



## ACCESS TO INFORMATION, TRANSPARENCY, AND TECHNOLOGIES: A CASE STUDY AT THE LEGISLATIVE CHAMBER OF THE BRAZILIAN FEDERAL DISTRICT<sup>1</sup>

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**Abstract:** The right of access to information is regulated in Brazil by the Federal Government and other federated entities. Considering that this right is a fundamental one, and assuming that the mere existence of rules does not lead to their effective implementation, this work aimed to carry out a case study of the Legislative Chamber of the Federal District of Brazil (CLDF, from the Portuguese *Câmara Legislativa do Distrito Federal*) with the following research questions: (i) how does the CLDF implement the transparency norms and the access to information? (ii) what technological tools are being used by the CLDF to improve these transparency mechanisms? (iii) to what extent are citizens using the right to access information, and how has the CLDF responded to the formulated requests? For this case study, descriptive analyses of the rules were performed, along with interviews of CLDF servants and access to information requests. The triangulation of such data revealed some concern relative to the compliance with the rules by the CLDF, especially regarding the institutional capacity of the Chamber and the response to citizens in legal terms.

**Keywords:** Transparency; Technologies; CLDF.

### 1 Introduction

In the last decades, it was possible to notice a global dissemination of laws on access to information: before the democratization processes in the 1980s, only ten "pioneer" countries had rules regulating access to information, whereas in May 2019, according to a survey by the Global Right to Information Rating<sup>5</sup>, at least 128 countries formally guaranteed such a right in their legal systems.

Ranked 27th in the said ranking, Brazil approved rules on this theme, initially at the federal level and, later, in the respective federative units. This work uses as a reference Law No. 12527/11 (Law on Access to Information – LAI), which foresaw the need for all spheres and branches to have their respective laws, giving prominence to the Federal District through

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<sup>5</sup> Information available at: <https://countryeconomy.com/government/global-right-information-rating>. Accessed on May 1, 2021

District Law No. 4990/2012 and Steering Board Act No. 57/2016 (for the Legislative Branch of the Federal District).

Although the Federal Government and the Federal District formally have the normative framework mentioned above, it must be stressed that the mere existence of rules in itself is not capable of guaranteeing the concretion of the central goals of the right of access to information, such as political participation and the control of political agents by citizens (accountability). In this sense, this work aimed to perform a mapping of the implementation of the right of access to information in the Brazilian Federal District Legislative Branch (Legislative Chamber of the Federal District – CLDF, from the Portuguese *Câmara Legislativa do Distrito Federal*), carrying out a case study to address the following research questions: (i) how does the CLDF implement the transparency and access to information rules? (ii) what technological tools are being used by the CLDF to improve these transparency mechanisms? (iii) to what extent are citizens using the right of access to information, and how has the CLDF responded to the formulated requests?

As research materials, besides the specialized literature, a survey of the CLDF rules on the theme was performed, in addition to an analysis of the CLDF website and the information made actively available to the public, the elaboration of access to information requests to the Chamber when the information had not been published, and interviews with servants from the Ombudsman's Office, Presidency, Human Resources Department, and Digital Information Management Committee (duly approved by *Plataforma Brasil*). Such methodological procedures were necessary to obtain research findings that contributed to the analysis. It is worth noting that the information from the interviews is presented in a way that there is no identification of the servants, given that the focus was on the implementation of the access to information institutionalized at the CLDF.

## **2 Public transparency and the right of access to information**

Defined by Bataglia and Farranha (2019b, p. 32) as "an aspect of data publicization as well as of access to information", transparency has a central role in the Democratic State Ruled by Law, given that it is able to equip citizens with the information necessary to participate in the elaboration of public policies and follow, monitor, demand, and assess the decisions made by political agents or public institutions (CUNHA, 2018).

Within the scope of the Brazilian public administration, the legal instrument that assembles these elements and the right to access itself is Law No. 12527/2011 (Law on Access to Information – LAI), adding itself to the other infraconstitutional rules that may be edited by the other federative entities. That said, this section seeks to present the main aspects regarding the conceptual debate about the right of access to information, highlighting and describing the role of the national and district legislation. It is also important to mention that there are works

that make considerations about this theme. In this sense, one may mention the FGV studies by Furtado (2020) and Michener (2018), who work in research and indicators of the use of access to information tools (access to information requests) and about the possible barriers to such access, the importance of the de-identification of requests, and the passive transparency policy in general. There are also works by Almada, Amorim, and Gomes (2018) and Cunha (2018), besides other publications by these authors, expatiating on transparency and correlated themes.

## **2.1 Right of access to information at the federal level and the role of the LAI**

As the literature has repeatedly pointed out, the right of access to information is a fundamental right. One of its first records is in the item linked to the freedom of speech and informational freedom, present in article 19 of the Universal Declaration of Human Rights (UDHR), drawn up within the scope of the UN in 1948. The same right is also provided for in article 19 of the International Covenant on Civil and Political Rights (ICCPR) of 1966 and article 13 of the Pact of San José of Costa Rica. In the Brazilian context, the country has not only ratified the international diplomas mentioned above but also expressly provided for the informational right in the Federal Constitution of 1988, article 5, XXXIII<sup>6</sup>.

The consecration of the right of access to information in the Brazilian system notwithstanding, it was only with the enactment of successive non-statutory regulations that the operationalization and regulation of the right of access to information were enabled within the scope of the Brazilian Public Administration. Although some rules have been historically related to this theme, such as the specific regulation for secrecy or classified information (Law No. 11111/2005), for example, the law that came to, indeed, fully regulate the right to information was only enacted in 2011, after a series of influences and in the face of an institutional context that favored this approval (BATAGLIA; FARRANHA, 2019a).

