

## **Barriers to freedom of information – Insights from Belgium**

**\*\*\* Authors' version \*\*\* (Accepted for publication in IJPA)**

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### *Abstract*

Freedom of information has gained attention all over the globe. Transparency laws provide the right to request (and access, under certain conditions provided in the law) information that has not been released by public authorities. While this principle has been embraced in most countries, previous studies showed that many barriers impede its full realization, for various reasons. The present article adds to this strand of research by specifically analyzing the case of barriers that emerge in FOI implementation by Belgian municipalities. The analysis is based on data collected in Spring 2023. The results point to a significant lack of compliance in many cases, and a predominance of strained transparency, that is, conscious or unconscious limiting access to information because of a lack of resources, or unfamiliarity with the requested information. These findings led us to refine and extend existing frameworks with important implications for future policy and research developments.

### *Keywords*

Transparency; Freedom of information; Barriers; Field experiment; Belgium

## 1. Introduction

Freedom of Information (FOI) laws are essential policy tools to ensure government nodality (Howlett, 2009). Nodality, the government's ability to receive and share information, helps governments understand society better and allows citizens to see government actions more clearly, which in turn encourages public involvement in policymaking (Hood, 1983; Margetts and John, 2023). Therefore, the effective implementation of FOI laws is of paramount importance for equipping policy network actors with the necessary knowledge to make informed decisions in specific sectors or issue areas, and to design efficient, effective, and legitimate policies. These laws have two main functions: a) they grant citizens access to government information, and b) they provide legal protection for bureaucrats who disclose information, safeguarding them from political reprisals.

FOI laws have experienced a real boom recently. This form of transparency relies on legislation that guarantees citizens the right to access information held by public authorities. The disclosure of the requested information is not automatic, since legislation includes exemptions, e.g., when documents threaten national interests and trade secrets. However, there exist other factors that may explain why information is not released. They can relate to the weak legal framework that leads to information retention; implementation problems; or other variables, indirectly linked to the law, that may play a role. Research on these barriers has preferred either a legal (Banisar, 2006) or a conceptual approach (Pasquier and Villeneuve, 2007). These perspectives are interesting, but eluded the difference between the drafting of the law (on paper, *de jure*) and its application (in practice, *de facto*), or did not rely on solid empirical evidence.

This article aims to address these gaps by presenting an exploratory study on barriers to FOI, grounded in empirical data. Specifically, it draws on data from a broader project on FOI implementation in Belgium that involved a field experiment conducted in Spring 2023 across all 581 Belgian municipalities. While all detailed findings of that experiment are presented in Esposito et al. (2024; see Appendix), this article answers the following specific research question: *what are the main barriers to FOI implementation in Belgian municipalities?*

In answering this question, our analysis uncovers patterns in the behaviors of public administrations implementing FOI legislation. This not only allows us to expand the conceptual classification of FOI barriers proposed by Pasquier and Villeneuve (2007), it also helps better understand the factors that hinder public administrations' ability to effectively receive and share information with citizens. Consequently, this paves the way for policy recommendations that can help overcome these barriers.

Although "active" transparency, i.e., the proactive release of information by governments is gaining traction, especially via the development of communication tools and technologies, FOI remains a core component of any transparency regime (Berliner et al., 2018) as it gives citizens and opposition parties the opportunity to access to undisclosed information, easing their check on certain government decisions and acts. In this context, understanding and classifying the obstacles hindering the optimal operation of FOI is valuable not just for evaluation purposes, but also for comprehending the complex dynamics underlying the use of FOI as a policy tool to ensure government nodality (Howlett, 2009).

The remainder of this article is structured as follows. The next part presents a review of the scientific literature on transparency, concentrating on primary approaches and definitions of the concept, as well as the various methods through which it is put into practice. The subsequent part provides more detailed information about the barriers to FOI. Then, we explain how we collected the data and how we intend to use them to build a refined theoretical framework of the barriers to effective FOI implementation. This research design part is followed by the

presentation of our findings, and the provision of the refined framework itself. The last part gives space to discuss the results and implications, expose the limitations, and propose paths for future research.

## **2. Literature review**

### *2.1 Transparency in the public sector – Focus on FOI*

Transparency has been much researched in Public Administration (PA) lately, with Cucciniello et al. (2017) listing around 200 publications that addressed the forms and/or the outcomes of the concept in the period 1990–2015. Many academic books have also been published, including the recent state of the art provided by Porumbescu et al. (2022). Most contributions converge towards the following definition: “the disclosure of information by an organization that enables external actors to monitor and assess its internal workings and performance” (Grimmelikhuijsen and Welch, 2012, p. 563). Therefore, transparency is mostly about information flows, their relevance, understandability, and usability for users (e.g., political parties, lawyers, researchers, journalists, the general public, etc.).

The salience of transparency revolves around its contribution to “good governance” and the role it plays in ensuring accountable governments. In democracies, it is expected to encourage citizen and political participation, inform public debates, reduce corruption, and increase administrative responsiveness and citizen trust (Mabillard and Pasquier, 2016). As a result, access to information has become a fundamental right, as specified in Article 42 of the European Union Charter of Fundamental Rights.

Regarding the proactive release of information specifically, the development of new technologies has provided new opportunities to share contents online, through websites, open data portals, and more interactive platforms like social media. But well before that, governments already had the obligation to diffuse information of interest to the population (though in vague terms), as detailed in most countries’ constitutions. This led to studies investigating website transparency, mostly at the local level (e.g., Da Cruz et al., 2016). Nevertheless, this active form of transparency is less codified than the passive, legal one (Pasquier and Villeneuve, 2007), on which we elaborate below.

