

THE WORLD'S

Right to Know

During the last decade, 26 countries have enacted new legislation giving their citizens access to government information. Why? Because the concept of freedom of information is evolving from a moral indictment of secrecy to a tool for market regulation, more efficient government, and economic and technological growth. By Thomas Blanton

History may well remember the era that spanned the collapse of the Soviet Union and the collapse of the World Trade Center as the Decade of Openness. Social movements around the world seized on the demise of communism and the decay of dictatorships to demand more open, democratic, responsive governments. And those governments did respond. Former Russian President Boris Yeltsin partially opened the Soviet archives. Former U.S. President Bill Clinton declassified more government secrets than all his predecessors put together. Truth commissions on three continents exposed disappearances and genocide. Prosecutors hounded state terrorists, courts jailed generals, and the Internet subverted censorship and eroded the monopoly of state-run media.

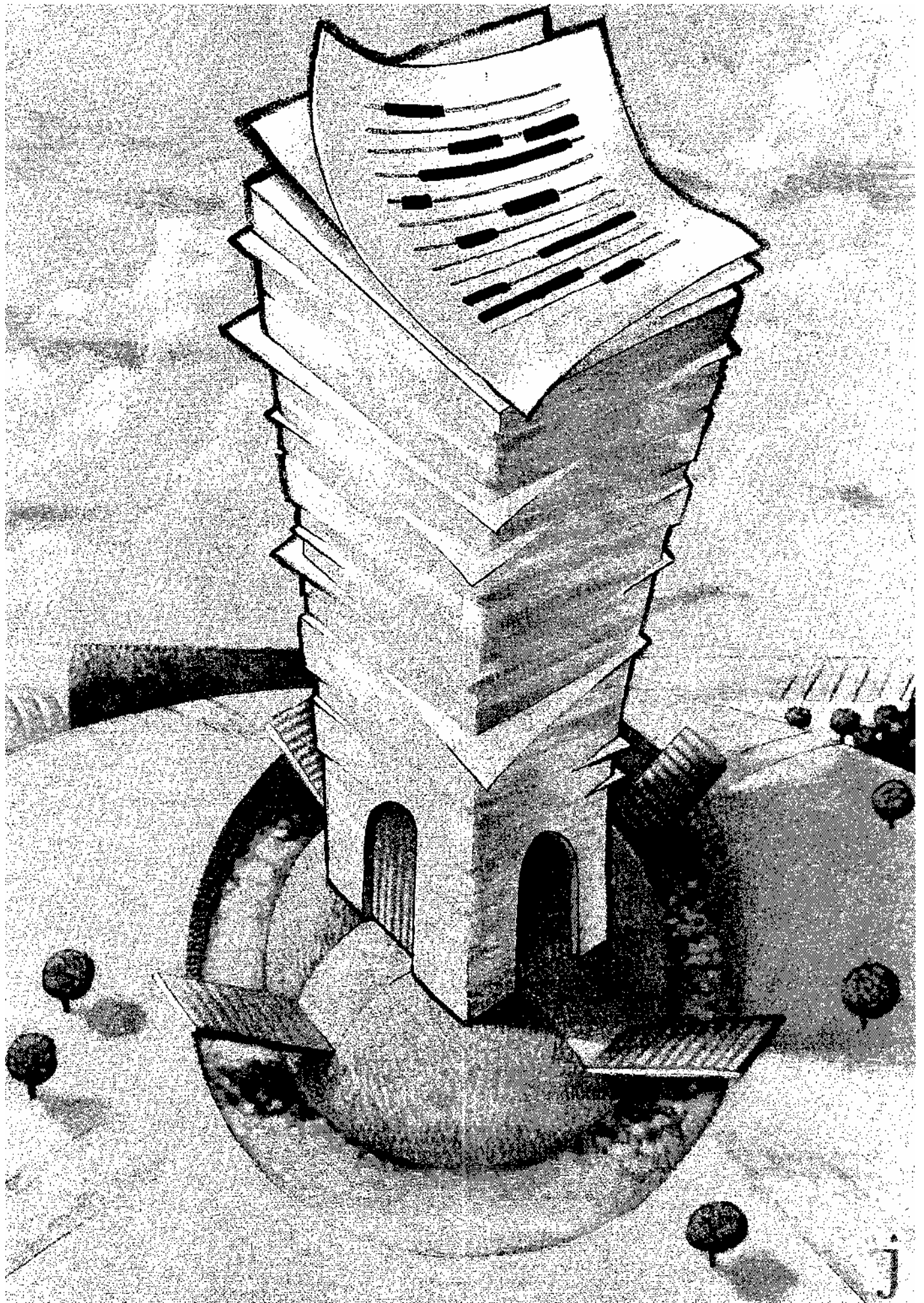
Most striking of all, during that decade, 26 countries—from Japan to Bulgaria, Ireland to South Africa, and Thailand to Great Britain—enacted formal statutes guaranteeing their citizens' right of access to government information. In the first week after the Japanese access law went into effect in 2001, citizens filed more than 4,000 requests. More than half a million Thais utilized the Official Information Act in its first three years. The U.S. Freedom of Information Act (FOIA) ranks as the most heavily invoked access law in the world. In

