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# Walking in Sunshine, or Away From It? Creating a Unified Transparency Index

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# **Walking in Sunshine, or Away From It? Creating a Unified**

## **Transparency Index**

**John Hogan (DIT), Raj Chari (TCD) and Gary Murphy (DCU)**

**Abstract:** Despite the strengths of the two bodies of literature on Freedom of Information (FOI) and Lobbying Regulation, a main inadequacy is that they fail to meet each other. The reason why both the FOI and lobbying regulation literatures need to be synthesized is that both should be seen as the two sides of the deliberative democracy coin: FOI legislation aims to regulate the actions of state officials, while lobbying laws seek to regulate the actions of private interests attempting to influence such officials. The novelty of this paper is that we thus extend and link the ideas raised in these two bodies of literature, by performing a comparative analysis across 16 jurisdictions in North America, Europe and Asia. Our first main goal is to identify a measure for the effectiveness of FOI legislation throughout the world that can be compared on a normalized scale. Secondly, we combine these scores with those from the extant literature on lobbying regulations, producing what we refer to as an overall ‘sunshine score.’ This score will represent one of the first encompassing transparency measures in the literature, which helps us better conceptualize a unified understanding the relationship between FOI and lobbying rules, as well as the openness of democratic systems throughout the world.

### **Introduction and Objectives**

Deliberative democratic theory is based upon the idea that all political acts are public acts (Elster, 1998). Its central principles are that the reasons for political decisions, along with the information necessary to assess those reasons, should be in the public domain; and the officials who made the decisions should be accountable (Gutmann and Thompson, 2004, 135; O’Flynn, 2006, 101). The theory is thus anchored in accountability, which is perceived to supersede consent as the conceptual core of democratic legitimacy (Chambers, 2003, 307). It is invested with the expectation that all policies chosen, decisions made and laws implemented, will be justified to the electorate (Thompson, 2008, 498). As such, the concept of transparency, too, guides deliberative democratic scholars. As Stasavage (2004, 668) argues, deliberations

occurring openly in public ‘increase the quality and the legitimacy of decisions taken.’

To promote transparency and accountability that is espoused by deliberative democratic theory, governments throughout the world have pursued two main initiatives - freedom of information (FOI) laws and lobbying regulations. These initiatives have been highlighted in two related, but heretofore separate, bodies of literature.

In one body, FOI scholars such as Lindberg (2005, 5) have noted that FOI legislation emerged from the long history of conflict between secrecy and openness in politics. The idea of FOI has been around since the principle of openness - *Offentlighetsgrundsatsen* – was enshrined in Swedish law in 1766 (Banisar, 2006). Cogent works by scholars such as Roberts (2001, 244) argue that ‘FOI laws have diffused rapidly throughout the advanced democracies over the last thirty years, and their organizing principle – the promotion of transparency in policy-making and operations – has become entrenched as one of the main precepts of good administration.’ There was a particularly dramatic increase in the number of FOI laws around the turn of the century (Ackerman and Sandoval-Ballesteros, 2006, 98; Banisar, 2006). Today’s FOI legislation thus promises that open access to governmental information should result in: increased transparency in the policy-making process (Piotrowski and Rosenbloom, 2002; Fox and Haight, 2011, 354); reduced corruption (Banisar, 2006, 6); and greater public participation in policy formulation within the area of open and accountable government (Stubbs 2008, 1; Hunt and Chapman, 2010, 1; Lidberg 2009, 267.) However, Banisar (2006) discovered that many FOI laws promote access in name only. In some jurisdictions the laws lie dormant, while in others they are abused by governments. Restructuring

has also undermined some of these laws by shifting authority to private agencies and away from the government departments to which the legislation applied (Roberts, 2001, 245). Roberts (2006) argues that the weakening of the influence of FOI laws is particularly problematic, as a number of our fundamental human rights are dependent upon our ability to access government information. In spite of FOI legislation, states will continue to keep secrets and while some level of governmental secrecy is probably unavoidable, it is vital to understand the social costs this will entail (Ellington, 2011, 85).

In a second body of literature, scholars have examined the regulation of lobbying, where political systems establish rules that lobbyists must comply with when attempting to influence public officials. Such regulations are therefore concerned with illuminating the action of private interests when influencing public actors. Examples of rules include: registering with the state before any contact can be made with a public office holder; clearly stating the bill/initiatives that the lobbyists seeks to influence; giving individual and employer spending disclosures of amounts spent on lobbying; and establishing revolving door provisions where politicians are not allowed to enter into the world of lobbying immediately after leaving office. Regulations constrain the actions of lobbyists and public officials, even if they do not impact upon the power variations between groups (Thomas, 2004, 287). Advocates of regulations believe they help guarantee an adequate level of transparency with respect to the activities of lobbyists – enabling the public to exercise their right to know who is attempting to influence political decisions (Francis, 1993; Bertók, 2008; Obradovic, 2009, Wonka *et al.*, 2010). Because the information given when registering is available for citizens to scrutinize, public officials can also be held accountable for their actions (Chari *et al.*, 2007). Some studies on the robustness of

lobbying laws suggest that the US has led the way in regulating the activities of lobbyists (Zetter, 2009, 16), while others suggest there are various regulatory environments found globally, particularly high, medium, and lowly regulated systems as seen in the US, Canada and the EU, respectively (Chari *et al*, 2010, 108-9).

