

# Transparency for a “sociological turn”

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*The right to information for the effectiveness of other fundamental rights: an interview with Prof. David Pozen*

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Revista da CGU opens its commemorative dossier for the 10th anniversary of the Freedom of Information Act in Brazil with an interview. The interview is an instrument of scientific communication that provides the opportunity to involve society in current, relevant and dense discussions, in a more dynamic and open format than traditional academic articles.

The editors Flavia Xavier and Marcus Vinicius Braga proposed the questions, and work on the right to information through a social perspective. The provocation is to think critically, beyond existing structures. Enjoy these discussions!

It is a great honor to open this dossier with Prof. David Pozen, who is the Vice Dean for Intellectual Life and Charles Keller Beekman Professor of Law at Columbia University in the United States of America.

A scholar with a wide range of practical experience in the Department of State, the Supreme Court, and the Senate, Professor Pozen has written numerous articles and essays on transparency and related topics.

In 2018, Professor Pozen and Professor Michael Schudson edited the book *Troubling Transparency: The History and Future of Freedom of Information*, which brought together distinguished scholars to evaluate the history and future of the U.S. Freedom of Information Act. In 2020, he edited the book *The Perilous Public Square: Structural Threats to Free Expression Today*, which identifies and assesses threats to freedom of expression posed by the rise of authoritarian populism, technological change, and other forces.

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**Revista da CGU:** Now we are in a called post-truth world. Can increased transparency favor misleading narratives and have the opposite effect of the ultimate goal of better qualifying social participation? Is the spread of these policies facing an ambivalence in the value of government transparency?

**David Pozen:** *The relationship between transparency and truth is certainly far from straightforward. But I would not blame increased transparency for rising levels of misinformation and disinformation online. Many other factors, including profound changes to media markets and technologies of communication, have contributed more directly to the “post-truth” phenomenon. At the same time, I would not look to transparency to solve these problems either. A large body of research has shown that mandated disclosure “chronically fails to accomplish its purpose.” This research suggests that it would be naïve to rely on strategies such as warning labels, fact checks, or the like to defeat the spread of falsehood. As I have tried to emphasize in [my own work](#), transparency reforms only tend to produce meaningful social benefit when combined with broader substantive reforms. In this case, the most significant reforms would presumably address the structural conditions that make certain sorts of lies so likely to go viral—for instance, reforms that would strengthen civic education, promote high-quality journalism, and, as Amy Kapczynski [puts it](#), “rebuild and democratize public institutions that cultivate, produce, and test knowledge.”*

**Revista da CGU:** You propose in your work a sociological turn in transparency studies. It is relevant to us, once we are celebrating 10 years of the Freedom of Information Act in Brazil, but the dissemination of this right still seems to be quite limited when we talk about guaranteeing social rights, especially for populations in situations of vulnerability. Could you talk more about this proposal? How could it contribute to future studies and, consequently, to support reforms of transparency policies?

**David Pozen:** *A [sociological approach](#) to the study of transparency recognizes its highly contingent and contextual effects, and therefore looks beyond the text of open-government guarantees and beyond the standard pieties about transparency’s virtues to learn how it works in practice. One important set of questions to investigate in this manner involves the power dynamics and distribu-*

*tional disparities that transparency laws both reflect and create. Who is helped and who is harmed by such laws?*

*Within the United States, I have argued that the leading transparency laws, including our own [Freedom of Information Act](#), have for the most part better served wealthy corporate interests than populations in situations of vulnerability. So, what you are observing in Brazil is part of a larger pattern. A key takeaway is that transparency mandates are almost never sufficient in themselves to protect vulnerable persons and must be combined with other measures in support of that end. I understand that your Office of the Comptroller General is working to identify and reduce barriers to information-access faced by quilombola communities. That strikes me as a commendable initiative, especially if combined with other initiatives that would help these communities make effective use of the information they receive.*

**Revista da CGU:** How to overcome communication barriers, such as technical terminologies and very hermetic concepts of public administration, especially in budgetary and financial management, to better dialogues with the population and their daily problems? How should we encourage democratic participation for better quality in public services, based on transparency? Would you have any good experiences similar to behavioral economics nudges?

**David Pozen:** *The United States is struggling with the same questions. I am not sure I have any specific answers that would apply in all contexts. These issues often have important local dimensions to them.*

*In general, though, I think it is crucial to develop and maintain a broad set of transparency intermediaries who are not themselves policymakers but who are in a position to help ordinary people understand and influence the policy process. These institutions should ideally exist within government—as in the case of ombudspersons, auditors, and inspectors general—as well as outside government—as in the case of journalists, advocacy groups, and other civil society actors. Nudges are no substitute for a robust ecology of transparency intermediaries.*

**Revista da CGU:** To conclude this interview, I want to ask your opinion on how this idea of seeking social value could solve the apparent contradictions between the guarantee of the right to information and the right of personal data protection.

**David Pozen:** *I see a tension here, but I am not sure I see a contradiction. Virtually all freedom of information laws contain exemptions for the protection of personal privacy, among other matters. So, one basic answer is that those exemptions must be honored, if not also strengthened, to ensure that personal data protection is not a casualty of transparency law.*

*More generally, I think that strategies of partial or incomplete transparency can be a useful tool for managing this tension. In a wide range of situations, strategies of partial transparency—such as delaying disclosure, limi-*

*ting disclosure to certain parties, or revealing high-level summaries rather than granular details—can help balance the values at stake when claims of a right to know run up against claims of a right to personal privacy or data security.*

*Thank you for the interesting questions and for the work that you do!*

David Pozen  
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