2000, the U.S. federal government received more than 2 million FOIA requests from citizens, corporations, and foreigners (the law is open to "any person"), and it spent about \$1 per U.S. citizen (\$253 million) to administer the law. Multilateral institutions are also trying to meet freedom-of-information challenges from their member states (as in the European Union (EU), where Sweden, Denmark, and Finland are criticizing the culture of secrecy favored by Germany and France) or from civil society (the World Bank is now fumbling with a half-hearted disclosure policy).

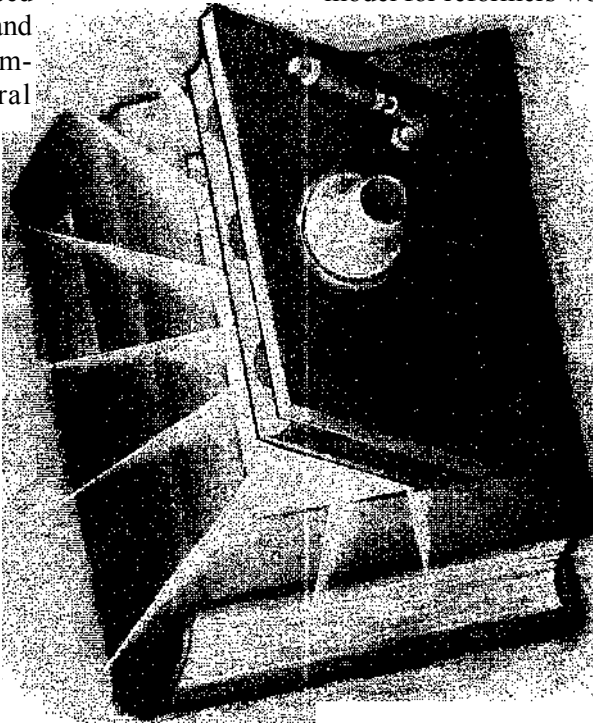
In the aftermath of September 11, as control of information emerged as a crucial weapon in the war against terror, troubling signs emerged that governments might be shutting the door on the Decade of Openness. But worldwide, new security measures and censorship laws have been few and far between. Canada contemplated but then backed away from giving its justice minister the power to waive its long-standing access law on an emergency, terrorism-related basis. India passed the Prevention of Terrorism Ordinance, which threatened jail terms for journalists who didn't cooperate with law enforcement, but no such actions have yet occurred. Great Britain delayed implementing its new information access law until 2005 but said the delay had nothing to do with September 11.

Ironically, secrecy has made the most dramatic comeback in the country that purports to be the most democratic. Even before the al Qaeda attacks, the Bush administration claimed executive privilege in

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several high-profile requests for information, fighting off congressional calls for the names of private-sector advisors on energy policy and stalling the release of Reagan-era documents under the Presidential Records Act. But September 11 turned this tendency into a habit, sometimes justifiably (as in details of special operations in Afghanistan) but more often reflexively: In recent months, White House officials granted former presidents veto power over release of their administrations' records, ordered agencies to use the most restrictive and legalistic response possible for FOIA requests, and denounced leaks even as mayors and local law enforcement complained about the federal government's failure to share information. The Bush administration's secrecy obsession will likely prove self-defeating, because like markets, governments don't work well in secret. The most effective opponents of the president's yen for secret military tribunals were not civil libertarians but career government prosecutors and military lawyers, who insisted on more open trials and more due process on legal and constitutional grounds, as well as for reasons of efficiency. The prosecutors know what President Bush does not—that openness fights terrorism by empowering citizens, weeding out the worst policies, and holding officials accountable (not least the foreign despots who are now temporary U.S. allies in the war against terrorism). More broadly, the motivations behind the freedom-of-information movement in countries outside the United States generally remain unchanged by the war on terrorism. Openness advocates are successfully challenging entrenched state and bureaucratic power by arguing that the public's right to know is not just a moral imperative; it is also an indispensable tool for thwarting corruption, waste, and poor governance.



