In Search of a Public Sector Transparency Measurement in Thailand

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Abstract

The main purpose of this paper is to identify appropriate transparency measures for Thailand’s public sector during a time of administrative reform. By applying an inductive approach to investigate practices widely accepted around the world in countries such as the United States of America, the United Kingdom, Singapore and by agencies such as Transparency International and the World Justice Project, the author tries to answer four important questions: (1) Are laws and regulations necessary to foster transparency in public organizations? (2) As the number of laws increases, does corruption decrease? (3) With the rising demand for public disclosure and the convenience of e-government, how can governments balance the right to know and the security or privacy of the country and the public? (4) What are the most appropriate measures of transparency for the Thai public sector?

Key words: good governance, transparency, corruption, transparency measures, Thai public sector

Introduction and Background

The term transparency in general refers to the property of openness, clarity, or the quality of being seen through. The opposite is a state of secrecy. Though many governments try to keep their citizens informed, there are certain matters that for reasons of security and privacy should not become public knowledge. Therefore, transparency and secrecy are two sides of the same coin, and governments must find a balance between what is kept secret and what is open to the public. Too much exposure of information to the public can make a nation vulnerable to its enemies; however, if a government keeps its public uninformed because it fears everyone is a spy, the safety and security of the governed are threatened. In the latter case, the governed may demand disclosure and ultimately launch a social movement that results in political upheaval.

The idea of transparency did not originate in the public organizations of the United States of America. Rather, it emerged in eighteenth-century Sweden (Florini, 2002). Anders Chydenius was both a member of the Swedish Parliament and a former medical doctor, and he had a strong influence on Enlightenment philosophy. Chydenius believed that public access to government activities would improve government effectiveness. When his political party won the majority in Sweden’s parliament, he convinced fellow members of the benefits of opening up....

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the government, and he and his colleagues succeeded in passing the first law on transparency, namely the Freedom of the Press Act of 1766. At the time, superpowers of today such as the United States, the United Kingdom, and France were still at war, and the possibility of governmental transparency was far in the future.

From the eighteenth century to the end of the twentieth century, the world experienced many wars, including the First and Second World Wars. New communication technologies, such as telegraph, the telephone, and the computer, were deployed by governments to spy on their own people for information and to protect state secrets from the public and suspected state enemies. In the United States, the movement supporting the right to access information started during the 1950s and 1960s, when John E. Moss, a Democrat and member of Congress, demanded that the Republican-controlled government disclose information to the public. His request initially was denied, but Moss later convinced other congressional members to join his movement and eventually succeeded in passing the Freedom of Information Act in 1966. With media pressure, the Freedom of Information Act (FOIA) of 1966 was officially promulgated on July 4, 1966. This law gave the American people the right to access government reports to learn how the government was serving the public interest. The question was, how much information could the government make available to the public? In 1974, the law was amended to protect the privacy of individuals to the extent that such privacy does not affect the rights of others. This law was a benchmark from which other organizations and countries, such as Australia, Canada, and New Zealand, could learn.

Since the end of Cold War in the late 1980s, international organizations such as the United Nations (UN), World Bank (WB), and International Monetary Fund (IMF) have considered transparency one condition undeveloped countries must meet to borrow money from these institutions for economic development (Wouters and Ryngaert, 2004). The main purpose of having a clear and open government is to prevent corruption in economic development programs and to improve government efficiency. In 1990, this concept was embedded within the umbrella of good governance, as noted in the WB’s (1992) publication titled Governance and Development. This text elaborated meticulously upon the transparency principle and explored the ways by which governments conceal information and keep populations from knowing about and becoming involved in policy decision-making processes, which can open the door for corruption among politicians and public administrators (World Bank, 1992, p. 46). Corruption can emerge during the implementation of programs and policy and particularly in government spending on public services; such corruption has a negative impact on citizens and ultimately backfires on the government in question (World Bank, 1992, p. 41).