Many contributions focus on FOI laws, more specifically on their emergence and development. They usually start by emphasizing the pioneering role played by Sweden, where a right of access to administrative documents was already recognized in 1766. FOI laws will be adopted much later in the other countries. For instance, the FOI Act entered into force in the United States in 1967. Then, the calls for good governance and more user-oriented administrations in many states led to the proliferation of FOI laws (Ackerman and Sandoval-Ballesteros, 2006).

The laws’ main principles are the same in every country. However, the content of the laws may vary from country to country, and from region to region in states that have different legal frameworks at the regional and local levels. It includes the scope of application (public bodies, administrations, judiciary, legislators, etc.), the kind of information that requesters may access (general information v. restricted definition of specific documents, written and/or recorded), exemptions, the number of days allowed for the contacted bodies to make a decision, sanction mechanisms, appeal rights, and oversight body types (information commissioner, commission, courts). It can also include provisions regarding proactive transparency. These aspects serve as a basis for certain rankings on transparency, especially the Right to Information Rating (RTI) that measures the strength of the laws. While RTI systematically compares similar provisions across countries, it does not account for most implementation issues; attaining a heightened position on the RTI ranking does not indicate the successful, effective execution of FOI.

This called for further and expanding research based on field experiments where information requests are submitted to public administrations to test their responsiveness rate and to identify any discrimination in replying based on the requester's profile, the content, and the tone of the request. Such experiments have been conducted in North America (e.g., Cuillier, 2010, and Wagner, 2021 in the US), South America (e.g., Michener et al., 2020 in Brazil; Lagunes and Pocasangre, 2019, in Mexico; Rodríguez and Rossel, 2018, in Uruguay), China (e.g., Yang et al., 2023). In Europe, studies have targeted local administrations in England (Worthy et al., 2017), the Netherlands (Grimmelikhuijsen et al., 2018), Slovakia (Spáč et al., 2018), and Italy (Cicatiello et al., 2024).

These studies reveal that public administrations tend to exhibit discriminant behaviors that severely undermine FOI principles. All these experiments on FOI primarily test its effectiveness, focusing on whether public administrations comply with the law and respond to access requests they receive. However, these studies often overlook the barriers erected by public administrations to avoid responding. Instead, examining these barriers is particularly valuable because it provides deeper insights into the challenges and obstacles that hinder transparency and can help policymakers identify areas where reforms are needed, to improve the implementation of FOI laws.

## *2.2 Barriers to FOI*

The study of transparency barriers tends to increasingly focus on the obstacles to the realization of the digital tools' full potential. Therefore, many contributions have addressed technological issues related to proactive dissemination of information, especially open data portals (see e.g., Dawes et al., 2016). Here, we do neither want to discard these issues nor write that they do not matter for the future of government transparency. However, we prefer to concentrate on the access rights that can be exercised by citizens, and check whether they are respected in practice, or if the bad implementation of the law prevents citizens from enjoying these rights. So far, most contributions have focused on the weak legal framework or complaints raised by non-state actors, especially journalists, about the promises not fulfilled by the law. Below, we will elaborate on these elements and extend them with other considerations, and then present the frameworks that revolve around attitudes that affect the quality of FOI.

### *2.2.1 Specific barriers to FOI*

The first barrier relates to the absence of a legislation on transparency, or insufficiencies in the legal framework. When countries or regions do not provide a well-defined transparency law, implementation issues will quickly appear. For example, the absence of clear deadlines for responding may lead to excessive waiting times; the vague definition of the national interest may lead to abusing this exemption to retain information; and the restricted definition of what information is can also be problematic. For instance, restricting access rights to documents will exclude other forms of communication and channels, which may also contain information (and potentially lead administrations to shift their communication habits to prevent disclosure). In this regard, Waldemarson (2015, p. 174) writes that “the possibility of gaining insight into government operations is further diminished because decision making processes tend to withdraw into informal networks. While the phenomenon as such is well-known, it has become more pronounced in recent years”. In certain cases, the law allows public organizations to be excluded from the scope of application.

The second barrier also relates to the legal framework, but from an implementation perspective (*de facto*). Therefore, obstacles do not stem from legal provisions (*de jure*), but from their weak implementation, or issues of non-compliance not properly sanctioned. According to Michener and Nichter (2022, p. 8), “transparency policies frequently end up as mere window-dressing –

providing *de jure* cover for compliance deficits in practice. For example, the peer effects of having a neighbor randomly audited prompt municipalities to legislate transparency regulations (de jure compliance), but do not translate into greater responsiveness to citizen requests (de facto compliance)". Also, administrations sometimes remain "silent" or delay the response to the requesters, although a deadline is specified in the law. The non-respect of these deadlines can prove detrimental to the FOI regime and the quality of democracy in general, since the public may, for instance, be informed (too) late of an environmental problem due to a delay in processing a journalist's request. These situations are not rare and often highlighted by reports that critique the functioning of FOI. In Quebec, for the period 2018-2021, 80% of all access requests submitted to the Ministry of Education and Higher Education were processed out of time<sup>1</sup>.

The third barrier concerns the costs for accessing the requested information. It can relate to FOI legislation when the costs are specified in the law, but they can also occur spontaneously, when administrations state that documents' production costs are too high and should be borne by the requesters themselves. In 2018, the Canadian administration told a researcher seeking records about a Royal Canadian Mounted Police investigation that it would cost them CAD 21 million to process the request, and that they needed a significant deadline extension, with a due date scheduled on March 25, 2098<sup>2</sup>. In addition, when fees are charged to access documents, they can sharply decrease the number of requests, as shown by Henninger (2018) in Australia. The same drastic reduction in the volume of requests submitted was also observed in other cases, including Ireland and Canada. Using an online experiment, a study from Ingrams et al. (2023) highlighted the effect of costs on citizens' perceptions of fairness and satisfaction with the submission procedure. They showed that successful implementation of FOI depends on trade-offs between the costs of requesting and the value of information.