Despite the strengths of these two related sets of literature, a main inadequacy is that they have failed to meet each other. The reason why both the FOI and lobbying regulation literatures need to be synthesized is because both should be seen as the two sides of the deliberative democracy coin: FOI legislation aims to regulate the actions of state officials, while lobbying laws seek to regulate the actions of private interests attempting to influence such officials. The novelty of this paper is that we thus extend and link ideas raised in these two bodies of literature.

Despite the fact that a number of studies have examined the development and evolution of FOI legislation, none has offered a comparative analysis that classifies the laws in terms of their strengths. Our main goal here is to first, set out the effectiveness of FOI legislation across a range of national jurisdictions in North America, Europe, Australia and Asia. The results will be a significant addition to the literature, because many studies examining FOI have largely offered single country analysis and relied upon qualitative methods to do so (see for example, Heald, 2003; Kirtley, 2006). Secondly, we will combine these FOI results with measures on the strength of lobbying regulations established in the extant literature and produce what we refer to as a ‘sunshine score’: this score will represent the first encompassing transparency measures in the literature. It will help us to better conceptualize a unified understanding of the relationship between FOI and lobbying rules, as well as the openness of democratic systems throughout the world.

In terms of structure, the next section outlines and justifies the countries selected for examination. Thereafter, we set out a method for scoring the effectiveness of FOI legislation. Based on these scores, and those that measure lobbying regulation robustness, ‘sunshine scores’ are calculated. The subsequent section offers reflections on what is referred to as a ‘conceptual map of transparency’ before turning to the conclusions.

### **Jurisdictions Examined: A Worldwide Comparative Approach**

This study adopts a comparative approach to understanding public policy developments in relation to transparency and accountability on a global scale, analyzing developments in FOI and lobbying regulations in 16 jurisdictions worldwide. The comparative approach allows us discover trends and achieve an understanding of broader characteristics (Blondel, 1995). The jurisdictions selected were Australia, Canada, France, Germany, Hungary, Israel, Lithuania, Philippines, Poland, Slovenia, Taiwan, the United States, Denmark, Ireland, Spain and the United Kingdom. The first 12 jurisdictions are all of the countries in the world with both lobbying regulations and FOI regulations currently in place. The latter four jurisdictions are countries that are on the verge of introducing lobbying regulations and have FOI regulations in place. Thus, this selection consists of a mix of jurisdictions with strong, medium, low and no lobbying regulations, but all of which have FOI regulations (Chari et al., 2010). By studying all of the countries in the world with both lobbying and FOI regulations, we are able to get a picture of what it is like to have encompassing transparency regulations (lobbying and FOI), and we can contrast these results with those from the selected jurisdictions that possess only FOI regulations at the moment.

**Table 1:** CPI scores for the selected Jurisdictions

<b>Jurisdiction</b>	
<i>High Regulation</i>	
US	62
<i>Medium Regulation</i>	
Canada Federal	50
Hungary	45
Lithuania	44
Philippines	39
Taiwan	38
Slovenia	35
Australia	33
<i>Low Regulation</i>	
Poland	27
Israel	21
France	19
Germany	17
<i>No Regulation</i>	
Ireland	0
Denmark	0
UK	0
Spain	0

**Source:** Chari et al., 2010.

All of the countries selected here are liberal-market democracies. And all have enacted FOI laws, or placed FOI rights in their constitutions over the last 50 years, as shown in Table 2 below. Thus, of these 16 countries, 12 are the only jurisdictions in the world that combine lobbying regulations and FOI regulations.

**Table 2 – Introduction of FOI Legislation**

<b>Jurisdiction</b>	<b>FOI Regulations and year of first introduction</b>
US Federal	<i>The Freedom of Information Act 1966<sup>1</sup></i>
France	<i>Loi n°78-753 du 17 juillet 1978 portant diverses mesures d'amélioration des relations entre l'administration et le public et diverses dispositions</i>
Australia Commonwealth	<i>Freedom of Information Act 1982</i>
Canada Federal	<i>Access to Information Act 1982</i>
Denmark	<i>Access to Public Administration Files Act 1985</i>
Philippines	<i>Philippines Bill of Rights 1987</i>
Spain	<i>Article 105 of Constitución Espanola 1978 and Law on Rules for Public Administration 1992</i>
Lithuania	<i>Law on the Provision of Information to the Public 1996<sup>2</sup></i>
Ireland	<i>Freedom of Information Act 1997<sup>3</sup></i>
Poland	<i>Article 61 of the Constitution of 1997 and Law on Access to Public Information 2001</i>
Israel	<i>Freedom of Information Law 1998</i>
United Kingdom	<i>Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002</i>
Hungary	<i>Act LXIII on the Protection of Personal Data and Public Access to Data of Public Interest 2002</i>

Slovenia	<i>Access to public Information Act 2003</i>
Germany	<i>Federal Act Governing Access to Information Held by the Federal Government 2005</i>
Taiwan	<i>Freedom of Government Information Law 2006<sup>4</sup></i>

As Table 2 shows, some jurisdictions such as the US were amongst the first adopters of FOI legislation in the 1960s. France in the late 1970s, Denmark, Australia and Canada in the 1980s, were amongst the second set of adopters. Lithuania, Ireland, Poland, Israel and the UK were in the third wave to implement FOI legislation at the turn of the century, with Taiwan in the fourth wave in 2006 (Hazell and Worthy, 2010).

