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# THE LAW OF ACCESS TO INFORMATION AND ITS APPLICABILITY IN BRAZILIAN MUNICIPALITIES

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## **ABSTRACT**

The Law on Access to Information - LAI no. 12.527 / 2011- aims to guarantee citizens access to information through transparency in public administration, considering that access to information is a fundamental right and represents an essential condition for democracy and the fight against corruption. This paper is a literature review that seeks to identify how LAI has been applied in Brazilian municipalities. The results showed that the analyzed municipalities have the Transparency Portal, however, the information provided is incomplete and does not meet the criteria of clarity, transparency, and timeliness. This article aimed to demonstrate that publicity and transparency of administrative acts can reduce and inhibit the practice of corruption through Social Control, considering that transparency in public management is essential for the participation of society.

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## **INTRODUCTION**

Access to public information is a guaranteed right to any citizen, guaranteed by the Federal Constitution of 1988 and the LAI, approved on November 18, 2011, which came into force on May 16 2012, and aims to reinforce access rights to information. information by the citizen, considering the duty that public managers have to carry out the management of documents, preserve their collections, as well as develop and implement policies that give citizens access information.LAI appears in this scenario as a fundamental instrument for the realization of citizens' rights, as it provides for procedures and deadlines to be observed by public bodies/ entities, in order to ensure the fundamental right of access to information, registered in the Federal Constitution 1988 and regulated by Federal Law No. 12,527 / 2011.(BRAZIL, 2011). When establishing this regulatory framework, Brazil takes an important step towards the consolidation and maturation of the democratic process, moving from the culture of secrecy to that of access, and in this scenario, information is the rule and secrecy, the exception. (BERNARDES et al. 2015, p. 762).

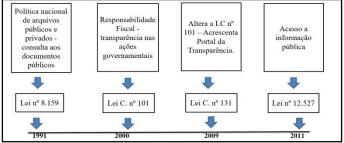
Information mediation is a concept undergoing theoretical consolidation, with terms under construction or not fullyexplored. It is understood that the discussions are crucial points for the development of any area of knowledge. The opportunity to seek to fill conceptual and methodological gaps or even to contribute to the process of evolution and updating of paradigms is expanded. (SILVA *et al.* 2019, p. 2). Art. 8 of Law No. 12,527 / 2011 provides in a crystalline way the duty of public bodies and entities to disclose information of collective interest in an easily accessible place, using all the means and instruments they have, and the disclosure of this information is mandatory in internet through websites, regardless of any request, however municipalities with a population of up to 10,000 (ten) inhabitants are exempt from mandatory disclosure through the internet, see:

Art. 8 - It is the duty of public bodies and entities to promote, regardless of requirements, the disclosure in an easily accessible place, within the scope of their competences, of information of collective or general interest produced or kept by them. § 1 In the disclosure of the information referred to in the caput, the following shall be included, at least: I - record of

the competencies and organizational structure, addresses and telephone numbers of the respective units and opening hours for the public; II - records of any transfers or transfers of financial resources; III - expense records; IV - information regarding bidding procedures, including the respective notices and results, as well as all contracts entered into; V - general data for monitoring programs, actions, projects and works of agencies and entities; and VI - answers to society's most frequently asked questions. § 2 In order to comply with the provisions of the caput, public bodies and entities must use all legitimate means and instruments at their disposal, and disclosure on official websites of the world wide web is mandatory (BRASIL, 2011). With this information, it is hoped that citizens will be able to exercise social control effectively in the public sector, contributing to the inhibition of corruption and malpractice that threaten their lives. (ROSA et al. 2016, p. 80). Thus, "advertising or access to information", "citizen participation in public deliberations" and "access to justice" constitute the intangible basis of what has been called participatory democracy. Therefore, between the right to information and the rights to democratic participation, a truly symbiotic relationship can be established. Only citizens who are provided with information can participate in public debates and forward their own positions. (RODRIGUES 2014. p. 91).In this sense, the Comptroller General of the Union - CGU believes that transparency is the best antidote against corruption, as it works as an inducing mechanism, leading public managers to act responsibly and allowing society, with information, to collaborate with control, of the actions of its leaders, in order to check if public resources are being used as they should. (CRUZ,2016; CGU, 2013, p. 51). Due to the prominence that public transparency has been gaining, the Transparency Portal has become the main instrument for the dissemination of information by public bodies and entities. (LEITE-FILHO et al. 2015, p. 115). Thus, this work aims to carry out a literature review on the applicability of the law of access to information at the municipal level, based on the criteria established in Federal Law No. 12,527 / 11. The research took place using the data available on the Coordination for the Improvement of Higher Education Personnel (CAPES), SCIELO and SPELL platforms, and also on the transparency portal of the municipal governments selected for this research.

