

COVID-19 and The Right to Access to Information

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1. Introduction

This pandemic has placed humanity in an uncertainty that we have not experienced in a long time. We have had to face an unknown disease, which symptoms, prophylaxis, and sequelae we do not fully understand. Throughout 2020 the scientific and medical community have been informing us about the effects and solutions to this global health problem. This scenario of lockdown and uncertainty about how to react to the disease, what treatment to follow, whether there will be a hospital that can take care of our family, how vaccines work, when can we have access to vaccines concern all society. Today, timely, clear, and truthful public information has literally become a matter of life and death. On the other hand, international bodies such as the European Council² and the Inter-American Court of Human Rights prepared two documents emphasizing the need to respect free speech and access to public information during the pandemic. Free speech plays an important role in times of emergency. The need of timely and clear public information is essential for making health, economic and social decisions. Therefore, restrictions to free speech and access of public information must be strict to preserve a democratic society that makes public decisions about Covid-19 known to all. Media and internet should be respected as tools for keeping citizens informed of the situation, communicate the measures taken and promote cooperation between government and society. Moreover, the commitment of the media and journalists to communicate truthfully and with accountability is important. In this sense, the Inter-American Court accepts restrictions when it is attentive to national security, public order, or health;

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²Council of Europe. 2020. *Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis*. April 7th, 2020. June 2020: <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>.

however, these restraints cannot mean prior censorship, nor a widespread suspension. In addition, both media and government must ensure the protection of personal data and avoid disclosing information that promotes discrimination.³ Thus, governments face important challenges in their task of guiding the population in prevention measures and supporting them to deal with the health and economic crisis without transgressing their rights. This paper explores the challenges that transparency agencies have during the pandemic to ensure access to information as part of free speech, collaboration, and participation in a democracy. We identify three mayor challenges: dark transparency, lack of plain language, and misinformation.

2. Transparency, free speech, and democracy

The access to public information as part of free speech is a pillar of democracy. Free speech ensures the participation in public decisions, protects individual autonomy and is one of the main forms of collaboration in modern societies.⁴ To participate and collaborate citizens need to have access to clear and reliable public information. Transparency agencies should guarantee this access.⁵ This is not an easy task in modern days and the pandemic has make it harder. Traditionally, free speech has been guaranteed by limiting government control over information and leaving to courts to repair damages made by defamation or liability. In general, the idea was, as Justice Holmes putted it, to let the market of ideas rule out what wasn't truth.⁶

Today, the speed in which information flows and the advances in behavioral sciences have proven that the traditional response of ex post judicial procedures that sanction false information and offer reparation is not adequate. As Chomsky⁷ points out in the public arena emotions frequently outweigh facts. In the same vein, "falsehood diffused significantly farther,

³Comisión Interamericana de Derechos Humanos. 2018. *Declaración de principios sobre libertad de expresión*. June 2020: <https://www.cidh.oas.org/basicos/declaracion.htm>

⁴Sunstein, Cass R. 2021. *Liars: Falsehoods and Free Speech in an Age of Deception*. United Kingdom: Oxford University Press.

⁵Fung, Archon, Mary Graham, and David Weil. 2007. *Full disclosure: The perils and promise of transparency*. United Kingdom: Cambridge University Press.

⁶Sunstein, Cass R. 2021. *Liars: Falsehoods and Free Speech in an Age of Deception*. United Kingdom: Oxford University Press.

⁷Chomsky, Noam. 2011. *Ten strategies of manipulation by the media*. June 2020: <https://www.demenzemedicinagenerale.net/pdf/14-10-strategies-of-manipulation.pdf>

faster, deeper, and more broadly than the truth in all categories of information”.⁸ Today is even more truth what Arendt once said: “while probably no former time tolerated so many diverse opinions on religious or philosophical matters, factual truth, if it happens to oppose a given group’s profit or pleasure, is greeted with greater hostility than ever before”.⁹ Now we also know that we are not as rational as we would like to think. David McRaney shows in his book “You are not so Smart” (2012) that our rational mind frequently makes mistakes, takes short cuts, or is deceived by our emotions. The most common errors come from:

- Cognitive biases: predicable patterns of thought and behavior that lead you to draw incorrect conclusions. Anchoring, meta-cognitive myopia.
- Heuristics: mental shortcuts you use to solve common problems. They speed up processing in the brain, but sometimes make you think so fast you miss what is important.
- Logical fallacies: like math problems involving language, in which you skip a step or get turned around without realizing it.
- Priming stimulus: the past affects the way you behave and think or the way you perceive another stimulus later.¹⁰

In this scenario the role of transparency agencies as the providers of public information and guardians of free speech is essential, especially during a pandemic. Nevertheless, they also confront important challenges. These challenges can be grouped in three categories:

- Dark transparency: disclosure of public information but it is inconsistent, confusing, and not verifiable.
- Lack of plain language: public information is not presented in a clear language. There is an excessive use of legal, medical, or technical jargon.
- Misinformation: it is represented by the mistrust in evidence, the denial of science and the increase in fake news.

⁸Vosoughi, Soroush, Deb Roy, and Sinan Aral. 2018. "The spread of true and false news online." *Science* 359 (6380): 1146-1151.

⁹Arendt, Hannah. 1967. "Truth and politics." *Truth: Engagements across philosophical traditions*: 295

¹⁰ McRaney, David. 2012. *You Are Not So Smart*. New York: Gotham Books.

3. Dark transparency

We can describe dark transparency as the situation in which there is a lot of information, but with little order and is difficult to find. There is a proliferation of official internet sites, but they have a vision of mere compliance with transparency laws or guidelines. It is a question of pouring information with little attention to the quality of the information and its possibility of use, for example, documents or data in PDF formats that do not allow processing or re-use. It is information that does not consider their audience, or the complexity of the information given. This dark transparency, that perhaps complies with the law, does not actually serve the purpose of informing decisions.

The problem of dark transparency results from an absence of a transparency public policy that understands public information as a strategic resource for decision-making and collaboration among agencies and society.¹¹ As Merino points out, having a transparency policy implies the deliberate purpose of acting and deciding based on information that must be public. It should be conceived as an organizational value and a framework for public deliberation. It is a policy that produces, uses, and distributes public information as a strategic resource.¹² Making public the outcome of decisions taken by the authorities should not be understood as a second-rate task. As Morales, Lopez, Ackerman, Arellano, Cossío have pointed out transparency implies that public decisions must be made in a glass box, based on evidence, and must be known to all. Public decisions should allow the broad participation of society. This builds trust in government and legitimacies their outcomes.¹³ When decisions are made in small groups, without clear information and a lack of public deliberation it erodes public trust and of course decreases collaboration.

4. Plain Language

¹¹Aquino, Romy and Lilibeth Álvarez .2020. “Acceso a la información pública y fake news: efectos de la pandemia por covid-19”. *Ius Comitalis* 3 (6): 261-285.

¹²Merino, Mauricio. 2008. “La transparencia como política pública”, en John M. Ackerman, *Más allá del acceso a la información. Transparencia, rendición de cuentas y Estado de derecho*, 251-252. México: Siglo XXI.

¹³Holmes, Stephen. 2008. *Más allá del acceso a la información: transparencia, rendición de cuentas y estado de derecho*. México: Siglo XXI.

A second challenge in public information is the way we present it. In health matters, it is particularly challenging to communicate complex scientific information such as: forms of virus' transmission or different types of vaccines, so that it is understandable to the public. We must ensure that public information comes from reliable, evidence-supported sources in a plain language. Plain language is defined as: "clear and effective communication".¹⁴ In Garner's Dictionary of Modern Legal Usage (1987), plain language is also defined as "Language that most effectively presents ideas to the reader".¹⁵ To do so it uses only as many words as are necessary. Because of this, "it is language that avoids obscurity, inflated vocabulary, and convoluted construction".¹⁶ To communicate information through a plain language, it is necessary that "the text should match the audience's reading skill".¹⁷

In this respect it is also useful to take advantage of information and data processing technologies. Both elements are part of Open Government commitments as tools for promoting plain language¹⁸. Plain language helps people understand complex problems and the strategies that the government adopts to overcome them. Communicating public decisions in plain language earns trust in the authorities and promotes collaboration. Some good examples of use of plain language are:

- **Covid-19 information section for children - Ministry of Health (Secretaría de Salud de México):** The Covid-19 web page for children of the Federal Ministry of Health uses various materials that explain, in simple and easy-to-understand language, information about Covid-19. In order to make the information understandable, it is supported by stories, infographics, videos, and suggestions of activities for parents to do at home with their children. A useful tool to bring the information even closer to the children is the participation of Sesame Street characters to communicate the message.¹⁹

¹⁴Kimble, Joseph. 2002. "The Elements of Plain Language". *Michigan Bar Journal*. Retrieved from: <https://www.plainlanguage.gov/resources/articles/elements-of-plain-language/>

¹⁵Garner, Bryan. 2001. *A Dictionary of Modern Legal Usage*. Oxford: Oxford University Press.

¹⁶Eagleson, Robert, Gloria Jones, and Sue Hassall. 1990. *Writing in Plain English*. Australian Government Publishing Service.

¹⁷DuBay, William H. 2008. "Working with Plain Language. A Train Manual". *Impact Information*. Retrieved from: <http://www.impact-information.com/Resources/working.pdf>

¹⁸González Rincón, Ana C. 2020. "Acceso a la información y protección de datos en México en tiempos de la pandemia. ¿Qué esperar de un gobierno abierto y responsable?". *Iuris Tantum* 34 (31): 45-55.

¹⁹Children's section of the Ministry of Health's website: <https://coronavirus.gob.mx/ninas-y-ninos/>

- **Information for Children - National Institute of Statistics and Geography (INEGI, by its Spanish acronym):** INEGI has a section on its website that is designed specifically for children. In small articles of no more than 200-400 words each and with the use of illustrative images, INEGI communicates in a simple and clear way information on complex topics such as: maps, soil types, hurricanes, water, different types of weather, the environment, among others.²⁰
- **Virtual social networks, particularly Twitter- Mexico City Government:** The Twitter account of the Mexico City Government is updated daily with information on the Covid-19 pandemic in the city (vaccination sites and dates, Covid-19 cases in Mexico, good hygiene habits, use of mouth covers, to mention a few examples). This information is written with a plain language that uses simple words, short paragraphs and emojis that facilitate the comprehension of the message for the audience to whom the tweets are addressed. Likewise, almost all publications are accompanied by infographics, images and/or videos that convey the message in a few words and in a forceful way.²¹

5. Misinformation and fake news

Perhaps this is the most important challenge to fight. It is a disdain for the evidence and information provided by science, pointing out that other data is available, questioning the use of evidence, as has happened in many parts of the world, erodes confidence in public information and in the institutions of a democratic state.²² This phenomenon of post-truth has been on the rise around the world, both in the public and private spheres. Denied protests related to the pandemic, or climate change, or anti-vaccine movements are an example of this problem. Truth itself and its attributes are underestimated, such as: objectivity, consistency, impartiality, sincerity, respect for evidence, accuracy, recognition of fallibility, and the pursuit of error minimization.²³ Procedures for attaining truth are belittled. There is disdain for the research

²⁰Information for children from the INEGI website: <http://cuentame.inegi.org.mx/territorio/default.aspx?tema=T>

²¹Mexico City Government Twitter: <https://twitter.com/GobCDMX>

²²Carrera, Pilar. 2018. Estratagemas de la posverdad. *RLCS. Revista Latina de Comunicación Social* 73: 1469-1481.

²³Castillo-Riquelme, Víctor, Patricio Hermosilla-Urrea, Juan P. Poblete-Tiznado, and Christian Durán-Anabalón. 2021. "Noticias falsas y creencias infundadas en la era de la posverdad". *Universitas, Revista de Ciencias Sociales y Humanas* 34: 87-108.

process that hypothesize, formulates ideas, and confronts them. Social media is a fertile field for misinformation. Unfortunately, this situation has also affected public information. Misinformation is a phenomenon that we must fight as a society. As Victoria Camps says, it is vital that, in the face of misinformation, it does not matter whether we are public servants, teachers, or citizens, let us put doubt before the visceral reaction. It is important to doubt, reflect and weigh pros and cons. Camps proposes a set of practical criteria to purge our interpretations of biases or deformations caused by political or partisan interests that sometimes move away from reality. To achieve this, we must: go back again and again to the reality we want to analyze, know the various interpretations regarding the facts and evaluate them through dynamic and open dialogue with others.²⁴