TRANSPARENCY'S SCANDALOUS PAST

Most of the freedom-of-information laws in the world today came about because of competition for political power between parliaments and administrations, ruling and opposition parties, and present and prior regimes. In fact, the first freedom-of-information law—Sweden's 1766 Freedom of the Press Act—was driven by party politics, as the new majority in parliament sought to see documents that the previous government had kept secret.

Likewise, the U.S. FOIA, which has emerged as a model for reformers worldwide, was not the

product of democratic enlightenment, but rather Democratic partisanship. The legislation emerged from 10 years of congressional hearings (1955-65) as the Democratic majority sought access to deliberations of the Republican executive branch under former President Dwight D. Eisenhower. The U.S. FOIA as it exists today—with broad coverage, narrow exemptions, and powerful court review of government decisions to withhold information—is actually an amended

version of the 1966 act, revised in 1974 by a Democratic Congress over a veto by then Republican President Gerald Ford.

The U.S. FOIA would not be as far-reaching had it not been for Watergate. Indeed, scandals have remained a catalyst for freedom-of-information movements worldwide. Canada passed its freedom-of-information statute in 1982 following scandals over police surveillance and government regulation of industry. Public outcry over conditions in the meat-packing industry and the administration of a public blood bank prompted Ireland to pass a similar law in 1997. Japan's 1999 national access law followed two decades of scandals, from the Lockheed bribery case in the 1970s to the bureaucracy's cover-up of HIV contamination of the blood supply in the early 1990s.

Eat, Drink, Be Corrupt

Some 20 years of press attention and local activism by Japan's relatively small population of private attorneys produced more than 400 freedom-of-information ordinances at the local and prefecture levels. The attorneys, or "citizen ombudsmen," achieved particular success using local access regulations to expose national scandals, such as the billions of yen spent by government officials on food and beverages while entertaining each other. In one famous 1993 case, city records in Sendai revealed that

a party of six officials had consumed 30 bottles of beer, 26 decanters of sake, and 4 bottles of chilled sake, for what one commentator called "a rollicking good time"—at taxpayers' expense. As a result of such revelations, between 1995 and 1997, Japan's 47 prefectures cut their food-and-beverage budgets by more than half, saving 12 billion yen (about \$100 million at the time).

Even more important, the information disclosure movement helped create a new political culture in Japan. Not only

did Japanese citizens line up by the thousands to file information requests at government offices on April 2, 2001, when the new national law went into effect, but political candidates also vied to outdo each other in pledges of openness. In fact, the newly elected governor of Nagano prefecture moved his office from the third floor to the first, encasing it with windows and adopting an open-door policy—the personification of the new politics of openness in Japan.

—T.B.

Japan's information disclosure movement started 20 years ago as local access ordinances unearthed systematic falsifications of government accounts and exposed widespread corruption within the Japanese public works and construction industries—a political bribery system that bulwarked 40 years of one-party rule in Japan [see sidebar above].

While the eruption of scandals has been a catalyst for reform in countries with a long democratic tradition, the collapse of totalitarian regimes helped drive the freedom-of-information movement elsewhere in the world. In Europe, where administrative reform in most former communist countries bogged down in the early 1990s (due to frequent changes in governments and a corrosive debate about banning former Communist Party officials from public office), Hungary took the initiative and passed a freedom-of-information act in 1992. The Hungarian law was, in part, the new regime's revenge against its communist predecessors, opening their files and making them accountable for previous misdeeds. Reassured by the successful model in Hungary, pressured by "open society" nongovernmental organizations (NGOs) such as those funded by billionaire philanthropist George Soros, and eager to integrate into the EU and NATO, other former communist countries engaged in the freedom-of-information debate in the late 1990s. New freedom-of-information legislation was enacted in Estonia, Lithuania,

Latvia, the Czech Republic, Slovakia, and Bulgaria between 1998 and 2000—and even in Bosnia and Herzegovina in 2001, at the behest of the Organization for Security and Co-operation in Europe.