The fourth barrier relates to the limited use of the law / lack of publicity around transparency in certain countries and regions. In Switzerland, Holsen and Pasquier (2010) showed how the recency of the law, the lack of awareness, the fact that people trust their authorities and have other channels to access information, and the existence of FOI laws at the regional level may explain the low uptake in the country. While the volume of requests is just one of the factors that underline the efficacy of the law, and its successful implementation, we argue with Hazell and Worthy (2010, p. 353) that the low uptake may lead FOI to "become locked into a negative cycle of disuse, neglect and stagnation". Moreover, there are cases where the law has been mostly used by specific people or groups, such as journalists, lawyers, and lobbies. This may be problematic since FOI then turns into a tool designed for specific needs. In this regard, Kwoka (2018) produced FOI logs and found that commercial requesters accounted for more than two-thirds of total requests in six federal regulatory agencies. Fink (2018) partly duplicated this study at the national level, focusing on state environmental offices. She found that most requests came from "consultants". This issue remains a barrier to the successful implementation of FOI in practice.

The fifth barrier points to the potential tension between the open government agenda and FOI, as emphasized by Berliner et al. (2018). In case of "subtractive dynamics" – a shift of priorities and resources to another point of attention – FOI may be weakened. The development of open government, the prioritization of technological development, open data portals, and new online, interactive communication channels may lead to strong active transparency policies. According

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<sup>1</sup> <https://ici.radio-canada.ca/nouvelle/1928398/delai-grandissant-acces-information-quebec-etude-commission>, accessed October 12, 2023.

<sup>2</sup> <https://ottawa.citynews.ca/national-news/man-seeking-historical-records-told-it-would-cost-feds-21-million-to-process-request-5439423/>, accessed October 16, 2023.

to Berliner et al. (2018), this may displace advocacy groups’ objectives, government priorities, and the attention paid to FOI on the political agenda. However, open-government policies may also open the door for “complementary dynamics”. To get back to the Canadian example above, the digitalization of the administration would certainly lead to better information gathering and processing, thereby enabling the public body to handle the FOI requests more effectively. This barrier, along with the ones mentioned above, are summarized in Table 1.

**Table 1.** Main barriers to FOI (authors’ compilation)

<i>Types of barriers</i>	<i>Main characteristics</i>	<i>Potential effects</i>
Legal provisions and framework ( <i>de jure</i> )	Weak legal framework, insufficient provisions	- Exemptions to FOI can be easily abused - Favors people and organizations with expertise
Implementation of legal provisions ( <i>de facto</i> )	Weak enforcement of the law, dysfunctionalities	- FOI does not deliver on its promises (e.g., deadlines) - Favors people and organizations with power (e.g., influence groups)
Costs	High fees to be paid to access information	- People are discouraged to use FOI - Favors people and organizations with financial resources
Use of law	Limited use of the law, use by specific groups only	- FOI does not benefit the general public - Favors people and organizations with knowledge
Tension with open government agenda	Shift of resources / attention to active transparency	Not enough resources are dedicated to FOI

**2.2.2 Existing frameworks**

Building on these barriers, certain authors have proposed conceptual frameworks. One recent example is Renteria’s study (2024) of Mexican municipal governments. His framework may prove useful when analyzing hurdles to implementing FOI, since he focuses on tactics for hiding information: a) noncompliance (“we refuse to provide information”); b) no legal binding (“we do not have the legal mandate to share the information”); and c) nonexistence (“we do not have information, or it is neither collected nor stored”). He adds that other tactics, for instance providing confusing information, may severely undermine information quality. He argues that certain additional aspects are also detrimental to transparency (e.g., deadlines not respected, information overload, etc.).

Another approach is preferred by Venard and Tshering (2021). In contrast to Renteria (2024), their analysis of the transparency landscape in Bhutan concentrates on opacity categories. The first category, labeled “idiosyncratic opacity”, refers to illegal practices and information hiding. The second category relates to “systemic opacity”, i.e., the lack of appropriate information, poor recording, and absence of standardized data. The third category, “deliberate opacity”, concerns negative attitudes towards transparency and accountability (no willingness to behave

in a transparent manner). The fourth category regards the ambiguous processes of controlling over information, labelled as “organizational opacity”. Finally, “mean opacity” concerns the insufficient resources to guarantee transparency.

The main aspects of these approaches directly relate to the specific barriers mentioned earlier: noncompliance, implementation issues, lack of resources, and so on. In our study, we rely on the framework developed by Pasquier and Villeneuve (2007), since it includes most of these aspects, and accounts for the specific barriers listed above. Moreover, it highlights the presence of both problems (e.g., lack of resources) and attitudes/tactics (e.g., refusal to comply with the law or abuse of exemptions). It consists of five categories, starting with “non-transparency”: in the absence of FOI, public organizations rely on active transparency exclusively. Pasquier and Villeneuve (2007) present four additional categories once a law has been adopted. The first relates to “adverted transparency”, when organizations directly disobey the law. The second, “obstructed transparency”, indicates the (sometimes abusive) use of legal provisions to obstruct transparency. The third concerns “strained transparency”, i.e., the lack of necessary resources to cope with the demand or understand the requests. The fourth, “maximized transparency”, occurs when organizations intend to “forestall possible demands by making all the information available” (Pasquier and Villeneuve, 2007, p. 152).

Therefore, categories included in these frameworks show a wide range of attitudes that can be adopted by organizations, depending on their resources, commitment to transparency, and adaptation to the cultural shift observed in the last decades (from opacity to openness). They are summarized in Table 2 and will serve as a basis for our analysis of FOI barriers in Belgium.