The US has a long history of lobbying regulations, at both the state and federal levels; the Philippines introduced lobbying regulations in 1957 - modelled on those in the US at the time; Canada has had lobbying regulations in place since 1989 at the federal level as well as in 7 provinces now; Germany had lobbying regulations at the state and federal level; Australia had had lobbying regulations at the federal level since 2007 and now in all states as well. France, Hungary, Israel, Lithuania, Poland, Slovenia and Taiwan all have lobbying rules in force at present. While four of the first five countries mentioned above are federal states and adopted lobbying laws in the 19<sup>th</sup> and 20<sup>th</sup> centuries, the latter seven countries adopted lobbying rules only since the turn of the century (see Chari *et al.*, Chapters 2 and 3). Australian has the dubious distinction of being one of the few countries to introduce lobbying regulations in the early 1980s, only to repeal these in 1996, before reintroducing them in 2007 (Hogan *et al.*, 2011). Denmark, Ireland, Spain the UK do not have lobbying legislation at present (although the these government are all either investigating the possibilities of introducing such rules, or are actively drafting lobbying legislation).

Furthermore, in terms of variations between the countries, some jurisdictions studied are republics, while others are constitutional monarchies; some are



presidential forms of governments, others parliamentary; some are unitary states, others federal; and some are national-level jurisdictions while others are state/provincial. Table 3 summarizes FOI legislation and lobbying laws (if applicable) in force at the national level in each of the countries examined, as well as in the political institutions of the EU.

**Table 3: FOI and Lobbying Legislation in the selected countries**

<b>Australia</b>	<b>Canada</b>	<b>Denmark</b>	<b>France</b>
The federal government introduced the Freedom of Information Act in 1982. <sup>5</sup> Australia was amongst the ‘second wave’ of countries introducing FOI legislation (Hazell and Worthy, 2010). Victoria introduced a similar act in 1982 <sup>6</sup> , with Queensland <sup>7</sup> and Tasmanian <sup>8</sup> being the last states to introduce FOI regulations in 2009. Bayne (1993) sees these laws as a break with Anglo-Australian legal tradition. There are lobbying regulations in all states and the federal level.	FOI laws have been in place in Canada at federal, provincial and territorial levels since the late 1970s. Nova Scotia first introduced the Freedom of Information and Protection of Privacy Act (1977) <sup>9</sup> . The federal government introduced the Access to Information Act in 1985. <sup>10</sup> There are lobbying regulations at the federal level and in seven provinces (see Table 2).	The Access to Public Administration Files Act was introduced in 1985. <sup>11</sup> Denmark does not regulate lobbyists. ‘A salient feature of the Scandinavian political systems has been to involve interest groups in the policy-making process without having formalised regulations’ (Rechtman, 1998, 579).	France introduced freedom of information legislation in 1978. <sup>1</sup> Article 26(1) of the general directives of the Bureau of the National Assembly also states that those with special cards issued personally by the president or by the quaestors may have access to the Salon de la Paix (Chari et al., 2010).
<b>Germany</b>	<b>Hungary</b>	<b>Ireland</b>	<b>Israel</b>
The federal government introduced the Federal Act Governing Access to Information Held by the Federal Government – ( <i>Informationsfreiheitsgesetz - IFG</i> ) – in 2005. Under this ‘everyone is entitled to official information from the authorities.’ <sup>12</sup> Germany introduced lobbying regulations in 1951, with amendment in 1975 and 1980 (Chari et al., 2010).	The Act LXIII on the Protection of Personal Data and Public Access to Data of Public Interest was introduced in 1992. This guarantees ‘the right of everyone to exercise control over his or her personal data and to have access to data of public interest.’ <sup>13</sup> Hungary introduced lobbying regulations in 2006, but repealed these in 2011 (Chari et al., 2011).	Ireland introduced the Freedom of Information Act (1997). This legislation was amended in six years later. <sup>14</sup> There are no lobbying regulations despite various political parties promising their introduction (McGrath, 2009). The current government is in the process of consulting the public over such a law.	Israel introduced its Freedom of Information Law, in 1998. <sup>2</sup> The law has improved transparency, but has not been an overwhelming success (Rabin and Peled, 2005). Israel introduced lobbying regulations in 2008. However, Veksler (2011) argues that these regulations have provided only symbolic transparency for the public.
<b>Lithuania</b>	<b>Philippines</b>	<b>Poland</b>	<b>Slovenia</b>

