



Contents lists available at ScienceDirect

Government Information Quarterly

journal homepage: www.elsevier.com/locate/govinf

A field experiment on bureaucratic discretionary bias under FOI laws

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ARTICLE INFO

Keywords:

Bureaucratic discrimination
Discretionary bias
RTI laws
Uruguay

ABSTRACT

The gap between the approval of RTI laws and their implementation leaves room for discretionary bias and discrimination from government officials. This paper explores possible discretionary bias and ultimately discriminatory behavior exhibited by Uruguayan government agencies while answering RTI requests. We explore whether public officials are more likely to respond to requests from citizens that are informed about their right under the RTI law vs regular citizens, as well as from influential citizens (journalists and firm owners). We also assess whether public servants' responses to RTI requests are gender-biased. We conducted a randomized field experiment to test for unequal treatment given to citizens' requests by Uruguayan government officials, considering different citizen categories. We find that only those citizens who know the RTI law and invoke its existence have a greater likelihood of obtaining an answer from bureaucrats. This result is driven mostly by men's requests declaring they know the law when making their request, while invoking the law doesn't make a difference in responses to women. These findings show that public campaigns to promote citizens' awareness of RTI laws and their use, not only would increase requests, but also governments' responsiveness regarding RTI requests.

1. Introduction

The free flow of information from government offices to all citizens is a crucial component for the effective functioning of democracy (Hollyer, Rosendorff, & Vreeland, 2011; Putnam, 1993) and for guaranteeing the right to adequate accountability in public administration (Armstrong, 2005). For societies to have informed citizens about policy and government actions information must be freely available. However, this depends largely on governments' willingness to provide it and the institutional mechanisms they set up to deliver it.

Among the many instruments that can be adopted to achieve these goals, Right to Information (RTI) laws are becoming more and more frequent. In the last decades, countries all over the world started to adopt RTI laws as key instruments for strengthening democratic governance (Ackerman & Sandoval-Ballesteros, 2006; Banisar, 2006; Blanton, 2002; Mendel, 2009). While in 1990 only thirteen countries had approved RTI laws, in 2015 almost 120 countries had laws for guaranteeing access to government information (AIE/CLD 2015). This trend is seen in Latin America as well (CEPAL, 2018; Mendel, 2009; Michener, 2010; Suominen, 2003): today 16 countries in the region have some type of legislation that seeks to guarantee citizens free access to public information (only Venezuela and Bolivia still do not have an RTI law).

RTI legislation has been internationally recognized as an instrument

for increasing citizens' participation in public decisions and their role in monitoring government's performance. Also, it has been proposed as a way of promoting better governance and trust in democratic institutions (Christopher & Heald, 2006; James, 2006; Robert, Bourke, & Worthy, 2012). However, like in many other policy fields, the mere approval of the law does not seem enough to guarantee actual access to government information (Darch & Underwood, 2005; Darch & Underwood, 2010; Open Society Justice Initiative, 2006; Roberts, 2000). In fact, evidence suggests that governments' compliance with RTI requests is far from being perfect in many countries. Research in developed countries with a relatively long history of RTI laws like Australia and Canada reveals levels of compliance (satisfying responses to the information requested) of around 60–65% (Robert & Worthy, 2010). However, there is high variation in these trends when considering other countries, like Ireland (Robert & Worthy, 2010). Latin America is also heterogeneous in this matter. Mexico, with one of the most iconic laws in the region, had a compliance rate of around 21% in 2006 (Open Society Justice Initiative, 2006) but recent estimations indicate levels of compliances from 70% to 80% (Lagunes & Pocasangre, 2016). Similar high levels are found in Chile (Lanza, Fumega, & Scrollini, 2011; Marshall, 2003; Open Society Justice Initiative, 2006). By contrast, in other countries compliance is still relatively low. Data from a study published in 2006 reveals compliance levels of Peru and 40% in Argentina (Open Society Justice Initiative,

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<https://doi.org/10.1016/j.giq.2018.06.001>

Received 26 August 2017; Received in revised form 9 March 2018; Accepted 7 June 2018
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2006). Another work published in 2011 shows even lower levels for Ecuador (30%) and Bolivia (25%) (Lanza, Fumega, & Scrollini, 2011).

The literature has established that the levels of bureaucratic compliance with RTI laws is related to the political economy or prevailing RTI arena in a country (McClean, 2010; Scrollini, 2015), the sensitivity of the information requested (Lewis & Wood, 2012), the type of institution that is requested to provide the information (Lewis & Wood, 2012) and the way information is required (Cherry & McMenemy, 2013; Cuillier, 2010; Worthy, John, & Vannoni, 2017). Less attention has been given, however, to the kind of person or institution that requires it (Michener & Worthy, 2015).

Bureaucratic discretionary bias usually lies, directly or indirectly, behind why bureaucrats are more responsive to some RTI requesters than others (Cuillier, 2010; Michener & Rodrigues, 2015; Roberts, 2002; Worthy et al., 2017). However, research linking the implementation of these laws and bureaucratic discretionary bias is still scant. In this paper we address the link between compliance with RTI requests and the characteristics of the requester, to explore the existence of discretionary bias and, ultimately, discriminatory behavior from bureaucrats in Uruguay.