Faced with the threat of misinformation such as fake news, it is important to remember Hannah Arendt's advice; in a democracy we must always defend the "repositories of truth" such as: the judicial system, the university, the education system, science, and journalism. These are the venues where divergent visions are dialogued, data is collected, and evidence is generated.²⁵ Truth repositories are the antidote to misinformation. Therefore, it is essential to preserve and use them when making public decisions. By having strong truth repositories, that inform public decisions, society can rely on its authorities and the information they publish. Trust results from rigorous analyses and open dialogues that repositories of truth guarantee.

6. The role of Transparency agencies

Transparency public policies play a key role in guaranteeing the existence of truth repositories. The OCDE defines transparency policy as the necessary actions to create "an environment in which government program's objectives, its legal, institutional and economic framework, policy decisions and their rationale, data and information related to monetary and financial policies, and the terms of agencies' accountability are provided to the public in an understandable, accessible and timely manner".²⁶ Furthermore, a transparency public policy is

²⁴Camps, Victoria .2016. *El Elogio de la duda*. Barcelona: Arpa Editores

²⁵Arendt, Hannah. 1996. "Verdad y política", *Entre el pasado y el futuro. Ocho ejercicios sobre la reflexión política*, 49-100. Barcelona: Península.

²⁶ OECD. 2020. *Code of Good Practices on Transparency in Monetary and Financial Policies*, Part 1— Introduction, Approved by the IMF Executive Board on July 24, 2000. Retrieved from: http://www.imf.org/external/np/mae/mft/sup/part1.htm#appendix_III

necessary because: only governments can compel the disclosure of information from private and public sectors thru legislation backed by the legitimacy of a democratic processes.²⁷ To achieve it we need independent, reliable institutions, with a clear and efficient transparency policy.²⁸ Transparency agencies should promote cooperation and exchange of information within agencies and with the private sector, especially media.

Limiting free speech should not be the solution to fake news. Even though in a time where anyone can post information without checks and it can become viral, it is very tempting for governments to do so. On the contrary, in a time of social networks and information highways, transparency agencies must guarantee reliable sources of information by ensuring voice to all points of view, promote the use of plain language thru guides and good practices. Transparency agencies should also encourage critical thinking by funding independent fact checkers. More information not less is the antidote for fake news.

Transparency agencies should also develop guidance for social media to self-regulate content. In this area experiences such as tweeter's policy of deleting posts that are disputed as fake news when revised by third party fact checkers²⁹ or Facebook's council administrative adjudication, a group of experts that analyze content that has been denounce and determines if it should be taken down, may be useful. Nevertheless, further research of these tools is required to guarantee that decisions are impartial and do not constitute limitations to free speech. It is also necessary to ensure open data of social media to have checks and balances of all agents involved in generating public information, including transparency agencies itself.

Information is power, in the information era even more so. The Covid-19 pandemic has made evident the importance of having reliable information for making both public and private decisions. Therefore, having an agency responsible of guarantee a good transparency policy has become a strategic resource for governments that wish to ensure free speech and democratic process for public decisions.

²⁷ Fung, Archon, Mary Graham, and David Weil. 2007. *Full disclosure: The perils and promise of transparency*. United Kingdom: Cambridge University Press.

²⁸ Sunstein, Cass R. 2021. *Liars: Falsehoods and Free Speech in an Age of Deception*. United Kingdom: Oxford University Press.

²⁹ Estrada-Cuzcano, Alonso, Karen Alfaro-Mendives, and Valeria Saavedra-Vázquez. 2020. "Disinformation y Misinformation, Posverdad y Fake News: precisiones conceptuales, diferencias, similitudes y yuxtaposiciones". *Información, cultura y sociedad: revista del Instituto de Investigaciones Bibliotecológicas* 42: 93-106.

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OECD. 2020. *Code of Good Practices on Transparency in Monetary and Financial Policies*, Part 1—Introduction, Approved by the IMF Executive Board on July 24, 2000. Retrieved from: http://www.imf.org/external/np/mae/mft/sup/part1.htm#appendix_III

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