<sup>1</sup> <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000339241>

<sup>2</sup> <http://www.freedominfo.org/documents/Israel--FOIL1998.pdf>

FOI is guaranteed under Article 25 of the 1992 constitution. <sup>15</sup> ‘The general principle of freedom of information’ (Banisar, 2006, 103) was set out in Law on the Provision of Information to the Public enacted in 1996 and amended in 2002. <sup>16</sup> Lithuania passed the Law on Lobbying Activity (LLA) in 2000.	The right to information was enshrined in the constitution in 1987 (Banisar, 2006, 122). Currently a freedom of information bill is in the Philippines parliament. RA 1827 is the lobbying act passed in the Philippines in 1957, making it one of the first countries in the world to regulate this activity - however it had not been fully enforced. <sup>3</sup>	The right to information is guaranteed under Article 61 of the 1997 Constitution. <sup>17</sup> The Law on Access to Public Information, was passed in 2001. A citizen must receive feedback within two weeks. <sup>18</sup> In 2005, the Act on Legislative and Regulatory Lobbying was introduced (Galkowski, 2008, 131).	FOI is guaranteed under both the Slovenian constitution (Banisar, 2006, 133) and the Access to Public Information Act passed in 2003 and amended in 2005. <sup>4</sup> It introduced a lobbying law in 2010 - The Integrity and Prevention of Corruption Act. <sup>5</sup>
<b>Spain</b>	<b>Taiwan</b>	<b>The United Kingdom</b>	<b>The United States</b>
Article 105 of the 1978 constitution guarantees access to government information. <sup>19</sup> The Law on Rules for Public Administration (1992) provides for access to government records <sup>20</sup> (Banisar, 2006, 139). Spain does not regulate lobbying.	The Freedom of Information Law was introduced at the very end of 2005, coming into force in 2006. In 2007 Taiwan introduced the Lobbying Act. with the aim of creating "open and transparent procedures for lobbying". <sup>6</sup> This would permit the public and media see who is lobbying and why. <sup>7</sup>	FOI was introduced in the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002 <sup>21</sup> . Despite the lobbying of policy makers being deeply ingrained, the UK has not introduced lobbying regulations (Parvin, 2007). However, the government is currently consulting on a statutory register of lobbyists.	In 1966 the Freedom of Information Act was introduced, making the US the fourth country to have FOI legislation (Vleugels, 2009). This has been amended three times to take account of electronic media. All states and territories have FOI legislation. The federal government has been regulating lobbyists since 1946, while all 50 states have lobbying laws today.

### Determining an ‘FOI Score’

In order to attain a better understanding of the strength of the transparency initiatives in each of the jurisdictions studied, this section will outline the quantitative indices used to measure the strength of lobbying laws and FOI legislation.

<sup>3</sup> <http://www.thelobbyist.biz/policy-matters/1153-lobby-reform>

<sup>4</sup> <https://www.ip-rs.si/index.php?id=324>

<sup>5</sup> [http://www.regulatelobbying.com/images/Slovenia\\_Lobbying\\_Law-3.pdf](http://www.regulatelobbying.com/images/Slovenia_Lobbying_Law-3.pdf)

<sup>6</sup> [http://law.moj.gov.tw/Eng/news/news\\_detail.aspx?id=3281](http://law.moj.gov.tw/Eng/news/news_detail.aspx?id=3281)

<sup>7</sup> <http://www.cepd.gov.tw/encontent/m1.aspx?sNo=0010668&key=&ex=%20&ic=&cd=>

When turning to measuring the strength of lobbying laws, while authors such as Opheim (1991) and Brinig *et al.* (1993) attempted to measure the strength of lobbying rules in the US, more recent literature has established that perhaps the most robust measures to comparatively analyze the strength of lobbying rules worldwide is using the Center of Public Integrity's (CPI) Index (see, Chari *et al.*, 2007 & 2010; Hogan *et al.*, 2011). CPI's analysis, whose objective is to better understand the transparency and accountability promoted by lobbying laws, is referred to as the 'Hired Guns' method, resulting in 'CPI Scores.'

The CPI writes that

'Hired Guns' is an analysis of lobby disclosure laws... The Center for Public Integrity created a ranking system that assigns a score to each state (with lobbying legislation) based on a survey containing a series of questions regarding state lobby disclosure. The questions addressed eight key areas of disclosure for state lobbyists and the organizations that put them to work:

- Definition of Lobbyist
- Individual Registration
- Individual Spending Disclosure
- Employer Spending Disclosure
- Electronic Filing
- Public Access (to a registry of lobbyists)
- Enforcement
- Revolving Door Provisions (with a particular focus on 'cooling off periods')<sup>22</sup>

Each lobbying law is analyzed by way of textual analysis with a total of 48 questions for the above eight sections outlined by the CPI. Each question is thus assigned a point value according to the answer.<sup>23</sup> The scale of final scorings ranks between 1 (weak lobbying legislation) to 100 (most robust lobbying rules that promote full transparency). Chari *et. al* (2010) have argued that systems that have a point scoring between 1 and 29 can be considered 'lowly regulated systems'; between 30 and 59 can be considered 'medium regulation'; and over 60 can be considered 'high

regulation.’ Chari *et al.* (2010) and Hogan *et. al* (2011) have calculated the CPI scores for most of the jurisdictions studied in the paper, save Alberta and Manitoba.

When turning to measuring the strength of FOI laws we can see that some excellent work has been done in this area in recent years. For example Vleugels (2009) provides a ranking system for national FOI regulations based on the number of annual FOI requests per 100,000 citizens. But, this does not take account of responses to those requests – something Lidberg (2009) regards as a crucial indicator of the legislation’s operational effectiveness and the government’s commitment to FOI. Hazell and Worthy (2010) consider various measures to test the performance of an FOI act, two of which are the number of FOI requests and the number of requests granted. They argue that the higher the numbers of requests and responses, the healthier the FOI regime (Hazell and Worthy, 2010). However, these approaches are very different from those employed by the CPI in studying lobbying regulations. Where the CPI’s index is a *de jure* measure of lobbying regulations, these approaches to measuring FOI are outcome measures only. Combining the results of these outcome measures of FOI with the CPI’s lobbying measures would be like adding apples and oranges. In this context, employing Centre for Law and Democracy’s (CLD) measure of FOI, set out in their Right to Information (RTI) rating methodology, would be an ideal means of examining the comparative openness of societies around the world. The CLD’s RTI measure of the strength of FOI legislation is, as a *de jure* measure of FOI regulations, very similarly to the CPI’s measure for lobbying regulations - due to the RTI’s use of 61 questions set within seven categories of disclosure, with a maximum possible score of 150 points.<sup>8</sup> The CLD writes:

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<sup>8</sup> <http://www.law-democracy.org/wp-content/uploads/2011/09/COVER-NOTE.pdf>

The indicators ‘are drawn from a wide range of international standards on the right to information, as well as comparative study of numerous right to information laws from around the world. The indicators are grouped into seven main categories, as follows:

- Right of Access
- Scope
- Requesting Procedures
- Exceptions and Refusals
- Appeals
- Sanctions and Protections
- Promotional Measures<sup>9</sup>

Thus, as with the CPI methodology, each FOI law has been analyzed by the CLD through means of textual analysis and then assigned a number value based on the 61 question asked. The scoring will come in between a minimum of 1 and a maximum of 150. This methodology, as with the CPI’s contains a clear set of scoring rules as to how points are attributed – so as to ensure consistency across different countries. “The assessments were based primarily on the main right to information law, as well as the constitution and, as appropriate, subordinate and supporting legislation.”<sup>10</sup> That the CLD also used local experts to review their analysis of FOI in each of the jurisdictions, as well as accounting for the fact that some of the countries are unitary states and others are federal, makes the CLD’s approach a robust means of analyzing FOI legislation worldwide.

We provide the CLD’s RTI scores for FOI legislation in each of the jurisdictions in Table 4. These are set out in descending order. We also normalise these scores around 100 in order to make them similar to the CPI’s scores for lobbying regulations.

**Table 4:** CLD’s RTI scores for FOI

Jurisdiction	RTI score for FOI	RTI score normalised too 100
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<sup>9</sup> <http://www.law-democracy.org/wp-content/uploads/2011/09/COVER-NOTE.pdf>

<sup>10</sup> <http://www.law-democracy.org/wp-content/uploads/2011/09/COVER-NOTE.pdf>

Slovenia	130	86.6
UK	97	64.7
US	89	59.3
Hungary	87	58
Ireland	86	57.33
Australia	84	56
Canada Federal	79	52.6
France	70	46.7
Israel	68	45.32
Denmark	66	44
Lithuania	61	40.7
Poland	61	40.7
Taiwan	60	40
Germany	54	36
Philippines	N/A	0
Spain	N/A	0

**Source:** <http://www.law-democracy.org/wp-content/uploads/2011/09/Chart-with-hyperlinks.pdf>

Table 4 shows that the highest ranked jurisdiction in terms of the CLD's RTI scoring system is Slovenia at 130, normalised to 86.6. There is a significant gap back to the next jurisdiction which is the UK, followed by the US. The US, Hungary, Ireland and Australia are all located within 5 points of each other. Canada and France are the only jurisdictions in the 70s. Bunched fairly close together, all within 8 points of each other are the five jurisdictions located between 68 and 60, with Germany at 54 coming in last. The CLD's RTI has no scores for the last two countries that we are examining – the Philippines and Spain. Of the 16 countries being examined, 5 (the UK, US, Australia, Canada and Ireland) are “Anglo-Saxon” and occupy 5 of the 7 top places in terms of FOI. Three of these countries are also federal states.

### **‘Sunshine Scores’**

Having measures of lobbying regulation robustness (on a 100 point scale) and those for FOI strength, also on a 100 point scale, the objective is to sum both of these measures in order to arrive at what is referred to as a ‘Sunshine Score’. This sunshine

score will therefore have a maximum value of 200, where the closer it is to the maximum, the more transparency and accountability is promoted within the jurisdiction. While the absolute value (between 0 and 200) is of importance, what is also of interest is how the jurisdictions rank against each other in terms of overall sunshine, and if there are any discernible trends regarding how the jurisdictions score in terms of both lobbying regulation and FOI measures. Table 4 summarizes the main findings.

**Table 4:** Transparency Measures – CPI Scores, FOI Scores and overall Sunshine Scores

Jurisdiction	CPI Score	RTI Score (normalised to 100)	Sunshine Score (out of 200)
<b>High Lobbying Regulations</b>			
US	62	59.3	121.3
<b>Medium Lobbying Regulations</b>			
Canada Federal	50	52.6	102.6
Hungary	45	58	103
Lithuania	44	40.7	84.7
Philippines	39	0	39
Taiwan	38	40	78
Slovenia	35	86.6	121.6
Australia	33	56	89
<b>Low Lobbying Regulations</b>			
Poland	27	40.66	67.7
Israel	21	45.32	66.3
France	19	46.7	65.7
Germany	17	36	53
<b>No Lobbying Regulations</b>			
Ireland	0	57.33	57.33
Denmark	0	44	44
UK	0	64.7	64.7
Spain	0	0	0

**Source:** Chari et al., 2010; <http://www.law-democracy.org/wp-content/uploads/2011/09/Chart-w-hyperlinks.pdf>

When considering the overall sunshine scores of all jurisdictions, we see that the highest is Slovenia at 121.6. It is only 0.3 ahead of the US in terms of overall

transparency. That US federal transparency and accountability legislation is ranked relatively high in this instance can be explained by the fact that lobbying rules at the federal level are, since 2007, more robust than those found in any other country, as well as in many of the US states, giving the federal government a higher CPI score, thereby offsetting its relatively low RTI score in comparison with Slovenia. In fact, the gap between Slovenia and the US in lobbying legislation is reversed in terms of the strength of their FOI legislation. Hungary has the third highest Sunshine Score at 103, just slightly ahead of Canada. The fifth highest sunshine score belongs to Lithuania at 84.7, making it the third former Eastern Bloc country in the top five. What we also see amongst these top five countries is how, apart from Slovenia, their CPI and FOI scores appear to match each other.