Access to Information Law in Brazil: Access to public information is provided for in the Federal Constitution, as well as in other related legislation, but the need to expand public policies has led to the creation of a law that deals with more specifically. The milestone for the creation of the first Access to Information Law was known as Sweden, in 1766. Colombia (pioneer) in 1888; Finland in 1951; United States of America - Freedom of Information Act, known as FOIA (Freedom of Information Act) in 1966; Denmark and Norway in 1970; France and Holland in 1978; Australia, New Zealand and Canada in 1982; Hungary in 1993; United Kingdom -Freedom of Information Act (FoI) in 2000 and Environmental Information Regulations in 2004; Scotland in 2002; Mexico in 2002 (one of the most advanced countries in this matter); Chile and Uruguay in 2008. Spain in December 2013 (came into force in December 2014) and Paraguay that passed its law on September 18, 2014, is the 100th country to pass the Access to Information Law. (CARLI AND FACHIN, 2016, pp. 10–11). In Brazil, access to public information was regulated only in 2011, through Law No. 12,527, in its art. 1 that defines which bodies and entities are subject, such as the Union, States,

Federal District and municipalities, the Executive and Legislative powers, Courts of Auditors, the Judiciary, the Public Ministry, autarchies, foundations, public companies, mixed-capital companies and private entities that receive public resources. (BRASIL, 2011; (CARLI AND FACHIN, 2016, p. 12). In this context, it is worth mentioning that Brazil has Law 8,159 / 1991 which deals with the national policy of public and private archives, providing that the Public Administration will open the consultation to public documents; Complementary Law No. 101/00 provides for Fiscal Responsibility; and regarding transparency in government actions, the Fiscal Responsibility Law No. 101/2000 stands out, amended by Complementary Law 131 of 2009, which specifically addresses the Transparency Portal. Figure 1 represents the history of the Access to Information legislation in Brazil.



Source: Prepared by the author.

Figure 1. Timeline of the regulation on the right of access to information in Brazil

Based on figure 1, it can be seen that with the creation of Law No. 12,527 / 11, the right to access information was finally regulated. This law appears to de-characterize the confidentiality of public documents and information that has permeated the Public Administration for so long.Art. 6 of the same Law provides that the organs and entities of the public power must ensure the management and transparency of information, providing wide access, as well as its dissemination. In its art. 8, there is an example list of what requirements should be included in the information disclosed, such as: (BRASIL, 2011).

- I registration of competences and organizational structure, addresses and telephone numbers of the respective units and opening hours to the public;
- II records of any transfers or transfers of financial resources:
- III expense records;
- IV information regarding bidding procedures, including the respective notices and results, as well as all contracts, entered into:
- V general data for monitoring programs, actions, projects and works of agencies and entities;
- VI answers to frequently asked questions from society.

Thus, considering that the Public Administration is in a managerial phase, at the moment when the State seeks to offer quality services to the population, it is necessary that the various public entities, render accountability to society regarding the various destinations of the amounts raised, in order to promote faithful monitoring for the true financiers of governmental actions. (CEOLIN *et al.* 2016, p. 44). In 2012, LAI was regulated by Decree 7,724, within the scope of the Federal Executive Branch, establishing procedures for guaranteeing access to information and for the classification of

information on access restriction, observing the degree and term of confidentiality, the scope of the its performance, forms of active and passive transparency, among other aspects. (CRUZ *et al.* 2016, p. 725). According to the legislation that deals with the right of access to information, this rendering of accounts must occur through the internet and must be made available through transparency portals.