**Table 2.** Attitudes towards transparency, related results, rationale, and categories (based on Pasquier and Villeneuve, 2007)

	<i>Attitudes</i>	<i>Result</i>	<i>Rationale</i>	<i>Category</i>
1	No appeal for a law on the transparency principle	FOI law is not adopted	“This is not necessary for improving state-citizen relationships”	Non-transparency
2	Information hiding	FOI law is not functioning properly	“We won’t share the requested information”	Adverted transparency
3	Use of exemptions	Information is not disclosed based on legal provisions	“We can’t share the requested information”	Obstructed transparency
4	Insufficient investment in transparency processes	Information is not disclosed based on its absence	“It’s too costly to produce the requested information”	Strained transparency
5	Compliance with the law	Information is disclosed based on legal provisions	“It is simpler and less costly to follow the rules”	Maximized transparency

### 3. Research design

The research design comprises two interlinked components: the first step is an exploratory analysis of empirical data on Belgian municipalities' attitudes towards FOI implementation collected through a field experiment. This analysis informs the second step, which involves revising previous conceptual frameworks on FOI barriers on the basis of the evidence brought by our empirical investigation.

#### 3.1 Case study: Belgium

A federal state with overlapping institutional layers (communities and regions) depending on their competencies, Belgium is a compelling case to study transparency. At the national level, an FOI law was passed in 1994<sup>3</sup>. Decrees were subsequently drafted in the regions, and have been amended since that date. The legal provisions have been extended and detailed, notably under the pressure of civil-society organizations and journalists, and because of the need to adapt to new, technological realities (defining “information” varies quite strongly over time, especially through the development of online communication). Regional FOI legislation applies to the regions (Flanders, Wallonia, and the Brussels-Capital Region) and their municipalities (N=581). Running an experiment in Belgium is compelling due to the regional differences, which have rarely been investigated in the literature. In this regard, the “decree on the extension of active publicity in local authorities” was voted in Wallonia just before we started gathering data. This extension, which regards mainly the explicative note requested through the experiment, does not apply to the less-populated municipalities at the time of our study<sup>4</sup>. Also, the “private” aspects of the note are an exemption for privacy reasons. Finally, it is not compulsory for municipalities to actively disclose the appendices (online) to the public.

#### 3.2 Data collection

This study is part of a broader project on FOI effectiveness in Belgium built upon a field experiment that was carried out in Spring 2023 (detailed description provided in Esposito et al., 2024; see Appendix). It involved sending information access requests to all 581 Belgian municipalities. The requests asked for the explicative note of the last municipal meeting, and the appendices that included the projects discussed during that meeting. Having these documents is essential to participate in democratic debates at the local level, since it helps citizens form an opinion and, potentially, participate in decision-making processes regarding municipal policies and public projects.

The requests had two minor variations. The first variation concerned the profile of the requester, who could be a university professor, an ordinary non-googleable citizen, or a transparency advocacy organization, using different email addresses. The second variation involved the requester's demonstrated familiarity with FOI legislation, some explicitly mentioning it and others not. This setup resulted in five different request texts. Municipalities were stratified by region and population size (<12,000; 12,000-50,000; >50,000 inhabitants). Within each stratum, the pairing of requests and municipalities was done randomly. The requests were drafted using the municipality's official language, sent within a short timeframe (March 13-15,

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<sup>3</sup> Loi du 11 avril 1994 relative à la publicité de l'administration.

<https://www.ibz.rn.fgov.be/fr/commissions/publicite-de-ladministration/introduction/>, accessed on 8 May 2023.

<sup>4</sup> For municipalities with less than 12,000 inhabitants, the decree entered into force on October 1, 2023; for municipalities with 12,000 to 50,000 inhabitants, it entered into force on April 1, 2023.

<https://www.uvcw.be/fonctionnement/actus/art-7574>, accessed 23 October 2023.



2023), and addressed to each municipality's FOI contact point, identified based on a mailing list provided by the non-governmental organization involved in the project.

### *3.3 Data analysis and extension of the conceptual framework on FOI barriers*

For what concerns this study, as the responses were received, their content was coded by a research assistant whose work was checked by one of the authors. The main goal was to assess the barriers to FOI based on a mix of inductive (when we find categories absent from existing frameworks) and deductive coding approach, since we started with the pre-defined set of categories from Pasquier and Villeneuve (2007). The deductive approach relates to “conducting deductively oriented content analyses that follow the scientific method and flow from a priori theoretical and conceptual frameworks” (McKibben et al., 2022, p. 158). It led us to start the analysis with a predefined set of four codes (or categories) that were highlighted in Table 2, since category 1 – non-transparency – was excluded (all municipalities are subject to the law). Then, we assigned the codes (adverted; obstructed; strained; maximized transparency) to the email texts and used sub-codes to specify their content. The analysis resulted into 581 replies and non-replies organized in the categories and sub-categories presented below.

## **4. Findings**

### *4.1 FOI barriers in Belgian municipalities*

The **first result** of our experiment is striking: 35.5% of the municipalities (206 out of 581) did not respond to our emails. This includes municipalities that did not reply (180), responded with an automatic message and did not follow up (17) or said they would respond but never did (2), or canceled the request without any explanation (1). In 6 cases, we also experienced problems with contact links. This proportion is very high given that all municipalities are subject to the law, and that we systematically sent a reminder. In Wallonia, where an extended decree on active publicity entered into force in October 2023 in all 88 municipalities with less than 12,000 inhabitants, 34 municipalities replied they were not subjected to FOI, therefore mixing up active and passive publicity. Most of them added the demand was abusive. Among the municipalities between 12,000 and 50,000 inhabitants, 15 out of 79 raised the same argument, although the decree was about to be enforced for them (as of April 1, 2023). One municipality with more than 50,000 inhabitants also gave the same answer. Therefore, 256 municipalities (44%) fall into the “adverted transparency” category.

