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1. Third Generation FoI in the Context of E-Government The Case of Bremen, Germany

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A DISCUSSING IN CIRCLES

The constitutions of Western democracies assume that citizens control government, participate actively in the development of public opinion and make well-informed political decisions. Therefore freedom of opinion, communication and information is considered a basic civil right. There is almost no general objection to a basic right of freedom of information for the purposes of citizens' access to governmental information.

However, in some Western democracies it still seems to be extremely difficult to implement appropriate procedures. In Germany, still no National Freedom of Information Act has been signed into law. In December 2000, the Federal Government published a draft bill, and in June and July of 2001 the Federal Ministry of the Interior organized a discussion forum on the Internet. Although there was strong support for the bill, it was not introduced before parliament. Among the 16 German states (Länder), only four have passed a FoI legislation so far (Berlin, Brandenburg, Northrhine-Westfalia, Schleswig-Holstein). The main arguments against FoI provisions on the federal and the state level refer to conflicting objectives of FoI and privacy and the costs associated with providing access within the governmental offices. In Germany, these arguments are brought forward especially by politicians from the Christian Democratic Party. They keep repeating them although experiences in other countries as well as in the four German states show that

these problems can be solved. Of course, there is no perfect solution, but rather only acceptable compromises. But this is inherent in any legislation and nothing special in regard to FoI.

The pros and cons have been exchanged for more than ten years. And the discussion moves in circles. It does not take into account the changes in society and government which have taken place or which are on the way while government is adapting to the information or knowledge society and implementing e-government. This paper argues that a change of paradigm is necessary in order to overcome the circular discussion repeating the same objections. E-Government not only requires FoI, it also provides more effective solutions for some of the problems which have been identified so far. In the city and state of Bremen, the administration has drafted a bill containing many of the needed answers. Unfortunately, until now there has been no majority within government or parliament for passing the draft bill. But the case illustrates very well how FoI may be put in the context of e-government and adapted to the information or knowledge society. This may be called a third generation approach. The first generation of FoI legislation in Germany was specific for restricted areas of administrative procedures or areas of administration such as city planning or environmental issues. The second generation legislation provided a general right for access without requiring specific reasons, but still requiring the exact definition of the information requested. The third generation will turn around the relationship by 180 degrees and make electronic publication the rule and secrecy the exception.

B THE RIGHT OF ACCESS AND BARRIERS

The barriers to FoI are mainly discussed from the government's point of view so far. Governments are concerned about conflicts with their own interest in keeping their secrets, about the costs associated with providing access when too many citizens ask for information and about taking care of their privacy obligations with respect to other citizens. All the empirical evidence gathered so far shows that there are not hundreds of citizens coming up to the offices and asking for access to the files. Rather it is mainly businesses, attorneys, professional mediators and to some extent NGOs who take advantage of access rights. The reasons why ordinary citizens are exercising their rights are not discussed very comprehensively.

The main barrier discussed are the fees. The head of the Freedom of Information Authority in the city and state of Berlin, Hans-Jürgen Garstka, reports that according to the Berlin FoI Law, departments are entitled to fix the fees for access according to the related costs. If one or more employees have to check a requested document for privacy concerns and if in case of conflict they have to secure agreement of the party concerned then the costs can easily amount to hundreds of Euros. He mentions a case where 100 Euros were charged for getting access to a ten-page document. The European Court has criticised the German regulation of fees for getting access to environmental information as being prohibitive. There are cases where departments deliberately charge high fees in order to keep citizens from making use of their access rights.

But the situation is a little more complicated. Government units are obliged to act economically. Accounting principles and procedures have been introduced to define and measure the costs of different services and products. According to this requirement, the costs for providing access to documents and files have to be calculated. And in principle the fees should be in relation to the costs. If this leads to inappropriate charges from the point of view of the citizen, there are two options:

1) This service might be subsidized by tax revenues, i.e. we all pay for the provision of a basic right with our taxes.

2) The procedures for providing access have to be changed so that the costs are significantly reduced. In a well-organized office the costs for accessing files by employees should not exceed a few Euros. Therefore the cost argument is basically an organizational issue.

But from the point of view of the author, the cost factor is not the main barrier. There are not many cases where citizens show up in an office, ask for a certain information, are told the fee and then step back because the fee is too high. There are much more cases where citizens would like to know something but do not know exactly in which document or file the information can be found or which government office is responsible. In many cases, acquiring specific information presupposes information. We all have learned how to collect information in areas of our daily activities. But if we are approaching new fields and subjects it takes some time. We need some help in order to get an overview and to learn which information is available at which place and by which procedure. In other words: Access to information requires meta-information. All second-generation FoI legislation implicitly supposes that the citizens know exactly which document or file they want to

access and that they are able to articulate this in the terminology of the administration. Probably there are no empirical studies about this problem. But from other areas of information retrieval, we know that defining an appropriate request is a capability which is not well developed in ordinary citizens. Rather until recently it was the domain of journalists, librarians and other specialized occupations. The world-wide web changed this situation. In technical terms, it offers access to a whole universe of information. And special services like search engines and catalogues have been developed for supporting this capability. However, ordinary people are only gradually learning to use these tools, and many think the web is too complicated. Easy access is one of the biggest challenges to overcome the so-called digital divide.