The IMF has built on the notion of transparency with the concept of accountability, bringing this idea onto the world stage and focusing specifically on transparency in financial transactions. The organization’s detailed 1997 report, Good Governance: The IMF’s Role, provided guidelines that borrowing countries can use to tighten their budgets and take careful precautions against spending on various monetary concerns. This report addressed
macroeconomic imbalances, inflation reduction, key trade, financial exchange, and tax administration (IMF, 1997, p. v). The IMF specifically demanded that borrowing countries create transparent financial reports and make them available for public access and internal and external audits. In the process, the IMF created a number of mechanisms, including the Special Data Dissemination Standard (which established the standard investment information that foreign investors should be able to access) and a manual on fiscal transparency that provided a code of good practice in matters such as fiscal transparency. The IMF had the idea that if all underdeveloped countries could manage their finances effectively by following these guidelines and the manual, they would be able to recover from economic slumps and quickly repay loans received from the IMF (Beke, 2002).

**Transparency from the Modern World?**

Nowadays, the notion of transparency has been accepted and applied in many countries and international organizations worldwide. Though it is used in different contexts, transparency generally is considered the process by which a government is obliged to open up information to public access, whether or not that information refers to policy decision-making. Many organizations today promote the belief that the public has the right to access information that is correct and up to date (World Bank, 1992; OECD, 2008; Arndt and Oman, 2006; Fox, 2007). The purpose of this exposure is not only to inform the public but also to allow the public to check on government performance and accountability, which requires answers about and explanations for every policy, decision, and action. The IMF pays particular attention to financial transactions and defines transparency within this context. In other words, the organization expects governments to provide credible, reliable financial reports that include costs, expenses, financial benefits from government policies, and risks involved in policy changes and adjustments that can be accessed and scrutinized by the public (IMF, 1997).

**The Significance of the Transparency Principle in Thailand**

Like some of its neighboring countries in Asia, Thailand considers transparency one of the six principles of good governance (GG) identified by the IMF (1997) as a condition for financial assistance in recovering from economic crisis. The concept was accepted reluctantly by the Thai government during the Thaksin administration in exchange for economic rescue. Thailand’s Office of National Economic and Social Development Board (NESDB) was assigned to monitor the state’s good governance progress from the beginning. After twenty years of reform, the concept of transparency has not been fully understood; nor has it received serious attention, though various agencies, especially the Office of Civil Service Commission (OCSC), have invested time, money, and human resources to mend administrative inefficiency and develop the principles of the rule of law.

Over the past twenty years, a group of academics from different universities, the author included, developed a set of measures and indicators to monitor good governance in conjunction
with the King Prajadhipok’s Institute (KPI) research team with the support of the NESDB. These measures and indicators comprised all six principles of GG: value for money, rule of law, accountability, transparency, participation, and integrity. However, the time has come to revise this mechanism because it is outdated and no longer applies to the current and future development of concepts and the national strategy toward a digital Thailand.

In terms of the openness of the Thai government, the Official Information Act of 1997, which is comparable to FOIA, was first legislated to protect citizens’ right to access public information. Many sections of the current Constitution of the Kingdom of Thailand (2017) clearly state the rights of Thai citizens to knowledge. For instance, section 34 protects the freedom of expression of all citizens, and section 35 protects the rights of media in reporting news to the public. At present, Thailand’s FOIA is being revised and opened to public criticism and suggestions.

There are at least four different measures of transparency in Thailand. One was developed ten years ago by the Office of the Public Sector Development Commission (OPDC). The first measurement comprises four dimensions with 17 indicators focusing on the requirements of the Official Information Act of 1997, which is no longer in use. The second measure is the integrity and transparency assessment, which is monitored by the Office of the National Anti-Corruption Commission to assess the following five components: (1) transparency, (2) accountability, (3) integrity in service delivery, (4) integrity culture from evidence-based data, and (5) work integrity (National Anti-Corruption Commission, 2014). Data for dimensions 1–3 will be collected from the people or external stakeholders; the rest will be collected from internal stakeholders or staff in the organizations. The problem with this measure is that it encompasses not only transparency but also many principles, mainly integrity. The third measure is from the Office of Information Commission (OIC) and is designed to test the openness of government. It is based on the Official Information Act 1997, which was amended in 1999, and is now being replaced by a new measure that is awaiting public review. Thus, this third measure is no longer effective. The fourth measure was developed by King Prajadhipok’s Institute more than fifteen years ago. At the time, transparency was part of the umbrella of good governance principles. Approximately 246 questions were asked of government agencies to complete this measure. Evaluating the answers was a tedious process, and the questions were deemed no longer applicable in the present context.