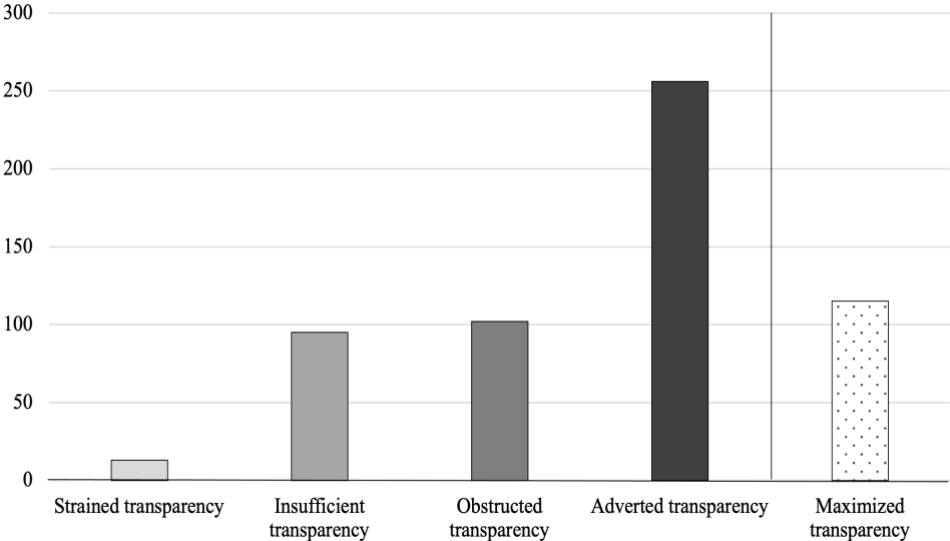
The **second result** concerns the exemptions detailed in the law, sometimes in vague terms, and without explanations, such as “the request is too vague or abusive”. This also includes privacy matters, when documents are not disclosed due to compromised confidentiality. In Flanders, municipalities can ask for more information about the requester, especially when the latter does not provide their postal code. In 100 cases, requests were refused because the demand was considered too vague (44 cases), abusive (3 cases), lacked information, especially in Flemish municipalities (18 cases), or because of incomplete documents (1) or privacy issues (8 cases: document confidentiality or information reserved for municipal councilors). 27 cases combined several of these aspects. In two municipalities, we were required to send our request via other channels, which constituted unsatisfactory replies from a transparency perspective. Therefore, 103 requests (17.7%) fall into the “obstructed transparency” category.

The **third result** pertains to the lack of resources and/or competencies sometimes raised. Most municipalities invoked a lack of resources to cope with the demand, replied that documents could not be formatted properly, or sent documents in raw, unreadable formats (9). Others told us to consult the documents on-site (3). Therefore, only 12 (2.1%) municipalities fall into the “strained transparency category”.

The **fourth result** regards what we call here “insufficient transparency”, covering cases where replies were unsatisfactory due to their partial character. This includes 58 municipalities that sent us a link to their website, granting access to the council’s minutes and the explicative note, but without providing any appendices, even when we asked specifically for these. In 24 instances, information was sent directly to us, using the WeTransfer platform to accommodate heavy documents, but lacked the requested appendices. In 7 cases, links to the municipality’s website were sent, where it was possible to access partial information; however, access to the other documents was denied based on the confusion between the active publicity provisions mentioned above and FOI. In 6 cases, partial access to documents was based on a combination of the arguments just listed. Consequently, 95 municipalities (16.4%) fall into the “insufficient transparency” category.

The **fifth result** relates to cases that fall into the “maximized transparency” category. It includes the remaining 115 municipalities (19.8%) that provided a complete reply. In 36 cases, links to the complete documents, published online (mostly on the municipality’s website), were clearly indicated in the responses. In most cases (56), the full requested documents were sent via email, using the WeTransfer platform. Finally, 23 municipalities combined in their replies links to the relevant online platforms and additional documents sent via email. These results are presented in Figure 1.

**Figure 1.** Number of municipalities per category type



N	12	95	103	256	115	<b>581</b>
%	2.1%	16.4%	17.7%	44%	19.8%	<b>100%</b>

*4.2. Regional differences*

In addition to these results, we have observed significant regional differences. In Belgium, regional laws apply at the local level, meaning that municipalities in Wallonia are subject to the Walloon FOI law, Flemish municipalities to the corresponding legislation, and the same situation applies for the 19 municipalities that belong to the Brussels-Capital Region (BCR). Minor differences between the legislations have revealed differences in behaviors. For instance, when it is mentioned in the law that requesters should indicate their postal code, administrations have sometimes asked for it before disclosing the documents. Two municipalities have requested to pay fees to disclose the documents. In some cases, technological issues were raised

(information upload on document-sharing platforms). The breakdown of replies by transparency category and region is displayed in Table 3.