From the historical viewpoint, the trajectory of the LAI is marked by the period of about 23 years up to its enactment, if counted from that of the Constitution of 1988. In 2003, a bill that would regulate this item XXXIII was presented, and, in 2009, on the initiative of the Executive Branch, there was another bill on the same theme (Bill No. 5228/2009), debated in the Council on Public Transparency and Anti-Corruption<sup>7</sup> (BATAGLIA; LEMOS; FARRANHA, 2020; BATAGLIA; FARRANHA, 2019b). After various debates in the Chamber and Senate (with attempts to expand the secrecy), it was enacted in the government of President Dilma Rousseff in November 2011, becoming effective in May 2012.

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<sup>6</sup> There are other constitutional provisions connected to the theme; however, because the focus of this work was the reality in the Federal District, we briefly explain such item of the fifth article of the Federal Constitution.

<sup>7</sup> The CTPCC (from the Portuguese *Conselho de Transparência Pública e Combate à Corrupção*) is an authority from the Office of the Federal Controller General that gathered representatives of the ministries and civil society organizations to debate the said bill. Further information may be found in the minutes of such CTPCC meetings (BATAGLIA; LEMOS; FARRANHA, 2020).

As highlights of the content its articles present, we have the following: (i) national nature (Federal Government, States, Federal District, and municipalities), covering all branches and agencies (Executive, Legislative, Judiciary, Prosecution Office, and Accounting Courts, direct and indirect administration) (article 1); (ii) principles, guidelines, and duty of the State to guarantee the right of access (articles 3 and 5); (iii) items and procedures for active transparency (article 8); (iv) procedures and deadlines for passive transparency (articles 10 through 14); (v) possibility of appeals (articles 15 through 20); (vi) information classification and protection of confidential data and personal information (articles 21 through 31); (vii) responsibilities of servants in such transparency activities (articles 32 and ss). The general deadline of twenty days for there to be a response (article 11, §1), the provision of digital media and systems to either consult or request information (articles 8 and 10, §2), and the absence of a need to motivate the requests (article 10, §3) should also be emphasized.

Therefore, as extracted from this normative framework, there is a search for making transparency the rule and secrecy the exception.

From these constitutional and infraconstitutional provisions, associated with the studies on the theme, it was agreed that there are two primary transparency modalities: active transparency, which translates into government information being made available proactively by public entities, and passive information, characterized by request for information to a public agency made by any citizen and which must be responded to within a specified deadline.

From a normative perspective, the importance of effective transparency (active and passive), in the words of Cunha (2018, p. 881), may be systematized by the  $T \rightarrow P \rightarrow A$  formula so that "public transparency (T) enables the political participation (P) of people in the decision-making process, which in turn allows the exercise of accountability (A) or control of political agents by citizens".

Although it has been defended by some authors, the " $T \rightarrow P \rightarrow A$ " formula does not necessarily represent an absolute causal link among transparency, participation, and accountability – i.e., the approval of laws on access to information in itself does not always lead to more substantial participation of society in limiting the exercise of political power or controlling public resources.

Moreover, the mere disclosure of public information also "does not necessarily constitute a public transparency-promoting policy, and a public transparency policy does not necessarily aggregate efficiency to a political regime or legitimacy to a democratic regime" (CUNHA, 2018, p. 890). This is because, as underscored by Cunha (2018) when referencing the work by Fox (2007), the existence of "opaque transparency"<sup>8</sup> in government agencies,

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<sup>8</sup> There has been criticism of this expression in the sense that something "is transparent or is not transparent", with a "half transparency" not being possible. In this work, there is awareness of this criticism; however, the expression from the mentioned author was adopted.

understood as the mere dissemination of facts that are not capable of demonstrating the reality of institutions, is of no use, given that "one may hardly expect that such transparency modalities modify the behavior of political agents so to render them more responsive towards the desires of citizens" (CUNHA, 2018, p. 894).

Therefore, the concretion of effective transparency passes through a series of policies, duties, and obligations directed at the actual implementation of a program for accessing information. As an example, one may mention the guidelines of the Inter-American Commission on Human Rights (2011) for having stressed that, to guarantee to citizens effective access to information, the State has an obligation to (i) respond to the formulated requests timely, thoroughly, and accessibly, (ii) have a resource that allows satisfying the right of access to information, (iii) have a proper and effective judicial remedy to review the access to information request denials, (iv) develop active transparency, and (v) generate a transparency culture, among others.

Moreover, one must mention the crucial role that the Open Government Partnership<sup>9</sup> initiatives have. As Gomes, Amorim, and Almada (2018, p. 14) highlighted, the recent trends in transparency and access to information focus on actions based on the Internet, given that "initiatives of digital nature and computerized databases may contribute to producing more and better transparency in governments, institutions, and organizations".

## **2.2 Law on Access to Information in the Federal District**

Complementing the Federal Law, district rules have also been edited, given that the LAI provides, in its article 45, that "it is up to the States, the Federal District, and the Municipalities, in their own legislation, complying with the general rules established in this Law, to define specific rules [...]".

Therefore, the Federal District approved its legislation on the right of access to information on December 12, 2012 (Law No. 4990/2012). Although part of its provisions is a mirror of the LAI, the following merits prominence: (i) the said law covers guidelines that must be followed by the Executive and Legislative Branches of the Federal District, as well as by the Federal District Accounting Court and other entities of the indirect administration; (ii) it regulates active transparency upon consigning that the "agencies and entities of the Federal District must promote, regardless of requirements, the disclosure [...] of information of collective or general interest" (article 8) using official Websites (article 9); (iii) it defines the use of the Internet to make requests for access to information (article 14, §3), additionally replicating the same deadline of twenty days extendable to another ten days for there to be a

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<sup>9</sup> Open Government Partnership (OGP) that seeks to assemble initiatives from countries in themes of transparency, accountability, fight against corruption, and innovation. Founded in 2011 and co-chaired in the first years by the USA and Brazil, it acts so that countries may present and implement National Action Plans for Open Government. In 2021, Brazil was in its fifth action plan.

response from the public power (article 15, §§1 and 2); (iv) it defines the accountability of servants for noncompliance with statutory access mechanisms (articles 35 and 36).