In the case of Australia, for instance, we see that its higher RTI score, as opposed to CPI score, indicates a greater emphasis on the regulation of the actions of state officials as opposed to private interests. This is something that has been noted in relation to Australia's lobbying codes of conduct since the 1980s. There is a tradition to regulating state officials in Australia, going back as far as the 1979, when the Committee of Inquiry Concerning Public Duty and Private Interest produced a report that formed the backbone of the Australian Public Service code of conduct.<sup>24</sup> That report's focus on public servants also set the tone for Australia's approach to regulating lobbying, placing the onus for monitoring and enforcing lobbying regulations on public servants, not the lobbyists (Hogan et al., 2011). Thus, the onus for ensuring transparency, through codes of conduct for lobbyists, essentially falls on the government representatives.

For the countries with low and no lobbying regulations the gap between their CPI and RTI scores widens as the CPI score decreases. Spain is the only country that



we selected to examine that has neither a CPI score (as there is no lobbying regulation) or a RTI score (as it could not be determined by the CLD). Although Spain has FOI legislation, the CLD was not able to calculate and RTI for it.

**Table 5:** Top 10 sunshine scores

<b>Jurisdiction</b>	<b>Sunshine Score</b>
Slovenia	121.6
US	121.3
Hungary	103
Canada	102.6
Australia	89
Lithuania	84.7
Taiwan	78
Poland	67.7
Israel	66.3
France	65.7

While the European jurisdictions tend to have a lower CPI score, they make up for this with higher RTI scores. As a result, two of the top three countries in terms of their overall sunshine scores are Slovenia and Hungary. Of the highest scoring European countries, four of the top five are former Eastern Bloc countries (Lithuania was an actual republic of the Union of Soviet Socialist Republics (USSR)). France was the highest scoring Western European country. The sunshine scores of the Germany, Denmark, Ireland and Spain represent the lowest scoring jurisdictions examined in this study. Particularly, in the case of these latter countries (apart from Germany), the fact that they have not implemented any form of lobbying regulations means they do not have a CPI score and this impacts significantly upon their low overall sunshine scores.

Thus, we can see that the Sunshine score presents a more rounded measure, and as such deepens out understanding, of transparency and accountability within any given jurisdiction. Weak FOI regulations can be offset by strong lobbying regulations or vice versa, ensuring an open and accountable government and society.

When attempting to decipher if there are any trends between lobbying regulation and FOI scores, one sees that states with medium and low lobbying regulation possess a wide range of FOI scores, so it is difficult to conclude that there is a discernible trend. However, there is some evidence that relatively robust lobbying rules do go hand in hand with high FOI scores. This is the case for the US (which had the highest CPI score and the 2<sup>nd</sup> highest RTI score of the sample), Canada (2<sup>nd</sup> highest CPI, 7<sup>th</sup> highest RTI), and Hungary (3<sup>rd</sup> CPI, 3<sup>rd</sup> RTI). We have also seen that in some instances weak CPI scores are offset by strong RTI scores, and weak RTI scores are offset by strong CPI scores. It is difficult to ascertain that a general rule can be derived from these findings, as relatively high-ranking CPI jurisdictions (such as Lithuania and the Philippines) either have low RTI scores or do not produce data that would enable the CLD to calculate RTI scores. However, there is some evidence that having relatively weak RTI scores does correspond with having no lobbying regulations whatsoever – as in the cases of Spain and Denmark.