Thailand's 1997 Official Information Act was the culmination of a political reform process that began in 1992 with mass demonstrations against a military regime and became even more urgent with Thailand's economic crisis in 1997. One request filed by a disgruntled mother changed the country's entire primary- and secondary-education system [see sidebar on page 57]. In post-apartheid South Africa, the 1994 constitution under which Nelson Mandela came to power included a specific provision that guarantees citizens' access to state-held information, and South Africa's implementation law, passed in 2000, is probably the strongest in the world.

SETTING A NEW STANDARD

Today, as a consequence of globalization, the very concept of freedom of information is expanding from the purely moral stance of an indictment of secrecy to include a more value-neutral meaning—as another form of market regulation, of more efficient administration of government, and as a contributor to economic growth and the development of information industries. Hungary's adoption of a freedom-of-information statute, for example, signaled a rejec-

Open for Business

coring and ranking countries by various governance indicators has become big business. The World Bank alone recently tabulated 17 different polls and surveys covering as many as 190 countries. But the business focus of most of these indexes makes freedom-of-information advocates suspicious of them. Most of the surveys emphasize risk for investors (the largest consumers of such assessments) rather than the experience of citizens. Some rating firms even give a positive score for the coercive capacity of government agencies (such as Russia's Federal Security Service) to enforce contracts and uphold the rule of law.

Consider Singapore. Even though the Corruption Percep-

tions Index published by the anticorruption group Transparency International (TI) gives Singapore a high score, the Singaporean government routinely restricts basic press freedoms. A key reason for this disconnect is that this index does not actually measure transparency but rather the perceptions of corruption among business people, academics, and risk analysts. Another irony for openness advocates is that the consulting firm PricewaterhouseCoopers's Opacity Index—which attempts to measure the amount of foreign capital investment lost due to poor governance—actually uses Singapore as its benchmark for "least opaque" country.

Fortunately, a group of Southeast Asian journalists, led

by the Philippine Center for Investigative Journalism (PCIJ), has developed a more defensible approach to comparative openness. Last year, the PCIJ compiled a list of 45 key government records (including socioeconomic indicators, election campaign contributions, public officials' financial disclosure forms, and audit reports on government agencies), asked eight Southeast Asian governments for these records, and tabulated the responses [see below]. (A "yes" response indicates that access was granted.) Using this methodology, Singapore loses some of its luster, with fewer "yes" answers than Thailand or the Philippines.

—T.B.

When Journalists Ask Governments vs. When Pollsters Ask Business People

Philippine Center for Investigative Journalism Ranking

Measuring openness by tabulating how governments responded to requests for access to official documents