An interesting point to notice is that, although the district law is directed at the Executive and Legislative Branches and Accounting Court of the Federal District, there is an emphasis on the regulation for the Executive Branch<sup>10</sup>. For example, the law itself establishes the ombudsman's offices of the agencies as those responsible for the Citizen Information Service (SIC, from the Portuguese *Serviço de Informações ao Cidadão*), with it being incumbent upon the Office of the Federal District Controller General the overall orientations for the SIC and the elaboration of an internal flow for processing the requests and training servants (article 12), a provision that, naturally, only applies to the Federal District Government.

Thus, one may notice that the focus given by the district law on the Executive Branch gave rise to the need for specific regulation and adoption of various internal measures to concretize the normative precepts of the district Legislative Branch. As per information obtained through a request for access to information<sup>11</sup>, already in 2012, with the approval of the Strategic Planning of the CLDF, the CLDF created workgroups (Strategy Execution Committees – CEEs, from the Portuguese *Comitês de Execução da Estratégia*) aimed at executing the strategic projects, such as the "Total Transparency" project. In 2014, with the purpose of fully complying with the provisions of the LAI, the Strategy Execution Committees were amended, and, as a result of the group's work, there was the publication of Steering Board Act No. 40/2014<sup>12</sup>, which was the first internal regulation issued with the goal of "applying, within the scope of the Legislative Chamber of the Federal District, District Law No. 4990 of December 12, 2012, which regulates the access to information in the Federal District".

In sequence, in the history line of the normative acts published by the CLDF to tackle the access to information in the District Power, Steering Board Act No. 47/2016<sup>13</sup> was published

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<sup>10</sup> This effort that the Federal District has made to conform normatively relative to the right of access to information has reflections on indices regarding this theme. In this sense, it is believed valid to mention, in this section, the rank of this unit in the transparency indicators. The 360 Transparent Brazil Scale (from the Portuguese *Escala Brasil Transparente 360*), a ranking devised by the Office of the Federal Controller General (CGU) that assesses the active and passive transparency of the Executive Branch of the federated entities, placed the Federal District in eighth place in 2021, with a score of 9.74 (on a scale up to 10 points, the highest transparency index), tied with the state of Mato Grosso (MT). Ceará, Espírito Santo, and Minas Gerais were in first place (10 points). The scale has the following methodology: a) regarding active transparency, the assessors consult the transparency websites of the entities, verifying the publications and identifying "yes" or "no" responses; b) regarding passive transparency, they verify if there are citizen service channels, besides analyzing the responses to three requests for access to information submitted. Thus, a good assessment of the Federal District is perceived when analyzing the data obtained in this ranking. However, it is valid to emphasize that this is an assessment of the Executive Branch of the federated entities, not the Legislative Branch. Hence, given what has been observed so far, a specific analysis of this branch in the Federal District is necessary. For more detailed consults, check: <https://www.gov.br/cgu/pt-br/assuntos/transparencia-publica/escala-brasil-transparente-360/metodologia>

<sup>11</sup> Demand No. 180421K1555E. A request for access to information made on April 18, 2021, and responded to on May 12, 2021.

<sup>12</sup> Steering Board Act No. 40/2014 is available at: <https://www.cl.df.gov.br/documents/5744492/7385394/Ato%20da%20Mesa%20Diretora%20n%C2%B020040%20de%202014%20-%20DCL%20148%2C%2020-08-2014?version=1.0>. Accessed on June 26, 2021.

<sup>13</sup> Steering Board Act No. 47/2016 is available at

already in 2016, addressing "the management of the CLDF portal on the Internet and the process of feeding its contents", formalizing significant advances in active transparency through the transparency portal. Among the important provisions of the said Steering Board Act, one may mention that, among others, the goals of the transparency portals were regulated, along with the information that should be disclosed and the competence of the Digital Information Management Committee, the Social Communication Coordinating Body, and the Modernization and Informatics Coordinating Body on the management and implementation of the portal.

That same year, there was also the publication of the Steering Board Act No. 57/2016<sup>14</sup>, a normative framework currently in effect that revoked Steering Board Act No. 40/2014 and brought important updates on the implementation of District Law No. 4990/12 within the scope of the CLDF. One of the main differences of the said normative Act to its 2014 predecessor is the level of detail in the provisions about the active transparency operationalization process: while the 2014 regulation included broad provisions and few articles about how the operation of the service to citizens should be and the role of the ombudsman's office in this process, the 2016 Act is much more detailed when bringing with precision the responsibilities of the Citizen Information Service (SIC), the possibilities for requesting access to information, the procedure to be adopted by the CLDF, and the appeals, complaints, and requests for information declassification.

Following these successive internal resolutions of the CLDF, in 2018, aiming to increase the effectiveness and reach of the district law on access to information, the composition of the Total Transparency Strategy Execution Committee was amended to enable the construction of the CLDF Plan for Transparency and Participation. That same year, Steering Board Act No. 22/2018<sup>15</sup> was sanctioned as well, approving the significant CLDF Open Data Plan, a document that aimed to guide the actions for implementing and promoting the opening of data of the CLDF, "observing the minimum quality standards so to facilitate the understanding and reuse of the information". According to the response to the request for access to information No. 180421K1555E, the

overall objective was to contribute to improving public management, increasing transparency, fostering social control and empirically-based scientific research on public management, and encouraging the development of new technologies intended to construct a participative and democratic public management environment, offering better public services to citizens.