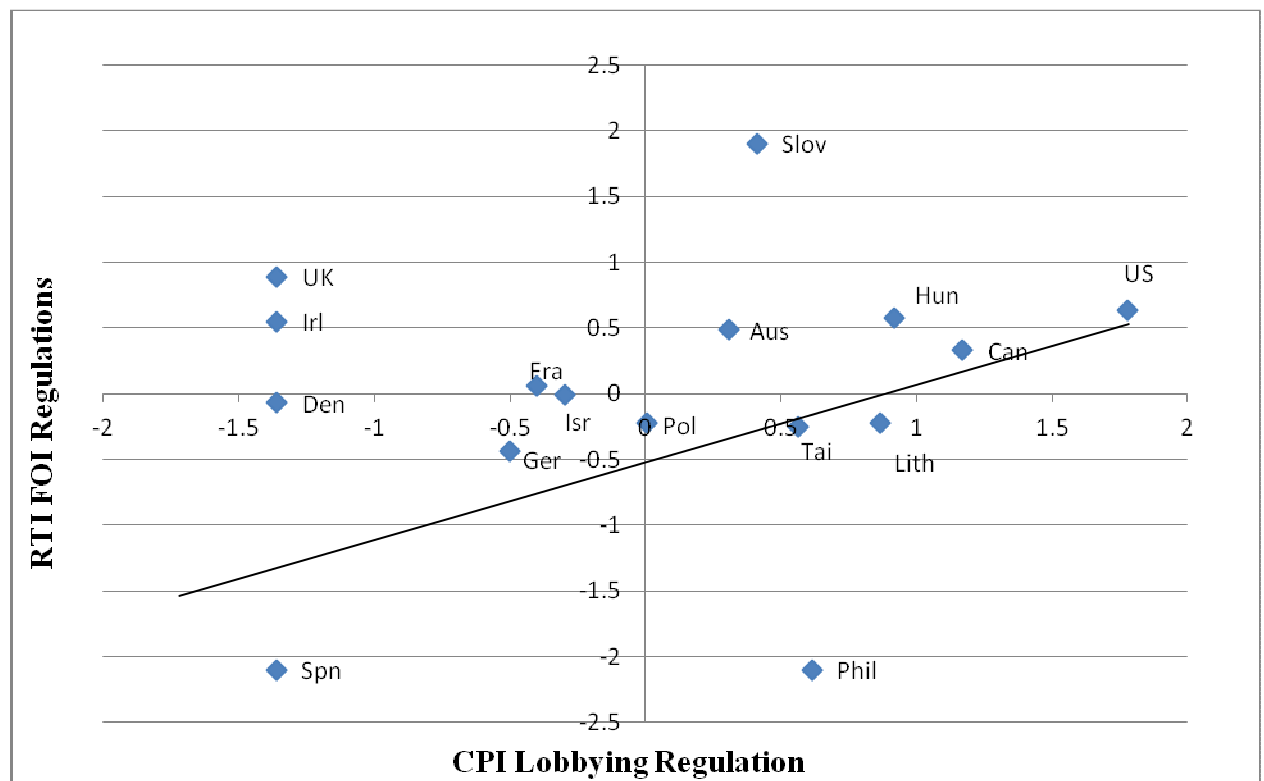
Of course, once Ireland, the UK, Spain and Denmark have introduced lobbying regulations their sunshine scores should change significantly – indicative of greater transparency in their societies. This was the situation in Australia after 2007 with the reintroduction of lobbying regulations which saw its CPI score rise from 0 to 33 and in the US in the same year due to its reform of the lobbying law at the federal level where the CIP score jumped from 36 to 62 (Charil et al., 2010).

### **Conceptual Map of Transparency**

As with lobbying and lobbying regulation, there is no clear definition of what governmental transparency is (Florini, 2007). However, as we now possess CPI and RTI scores for each of the jurisdictions examined, we can position the location of

each on a conceptual transparency map. The idea for this kind of a map is borrowed from Lijphart's (1999) concept of a conceptual map of democracies. The x-axis – regulated transparency – represents the rigour of lobbying regulations. The y-axis – informational transparency – represents the effectiveness of FOI legislation. The units on each axis constitute standard deviations, in order to show how much variation there is from the average, in terms of the rigour and effectiveness of regulated and informational transparency (respectively) in each jurisdiction. High values indicate stronger lobbying regulations and more effective FOI legislation. For each jurisdiction their position on the map is indicative of their Sunshine Score and the strength of that score in relation to every other jurisdiction plotted and also in relation to the FOI and CPI means for all 16 national jurisdictions examined.

**Figure 1:** Two dimensional conceptual map of transparency



Out on the right of the map is the US, with its strong lobbying regulations and high FOI rules, followed by Canada, Hungary and Lithuania, though Lithuania's FOI is relatively low. Far to the left are places like the UK, Ireland, Denmark and Spain without any lobbying rules in place. Near to the top of the map is Slovenia with its very high RTI score and relatively high CPI score, while in addition to Spain, the Philippines lies as the bottom of the map due to its having no RTI score.

On the lobbying regulation dimension, all jurisdictions are within 2 standard deviations of the mean. Apart from the US, all other jurisdictions are in fact within 1.5 standard deviations to the right or left of the mean. On the FOI regulations dimension Slovenia is almost two standard deviations above the mean, while Spain and the Philippines are just over two standard deviations below the mean. In many respects, Slovenia is a true outlier, located more than twice as far above the mean as any other jurisdiction, the nearest country to it on the FOI axis being the UK.

We can see how jurisdictions in the top right hand quadrant of the transparency map, the US, Canada, Hungary, Slovenia and Australia seem to have achieved a balance between lobbying regulation and FOI legislations. Most of these jurisdictions are located above the trend line – being amongst the most transparent jurisdictions that we examined. Taiwan, Lithuania and the Philippines are located in the lower right hand quadrant, below the trend line. These states have medium lobbying regulations, but their RTI scores were relatively low, and 0 in the case of the Philippines. Poland is on the border of this quadrant. Germany, Denmark and Spain are in the lower left hand quadrant. These countries have both low lobbying regulations and FOI regulations also. Israel is right on the border of this quadrant, with its FOI exactly on the mean, while its CPI is slightly below the mean. France, the UK and Ireland are located in the top left hand quadrant. Their FOI scores are

well above the mean, but whereas France's CPI is relatively low, both Ireland and the UK score 0 on CPI – as neither had lobbying regulations in place. Ireland and the UK were the only jurisdictions without lobbying regulations to be located above the FOI mean, while Denmark, another country without lobbying regulations, comes very close to that mean. Spain, located in the bottom left hand corner of the map, is representative of jurisdictions without lobbying regulation and which, although they have FOI legislation, the CLD has been unable to provide an RTI score for.