**Administration: Transparency** in Public Public Administration is empowered and formed by principles, and the principles of advertising and transparency are related to influencing access to information by the The transparency of public information is linked to the principle of advertising, provided for in Article 37 of the Magna Carta (BRASIL, 1988). Even before this article, the Federal Constitution already mentioned its article 5, which guarantees access to information held by the State to anyone. This premise is guaranteed to citizens, thanks to legal provisions developed from experiences in other countries. (ROSA et al. 2016, p. 79). The principle of remote advertising to the republican principle itself, some of the cornerstones of the current constitutional system. The word republic comes from the Latin res publica, which means something public. Therefore, acts have taken on behalf of the state, including administrative ones, are open to all, are public, must be widely franchised. This is yet another principle that aims to legitimize administrative activity, allowing all members of society to be aware of the acts and any data of interest. (NIEBUHR, 2015, p. 60). Transparency in the public sector, considered as a requirement for democratic management, depends on the degree and the way in which users have access to information, and this variable is defined through a political and ideological process in which one chooses to be transparent or not. (SOUZA, 2013, p. 101). It should be noted that the duty of transparency is associated with Accountability, which deals with the obligation of the bodies and entities to be accountable for the actions developed, as well as being held responsible for

Fiscal Responsibility Law (LRF): In Brazil, in the last decade, one of the most profound changes in public management is the adoption of fiscal responsibility as a guiding principle for Public Administration. (MACHADO et al. 2013, p. 6). The LRF is regulated by the complementary law 101/200, which aims at the search for responsible and quality tax management, therefore, planned and transparent government actions are presumed, thus providing access to information to citizens regarding their performance, in terms of public resource management. Through the LRF, Brazilian public transparency has been added as one of the standard mechanisms in public management. In order to strengthen transparency mechanisms in the public sector, other Federal Laws were enacted, as can be mentioned, Complementary Law 131/2009, which gave it prominence, as in the world wide web and LAI - Law 12.527 / 2011 - which expanded the transparency portfolio once and for all, detailing it, such as the categorization of active (information exposed in electronic media) and passive (requested information). And finally, the most current, the Anti-Corruption Law, Law 12.846 / 2013, which brings greater rigor in the inspection of acts of administrative and civil liability of legal entities against public administration. (CARDOSO et al. 2018, p. 105).Art. 48 of the LRF lists the instruments of transparency in fiscal management, such as plans, budgets and laws of budget guidelines; the rendering of accounts and the respective prior

opinion; the Summary Report on Budget Execution and the Fiscal Management Report. With this, the LRF intends to increase the transparency of planning and control acts for each period. The sole paragraph of article 48 of the LRF adds as a means of ensuring transparency, the real-time disclosure of information regarding budgetary and financial execution and the encouragement of popular participation and the holding of public hearings during the preparation and discussion of plans, budget guidelines laws and budgets. Article 9 of the LRF refers to the calendar of public hearings on budgetary issues.



Source: (Brazil, 2019).

Figure 2. Stamp developed for the Access to Information Law

As instructed, this new banner should replace the Public Transparency banner (figure 3), for the bodies that have a transparency page. (BERNARDES *et al.* 2015, p. 778).



Source: (BRAZIL, 2019).

Figure 3. Public Transparency Banner

Figures 2 and 3 show the need for municipalities, on their websites, to disseminate these images to identify access to information. Considering such items, a survey was carried out on the websites of the prefectures of southern Brazil, when it became evident that the performance of the websites analyzed was somewhat insufficient. This fact was possible to verify when it was verified that, in 20% of the surveyed sites, the banner for LAI was not available on the home page. Except for the Santiago City Hall site. And for the 80% that presented the banner on the home page, in 59% of the cases, it was different from the one recommended by the Secretariat of Communication of the Presidency of the Republic. Figure 4 shows a mosaic of the different banners that referred to LAI, found throughout the research. (BERNARDES *et al.* 2015, p. 778).



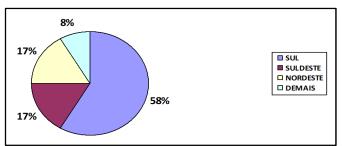
Fonte: Elaboradapelaautora.