**Table 3.** Barriers by Belgian region

		Region			Total (%)
		BCR	Flanders	Wallonia	
Transparency category	1. Adverted transparency	16%	28%	65%	44%
	2. Obstructed transparency	21%	27%	7%	18%
	3. Strained transparency	0%	2%	2%	2%
	4. Insufficient transparency	11%	19%	13%	16%
	5. Maximized transparency	53%	24%	13%	20%
<i>Total (N)</i>		<i>19</i>	<i>300</i>	<i>262</i>	<i>581 (100%)</i>

On average, we observed a greater degree of obstruction in Walloon municipalities: in this region almost two thirds of municipalities showed adverted transparency, compared to the 28% of Flemish municipalities and the 16% of BCR municipalities. Interestingly, Flemish municipalities show the highest share of obstructed transparency, which is not so frequent in Walloon municipalities. This regional heterogeneity calls for further analyses to investigate whether contextual differences may explain diverging patterns of responses among municipalities. Administrative capacity may be a promising avenue of research, as Walloon municipalities are on average smaller than municipalities of the other regions. In that regard, Table 4 shows that adverted transparency is less likely as municipal size increases.

**Table 4.** Barriers by municipal size

		Population size (inhabitants)			Total (%)
		<12,000	12,000-50,000	>50,000	
Transparency category	1. Adverted transparency	58%	33%	17%	44%
	2. Obstructed transparency	14%	21%	27%	18%
	3. Strained transparency	2%	2%	3%	2%
	4. Insufficient transparency	13%	21%	10%	16%
	5. Maximized transparency	14%	23%	43%	20%
<i>Total (N)</i>		<i>278</i>	<i>273</i>	<i>30</i>	<i>581 (100%)</i>

#### 4.3 Towards a refined framework

As already mentioned, the refined framework displayed in Table 5 does not aim to completely reinvent the approach to FOI barriers. Rather, we build on Pasquier and Villeneuve (2007) to extend the reflection on the obstacles to successful FOI implementation. In theory, barriers range from no transparency at all to maximized transparency. However, this approach must be complemented by the hurdles identified in our study. In addition, it is worth exploring the behaviors and rationale to better understand how these barriers are justified, what kind of effects they produce, and how they translate into organizational practices.

**Table 5.** Extended framework on FOI issues and barriers (when a law applies)

<i>Categories</i>	<i>Manifestations of transparency</i>	<i>Behaviors / tactics</i>	<i>Rationale / justification</i>
No transparency	1. Absence of a FOI law	Organizations may focus their efforts on proactive transparency, or completely neglect it, and prefer opaque processes over openness towards citizens	“It is not necessary”
Adverted transparency	2. Exclusion of certain bodies from the scope of the law	Organizations may record information on channels not covered by the law	“It is too sensitive”
	3. Restricted definition of information (e.g., only written documents)		
	4. Dissimulation of the existence of the requested information	Organizations may deny the existence of certain documents	“We do not have this information”
	5. “Silence” of administrations	Organizations may not respond, or send an automatic response with no follow-up	
Obstructed transparency	6. Use of exemptions	Organizations may use exemptions to ensure privacy, sometimes abusively	“We need to protect such information”
	7. Use of legal provisions	Organizations may refuse access, due to the abusive or vague nature of requests	“The request is not precise enough”
	8. Nature of information	Organizations may argue that documents are evolving, or are reserved for certain bodies, and therefore can’t be sent	“We can’t send incomplete information”
Strained transparency	9. Low responsiveness due to insufficient resources	Organizations may not respond because they are not well-equipped to cope with the demands	“We don’t have enough resources”

	10. Inability to send documents because the retrieving process is too costly	Organizations may face issues, especially technological ones, that prevent effective information disclosure	“It would be too expensive to produce the documents”
	11. Poor information management (no processes, broken links, etc.)	Organizations may suffer from poor information management that impedes effective information disclosure	“We can’t find the requested information”
	12. On-site consultation of documents	Organizations may not share information online or via mail	“Information must be consulted on site”
Insufficient transparency	13. Partial disclosure based on the classification of documents	Organizations may only send part of the requested information because some pieces are classified	“We can’t share classified information”
	14. Partial disclosure based on the existence of online information	Organizations may tell the requesters that information is available online, e.g., on their website	“Information is already available”
	15. Ineffective disclosure because of information formatting	Organizations may release information in formats that are not readable for most citizens	“Information was compiled, and is therefore available, in this format”
Maximized transparency	16. Compliance with the legal framework	Organizations may comply with the rules and disclose information effectively	“Complying with the law is essential, also to improve our relationships with citizens”
	17. Provision of information and publication for the general public	Organizations may do more than the law asks and go beyond simple compliance	

Table 5 shows that FOI barriers are diverse, can manifest in different behaviors, and relate to different justifications. While most approaches focus on a transparency continuum, or the legal v. non-legal distinction, we delve into 17 different behaviors that may arise when people send requests for information through FOI. These behaviors depend on legal and personal grounds, as well as resources. When the law is mentioned, requests can be dismissed for relevant reasons or access can be refused abusively. In these cases, oversight bodies should play their role and launch a mediation process or directly command the organization to disclose information. However, launching such processes can discourage requesters, especially those who can't count on a strong organizational structure, such as journalists' associations.

The weak implementation of the legal provisions, especially lengthy processes (delays, need to contact the organization multiple times, changing contacts) may also discourage requesters. The lack of resources can be problematic too, since organizations may deny the existence of a document in a certain format, or communicate it ineffectively. In such cases, it is impossible for requesters to access the documents, or consult information because of high barriers. To come back to the example provided in the theoretical section, extremely long delays and high costs may impede the release of information. Finally, the varying degrees of commitment to transparency may have strong effects on FOI, since they may reinforce the implementation issues identified in Table 5 or, in contrast, foster compliance with the law, sometimes providing the requested information to the general public, for instance through additional publications. This phenomenon was labeled as "concordance" by Worthy et al. (2017).