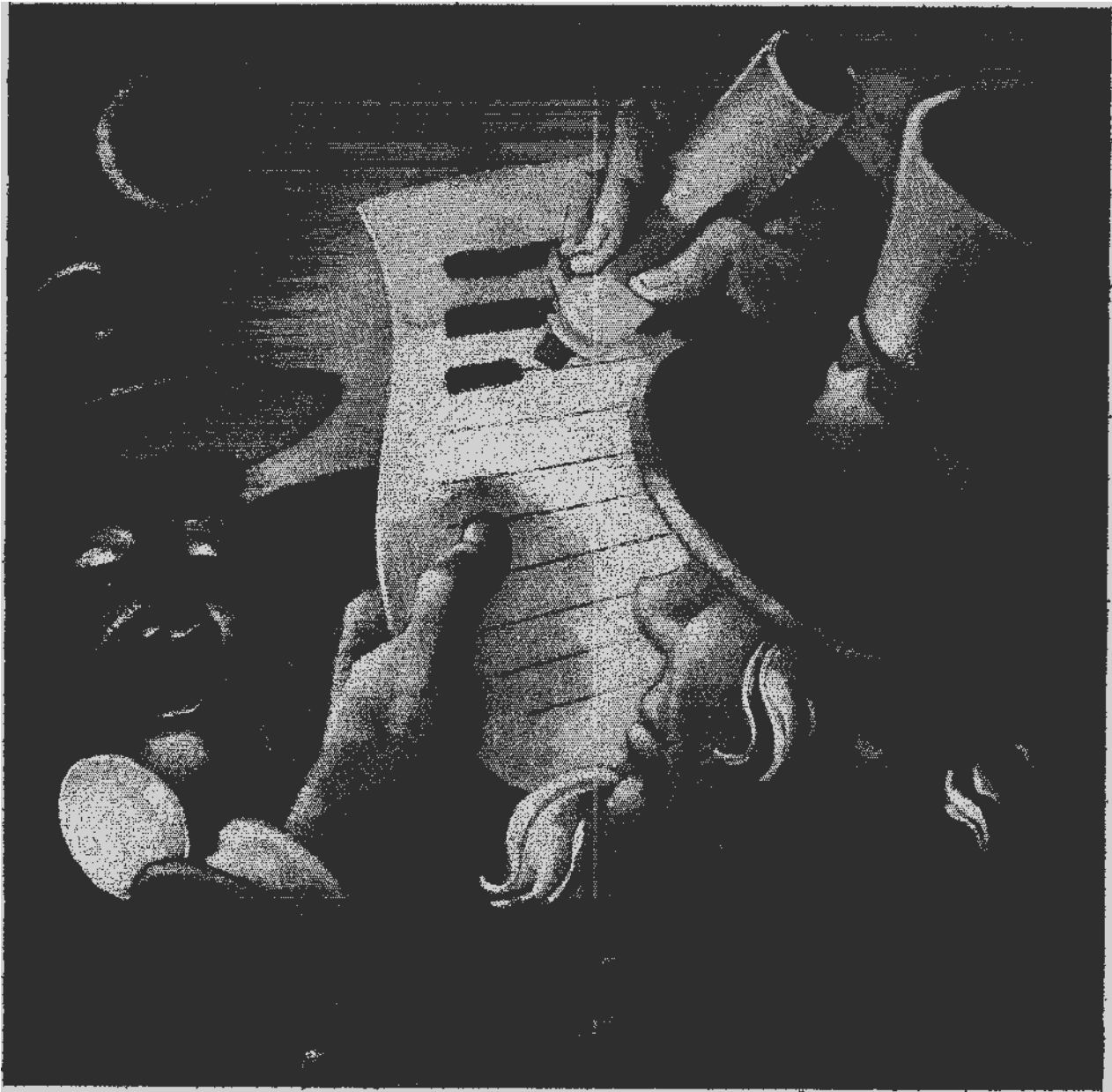
Country	Requests Granted (%)
Philippines	56
Thailand	51
Cambodia	42
Singapore	42
Malaysia	33
Indonesia	18
Vietnam	18
Myanmar (Burma)	4

Transparency International (TI) Rankings (Corruption Perceptions Index 2001)

Measuring government corruption based on the surveyed opinions of business people, academics, and country analysts (on a zero-to-ten scale with zero as highly corrupt and ten as highly clean)

Country Score	CPI
Singapore	9.2
Malaysia	5.0
Thailand	5.0
Philippines	3.2
Vietnam	2.9
Indonesia	2.6
	1.9

Note: Neither Cambodia nor Myanmar (Burma) was covered because TI found fewer than three reliable survey sources for each of these countries.



tion of its communist past. But perhaps even more important, the law combined new access rights to government records with strong data protection provisions for business, in an attempt to attract German corporate investment by conforming to European—and particularly German—standards that guard trade secrets and personal information.

Financial transparency measures do not necessarily help the cause of political reform, but agile advocates have harnessed the language of transparency to push for political liberalization at the local level. In fact, legal reformers in China, as well as the Communist Party's anticorruption activists, are using this argument to help open the decision-making process in local and provincial governments. Their argument, which acquires greater weight as China enters the World

Trade Organization (WTO), is that regulating governments and corporations (especially global ones) may be done more efficiently by promoting full disclosure of their activities, rather than by relying on multiple bureaucracies in multiple countries that provide multiple opportunities for corruption. Such efforts to promote local transparency are more likely to succeed than would any attempt to implement a national freedom-of-information statute—especially one that would apply to law enforcement or national security or Communist Party deliberations.

Membership in a supranational organization, such as the WTO, does not always encourage transparency—as when NATO refuses to release files without a consensus among all NATO members or requires Poland to adopt a new law on state secrets. But

more often than not, supranational organizations create a demand for greater access to information, both between and within countries. These global or regional governance institutions set up multiple information flows among national governments, multinational organizations, the media, and private citizens' groups, who use each party's information to leverage the others, often with significant domestic impact. For example, the Slovakian press reported EU criticism of misleading economic statistics under the



government of former Prime Minister Vladimir Meciar. This negative publicity led to the revamping of the state statistical office and contributed to both Meciar's political decline and Slovakia's formal adoption of a freedom-of-information law.

