



Sunshine as disinfectant: The effect of state Freedom of Information Act laws on public corruption[☆]



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ABSTRACT

We assess the effect of Freedom of Information Act (FOIA) laws on public corruption in the United States. Specifically, we investigate the impact of switching from a weak to a strong state-level FOIA law on corruption convictions of state and local government officials. The evidence suggests that strengthening FOIA laws has two offsetting effects: reducing corruption and increasing the probability that corrupt acts are detected. The conflation of these two effects led prior work to find little impact of FOIA on corruption. We find that conviction rates approximately double after the switch, which suggests an increase in detection probabilities. However, conviction rates decline from this new elevated level as the time since the switch from weak to strong FOIA increases. This decline is consistent with officials reducing the rate at which they commit corrupt acts by about 20%. These changes are more pronounced in states with more intense media coverage, for those that had more substantial changes in their FOIA laws, for FOIA laws which include strong liabilities for officials who contravene them, for local officials, and for more serious crimes. Conviction rates of federal officials, who are not subject to the policy, show no concomitant change.

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1. Introduction

Brett Blackledge, a reporter for *The Birmingham News*, won the 2007 Pulitzer Prize for Investigative Reporting for a series of articles that exposed corruption in Alabama's 2-year college system.¹ He collected reams of financial records, contracts, and disclosure forms that revealed a compelling story of state legislators and their associates receiving kickbacks and cushy jobs from various members of the school system administration. Many of the official records that he relied upon were uncovered in accordance with Alabama's public records law.

In 2007, reporters for the Detroit Free Press submitted a Freedom of Information Act (FOIA) request for documents dealing with a settlement with a police whistleblower. After much wrangling in court, the

documents were eventually released. They revealed startling evidence of perjury and obstruction of justice by mayor Kwame Kilpatrick that eventually led to his resignation, prosecution, and conviction.²

These anecdotes, and many others like them, highlight the role that access to public documents can play in helping a free press check the abuse of power by public officials.³ One of the most important changes in the relationship between public officials and the press in recent years has been the widespread adoption of FOIA laws at multiple levels of government. These laws provide clear guarantees regarding the rights

² "Free Press Pushed for Freedom of Information," Detroit Free Press, September 5, 2008. <http://www.freep.com/apps/pbcs.dll/article?AID=/20080905/NEWS01/809050340/1007/NEWS05>.

³ In addition to the anecdotal evidence, there is a growing body of literature that addresses the role of the media in promoting government accountability. Some recent examples include Djankov et al. (2003), who find that state ownership of the media is associated with a number of undesirable characteristics (less press freedom, fewer political rights, inferior governance, underdeveloped capital markets, inferior health outcomes, etc.). Besley and Prat (2006), who develop a model that predicts that media capture by the government increases the likelihood that elected politicians engage in corruption and/or rent extraction and reduces the likelihood that bad politicians are identified and replaced, and Snyder and Strömberg (2010), who find that more active media coverage of U.S. House representatives leads to better informed voters, which increases monitoring, makes the representatives work harder, and results in better policies from the constituents' perspective.

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¹ Pulitzer Citation and copies of Blackledge's prize-winning stories available at <http://www.pulitzer.org/citation/2007>, Investigative + Reporting.

of individuals and organizations to access information about government activities, and they make it easier for members of the press and members of the public at large to hold those in power accountable for their actions.

Most of the literature investigating governmental transparency and corruption has lauded transparency (see, e.g., Klitgaard (1988), Rose-Ackerman (1999), Brunetti and Weder (2003), Peisakhin and Pinto (2010), Peisakhin (2012)). Indeed, the literature suggests that gathering and analyzing information is one of the main weapons used to combat corruption. For example, Klitgaard (1988) discusses several information-gathering practices that are designed to thwart corruption, such as agents tasked with spot checking customs activities in Singapore, investigations of government officials for having “unexplained assets” in Hong Kong, and intelligence officers inspecting the lifestyles and bank accounts of officials in the Philippines. Such practices suggest that government officials recognize that information is a valuable resource in the fight against corruption.

Nonetheless, governmental transparency may not always be beneficial. Bac (2001) for instance, contends that transparency can have a perverse effect on corruption. Specifically, he argues that transparency may provide better information to outsiders about whom to bribe. If the incentive to establish and exploit political connections for corrupt purposes is greater than the disincentive that results from the higher probability that corruption will be detected, then more transparency might actually increase corruption.

Prat (2005) also argues that complete transparency is not always desirable. He considers a principal–agent setting in which the principal can have two types of information: information about the consequences of the agent's action and information directly about the action itself. The former is always beneficial, while the latter can have detrimental effects, because the agent has an incentive to ignore useful private signals. This result may explain why most countries that adopt FOIA laws place restrictions on information disclosure during the pre-decision process, but make information freely available after decisions are implemented.