However, we should be careful and distinguish between barriers intentionally raised by public administrations on the one hand and, on the other, behaviors aligned with the "spirit of the law" or attitudes that reveal other, more profound issues, and do not relate to intentional hiding of information. For instance, information commissioners have often complained about the lack of resources. This reveals a more political than administrative problem, since prioritization of FOI and investment in transparency is a political issue. Delays and more generally problems with handling the requests may result from a clear lack of resources; in some cases though, especially at the local level, there are abusive cases aiming to discourage requesters. We should therefore nuance our analysis, and neither embrace an "administrative" perspective ("there is nothing we can do") nor an "activist" perspective ("they are systematically hiding information from us"). The same approach can be applied to classification: sometimes, sensitive information is classified for relevant reasons, while sometimes it is used as a reason to hide documents that should be made public. In other cases, a lack of resources may lead to the creation of an informal priority rule by the administrative clerks, in line with the street-level bureaucracy perspective (Lipsky, 1980). A final example of this relates to the existence of the requested information on online platforms. While information can be found on the website of a municipality or agency, and sometimes in greater detail than what is asked, organizations may also redirect requesters to websites where trying to find information quickly becomes a true nightmare.

## **5. Discussion and conclusion**

Our findings show a predominance of FOI barriers over compliance, although certain behaviors are proof of deeper problems (lack of training and/or awareness, culture of opacity, employees struggling with digital platforms, etc.). Other variables, such as administrative capacity, may also explain the differences observed in our data. As mentioned above, municipality size may play a role in the regional heterogeneity identified in the Belgian case (Table 4). This adds to previous findings in the literature that focused on national FOI laws, specific agencies, or municipalities located in a specific area. Prior contributions also concentrated on factors that may affect replies to FOI requests, such as mentioning the law (e.g., Worthy et al., 2017), the

tone of the request (Cuillier, 2010) or the “googleability” of the requester (see Michener et al., 2016), and identified barriers to FOI implementation. However, they did not provide a typology of these barriers, based on the replies received in their studies. Moreover, this article provides a refined framework to FOI barriers that significantly extends the previous models and typologies provided in the literature, and achieves it through data collected on the field, which was not the case in past efforts to build a model of FOI barriers.

While our study does not aim at providing a thorough assessment of FOI compliance, which we also leave to further research, it is essential to compare the levels of maximized transparency observed in Belgium with those observed elsewhere in Europe. About 20% of Belgian municipalities disclose the complete information, which is a better compliance rate compared to England (15%). However, it is higher in Slovakia (30%), Italy (59%, although the figure includes only large municipalities) and the Netherlands (77%). A word of caution is necessary for such comparisons, since the field studies mentioned are adapted to country-specific characteristics. For this reason, the content of the request differs by country, which may determine different incentives to raise barriers. The experience of local administrative staff with FOI may also depend on the recency of the law and its use by the public. Our findings have concrete implications for both future policy and research developments, as presented below.

Before turning to these implications, we add that discussions around FOI implementation in European countries, including Belgium, have already been presented in a collective book (Dragos et al., 2019). This book focuses mostly on legal aspects, including the nature and definitions of documents in various countries. Comparisons revolve around oversight bodies, exceptions, fees, scope, applicant profiles, and timeframes. While they provide a compelling comparative view on FOI regimes in Europe, they do not concentrate much on implementation, and therefore on barriers identified in practice. In this regard, our study adds to this collaborative work by presenting a framework that may complement this legal approach. Our hope is that such a framework, focusing first on the *de facto* application of FOI, will be used in a comparative manner in Europe and beyond.

### *5.1 Implications for policy development*

As already stated, FOI is a crucial tool to ensure government nodality (Howlett, 2009). Its effective and successful implementation by public authorities allows governments to better understand their citizens’ expectations and needs, and enables citizens to better grasp government actions and decisions. This may foster citizen involvement/engagement in policymaking (Hood, 1983; Margetts and John, 2023). This paper specifically aims to enhance understanding of the barriers that hinder the effective implementation of FOI laws at the level of municipal administrations. The traditional distinction between agency (individual or collective actions) and structure (institutional and organizational factors) helps us understand the nature of these barriers (Esposito et al., 2023; Esposito and Terlizzi, 2023), and thus informs policy recommendations to overcome them.

Bearing in mind this distinction, our study provides empirical insights into “structural barriers” encompassing institutional (e.g., legal constraints or political culture) and organizational (e.g., complex bureaucratic processes or lack of financial resources) barriers to FOI implementation. Additionally, we identify “agentic barriers” representing obstacles that arise from specific actors’ actions and/or decisions (e.g., municipal officials choosing not to share sensitive information). These findings provide a comprehensive perspective that allows for a systemic understanding of implementation challenges at the macro (institutional), meso (organizational), and micro (individual) levels within the policy environment. Therefore, considering both structural and agentic barriers in FOI implementation has significant strategic implications. Addressing structural barriers, such as legal constraints and bureaucratic complexities, requires

policy reforms, streamlined processes, and adequate resource allocation. Implementing clear legal frameworks and investing in organizational capacities are essential. In this regard, setting clear processes such as a creating a direct contact or a platform for dealing with FOI requests, and then prioritizing the treatment of these requests seem vital. Moreover, these processes should build on a systematic treatment and gain experience from how past requests were dealt with in order to guarantee continuous improvement in responding to FOI requests, and establish a virtuous learning dynamic within public administrations.

Addressing agentic barriers, related to individual or collective actions, demands targeted interventions, including training programs to enhance awareness, ethical decision-making, and accountability among officials. Encouraging a culture of transparency, promoting ethical behavior, and ensuring accountability mechanisms are crucial. Strategically, a holistic approach is necessary. Policymakers should focus on legal reforms, administrative simplification, and capacity-building within organizations. Simultaneously, fostering a culture of transparency and accountability through awareness campaigns, training, and incentives can help individuals and organizations overcome agentic barriers. This may take the form of internal workshops and training sessions, using the expertise of other municipalities in dealing with FOI requests and more specifically with members of the regional commissions of access to documents. Formal or informal encounters and discussions with people and organizations using FOI on a regular basis may also help overcome agentic barriers. In this regard, research and academics in general may play a central role.