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<https://www.cl.df.gov.br/documents/5744492/14358508/Ato%20da%20Mesa%20Diretora%20n%C2%BA%20047%20de%202016%20-%20DCL%20109%2C%2015-06-2016?version=1.0>. Accessed on June 26, 2021.

<sup>14</sup> Steering Board Act No. 57/2016 is available at

<https://www.cl.df.gov.br/documents/5744492/14358508/Ato%20da%20Mesa%20Diretora%20n%C2%BA%20057%20de%202016%20-%20DCL%20127%2C%2011-07-2016?version=1.0>. Accessed on June 26, 2021.

<sup>15</sup> Steering Board Act No. 22/2018 is available at

<https://www.cl.df.gov.br/documents/5744492/19057769/Ato%20da%20Mesa%20Diretora%20n%C2%B0%20022%20de%202018?version=1.0>. Accessed on June 26, 2021.

In light of the consistent evolution of the CLDF Steering Board Acts, which nearly always sought the operationalization of national and district laws on access to information and more considerable effectiveness to the constitutional right to access government data, one may notice that, despite some delays (given that the LAI dates back to 2011 and the district law to 2012), the regulatory framework of the CLDF satisfactorily meets what is expected from the District Power. Moreover, as a response to request for access to information No. 180421K1555E, the Chamber also informed that internal campaigns to disseminate the rules of access to information were performed "through videos, posters, the intranet, and murals of the House. Also, various expert professionals were involved in the publicization of the said Act so to generate the most significant impact possible among the deputies, servants, and service providers of the House".

### **3 Access to information at the CLDF: a case study**

The normative framework of transparency and access to information in effect notwithstanding, in going beyond a mere theoretical-expositive analysis of the existing rules, we aspired to carry out a case study in one of the district powers – in this case, the CLDF –, to verify how the federal law, the district law, and the Steering Board Act were being applied and fulfilled.

The method used for this case study consists of the triangulation of the data obtained through (i) documentary analysis, performed by verifying the documents and information that exist on the website and Transparency Portal of the CLDF and the documents received through various requests for access to information submitted, and (ii) interviews conducted with servants of the Chamber, specifically the Ombudsman's Office, Presidency, Human Resources Department, and the Digital Information Management Committee.

It is essential to underscore that, to obtain information directly from the servants, the planning of the interviews was duly submitted to *Plataforma Brasil* within the scope of the project "The Federal District and Digital Governance: Technologies and Information" (from the Portuguese *O Distrito Federal e a Governança Digital: Tecnologias e Informação*)<sup>16</sup>, the purpose of which was to "map the employment of communication and information technologies within the scope of the public powers of the Federal District". After the approval of the project, the ombudsman's office was contacted so the invitation to participate in the research would reach the servants in their respective sectors, who promptly volunteered to contribute with information relevant and pertinent to this case study.

The results obtained with the survey and data analysis through the channels highlighted above will be presented in three parts: (i) the operation of the CLDF sectors that address active

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<sup>16</sup> The said project received funding from the Foundation for Research Support of the Federal District – FAP/DF.

and passive transparency; (ii) the use of technological innovations in fostering transparency and access to information at the CLDF; (iii) the transparency and access to information in numbers: patterns and problems identified.

### **3.1 The operation of the CLDF sectors that address active and passive transparency**

#### **3.1.1 Passive transparency**

Regarding passive transparency, Steering Board Act No. 57/2016 created the Citizen Information Service (SIC) to respond to and process the requests for information submitted by the population, with the management of the said service being the responsibility of the Ombudsman's Office, as per article 3 of the rule mentioned above. It is also worth stressing that the CLDF Steering Board Act consigned that (i) it is the duty of the Steering Board to make human, technological, logistic, and budgetary resources available for the deployment and operation of the SIC and (ii) the response deadlines in the federal and district laws must be observed, and, when the request requires the participation of another organizational unit to produce or provide the information requested by the citizen, "the SIC will formally request the information directly from that unit, fixing the deadline of ten days to respond to the demand" (article 12 §2).

The information obtained in this case study partly corroborates the normative provision collated above. All servants interviewed narrated that the Ombudsman's Office incorporated and has complied with the function of centralizing the service to citizens. The flow takes place as follows: as a general rule, such demands are sent to the Ombudsman's Office; next, the servants analyze the request and respond directly to the citizen if they have the information available or forward the demand via the SEI to the CLDF sector that can respond to what was requested<sup>17</sup>.

Relative to the provision by the Steering Board of the resources necessary for the operation of the SIC, two points merit prominence: (i) the list of servants assigned to the ombudsman's office has more servants than provided for in the Position Plan; (ii) despite there being no budgetary restrictions to the SIC, there is difficulty managing the public money related to the institutional capacity of the sector.

Relative to the first topic, one must emphasize that, although the interviews reported a historical difficulty of various sectors of the Chamber relative to the lack of servants since the CLDF went long without civil-service examinations, such a problem does not extend to the Ombudsman's Office. This is because, according to information obtained through a request for

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<sup>17</sup> The interviewed servants underscored the internal procedure for communication among sectors, emphasizing the central role of the Electronic Information System (SEI, from the Portuguese *Sistema Eletrônico de Informações*), implemented from 2019 to 2020. This is because, if the Ombudsman's Office understands that there is a need to ask for information from other sectors to respond to a request for access to information, such a request may only be made internally through SEI processes, a digital tool that records and facilitates the communication for internal information management.

access to information<sup>18</sup>, although the staff provided for the Ombudsman's Office in the Position, Career, and Remuneration Plan of the CLDF includes five positions, seven servants were assigned to the Ombudsman's Office at the time of writing: two Legislative Aids, two Legislative Assistants, one Technical-Legislative Consultant, and two servants with no effective relationship with the CLDF (DRH Dispatch 0379334). Therefore, a first positive point made evident is that the number of servants working with the Citizen Information System above the provided may corroborate the purpose of guaranteeing the promptness and efficiency in responding to the requests by citizens for access to information.