Existing research reveals a bureaucratic bias driven by discriminatory behavior against regular citizens vs informed, influential or powerful ones across different policy areas (Fried, Lagunes, & Venkataramani, 2008). For the RTI field, several studies have also shown the existence of bureaucratic discretionary bias when responding to RTI requests. Influential or powerful actors are usually treated differently than common citizens (Roberts, 2002) –bureaucrats can be more responsive to them– possibly because bureaucrats may fear retaliation from them or fear the use they could do with the information (Cuillier, 2010). We argue that in Latin American countries, where the gap between the approval of legislation and its implementation tends to be wider, there is more room for bureaucratic discretion and for influential actors to receive more responses to RTI requests than common citizens. Following Lagunes (2009) and Lagunes and Pocasangre (2016) we claim differential treatment from bureaucrats to influential citizens due to fear of retaliation can also be stronger in a Latin American country like Uruguay, where the flow of governmental information is very limited and bureaucracies are relatively politicized.

Personal individual characteristics –in contrast to professional identities– such as race, gender or education, have also been pointed by the literature as dimensions considered by bureaucracies to act with discretion –or discriminate– depending on the identity of citizen (Butler & David, 2011; McClendon, 2016; White, Nathan, & Faller, 2015). A few studies on the RTI field have also shown bureaucratic bias based on individual identities of requesters (Roberts, 2006; Open Society Justice Initiative, 2006; Lagunes, 2009; Peisakhin, 2010; Michener & Rodrigues, 2015). Following Michener and Rodrigues (2015) we argue that, in the Latin American context, where gender inequality reaches high levels compared to other regions, women are less likely receive responses to requests than men under the implementation of RTI laws.

Our goal is to test the possible discretionary bias and ultimately discriminatory behavior exhibited by Uruguayan government agencies while answering public information requests. We explore whether public officials are more likely to respond to requests from citizens that are informed about their right under the RTI law vs regular citizens, as well as from influential citizens (journalists and business representatives). We also intend to assess whether public servants' responses to RTI requests are gender-biased.

We conducted a randomized field experiment to test for unequal treatment given to citizens' requests, considering different citizen categories. We find that only those citizens who know the RTI law and invoke its existence have a greater likelihood of obtaining an answer from bureaucrats. This result is driven mostly by men's requests declaring they know the law when making their request, while invoking the law doesn't make a difference in responses to women. These findings show that public campaigns to promote citizens' awareness of RTI

laws and their use, not only would increase requests, but also governments' responsiveness regarding RTI requests.

The premises and findings of this study call for continuity in this line of research regarding bureaucratic discretionary bias.

Our contribution is twofold. First, we contribute to the field of RTI, exploring the existence of bureaucratic discretionary bias in the implementation of these laws and how that bias could be related to discriminatory behavior from government officials towards different types of requesters. In more general terms, we contribute to the research on how bureaucracies guarantee—if they do—identical treatment for all citizens, without any regard for their characteristics. Second, we offer innovative evidence for the study of bureaucratic behavior in a Latin American country, where the gap between the approval of legislation and its implementation is far from guaranteeing adequate enforcement.

The following section contains a review of the existing literature regarding discriminatory bureaucratic behavior under different policy settings and especially under the implementation of RTI legislation. Section 3 contains a brief description of the Uruguayan RTI law and its context. Section 4 explains our theory and hypotheses. Section 5 contains the methodological design and experimental setup used to test our hypotheses. In Section 6 we show the main results of the experiment. A discussion of the implications of these findings and some concluding remarks are found in Section 7.

2. Discretionary bias and discriminatory behavior in government's interactions with citizens under RTI laws

Bureaucratic discretionary bias is not a new issue in the social sciences. The literature accounts for a long-standing debate on whether government officials are biased in the way they interact with different citizens and the extent to which those biases are related to 'hidden' discriminatory values (Brodtkin, 1997; Goodsell, 1981; Jones, Greenberg, Kaufman, & Drew, 1977; Michael, 1980). In this sense, although the concepts are related, discretionary bias stands for unequal treatment from bureaucracy, while discrimination represents one explanation for it.

Several classic studies assess discretionary bias in different areas of government policies (Lieberman, 1998; Thomas, 1986), specifically in citizen-initiated contacts¹ with different types of governmental officials, 'street level bureaucrats'² as defined by Lipsky (Michael, 1980), elected officials and members of the Congress. Also, prior work shows that bureaucracies do not treat all citizens equally when, for instance, delivering public services (Jones, Greenberg, Kaufman, & Drew, 1977; Mladenka, 1981).

One explanation for this phenomenon establishes that discretionary bias is driven by differences in organizational rules, procedures, resources, and technical capacity and is not related to bureaucrats' discriminatory orientations towards different types of citizens (Handler, 1986; Michael, 1980) or to the political environment in which policy takes places (McClean, 2010; Wood & Waterman, 1994). Another strand of the literature states that discretionary bias reflects discriminatory behavior on the part of bureaucrats. Some studies, for example, assess bias in implementation of social and welfare services, focusing on how social service bureaucrats act differently towards different types of individual citizens. In this vein, Keiser, Mueser, and Choi (2004) find that, within the same jurisdiction, nonwhite recipients of welfare benefits tend to be more frequently sanctioned by the social workers who monitor them than white recipients. Ernst, Nguyen, and Kamilah (2013) find that, in the process of applying for benefits, white applicants receive more and better information on the benefits than

¹ As defined by (Verba & Nie, 1972) in contrast to electoral behavior or interest-group activity.

² Lipsky refers to teachers, police officers, and judges as 'street-level bureaucrats', a category with 'substantial discretion in the execution of their work' (1980:3).

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