Case Study Selection

This study uses a qualitative approach to explore the best practices of leading developed countries such as the United States, the United Kingdom, and Singapore. The researcher also included practices used by Transparency International (TI) and the World Justice Project (WJP) in designing measures and indicators to monitor transparency. The United States and United Kingdom were selected for this study because they were forerunners in initiating the concept of transparency, whereas Singapore is one of the leading countries in Asia and is well known for its
highly successful, minimally corrupted, and efficient government. TI and the WJP were chosen for their work in designing indicators of transparency. Research mapping these indicators as well as what has been used already in Thailand will support inductive reasoning regarding a finalized set of transparency indicators for future public-sector assessment.

**Lessons Learned from Best Practices**

In this investigation, the author identified a number of answerable inquiries and questions from which we can learn. The first question is, are laws and regulations necessary to foster transparency in public organizations? Second, is it reasonable to conclude that the greater the number of laws, the less the corruption? In other words, are laws a good starting place from which to lay the foundation for corruption prevention and management? The increase in guidance and transparency in preventing and punishing wrongdoing of any kind could make public officers fear and refrain from any malfeasance. Third, with the rising demand for public disclosure and the convenience of e-government, how can the government balance the right to know with the security or privacy of the country and the public? Fourth, what are the most appropriate measures of transparency in the Thai public sector?

**Is having law necessary for fostering transparency?**

Transparency in the United States can be traced back to the earliest unification of the country. James Madison was once said to support the openness of the government to public acquisition of information and feedback (Ginsberg et al., 2012). The United States has claimed that it was the first modern state to implement the concept of transparency in its government administration. The attempt to increase transparency in the U.S. government can be seen in at least ten legislations over the years. Though the nation embraced the principle of transparency from the very start, its constitution does not clearly state the need for the government to support the public access of information or the citizen’s right to know. At the heart of the federalism is the principle of separation of power among the legislative, executive, and judiciary branches of government. Each has certain powers that it can exercise within a system of checks and balances from other bodies that prevent the encroachment of power over other branches. The internal audit plays a clear role in the constitutional design of government, but the external public check is not explicitly stated. Most of the time, the court interprets the law in favor of the people’s right to know, based on the will of the founding fathers (Peled and Rabin, 2011). Judges tend to encourage the public to provide external checks on the government by accessing public information. The First Amendment implicitly gives people the freedoms of speech and association, which imply transparency.

It was not until 1966 that the U.S. citizen’s right to know was legalized by the Freedom of Information Act (FOIA), which replaced the Administrative Procedure Act of 1946. FOIA allows the public to more easily request public information, except for confidential materials that relate to national security, individual medical information, financial institutions, geographical
information, and other sensitive topics, etc. Over the years, FOIA has been amended more than six times to meet government goals. For instance, during President George W. Bush’s administration, this act was applied to protect his administrative and trade interests. In comparison, President Barak Obama strongly supported opening up the government as much as possible. On December 8, 2009, President Obama issued the Open Government Directive, an executive order encouraging all government units to disseminate public information online and recommending that government websites increase transparency according to the mandates of the FOIA. This order, however, did not specify punishments for agencies that did not follow these instructions (Ginsberg et al., 2012). In the following year, Executive Order 13563 was issued to further foster transparency and efficiency of government.

Other related laws in the United States include the Privacy Act of 1974, which provides individual protection for personal information, and the Government in the Sunshine Act of 1967, which requires committees, congressional bodies, commissions, and other government agencies to announce their next meetings in advance and allow members of the public to attend; however, when the meeting concerns national security, international relations matters, and the like, the public will not be allowed to participate.

The Federal Register Act of 1935 requires that all executive orders and policies shall be posted and updated daily by the Office of the Federal Register of the National Archives and Records Administration (NARA; Ginsberg et al., 2012) so that the public can know what the government is doing. Other particular issues posted by NARA relate to the National Environmental Policy Act, the Regulatory Flexibility Act, the Negotiated Rulemaking Act, and the E-Government Act. To meet the needs of an age of information and a connected world, President Obama created a number of websites through which people can gain direct access to government information. These websites include USASpending.gov for government spending information and Regulation.gov for information on regulations information, and etc.