Relative to the provision of funds for the activities developed by the SIC, it was reported in the interviews that the Ombudsman's Office does not typically face budgetary issues to implement projects or initiatives relative to the LAI. Nevertheless, the obstacles faced by the sector were in the use of public money, given the limitation in the institutional capacity of the ombudsman's office, a concept directly related "to the structure and organizational and administrative processes of public institutions, which should enable the achievement of goals and targets established by the organizations" (FERNANDES, 2015, p. 703-704)

Such a challenge, as will be demonstrated in due course, may be perceived in the historical dimension found in the implementation of a computerized system to manage the demands of the ombudsman's office: the interviews revealed that, at least since 2009, the free implementation of computerized systems was proposed to the CLDF but that, for about ten years, the control of the demands was carried out manually in Excel spreadsheets. The justification presented refers to the difficulties in tackling public bureaucracy, performing adaptations to the system made available, or technical difficulties in formalizing service contracting.

Another case mentioned in the interviews capable of showing challenges in the institutional capacity of the agency occurred when the Ombudsman's Office requested funds to implement a call center to serve the public, to which the sector obtained the approval of the request for funds by the CLDF, but the project was not implemented due to legal difficulties of the Ombudsman's Office itself in conducting a bidding process.

This demonstrates one of the perspectives of which this work is part, in the sense that the institutional context (LEJANO, 2012) matters in the implementation of legal provisions. In other words, if there is a set of state capacities that are not developed and not strengthened in the implementation process of state rules, many ideas and initiatives may be aborted and rendered infeasible. The strength and combination of this set of elements (rules associated with the implementation, combined with the understanding of the tasks, agents, human and budgetary resources, elements of political will, and other instruments) influence these implementation

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<sup>18</sup> Request registered as "Demand 290321K0842E", sent on March 29, 2021, and responded on April 5, 2021.

processes.

### **3.1.2 Active transparency**

Regarding the active transparency mechanisms, Steering Board Act No. 57/2016 provides for, in article 2, that it is the duty of the Legislative Chamber units to promote the dissemination of information of collective interest produced or guarded by the House, regardless of a request. According to the conducted interviews, the primary active transparency mechanism at the time of writing was the Transparency Portal<sup>19</sup>, and its filling was carried out in a decentralized manner, with it being up to each sector that detained or produced the information to feed it.

As a result of the decentralization, according to the interviewed servants, there would not be in the Chamber a sector responsible for checking the information made available on the Transparency Portal. With the absence of a body for reviewing the data actively made available, there was no way to be sure of the completeness of the information that mandatorily, by law, must be made available to the public. As an example of this problem, one may mention that, upon performing a documentary analysis for this case study, no documents from Electronic Procurement No. 26/2018 (related to the electronic system for the ombudsman's office) were identified, with it being necessary to submit a request for access to information to complement the information missing on the Transparency Portal.

Therefore, this lack of an entity responsible for inspecting the active transparency may be understood as a relevant weakness of the CLDF in enforcing the laws in question. After all, if not through social control, there is no guarantee that the information on public expenditure is entirely made available on the Transparency Portal.

## **3.2 The use of technological innovations in fostering transparency and access to information at the CLDF**

By surveying data on the implementation of transparency and access to information mechanisms, it was possible to identify two points that merit prominence relative to the use of technological tools at the CLDF: (i) despite the difficulty reported above regarding decentralization and the absence of a body to review the information included in it, the Transparency Portal was reformulated at the end of 2020; (ii) although the Ombudsman's Office has historically presented difficulties with the implementation of a demand management system, the problem seems to be in the process of being resolved with the implementation of a system bid in 2018.

Firstly, a point emphasized by the interviewed servants was the implementation of a

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<sup>19</sup> Available at: <https://www.cl.df.gov.br/transparencia>. Accessed on April 27, 2021.

new Transparency Portal, officially launched in an institutional event in November 2020<sup>20</sup>. Although we have no access to the previous version to compare the system functionalities, many of the interviewed servants underscored that the change in the tool considerably facilitated the access to the information made available by the Chamber. Indeed, in the perception of the authors, the Transparency Portal available at the time of writing was intuitive and easy to navigate, corroborating the access by citizens to information related to the management of public affairs.

Relative to the second aspect highlighted above, the perspectives were not yet so encouraging. It was possible to notice that the sector responsible for the SIC had opportunities, at least since 2009, to implement, often free of charge, a system to contribute to the management of the access to information. Nevertheless, according to the information gathered, the Ombudsman's Office has not yet had success in implementing such technological systems and, up to mid-2021, still performed the control of the demands received manually,

The first attempt mentioned occurred when the Government of Bahia, in 2009, due to the participation of the CLDF ombudsman's office in the "First International Forum of Ombudsman's Offices", made its Ombudsman's Office System (TAG) available for free use. Despite that, it was reported in an interview that its implementation was not possible because, at the time, the ombudsman's office had no knowledge to effect the contract for the assignment of rights, nor knowledge of the internal mechanisms needed to pay for the airline tickets (both for servants of the National Assembly of Bahia to go to the Federal District and for CLDF servants to go to Bahia to learn about the functionalities of the donated system).

A second attempt recorded was in 2010, when the ombudsman's office internally requested, through Memorandum No. 14/2010-OUV, the development of a System. Despite this demand, it was reported that the Ombudsman's Office received no official response to the request because the CLDF had a significant demand and little capacity to respond to the requests related to technological solution development.