From Figure 1 there is a slight upward trend in RTI scores, as CPI scores increase from left to right. States with high lobbying regulations tend to have slightly more effective FOI legislation. This suggests that stronger regulation of the actions of state officials leads to stronger regulation of those private interests attempting to influence those same state officials – namely lobbyists. This finding is supported by the fact that 4 of the 7 countries located to the right of the mean for lobbying regulations are also above the mean of the informational transparency dimension, with Taiwan and Lithuania very close to that mean. The only real outlier in the two right hand quadrant was the Philippines, which has no RTI score at all. Of the 4 jurisdictions without lobbying regulations examined here, the UK and Ireland had FOI scores above the mean. In the cases of Denmark and Spain their RTI scores came in below the FOI mean. This suggests that stronger lobbying regulations and stronger FOI regulations tends to go together – as is borne out by the ascending trend line. Developing rules for transparency in relation to private interests leads to rules for transparency in relation to state officials and vice versa.

The governments in both Ireland and the UK, countries that introduced FOI regulations around the turn of the century, are currently considering the introduction of lobbying regulations. This suggests that once a jurisdiction introduces either FOI

rules or lobbying regulations, an acceptance of the broader concept of transparency occurs that gradually leads to both sets of regulations coming into force. We have seen this with the rapidly increasing number of jurisdictions that have introduced lobbying regulations since the turn of the century, as well as the gradual strengthening of extant regulations at the federal, state and provincial levels in the US, Canada and Australia (Chari et al., 2010). In this respect, we have found that time tends to also be an important factor, as the longer either lobbying regulations or FOI legislation is in place, the more likely it is to undergo revisions, and in most cases these revisions tend, overall, to produce stronger transparency legislation and regulations.

The conceptual map in Figure 1 provides a graphical illustration of relative transparency in each jurisdiction, and as such constitutes a transparency snapshot. In a couple of years, the relative positions of the jurisdictions will have all changed as they introduce/reform their lobbying regulations, or alter the workings of their FOI legislation. As such, this map will serve as a historic artefact, enabling us to track the shifting transparency of each country, state and province mapped here.

## **Conclusion**

Despite the existence of a wide-ranging literature on FOI legislation and lobbying regulations, no study has sought to integrate both forms of transparency regulations into a comprehensive transparency measure – what we call a sunshine score. Nor, has a comparative study on this scale, involving 16 national jurisdictions, sought to understand, compare and contrast FOI and lobbying regulations in order to discover trends in relation to transparency and accountability.

The article initially provides details as to how FOI legislation and lobbying regulations constitute two sides of the transparency debate. Both sets of regulations

seek to shine a light into the black box of policy making from different directions, with FOI legislation focusing on the actions of state officials, while lobbying regulations concentrate on the actions of those trying to influence state officials. The article then discussed case selection criteria and provided a brief overview on the development FOI legislation in each jurisdiction. This encompassed the different waves in the introduction of FOI legislation, starting with the first wave in the US in the mid 1960s and ending with Taiwan in 2006.

The article's first objective was to offer a means of measuring the effectiveness of FOI legislation in each jurisdiction – their "FOI scores". This was achieved using the CLD's RTI scores for FOI legislations. The CLD has examined FOI regulation in 90 countries in total, but we were primarily interest in those countries that also had lobbying regulations in place or were close to the introducing such regulations.

The article's second object was to develop an overarching transparency measure, what we refer to here as a sunshine score. The RTI scores set out here were combined with Chari et al's (2010) use of CPI scores for the rigour of lobbying regulations, to provide the sunshine score of the overall level of transparency in each country studied.

These sunshine scores then permitted the development of a two dimensional conceptual map of regulated and informational transparency in each jurisdiction. From this we can see how having more effective FOI legislation, or more rigorous lobbying regulations, impacts upon the positing of each jurisdiction. But also how, over time, these jurisdictions might move in relation to one another, as their FOI legislation becomes more effective or they reform their lobbying regulations.

Thus, this study has been concerned with presenting the level of transparency in 16 jurisdictions by looking at both their FOI and lobbying regulations. By combining the RTI scores for FOI legislation with CPI scores for lobbying regulations, the study has produced what we refer to as sunshine scores. These provide an insight into the overall levels of transparency in each jurisdiction. As political acts are public acts, deliberative democratic theory suggests democracy can be enhanced through publicity and accountability. It is certainly the case that in combination, FOI laws and lobbying regulations have the potential to offer democratic societies the opportunity of moving beyond representative democracy to deliberative democracy, where the decisions of the agent (politicians) and the actions of those trying to influence them (lobbyists) are visible to the principle (the general public). Thus, through the greater transparency offered by effective FOI legislations and strong lobbying regulations the dangers of moral hazard are negated – representatives pursuing private interests over those of the public – as their behaviours are observable.

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<sup>3</sup> <http://www.irishstatutebook.ie/1997/en/act/pub/0013/index.html>

<sup>4</sup> [http://law.moj.gov.tw/Eng/news/news\\_detail.aspx?id=2636](http://law.moj.gov.tw/Eng/news/news_detail.aspx?id=2636)

<sup>5</sup> [http://www.austlii.edu.au/au/legis/cth/consol\\_act/foia1982222/](http://www.austlii.edu.au/au/legis/cth/consol_act/foia1982222/)

<sup>6</sup> <http://www.foi.vic.gov.au/>

<sup>7</sup> <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/R/RightInfoA09.pdf>

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<sup>22</sup> <http://www.publicintegrity.org/hiredguns/default.aspx?act=methodology>

<sup>23</sup> For discussion of the range of point values that can be assigned for each question please see <http://www.publicintegrity.org/hiredguns/default.aspx?act=methodology>

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