Although the weight of the empirical evidence favors the view that increased transparency is beneficial, the evidence with respect to FOIA laws is limited. There have been a few recent studies of the impact of these laws on *perceptions* of corruption in cross-country settings. Islam (2006) constructs indices that measure (i) the frequency with which governments update publicly available economic data and (ii) the presence of FOIA laws and the length of time the laws have been in existence. She finds a negative correlation between these indices and her measures of perceived corruption. In contrast, Costa (2013) finds that the adoption of FOIA laws increases the perceived corruption level, particularly in the first 5 years after enactment. Escaleras et al. (2010) find no evidence of a significant relation between the existence of FOIA laws and perceived corruption levels for developed countries, but find a positive and significant correlation between FOIA laws and perceived corruption in developing countries. The authors attribute this latter finding to the fact that developing countries have relatively weak institutions that make FOIA laws less effective.

To our knowledge, our study is the first to examine the impact of state-level FOIA laws on the objective prevalence of public corruption among state and local government officials. We see three important advantages to undertaking such a study. First, parameter heterogeneity should be reduced given that the variation in the legal, social, cultural, and political institutions is much lower across states than across countries. Second, the data are objective. We can examine the number of state and local public officials actually convicted for corrupt acts rather than rely on the type of subjective survey-based data used in the cross-country studies. Finally, there is a set of identifiable public officials – federal employees – who should not be affected by state FOIA laws. This feature facilitates a straightforward placebo test.

We measure corruption by using annual state-level data for 1986–2009 reported by the Transactional Records Access Clearinghouse,

which compiles information on corruption convictions from the Executive Office of U.S. Attorneys. The database maintained by this organization lists criminal convictions in Federal District Courts of federal, state, and local public employees for official misconduct or misuse of office. We expect the number of corruption convictions of state and local officials, but not federal officials, to respond to changes in state FOIA laws, and thus it is important to have separate measures of convictions at the state, local, and federal levels. This is the only database that reports the disaggregated conviction data.

Information on the provisions of state FOIA laws is obtained from the Open Government Guide. We construct measures of the strength of state FOIA laws by analyzing the open record statutes, case law, and Attorney General's opinions for each state. Our goal is to assess the effectiveness of these laws in promoting an open government and providing citizens with access to public records. We expect states that create a presumption for disclosure, place limits on fees, impose deadlines for responding to FOIA requests, and punish officials who fail to properly respond to information requests to have more open and transparent governments. This openness should make it more difficult for corrupt public officials to escape public scrutiny.

All states have some sort of law that governs the public's access to records held by state and local officials, but the details of the statutory provisions of FOIA laws vary widely across states and over time. We classify states in two categories: those that provide strong access to public records (strong FOIA states) and those that provide weak access (weak FOIA states). Between 1986 and 2009, 12 states switched from weak to strong FOIA. Our analysis reveals that when policy changes, there are substantial changes in corruption conviction rates for state and local public officials, but no obvious change in the conviction rates for federal officials. Thus state FOIA laws affect either conviction or corruption rates of state and local officials.

Encouraged by this finding, we propose a reduced-form model to help disentangle changes in conviction rates from changes in corruption rates. This exercise is important because a naïve analysis might simply attribute all changes in observed conviction rates to changes in the level of corruption, possibly leading to the implausible conclusion that strengthening FOIA laws actually increases corruption. The model predicts that strengthening FOIA laws has two effects: reducing corruption rates and increasing the probability that the corrupt acts are detected. By making plausible assumptions about the process by which corrupt acts are committed, uncovered and prosecuted, and otherwise exit the system (e.g., statutes of limitation, death of corrupt officials), we can partially separate the two effects.

Using an approach motivated by the model, we investigate the impact of switching from weak to strong FOIA on corruption convictions of state and local officials. Our specifications control for known determinants of corruption rates, include a complete set of state and year dummy variables and state-specific trends, and employ a set of propensity-score-matched control states. We find throughout that corruption conviction rates rise substantially after strong FOIA adoption, approximately doubling in most specifications, which suggests a significant increase in detection probabilities. However, corruption conviction rates decline by about 20% from this new elevated level as the time since the adoption of strong FOIA increases, which suggests a substantial reduction in the underlying corruption level in response to strong FOIA enactment. There is no concomitant change in the corruption convictions of federal officials in these same states.

To provide additional insights on the effects of FOIA, we decompose our measure of the strength of state FOIA laws into four components: liability, time, money, and discretion. The liability component measures civil and criminal penalties for violating FOIA provisions, the time component measures the limitations on the time allowed to respond to FOIA requests, the money component measures the allowable fees for requests, and the discretion component measures the strength of limitations on the discretion of officials in providing requested information. Examining each of the components individually suggests that liability

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