The third attempt informed in the interviews occurred in 2011, when the Ombudsman's Office began seeking follow-up system options and, with this, glimpsed the possibility of the assignment the Ombudsman's Office System of the Federal District Ministry of Finance, which was requested through Letter No. 17/2011-OUV. In this new request, the representative for the Modernization and Informatics Coordinating Body (CMI, from the Portuguese *Coordenadoria de Modernização e Informática*) informed that, although the system was compatible with the CLDF, customizations would be necessary and the Chamber did not have enough servants for such procedures.

In 2015, a new request was made for the creation of a system (Process 001-

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<sup>20</sup> Available at: <https://www.youtube.com/watch?v=m78N5IZJRBY>. Acesso em: 23 abr. 2021.

001692/2015 - SEI 0044014), but, once again, the demand did not evolve in the internal procedures of the CLDF.

Only in 2016, with the issuance of a new document by the Vice-Presidency officializing the demand, in compliance with the requirements of the Law on Access to Information, was a planning team appointed (Secretary-General Ordinance 59/2016) to gather minimum requirements to draw up the Basic Reference Term to bid the ombudsman's office software.

After all administrative phases, Electronic Procurement No. 26/2018 was carried out, the subject matter of which, according to its public notice, was the contracting of a technological solution to "respond to the demands of the Ombudsman's Office and the Citizen Assistance Service [...] contemplating a licensed application system, technical deployment services, training, warranty, and technical support, as per the requirements and specifications contained in the Reference Term". The said public notice also required that the system be "accessible through Internet browsers and, in the case of external users, it should be accessible via application in mobile devices", with the system being integrated into OuveDF, the Ombudsman's Office system of the Federal District Government.

Although the bidding took place in 2018 and the awarded company, up to May 2021, had not completed the service, some interviewed servants informed that the system was in the process of being concluded and implemented. It was not possible to obtain information regarding the integration of the bid system with the SEI or other CLDF systems, but this is an aspect that merits follow-up from the civil society, given that the interoperability among systems is a focal point for the efficiency of the Ombudsman's Office support mechanisms.

Therefore, one may notice a long period of failed attempts to implement information systems that could help comply with the rules on the right to access, much due to bureaucratic difficulties of the Ombudsman's Office in handling public money and the necessary procedures for internal process management. It is important to mention that it is the research agenda of the authors to conduct interviews with other CLDF sectors that also tackle this technological and innovation matter for an Open Parliament. For example, this is the case of LABHacker, a citizen innovation laboratory of the Chamber of Deputies that operates on the themes researched in this work: transparency, participation, and citizenship. Its purpose is to assemble parliament members, servants, civic hackers, and civil society in a network for more considerable transparency and social participation in public data management. The view of this laboratory is also of significant relevance in the context of this research (LABHACKER, 2021).

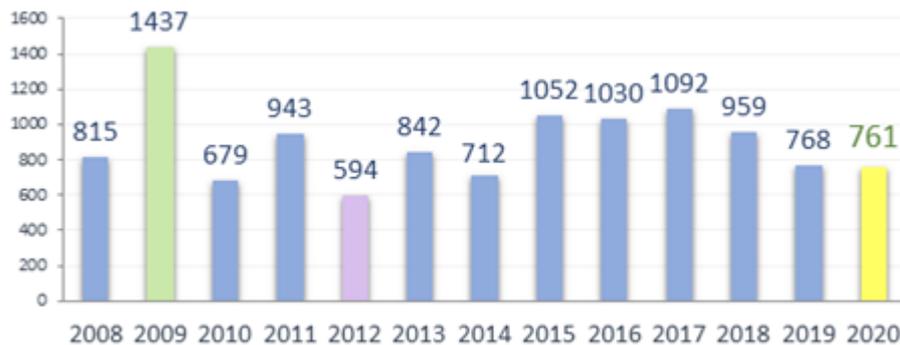
### **3.3 Transparency and access to information in numbers: identified patterns and problems**

Given that the analysis undertaken above regarding the structure that surrounds and enables the concretion of access to information at the CLDF, it is essential to verify the number of requests received annually by the Ombudsman's Office and the response results, whether

requests for access were granted or denied. The information debated in this subsection stems from documents obtained through requests for access to information<sup>21</sup>, in which the follow-up spreadsheets used by the Ombudsman's Office for controlling the received demands were requested.

The first relevant piece of information regards the average number of demands sent to the Ombudsman's Office, which in the previous thirteen years was about 842 per year:

**Figure 1** – Demands sent to the Ombudsman's Office from 2018 to 2020



Source: Ombudsman's Office of the Federal District Legislative Chamber, 2020.

The numbers obtained above do not necessarily reflect all requests for access to information directed at the CLDF, given that (i) not all demands received by the ombudsman's office are related to requests for access to information since citizens may also submit complaints or suggestions that do not demand measures within the scope of the LAI, and (ii) although the SIC is the duty of the Ombudsman's Office, there is a possibility, albeit reduced, that the request is sent directly to the responsible sector without going through the system of the ombudsman's office, thus not being included in the accounting above<sup>22</sup>. It is worth noting that, because the follow-up process of requests for access to information was manual, it was not possible to obtain additional information with the CLDF about the exact numbers of requests for access to information in the years before 2019. With this, the data in Figure 1 reflect the fact that the ombudsman's office only provided information on the general demands received in recent years.

Regarding the more recurring subjects of the demands sent to the Ombudsman's Office, obtained through the interviews, it was possible to notice that the requests typically have varied themes but there are common themes every year depending on the subject that occupies more space in public discussions. For example, it was mentioned in the interviews that the matters related to the corruption allegations at the time of the Arruda Government or, in 2020, to the

<sup>21</sup> Request for information registered as "Demand 310121K1121". Information received on April 20, 2021.