THE ABCs OF OPENNESS

Making good use of both moral and efficiency claims, the international freedom-of-information movement stands on the verge of changing the definition of democratic governance. The movement is creating a new norm, a new expectation, and a new threshold requirement for any government to be considered a democracy. Yet at the same time, the disclosure movement does not even know it is a movement; its members are constantly reinventing the wheel and searching for relevant models. Moreover, entrenched state interests continue to launch vigorous counterattacks in the United States and abroad, citing national security and the need for privacy in the deliberative process as counterweights to freedom-of-information arguments. The ideal openness regime would have governments publishing so much that the formal request for specific information (and the resulting administrative and legal process) would become almost unnecessary. Until that time, openness advocates have reached consensus on the five fundamentals of effective freedom-of-information statutes:

First, such statutes should begin with the presumption of openness. In other words, the state does not own the information; it belongs to the citizens. Traditionally, of course, "*L'e-tat, c'est moi*," as France's King Louis XIV declared. Reversing this legal claim and its legacy in official secrecy acts (which turn a blind eye to the public's "right to know") remains the top priority for freedom-of-information movements.

Second, any exceptions to the presumption of openness should be as narrow as possible and written in statute, not subject

to bureaucratic variation and the change of administrations. Reformers in Japan point to overbroad privacy exemptions as a huge obstacle, since they allow bureaucrats to withhold any personal identifier whatsoever, whether or not releasing it would invade the privacy of the person. Consequently, released documents look like Swiss cheese, with every official's name deleted, even the prime minister's.

Third, any exceptions to release should be based on identifiable harm to specific state interests, although many statutes just recite general categories like "national security" or "foreign relations." Most of this is common sense: It's easy to see the harm from releasing data like the design of chemical warheads, identities of spies who could be killed if exposed, bottom-line positions in upcoming treaty negotiations, and the like. But most government secrets are far more subjective and merely time-sensitive. Former U.S. Secretary of State Lawrence Eagleburger has said most of the secrets he saw in his government career could easily be released within 10 years of their creation.

Fourth, even where there is identifiable harm, the harm must outweigh the public interests served by releasing the information. No public interest is served by releasing the design of a nuclear weapon, but the policies that govern the use of nuclear weapons are at the heart of governance and public debate. The United States has even released specifics on the recruitment and payment of spies when that information was nec-

essary in a legal prosecution (another form of public interest), such as in the trial of former Panamanian strongman Manuel Noriega.

Fifth, a court, an information commissioner, an ombudsman, or other authority that is independent of the original bureaucracy holding the information should resolve any dispute over access. In *New Zealand*, the ombudsman can overrule agency withholdings. In Japan, a three-judge panel decides appeals. And in the United States, a federal judge recently ordered release under FOIA of energy policy records that Vice President Dick Cheney had refused to give to Congress.

In seeking to implement these fundamental principles, the freedom-of-information movement may be focusing too much on statutes and legal language. Free media and active civil society may be more important than laws: In the Philippines, for example, without a formal access law, the media and NGOs have opened government records and even brought down former

President Joseph Estrada. The habits of dissent and resistance may also hurt the movement, since activists have to learn to work with as well as against governments to achieve real openness. Bureaucracies will always confound citizens unless reformers find ways to change bureaucratic incentives (rewarding and promoting officials who are responsive) and to develop some appreciation for administrators'

Membership in a supranational organization, such as the WTO, does not always encourage transparency.

resource constraints and political pressures.

Perhaps the ultimate challenge for the freedom-of-information movement will be the need for governments and citizens alike to adapt to a new cultural and psychological climate. In colloquial Japanese, for

