatively few requests. More than 73% of those who answered the online survey think LTrans has increased the amount of work for public officials only 'a little' (36.9%) or 'not at all' (36.4%).

Despite the Federal Council's proclamation that LTrans would bring about change, the majority of LTrans officers and other federal workers we interviewed and surveyed have observed little to none since the law came into force. Among survey respondents, 61.5% believe that the law has brought about little to no internal change in the administration. *"The mindset is still as it was before,"* stated one interviewee. *"The change was very, very small. It was a change in mindset, perhaps, but in practice it is very small,"* said another. One officer hypothesized that the law is just not well-known enough among federal employees: *"I don't believe that everyone has really incorporated the basic principle [of transparency], or that everyone is really very conscious of this law."* However, it may also be that the lack of change stems from the fact that some offices already considered themselves transparent before the law came into force. *"We were already a transparent enough office, we did not see a paradigm change,"* offered an LTrans officer. Another remarked that the shift toward transparency had occurred as early as the 1990s – before LTrans had even been written. *"We see some effects that date back to the 1990s because we spoke in the 90s of the principle of transparency and [at that time] journalists who were requesting information were referring to this principle."* A solid majority (58.3%) of administrators

think LTrans has increased the administration's level of transparency to some extent, although 26% feel the law has had very little or no impact on how transparent the administration is. Over 65% believe that the federal administration rates between a seven and ten [on a scale of one to ten] in terms of its actual level of transparency, independent of the effect of LTrans. Solid proportions of those who answered the survey have noticed no effects of the law on the administration's level of effectiveness (43.2%) or on the quality of information management (48.7%) at their organization<sup>8</sup>.

Nor do federal employees think that LTrans has brought about much, if any, change in the relationship between the administration and citizens. Fifty-nine percent think the law has had little to no effect on the balance of information flow from government to the public and an even larger proportion – 73% - believe the law has had little to no effect on the participation of citizens in the development of public policies. Overall they think LTrans has made little or no impact on the improvement of relations between the state and its citizens. Among our interviewees, approximately a quarter said they thought the law had improved the relations between administration and the public or resulted in more trust in government on the part of citizens, roughly equal to the 30% of survey respondents who said the same.

Despite the lack of change that LTrans officers and other federal administration employees perceive the law to have caused, some of our interviewees did mention that co-workers had altered (or threatened to alter) behavior to avoid disclosing documents. Several talked about separating out sensitive information so that it could be withheld, making documents more presentable to outside eyes, or avoiding certain written communication altogether. *'We used to put notes on documents and then we had to release the whole document. So now we have to put the notes on a separate piece of paper,'* admitted one LTrans officer. *'I would say that we pay a bit more attention to making notes a bit cleaner, to having a bit more order in the files,'* stated another. Yet another officer revealed, *'I heard that papers should be titled "memorandum to person X" so in this way the paper is designated for personal use and then it's exempt from disclosure.'* The same interviewee reported a manager's reaction to the possibility of having to disclose sensitive documents: *'The director said: "if we have to give these reports here...or the minutes of our directorate's meetings, we stop taking minutes at the meetings."'*

## Discussion

Before LTrans came into force, many federal LTrans officers were concerned about seeing a significant increase in their workload as they received a large number of requests for information. However, as we have seen above, since the law came into force few requests have been made under LTrans and federal department and office staff members have noticed little change to the culture of their organization, whether in terms of work demands or the more

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<sup>8</sup> We defined for respondents the meaning of effectiveness - 'work done well, more quickly'.

general level of change in mindset or paradigm, the behavior of their colleagues, or the relationship between the administration and members of the public.

The research question for our SNF study has therefore shifted from the extent to which LTrans has affected change in the federal administration to why there have been so few requests and so little change. With the evidence described above, we have drafted several preliminary hypotheses that offer answers to these questions:

1. Few requests are submitted to federal departments and offices because
  - a. there is presumed low public awareness of the law, which is exacerbated by the fact that few journalists use the law;
  - b. the government already provides members of the public with sufficient information to make decisions when voting;
  - c. the tradition of political consensus (rather than opposition) and the *Milizsystem* make it unnecessary for politicians to use the law, in contrast to countries like the UK<sup>9</sup>;
  - d. requests are made at the cantonal level;
  - e. trust in government is relatively high in Switzerland and corruption is low.
2. The administration had already experienced change before the law came into force – LTrans introduced little new to the work of federal employees;
3. Federal administrators do exhibit resistances to transparency, including liberal and broad use of exemptions, which allow them to withhold documents they do not wish to disclose.