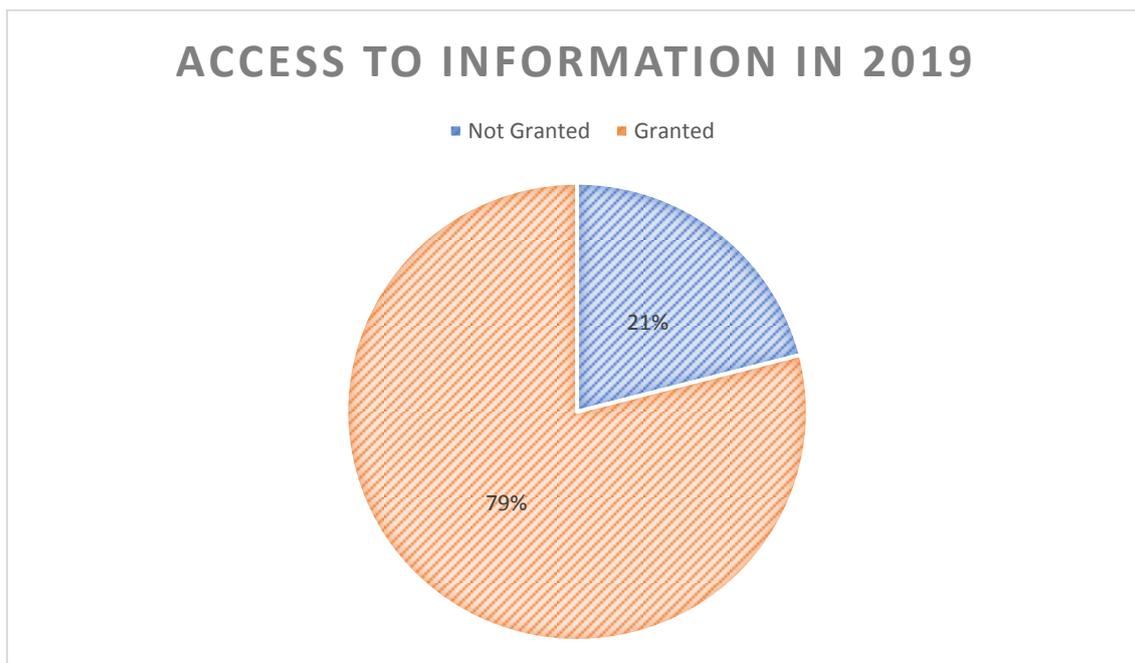
<sup>22</sup> It is possible for a given sector to provide an email address and for citizens to submit a request directly through this instrument. Once in possession of this information, the sector responds to the demand directly, without generating an SEI process or going through the request for access system of the ombudsman's office (Source: Interviews).

COVID-19 pandemic appeared in relevant numbers.

As narrated in the interviews with the servants, it was very rare for the CLDF to deny a request for access to information formulated by citizens based on information confidentiality grounds. Despite the low incidence of justified denials, it was underscored that some demands were not granted in recent years due to human failure, such as (i) the ombudsman's office not forwarding the request to the responsible sector for service, (ii) the responsible sector not responding within the deadline and the request becoming "lost", or (iii) when there is a denial by the responsible sector to provide specific information and the ombudsman's office does not forward it to the higher body.

In the face of this data, access was obtained, via a request for access to information<sup>23</sup>, to spreadsheets recording the statistics of this procedure of requests from citizens. The spreadsheets demonstrate that the absence of a response to citizens is not one-off and isolated. In 2019, of the 768 demands received by the ombudsman's office, 363 were requests for access to information and, of such requests, 75 were denied. In 2020, in turn, of the 761 requests received by the ombudsman's office, 197 were requests for access to information, and 59 of such demands were denied or, after being forwarded to the responsible area, were not returned to the citizen.

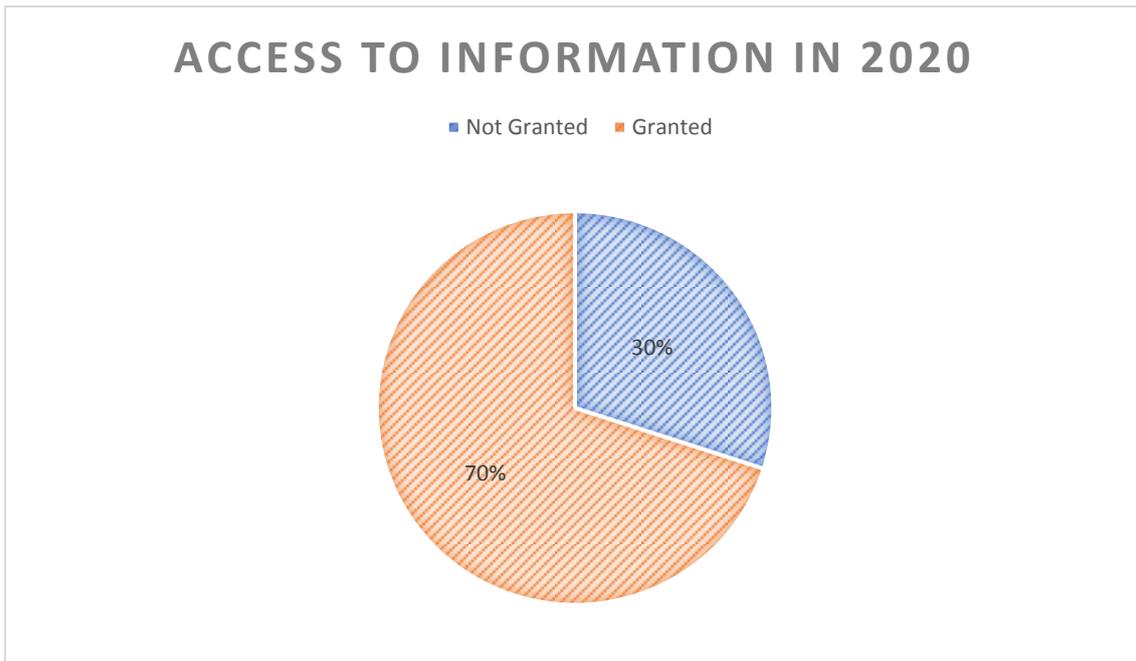
**Figure 2** – Demands for access to information in 2019



Source: Devised by the authors based on the CLDF Ombudsman's Office data, 2019.