The United Kingdom, in comparison to the United States, governs its people with conventional law. The nation paid serious attention to transparency laws in 1994 during the regime of Prime Minister John Major, when the Committee on Standards in Public Life (CSPL) was created to develop a standard practice on ethics. In 1995, the transparency principle was embedded in the seven principles of public life, the 'Nolan principles', (selflessness, integrity, objectivity, accountability, openness, honesty, and leadership) and applied to all public servants (O’Hara, 2011; Committee on Standards in Public Life, 1995). The term “openness” was later changed to “transparency” (Scott, 2012).

The United Kingdom and Japan have followed America’s progress toward granting its people rights to know and access public information under the FOIA. Other U.S. practices followed by the United Kingdom and Japan also include the setting up of the Information Commissioner’s Office (ICO) to monitor the Data Protection Act of 1998 and the Freedom of Information Act of 2000 (Scott, 2012). In a similar manner, as of 2010 the UK government had
integrated all related government data and posted them on the data.gov.uk website for easy public access.

Among the countries in the Asia-Pacific region, Singapore is considered to have the most efficient system for dealing with corruption, but its government has shown little concern for transparency. Unlike many Western countries, Singapore does not have freedom of information acts of any kind. The government has created many measures directly attack the problem of corruption but do not provide space for public participation. It is interesting to note that in the Constitution of Singapore, there is a clause that allows members of the public to express their opinions and permits freedom of speech and criticism of the government; however, at the end of the same clause is a restriction of freedom of expression, which is allowed only by the parliament and must not threaten national security. Requests to access government information require approval from judge to decide and often are denied for security reasons.

Only one small bureau has been created to fight corruption in Singapore. The Corrupt Practices Investigation Bureau, under the Office of the Prime Minister, is responsible mainly for investigating and issuing all measures against corruptions (Quah, 2013). Singapore’s government created three sets of measures to prevent corruptions. These measures promote a merit system, integrate networking against corruptions, and punish corruptions. Members of the public have little access to government information and can access only information related to daily life (e.g., weather and air and water quality) from government websites such as data.gov.sg and ecitizen.gov.sg.

With respect to the question of “Are laws and regulations necessary to foster transparency in public organizations?”, it is clear that the essential element for cultivating transparency in the government is undeniably the constitutional declaration of the right to know or the right to express oneself freely. These are basic human rights that should be provided and protected by the government. Other laws and regulations should complement and elaborate on the supreme laws, a point emphasized by TI and the WJP as the first elements in their assessments. The effective structural design of transparency should be endorsed and enforced by at least one regulatory agency, as in the case of Singapore, where the government has the final say in all matters. Special regulatory agencies for particular issues of concern may be created for flexible and effective implementation of the laws; however, the number of agencies is not a factor relevant to the successful implementation of transparency laws.

**Do more laws on transparency yield less corruption?**

It is the conventional belief in Thailand that if having laws were the priority in fighting against corruption, corruption itself would be eradicated with a high number of transparency laws. The United States, for instance, has put forth a great deal of effort to promulgate many laws and regulations on general and particular issues, including natural resources, environmental protection, and trade agreement. Other countries, such as Japan, the United Kingdom, and
Singapore, have learned from the U.S. approach but have passed only fundamental laws and created certain agencies to enforce the laws. The results from a study by TI (2015) revealed that the United States was ranked 16th among a list of 168 least corrupt countries. In 2016, it was ranked 18th according to the Corruption Perceptions Index Survey and scored 74 out of 100 in the fight against corruption (TI, 2017). No country in the survey received a perfect score, despite rigorous measures to promote transparency. The United Kingdom was ranked 10th, slight ahead of the United States. Japan ranked 18th, and Singapore ranked 8th, receiving the highest rank despite its lack of transparency laws and regulations. This score indicated that Singapore has efficiently preventing governmental opaqueness, promoting transparency, and punishing wrongdoing despite having only certain number of transparency laws.

When other factors, such as strong government measurements, are taken into account, corruption appears to have nothing to do with transparency. In other words, the case of Singapore has shown us that reducing corruption is different than building and fostering transparency. Having an open and transparent government does not guarantee the absence of corruption; they are two separate things. However, keeping government administration open to the public can at least support external audits and watchdogs for government policies, programs, and activities.