On the following pages we explore these hypotheses in more depth.

We have identified five salient explanations for the low number of requests to Swiss federal administrative offices since July 2006. First, awareness of the law among the public is low. Several of the experts and members of the administration whom we interviewed stated that they believe members of the public do not know about the law and therefore do not make requests. In contrast, there are relatively high levels of awareness and use of the Freedom of Information Act 2000 in the United Kingdom (see Figure 1) – the proportion of the population that reported knowing about their right to information rose from 74% in 2004 (before the law went into force) to 86% in 2008 (Social and Market Strategic Research 2008). One possible explanation for the difference between the two countries in this respect is that journalists in Switzerland infrequently write about LTrans or use it to obtain information, despite LTrans officers' and other government administrators' belief that the media are the largest source of requests. In contrast, in the UK nearly 2000 newspaper articles were published in national papers between 2005 and 2007 about FOI or using information obtained

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<sup>9</sup> The *Milizsystem* characteristic of the Swiss political culture refers to the fact that nearly all politicians are non-professionals and hold separate day jobs.

through FOI from central government (Worthy 2009). Experts whom we interviewed hypothesize that this is because journalists have not been trained to use the law in Switzerland (as many have in the UK) and that they already have well-established informal avenues for receiving information from the government and administration, so they do not need the legislation. For example, journalists accredited by the Swiss confederation can participate on a weekly basis (and sometimes more often) in press conferences that follow the meetings of the Federal Council, where they can ask questions and obtain necessary information.

Journalists are not the sole beneficiaries of access to government information via other paths, however. A second possible explanation for the low number of LTrans requests to federal offices and departments is the already wide availability of information to people and organizations who need to make informed decisions when voting (there are a minimum of four opportunities for citizens to vote each year) or participating in public debates. Not only do government organizations publish a great deal of information on their web sites, they also circulate information as a matter of course as part of the consultation process and send out information prior to votes, initiatives and referenda. The consultation process guarantees that all stakeholders with a vested interest in a proposed law can obtain the necessary information to understand and comment on it prior to it being put to vote. This includes NGOs, companies, and academics. From these sources it is not difficult for individual citizens who have connections to access the information. We also hypothesize that LTrans is little utilized by politicians for two main reasons: 1) the 'consensus system' guarantees that all main parties in government have access to all information needed to vote and make policy decisions; 2) as non-professionals, they spend a large proportion of time at their day jobs, many of which are with influential companies and NGOs from which they can receive the information they need to make decisions as members of Parliament.

A fourth possible explanation for the lack of requests is the role of federalism in accentuating the proximity of cantonal authorities – and relative distance of the federal administration – to the people. We hypothesized that more requests are made at the cantonal than at the federal level because most services important to individuals, such as education and health, are provided by cantonal organizations and, as a result, people are more likely to seek information from them than from those at the federal level. However, the results of exploratory research for evaluations of the Berne and Vaud cantonal laws on access to information in the past six months make it difficult to sustain this hypothesis. Whereas all 19 of the 22 cantonal offices that responded to a survey about the Berne legislation had received between zero and five requests in the past year (Wicki 2008), which would appear to disprove it, of the 24 out of 45 cantonal offices that answered the survey on the Vaud ATI law 13 had received between zero and five requests in the past year, two between 11 and 15, and three over 100 (five replied that they had no idea how many requests they had received and one said they had gotten

'a lot')<sup>10</sup>. The latter figures would indicate more requests in one canton over the past year than at the federal level, thus supporting the hypothesis.

Finally, if the hypothesis that a lack of trust can be partly ameliorated through the implementation and use of transparency mechanisms holds, perhaps we can also say that high trust explains the lack of use of those mechanisms. Of the populations of all European countries, Swiss people have the highest level of confidence in their government – 67.2% reported 'a great deal' or 'quite a lot' of trust in the government in 2007 – followed by Finland with 64.1% (World Values Survey Association 2007). Switzerland also ranks as the fifth least corrupt country in the world according to the 2008 Corruption Perceptions Index by Transparency International (Transparency International 2008).