Head of the Class

In early 1998, an elite school in Thailand picked on the wrong mother. Sumalee Limpavart refused to believe that her brilliant daughter, Nattanich, had failed the entrance exam for an elementary school at the state-run Kasetsart University, so she filed a request at the school for copies of the test sheets and grades for everyone who took the exam. When the school refused, Sumalee turned to the new Thai access law administered by the Office of the Official Information Commission (oic). At first, the OIC declared that Sumalee, could see only her own daughter's answer sheet. However, an appeals tribunal ruled that the tests and scores were government data, not personal infor-

mation, and could be released. The school refused to comply, and the parents of the other children even sued Sumalee and the appeals tribunal. (One parent tried to get the attorney general to prosecute Sumalee for "misconduct.") Ultimately, the Thai Supreme Court upheld the decision of the appeals tribunal, and the Kasetsart school reluctantly showed Sumalee the grades and test sheets. The documents revealed that a child with the same score as Nattanich—a supposedly failing score—had been admitted to the school, but the school refused to explain exactly how it had picked between the two. Since the other child came from a prominent family, Sumalee had a pretty good idea

what had happened. She thus filed a complaint with the State Council (which serves as the Constitutional Court) that the school had violated Article 30 of the Thai Constitution, which bans discrimination on the basis of race, nationality, place of birth, age, and social or economic status. The council not only agreed with Sumalee, but also ordered the abolition in all state schools of special admissions criteria based on financial contributions, sponsorships, and kinship arrangements. As a result, test scores are now public, privileged admissions are now prohibited, and Sumalee's case has dramatically raised Thais' awareness of their access rights.

—T.B.

The World's Right to Know

example, the term *okami* (god) is commonly used to refer to government officials. "You can't complain against the gods," one Japanese activist told a newspaper, summarizing the difficulty felt by ordinary

people confronting the government. Or in the words of the Bulgarian activist Gergana Jouleva, "Democracy is not an easy task neither for the authorities nor for the citizens." **EHI**

C Want to Know More?

Most public discussion on freedom-of-information issues now takes place on the World Wide Web, where a new Soros-funded network called freedominfo.org provides country studies and the most comprehensive survey of access statutes worldwide, compiled by David Banisar, author of "Freedom of Information Around the World" (London: Privacy International, 2002). The site also has links to national and regional campaign sites, including those of the Campaign for Freedom of Information (United Kingdom), the Access to Information Programme (Bulgaria), and the Commonwealth Human Rights Initiative (India). The freedominfo.org approach builds on the Philippine Center for Investigative Journalism's (PCIJ) pioneering work, *The Right to Know: Access to Information in Southeast Asia* (Manila: PCIJ and the Southeast Asian Press Alliance, 2001), edited by Sheila Coronel.

On the campaign for openness in the European Union, see the Web site of Statewatch, especially the "Essays for an Open Europe." The Bank Information Center Web site includes details on the campaign for openness in the multilateral financial institutions. The London-based nongovernmental organization Article 19 — referring to the 19th article of the Universal Declaration of Human Rights — features useful freedom-of-information legal analysis and advice on its site, including Toby Mendel's "The Public's Right to Know: Principles on Freedom of Information Legislation" (London: Article 19, 1999). Privacy International's site was the first to feature annual reports on new freedom-of-information developments worldwide, and Transparency International's site includes links to a number of international anticorruption campaigns. Freedom House's most recent global study of media censorship, "Annual Survey of Press Freedom" (New York: Freedom House, 2002), reports that the war on terrorism did not seriously impinge on press freedom in 2001.

On the U.S. Freedom of Information Act, see Allan R. Adler's, ed., *Litigation Under the Federal Open Government Laws* (Washington: American Civil Liberties Union Foundation, 1997) and Herbert N. Foerstel's interview-based history, *Freedom of Information and the Right to Know: The Origins and Applications of the Freedom of Information Act* (Westport: Greenwood Press, 1999). Norman S. Marsh's, ed., *Public Access to Government-Held Information* (London: Stevens, 1987) is the only book-length comparative treatment of international freedom-of-information statutes. For a more recent work that focuses on national-security secrecy, see *Secrecy and Liberty: National Security, Freedom of Expression and Access to Information* (The Hague: Martinus Nijhoff Publishers, 1999), edited by Sandra Coliver, Paul Hoffman, Joan Fitzpatrick, and Stephen Bowen. For the best study of an individual country's freedom-of-information experience, see Lawrence Repeta's "Local Government Disclosure Systems in Japan" (Seattle: National Bureau of Asian Research, 1999).

In "The End of Secrecy?" (FOREIGN POLICY, Summer 1998), Ann Florini argues that globalization compels governments and private corporations to deliberately divulge their secrets and create a de facto system of "regulation by revelation." The first iteration of the A.T. Kearney/FOREIGN POLICY Magazine Globalization Index, "Measuring Globalization" (FOREIGN POLICY, January/February 2001), found that the most globalized countries tend to be the least corrupt, as measured by Transparency International.