Figure 4. Mosaic of the banners for the LAI found on the surveyed sites

In view of the data analysis, it was found that the municipalities that complied with this guideline were: Balneário Camboriú, Novo Hamburgo, Butiá, São Francisco de Assis and Santiago, considering that their transparency portals meet the requirements set forth in Law No. 12,457 / 11 regarding access to information for citizens.

## **METHODOLOGY**

This work was prepared based on a literature review in the CAPES databases - through the journals portal, as well as the SCIELO and SPELL platforms, in the period from 2009 to 2019. The keywords used were "access law information "and" transparency in the municipalities ".Adding all the databases, 109 articles were found. After reading the titles of the articles, it was noted that some of them were repeated on different bases and others did not meet the criteria of this study. 36 articles were selected to read the abstract and those that did not relate to the purpose of this study were excluded. After reading the abstracts, 12 articles were selected that met the initially proposed criteria and were read in full (Table 1). In the final selection, 10 (ten) articles dealing with the Law on Access to Information in general, 5 (five) articles on Social Control and transparency, 5 (five) articles on the importance, construction and implementation of the Law of Access to Information, 4 articles about advertising and transparency. Bibliographic research is one of the best ways to start a study, looking for similarities and differences between the articles raised in the reference documents. The compilation of information in electronic media is a major advance for researchers, democratizing access and providing frequent updates. The general purpose of a research literature review is to gather knowledge on a topic, helping to provide the foundations for a meaningful study for nursing. (SOUZA et al. 2010, p. 103). The literature review carried out took into account only the articles published in the last ten years, however, it is noted that the publications took place between 2013 and 2019. Regarding the production of the authors, it appears that of the 39 authors / co-authors, none has produced and published more than one scientific paper on the Access to Information Law. It can also be observed that the academic production with the theme related to the Access to Information Law was concentrated in the municipalities located in the South region of the country, considering the articles selected for the development of this literature review in the CAPES databases - for through the journals portal, as well as on the SCIELO and SPELL platforms. When selecting the articles, it was possible to conclude that among the 12 (twelve) selected articles, 5 (five) stood out for being from the South, 3 (three) from the Southeast, 3 (three) from the Northeast and 1 (one) from the various regions of the country.



Fonte: Elaborada pela autora.

Figure 5. Demonstration of research carried out by region

## **RESULTS**

The aim of this study was to present and discuss the content of the literature regarding the Law on access to information and its applicability in Brazilian municipalities. According to data analysis, the South Region has a higher index of transparency. In this context, table 6 gathers the works found in the literature that deals with access to information, specifically in the South of the Country.

Table 6. Municipalities in the South of Brazil, identified for meeting the requirements set out in Law 12,527 / 11, which deals with the right to access information

Author /	Objective	Results / conclusions
Year	Objective	Results / conclusions
(Machadoet al. 2013).	Measure the level of transparency, through the disclosure of mandatory information on the websites of forty-one municipalities in Rio Grande do Sul, Brazil, with a population of more than 50 thousand inhabitants.	The results show a low level of transparency of the information required by the laws under study by the municipalities in the sample and the underutilization of the Internet by the municipal governments.
(Bernardes <i>et al.</i> 2015).	Analyze how this law is being implemented by city halls in the southern region of the country.	It concludes that of the 479 municipalities with more than 10 thousand inhabitants in the South region, only 8.35% had any indication of the presence of LAI in their sites.
(Rosa et al. 2016).	Identify the percentage of municipalities in the southern region of Brazil that discloses the information required in art. 8 of the Access to Information Law on its websites.	It is concluded that, in general, the municipalities of the southern region of Brazil, with greater than 10 thousand inhabitants, partially meet the requirements presented in Article 8 of the LAI.
(Carli and Fachin, 2016).	Investigate how LAI is made available in the city halls of Santa Catarina that are members of the Association of Municipalities in the Far West of Santa Catarina (AMEOSC).	It is concluded that it is too early to make a broad assessment of the availability of LAI in the surveyed municipalities since it was approved in 2011. City halls are structuring themselves to meet the demands. Insufficient human resources, inadequate disclosure and awareness of civil servants and the population, in general, were considered obstacles.
(Bianchi et al. 2017)	Analyze the degree of transparency in the municipalities of Rio Grande do Sul with more than 50 thousand inhabitants.	The results obtained demonstrate that much relevant information about the budget and budget execution has not been disclosed, and, when available, many do not meet the criteria of clarity and timeliness.