A second explanation for a lack of change to administrative procedures and behavior since LTrans came into force is that the trend toward increasing transparency had begun in Switzerland long before the law was in effect. This development was a result of the polarization of political parties as well as external pressure on the government to become more open during the 1990s. As stated above, direct democracy in Switzerland is based on citizens having sufficient – and supposedly balanced – information on which to base their participation in elections, referenda and initiatives. This information is sent out to all voters by post prior to each vote and includes a statement by the Federal Council as well as the opinions of each political party. With the growth in the Swiss People's Party's (SVP, a rightist conservative political party) power in the 1990s and the subsequent radicalization of other parties' positions as they sought to differentiate themselves from the SVP, the administration became a tool for some parties to collect information that would further their agendas. As a result, the administration was accused of giving the results of surveys they carried out to only certain members of government and parties and there were demands for more neutrality on the part of the administration. Thus, the administration had two choices: 1) stop collecting information altogether; 2) give all the information they gathered to all parties. The administration chose the latter, though they reduced the number of surveys they conducted. This made the federal government more conscious of the need for administrative transparency, lest the citizens believe that they were being given biased or only selected information on which to base their votes. Simultaneously the international 'strengthening democracy' movement, guided in part by the OECD, was gaining force, which led to pressure on countries to be more open. It could be for this reason, at least in part, that the number of countries that passed and implemented access to information laws in the late 90s and early part of the first decade of the 21<sup>st</sup> century – including Switzerland – increased so dramatically.

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<sup>10</sup> Data collected by Philomène Meillard, MPA student at the Institut de hautes études en administration publique, for her Masters thesis to be completed in September 2009.

A final hypothesis about the lack of change to federal administrative practices and behavior contrasts quite strongly with what we propose above – that the administration has not, in fact, embraced transparency. Though it seems that offices and departments comply with the law to the extent necessary, few appear to have gone beyond what is required and some actually look for ways to avoid disclosure. Evidence for this hypothesis appeared both in the answers we received in interviews as well as the high percentage of requests that are refused. The Swiss transparency law offers the administration many ways to avoid disclosing information. First, as stated above, the law is not retrospective (in contrast to the laws in jurisdictions such as the UK, Australia, and Scotland). This means that any documents completed prior to July 1, 2006 are exempt from disclosure requirements. Several interviewees told us they categorically refuse to release documents that date before July 2006, though others said they do consider requests for pre-LTrans documents. Second, only finished documents must be released – drafts and incomplete versions do not fall under LTrans; nor does information in general. Respondents to our survey overwhelmingly agreed (94.4%) that drafts of documents should not be released. Third, the exemptions that can be used to justify withholding information are relatively broad and protect wide swathes of existing documents. Swiss federal administrators have used these fairly liberally – over the past two and a half years 43% of requests have been refused in part or in full, much higher than in the UK (33%) or Ireland (23%).

## **Conclusions**

At the beginning of our SNF project we sought to find out what the impacts of LTrans on the working practices of federal administrative organizations have been – has the law affected change and, if so, how? By talking with LTrans officers and experts on the legislation, as well as surveying a sample of all federal employees, we have learned that the Swiss Law on Transparency seems to have barely made a ripple on the surface of the administrative culture. Few requests for information have been made, relative to the number in most other countries, and few LTrans officers or other federal employees have noticed changes to the culture or working practices of their organizations.

It is unclear whether LTrans has actually increased transparency of the Swiss federal administration. While the results of our survey and responses from interviewees seem to indicate that federal employees think the administration is transparent, there is little evidence that this is explicitly because of LTrans. It could be that the increase in transparency has been a gradual trend since the 1990s; the opposite could also be true – that the law has actually made federal employees more cautious about releasing information, leading to selective disclosure and less written communication.

It is quite early in life of the Swiss law to make definitive statements about its effects. If experience in other countries is any guide, people will become

more aware of the law over time, which should boost use of the law. However, if our hypotheses about the lack of people's need of the law hold, e.g. journalists' and politicians' already sufficient access to information and the administration's proactive dissemination of information pertinent to citizens' decision-making on policy issues, then perhaps the number of requests will remain steady or even decline.

The data on which this paper is based are only preliminary findings and hypotheses. We need to further develop our analytic model of interview and survey responses and, if possible, conduct a survey of the general population's information needs and interest in government information. We tentatively plan to conduct a survey of the wider population about their information needs in the next phase of the SNF project.

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