<sup>23</sup> Request for information registered as "Demand 310121K1121". Information received on April 20, 2021.

**Figure 3** – Demands for access to information in 2020



Source: Devised by the authors based on the CLDF Ombudsman's Office data, 2020.

It is worth recalling that the percentage of demands not granted does not correspond to those denied by the CLDF in a substantiated manner. The percentage highlighted in blue in the charts above represents the demands that were not even returned to the citizen, leaving the requester with no response in these cases.

In the interviews, it was underscored that, in 2020, difficulties were found, as in all other sectors of society, due to the pandemic and the adaptation to remote work. Such difficulties notwithstanding, one must note that the percentage of an absence of a response was also over 20% in 2019, the year before all complications stemming from the coronavirus.

Such percentages determined in this research are, perhaps, the most concerning aspect of this case study. The high number of requests not granted by the CLDF may demonstrate noncompliance with the legal frameworks on access to information.

Besides the finding above, another identified problem was related to the availability of reports and statistical data regarding the Law on Access to Information. As per article 32 of the District Law on Access to Information, "the highest authority of each agency or entity must publish, manually, on its official website on the Internet" data and administrative information on the list of pieces of information that were declassified in the previous twelve months, the list of classified documents at each level of secrecy, with identification for future reference, and the statistical report containing the number of requests for information received, granted and denied, as well as general information on the requesters.

The legal need to produce and publish such statistical data notwithstanding, it was made evident that the CLDF shows a need for updates, given that, on its own website, there were no

recent reports at the time of writing, only two from 2016 and 2017<sup>24</sup>. Undoubtedly, the information in this work obtained through the LAI does not replace the legal obligation of the Chamber to make available data on the use of the LAI via active transparency, so that noncompliance with the legal provision demonstrates another weakness in the way the CLDF seeks to implement the laws on access to information.

Hence, one may notice various points that still need improvements for the CLDF to duly comply with transparency rules (federal, district, and the Steering Board Act itself). The definitive establishment of a system to control this flow, the observance of deadlines, the checking due responses, and the provision of reports proactively by the institution are some of the needs determined in this study.

#### **4 Conclusion**

Initially, this work sought to bring fundamentals about the right to information, deemed a human right, explaining its connection to international conventions and the Brazilian Federal Constitution, besides general principles and concepts (e.g., active and passive transparency).

Next, a description was made of the legislation that tackles this theme, such as the Law on Access to Information (Law No. 12527/2011), the District Law on access to information (Law No. 4990/2012), and CLDF Steering Board Acts related to transparency in the District Power. In them, it is interesting to underscore that there is mirroring and correspondence with the provisions of the federal law (for the compliance of all federated entities and Powers of the Republic). Moreover, when it came to the district reality, there was an emphasis on the role of ombudsman's offices as responsible for implementing passive transparency.

Once the brief theoretical expositions were surpassed, a case study was carried out to verify how the laws on access to information were being applied within the scope of the CLDF. The main findings of the study may be synthesized as follows: at the time of writing, a) regarding passive transparency, the CLDF ombudsman's office was responsible for the SIC and played an important role in responding to the demands; nevertheless, it was possible to verify that there was a time-consuming search (with failed attempts) for a system that would facilitate the management of the SIC demands, and it was possible to determine a significant percentage of requests for access to information not granted in previous years due to internal failures at the CLDF; b) regarding active transparency, the Transparency Portal, which assembled information fed directly by sectors that held or produced it, may have been lacking some pieces of information mandatory by law, given that there was no central body responsible for checking and supervising the feeding of the database, and the absence of the publication of mandatory transparency reports on the CLDF website was found.

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<sup>24</sup> Available at: <https://www.cl.df.gov.br/web/guest/dados-estatisticos1>. Accessed on April 27, 2021.

Although it was determined through the interviews that some CLDF servants seek to meet the legal requirements for transparency and access to information and dedicate themselves to do so, this study made the noncompliance with legal precepts in the LAI implementation process evident. To avoid reproducing this situation in the coming years, it is extremely necessary for the internal CLDF sectors to adopt measures to bridge the gaps and overcome the difficulties identified in this study. Non-exhaustively, one may mention, as possible improvement mechanisms, the (i) reorganization and reassessment of the organogram and task division of the Ombudsman's Office servants for the SIC to gain efficiency in daily activities; (ii) the adoption of a mechanism for following up on the legal deadlines and exacting responses from the sectors to which the requests for access to information were sent; (iii) the responsabilization, according to the law, of those responsible for not responding to the demands formulated through the law on access to information.

In view of these propositions, the future action agenda of the authors includes, firstly, making contact with the CLDF to make suggestions and volunteer to work together with the district Legislative Branch to improve the currently existing management mechanisms and the compliance with the precepts of the law on access to information. Moreover, for future work purposes, the detailed analysis of the legislative branches and other entities of the federation is understood as relevant for the diagnosis of implementation of the LAI to be expanded and for it to be possible to perform research comparing bottlenecks and existing best practices.

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