**How can the Thai government balance the right to know and the security and privacy of the country and the public?**

Given the development of the supercomputer and the growth of internet and digital technologies, it is impossible to keep the public in the dark. The curiosity and inquisitiveness of the public demand that government and public agencies reveal public records, reports, meeting minutes, policy outcomes, and so on. The government, in contrast, would prefer to have less public intrusion and criticism of policy decisions and other activities for the sake of national security and social stability. The issue at stake is how to balance the interests of between the two sides.

The above case studies suggest that it is reasonable and acceptable for information that affects domestic and international security to remain secret from the public. However, the bases of the transparency principle are the people’s right to know and the duty of the government to protect individual rights to privacy regarding personal information, including birthdate, identity, financial property, assets, and health issues. How, then, can a government delineate between the information that should be exposed to the public and the information that should be kept private?

The United States government has very clear guidelines regarding what people can and cannot request and directly access on federal websites. The FOIA identifies nine items of information that cannot be disclosed to the public, and these specifications are mostly followed by Japan, although a judge can decide when more information should be made available.

**What are the most appropriate measures of transparency needed in the Thai public sector?**
How can people know that their government is open and transparent? To answer this inquiry, the author has explored the measures used by TI and the WJP. The former has been a leading worldwide organization working against corruption since 1993. Its corruption index has been developed over the past twenty years to measure governmental transparency compared to that of countries around the region and the world. Data are collected from more than 160 countries to test the level of corruption of governments and not their transparency (as the name of the organization might suggest). This investigation revealed that Singapore was ranked as the least corrupt nation, but this score does not reflect the government’s openness to the rights of the public to know and criticize. Recently, TI has developed a new set of indices to assess transparency. The Open Governance Scorecard has 47 indices to measure how open the government is. This assessment requires that various primary and secondary data are rated on a scale of 1 to 3. A score of 1 indicates “not implemented,” 2 indicates “partly implemented,” and 3 indicates “fully implemented” (TI, 2015b). This evaluation is based on the FOIA and is a legally oriented tool to determine transparency. However, there are other elements of government policies, procedures, practices, and online access that are not included in this assessment. Therefore, the TI indices on open governance are only partly useful at a certain level.

The WJP was established as a private organization in 2006, and it works to measure the quality of government, particularly the quality of law or rule of law. In 2015, Juan Carlos Botero and Alejandro Ponce developed the Open Government Index to measure government transparency in four areas: (1) publicized laws and government data, (2) rights to information, (3) civic participation, and (4) complaint mechanisms (World Justice Project, 2015a, 2015b). Each area has 78 sub-indicators. This index is more comprehensive than those of TI, and it asks about laws, quality of information, timeliness of services, service charges, media protection, civil and political organizations, freedom of association, rights to petition, and government responses to complaints. In the first report, published in 2015, Thailand ranked 62nd out of 102 countries with a score of 0.49 out of 1.0, indicating that it received a grade of 50 percent in all four areas of assessment. This measure is useful for developing appropriate indicators for the Thai public sector.

From the above study, the author identified the following ten important characteristics for creating transparency:

1) Government information is considered a public asset that a priori must be kept open and confidential information is the exception.
2) Either citizens or non-citizen are allowed to access to public information.
3) All public agencies are obligated and committed to revealing public information.
4) Public agencies must provide easy access to public information with a minimal burden on service charges.
5) To provide effective open access to public information, modern technology should be integrated into the system.
6) A clear guideline on the kinds of information that can be exempted from public access should be set and declared.
7) Public information must be completed, clear, and correct.
8) Various public agencies should be involved in fostering open and transparent government.
9) The supreme law or constitutional law should guarantee and affirm the citizen’s right to know in the country.
10) Some kind of freedom of information act must be issued in the country to provide clear guidelines, mechanisms, and methods for fostering and promoting open government.

There are *five major indices* to measure the openness of Thai public agencies, namely

1) publicized laws on open government, such as constitutional and related laws, that identify the transparent regulatory agency, open government audit agency, and their appropriate authority;
2) a transparent system of public agencies for a transparent internal procurement system, public access, internal information management, public personnel training, and integrity;
3) the people’s right to know and access public information through various user-friendly channels;
4) the right to access public information from other public organizations; and
5) an effective and responsive complaint system and protections for individual privacy.

The author believes that the above guidelines and indices are the minimum tools needed to design a mechanism to measure the openness of Thai governmental public organizations at the agency level. However, these indices require further testing to confirm their validity and reliability.

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