The author of this paper was involved in developing the web-based city information system for the city and state of Bremen (www.bremen.de). This system has won several awards because it is designed as a regional search engine and web catalogue. From library studies we learned that people - according to their pre-existing knowledge - prefer different modes to search for information

1. If they know exactly what they are looking for, typing a keyword into an enter field of a search engine is the easiest and fastest way.
2. If they know what they want but are not certain how to formulate or how to spell it, an alphabetical list is more appropriate.
3. And if they do not exactly know what they want, have only a rough idea or need a hint to recall, a thematic catalogue shows what the options are.

In www.bremen.de, information about units of public administration, business companies and NGOs can be accessed by all these modes. While most websites use a full-text search, this system applies an index-based search based on a thesaurus. The big difference is that the full-text search only finds identical sequences of characters, without reference to their meaning. If I do not know the exact wording and spelling of the name of a document or part of it, I cannot find it via the search function, while with an index-based search there are several keywords assigned to a document including synonyms and abbreviations. Therefore the index-based search is much more effective. But it requires not only more sophisticated search algorithms but also indexing and editing for each object. In regard to the access to governmental information this means that each document would

have to be indexed like books in a city library. But again, in a well-organized administration, employees should have easy and effective access to information via a document management system and therefore this is nothing special in regard to FoI.

C ELECTRONIC PUBLICATION AND EDITING AS A RULE

When some innovative people in the Bremen administration started drafting a FoI bill, the ideas and the success of the city information system were taken into consideration. In order to provide a real chance for better informed citizens two subgoals were set:

1) In order to facilitate access to information, appropriate meta-information has to be generated and provided by a central office.

2) A choice had to be made between a full-text database or a reference database. A reference database would answer a request by giving the exact name of the document and the agency where it can be accessed. A full-text database would provide access to the document itself, if it is available in electronic form. The draft of the Bremen FoI bill combines both options, not only because this is better service to the citizens, but also because it is much cheaper. If documents are available electronically and they are linked to the city information system, then an individual request for access does not cause additional costs. The problem of cost-related fees which might become prohibitive does no longer exist. Against this background the draft requires the publication of all documents in electronic form unless there is a concrete reason for secrecy.

According to these goals a section „Publication of public information“ with five corresponding paragraphs was included in the draft bill. The title may be misleading as „public information“ is usually understood as published information. But this section is to constitute a new obligation for publishing information that otherwise would not be published.

Third Section
Publication of Public Information

§ 18

General Publication Requirement

- (1) The public agencies shall publish information they have available when the interest of the public is obvious, unless there are legal reasons against it or unless publication would produce disproportionate expenditures.
- (2) The public agencies make the suitable organizational provisions to separate information which may not be published from that which may be published.

§ 19

Counseling by the State Data Protection Officer

The State Data Protection Officer advises the public agencies concerning the extent of the information to be published. If a public agency is – contrary to the recommendation of the State Data Protection Officer - not willing to publish certain information, the public agency has to give full reasons in writing to the State Data Protection Officer.

§ 20

Obligation To Publish

- (1) Each public agency has to publish the administrative rules they issue.
- (2) By statutory order, further types of information are determined for publication.
- (3) Obligations to publish regulated by different law or obligation to publish on the basis of special legal relations remain unaffected.

§ 21

Ways of Publication

- (1) The public agency determines the way of publication according to § 18 and § 20 in compliance with the legal stipulations.
- (2) The information has to be published so that it is generally and easily accessible. The access to published information may not require an application procedure.
- (3) The Free Hanseatic City of Bremen establishes a Central Information Register in order to facilitate the information retrieval. The Information Register has to be generally and easily accessible. The public agencies are required to notify the Information Register of publications. Details are stipulated by statutory order.
- (4) The access to the published information and to the Information Register is free of charge unless no other legal stipulations apply.

(5) As far as it is possible without disproportionate expenditure, all information in line for publication has to be transmitted to the city information system *bremen.online*, unless the transmission of the information to another generally accessible database is prescribed by law.

§ 22

Basic Principles for the Indexing, Editing and Transmission of the Information To Be Published

The technical and organizational principles for the indexing, editing and transmission of the information to be published are stipulated by statutory order.