Source: Elaborated by the author.

Based on table 6, it appears that among the articles analyzed, research was carried out in the State of Rio Grande do Sul and in the State of Santa Catarina. In view of this information, the municipalities of Novo Hamburgo, Passo Fundo, Canoas, Porto Alegre and São Leopoldo, both located in the State of Rio Grande do Sul, were identified with higher levels of transparency, according to the information indicators provided for in Law No. 12,547 / 2011 access to information.

(MACHADO etal. 2013, p. 14). That said, the indicators provided for in the Law on access to information that was identified in the municipalities' transparency portals to check the level of transparency were: Clear indication of the Access to Information Law, indication of means for requesting information, creation of the Information Service Citizen Information (SIC), information on the competencies of municipal bodies, information on the organizational structure, disclosure of the address, telephone numbers and opening hours, information on transfers or transfers of resources, Information on expenses incurred, information on tenders, notices and results of the contests, information on contracts signed, monitoring of programs, actions, projects and works, availability of answers to "most frequently asked questions (FAQ)", availability of a research tool, permission to record electronic reports, updating of information available actions, access to information by people with disabilities. The selection of these information indicators was prepared based on articles 5, 8 and 9 of Law No. 12,547 / 2011, and as a result, it was possible to identify which municipalities had the highest indicators of transparency. The authors (BERNARDES et al. 2015), carried out another research where they also analyzed the level of transparency of the municipalities in the Southern Region of Brazil based on the information indicators provided for in the Access to Information Law, however, the results obtained by these diverge with the data presented by the authors (Machado et al. 2013), since for the authors (BERNARDES et al. 2015) the ranking of municipalities with the highest transparency indicators are: Canoas, Londrina, Novo Hamburg, Florianópolis, and Nova Londrina. (BERNARDES et al. 2015, p. 787).

Therefore, it is clear that the only municipalities in common between the authors were the municipalities of Canoas and Novo Hamburgo, which stood out for being the most transparent city halls in the south of this country. For the authors (Bianchi, et, al, 2017), several indicators of information provided for in the LAI are not being disclosed and, when they are made available, most do not meet the indicators of clarity and timeliness, harming the process of popular participation and social control. Thus, they identified that the items least found on the electronic portals were content accessible to people with disabilities, Citizen Information Service (SIC) and transparent, clear information in easy to understand language. For the aforementioned authors, this information is worrying, since, even in municipalities with more than 50 thousand inhabitants, and which have a relevant economic capacity, levels of compliance were found that are still far from full compliance, that is, municipalities with a significant number of inhabitants do not meet the requirements set out in the Law (BIANCHI et al. 2017, p. 160). On the other hand, in the State of Pernambuco, the transparency portals of the municipalities Recife, Olinda and Jaboatão dos Guararapes were analyzed, and the results showed that the transparency portals of Recife and Olinda are more complete, have easier access, with a quick view of the information. In contrast, Jaboatão dos Guararapes needs to develop better, namely: to be more attractive and stimulate demand for all users of information, since it has fewer attributes and possibilities of access to information. (CEOLIN et al. 2016, p. 57). The Alagoas and Mineiros Municipalities in compliance with the LAI superficially follow the established requirements. Hence it appears that no municipality stood out for making information available on official websites. (LEITE-FILHO et al. 2015, p. 130; LAMENHA et al. 2016, p. 86). Throughout the study, it can be seen that all municipalities surveyed have a transparency website/portal, however, none of them fully complies with the current legislation on access to information for citizens.

#### **Considerations**

After studies carried out on the application of the Access to Information Law in some Brazilian municipalities, the results showed that most of those analyzed here have a Transparency Portal, but the information provided is incomplete, failing to meet the criteria of clarity, transparency, and timeliness. Thus, it is necessary to disseminate this information in more accessible language, so that the citizen can exercise social control, as well as contribute to improving public management and, in a way, inhibiting the practice of corruption within the Public Administration. In this context, the present study can assist the supervisory bodies, as well as encourage citizens to charge the bodies and entities for advertising information of collective interest, in order to increase the level of transparency in the Public Administration.

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