§ 18 defines the new obligation for publishing all existing information. This is the complete turnaround compared to the 19th century principle of secret office and the long and hard fight for building doors into the thick walls of government offices. This change of paradigm corresponds not only with basic democratic principles but in particular with the guiding principles of the Active Society, the Citizens Commune and the Information or Knowledge Society. Of course there must be exemptions and restrictions. But the burden of proof is shifted. According to the new principle of „publication first“ the department has to argue why a document must not be published. § 19 creates the obligation to consult the Data Protection and FoI Officer of the state. If a department is not willing to follow his recommendation, it has to provide the reasons in writing – which is public information. To support the general principle, § 20 provides an unrestricted obligation to publish every administrative directive, order, rule etc. And further obligations may be specified by directives for the whole state or for individual departments. The way and form of publication is not defined. However, § 21 (5) explicitly mentions the city information system „*bremen.online*“ (www.bremen.de) as the main medium. This is in line with the fact that almost all new documents are already produced in electronic form.

The biggest challenge, however, is in § 21 (1) and § 22. A Central Information Register shall be established which serves as a reference database with links to the original documents. § 21 (3) requires all departments to register their documents. Details are to be defined in a corresponding directive. The idea is that the State Archive serves as the Center and that its employees index the documents according to a common language thesaurus.

D GOOD IDEAS TAKE A LITTLE LONGER ...

The draft bill was formulated within the Finance Department which is responsible for IT in state government including the city information system and e-government projects. The paper was then circulated in September 2000 when the states of Berlin and Brandenburg were starting FoI legislation. However, some members of state government and of parliament did not want this to be an official draft bill, so it got the status of a document for discussion authored by three public servants.¹

To initiate a formal parliamentary and public debate in July 2001, the members of parliament of the Green Party acting as the opposition to the majority parties adopted this paper and brought it into state parliament as their draft bill.² Within parliament the draft bill was referred to the committee for information and communication technology and media and to the committee for privacy/data protection. Due to objections of the members of the Christian Democratic Party both committees decided to wait for the experience other German states would make with their FoI implementation. After more than one year, in May 2002, a public hearing took place, among others with the Berlin Data Protection and FoI Officer.

Although all the experts argued in favour of this approach, members of the Christian Democratic Party within the committees maintained that the consequences were not calculable and that they did not want this law at this point of time. In May 2003, there will be elections to the state parliament and then a new round will be opened.

E ... BUT MAKE THEIR WAY IN THE END

It is highly probable that this approach incorporated in the draft bill will be adapted and implemented sooner or later because it is in line with almost all

¹ Diskussionsentwurf eines Bremischen Informationsgesetzes (BremInfG), Senator für Finanzen der Freien Hansestadt Bremen.

² Drs. 15/768 v. 04.07.2001. Antrag der Fraktion Bündnis 90 / Die Grünen, Gesetz über die Freiheit des Zugangs zu Informationen für das Land Bremen (Bremer Informationsfreiheitsgesetz, BremIFG)

relevant trends and strategies which are related to the key words e-government, information and knowledge society.

This is not the place to discuss in length the validity of the concepts of an information and/or knowledge society. One of the basic societal changes is to shift responsibilities from public institutions to the individual. This may be called deregulation, liberalization or privatization. However, it will only work if the individual is given the information necessary to take over these responsibilities. Citizens are expected to engage more in self-organizing and this requires the provision of appropriate information.

E-government is partly an outcome of this trend. But at the same time, it is an approach to reduce the costs and to improve the quality of the services still provided. E-government is about providing government services to the citizens by electronic information and communication media, in particular the Internet. It includes not only provision of registration forms, tax declarations and applications, but also different tools for citizens participation labelled e-democracy. Politicians in Germany and other EU member states are concerned about decreasing participation rates in elections which start to threaten the legitimacy of their offices. Therefore online voting, online forums and chats and similar means are expected to activate the citizens. Another problem is corruption which is intended to be fought by improving transparency. In both areas, providing information online is a necessary step.

Within the e-government debate it is meanwhile generally accepted that more has to be done than publishing some webpages on the Internet. Back-office integration is the keyword. This means connecting the webpages to the internal IT-based processes used by the employees. It also means integrating the Internet and the intranet applications. Many government units are developing document management systems and providing access to databases for their employees via an intranet. Using filters, the same databases can be opened for access by citizens. Under the heading of „Knowledge Management“ governments are structuring the files, documents and other sources of knowledge for more effective internal use as well as for selling information, where appropriate. So far the knowledge management debate does not always take into consideration the FoI debate. But once the knowledge databases are developed and can be accessed by civil servants and members of political bodies, access for entitled citizens cannot be denied for a long time. Therefore it is wise to integrate the FoI goals into the knowledge management projects from the beginning in order to save the higher costs of later adaptation. Past experience does not support the assertion that good arguments become reality by their own. But the planning of such projects, the

budgets reserved and the public debate create opportunities to claim what is promised in rhetoric declarations of e-government and e-democracy – beyond the small city and state of Bremen.