### *5.2 Implications for future research*

These inputs from our experiment add to the literature as they not only provide a systemic understanding of micro-, meso- and macro-level barriers to FOI implementation in Belgium but also consist in a first empirical application of Pasquier and Villeneuve's framework (2007). Extending this framework has concrete consequences and implications for research and practice. From an academic perspective, our study contributes to developing our knowledge on FOI; from a practical point of view, it raises significant issues for requesters, at least from a democratic-debate perspective. It may lead to recommendations for municipalities that want (and need) to increase transparency. For instance, the absence of a dedicated contact person may reinforce the "silence of administrations" problem, increase the number of unanswered requests, or delay the replies beyond the deadline detailed in the law.

Future research may therefore focus on FOI barriers from different perspectives (levels), but also build on the barriers identified here to assess the situation in other countries. In addition, the link between variables such as municipality type and barriers to successful implementation of FOI can also be investigated in other countries. This would contribute to building more solid evidence on the empirical association between these variables (as well as other institutional, social and political ones) and FOI barriers. In this sense, this would certainly lead to statistical models to test such associations, e.g., through correlation and regression analyses. Qualitative research may also build on the typology established here and contribute to further identify and understand the reasons for (partially) failed implementation of FOI in various contexts.

### *5.3 Limitations*

This article also meets with limitations. The first regards the coding of the replies and their interpretation. It is almost impossible to differentiate between partial/incomplete replies based on misunderstandings or lack of resources and deliberate intention to hide information. In this regard, even qualitative data would be difficult to gather, due to social desirability bias: who will admit to voluntarily violating the law? An interesting path for future research may point to participant observation, rather than relying on raw replies or secondary (qualitative) data.



Another limitation relates to factors that may influence municipalities' behaviors. While this does not exempt them to comply to FOI, receiving requests about personal information, or information that can harm politicians, may have an effect on attitudes towards transparency. Here, data collected via interviews, for instance, may help researchers better understand this kind of effect.

An additional limitation refers to the methodological issues encountered in our study. Indeed, we contacted the municipalities based on a mailing list provided by a non-profit organization that has been active in FOI for many years. However, in the absence of clear contacts in each municipality regarding FOI requests, it was impossible to directly and systematically send the requests to the same people and departments. This was also quite impossible due to the diverse structures and organigrams that characterize Belgian municipalities. In case of replication in other settings, this is not a problem when detailed contact points are provided (e.g., in Italy); however, this may become more problematic when the law does not provide the opportunity to contact municipalities via e-mail, like in the Belgian case.

Finally, we are aware that our article is mostly focused on the barriers as they emerge from e-mail interactions between citizens and municipal officers, and does not include the socio-economic and political characteristics of the municipalities. Addressing them (e.g., political parties in power, mayors' characteristics) may well be an avenue for future research (both in the Belgian context and elsewhere) that will certainly allow to have a systemic view of the micro-, meso- and macro-level factors that facilitate or hinder the effective implementation of FOI policies.

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## **Appendix** (From the working paper of Esposito et al., 2024)

3. Research design: drawing on citizen science to run a field-experiment evaluation of FOI implementation in Belgium

### *3.1 Empirical setting: FOI laws in the institutional context of Belgium*

Belgium has a federal system with multiple layers of government (Table A1). At the national level, there is the Federal government. Below it, there are three language-based communities (Dutch-speaking Flemish Community, French-speaking Walloon Community, and German-

speaking Community) and three regions (Flanders, Wallonia, and the Brussels-Capital Region). Additionally, there are ten provinces and 581 municipalities within these regions.

**Table A1.** Belgian institutions by level of government

Levels	Institutions				
<i>Federal</i>	National institutions: House of Representatives, Senate, King				
<i>Community</i>	German-speaking	French	Brussels Common Community Commission		Flemish
			French Community Comm.	Flemish Community Comm.	
<i>Region</i>	Walloon Region		Brussels-Capital Region	Flemish Region	
<i>Linguistic</i>	German	French	Bilingual (French-Dutch)	Dutch	
<i>Province</i>	5 provinces		Brussels-Capital	5 provinces	
<i>Municipality</i>	262 municipalities		19 municipalities	300 municipalities	
<i>Inhabitants<sup>a</sup></i>	3,633,795		1,208,542	5,589,069	

<sup>a</sup>Source: Statbel (2020) *Structure of the population* (January 1<sup>st</sup>, 2019).

In 1994, Belgium implemented a national FOI law, and each region has its own decrees governing municipalities. The FOI framework allows individuals to submit written requests (including via email) for documents held by administrative authorities. Requesters generally do not need to demonstrate a specific interest, except for personal documents. Authorities must respond to FOI requests within 30 days, which can be extended to 45 days if necessary, and refusals must be substantiated.

However, regional variations exist. In the Brussels-Capital Region, requesters must include a scanned copy or photograph/photocopy of their identity document with the FOI request. Wallonia has a 30-day response time, extendable by up to 15 days, with reasons for rejection or postponement communicated. The Brussels-Capital Region's response times range from 20 to 40 days based on information volume and complexity. In Flanders, the processing time is 20 calendar days, extendable to 40 days with justification. Requests in Flanders that are overly general may need revision and completion before being addressed by authorities.

### 3.2 Recruiting citizen scientists

This article outlines an initiative led by the scholars co-authoring this paper, in collaboration with a third-sector entity and a group of 36 citizen scientists. These three groups of actors collectively constituted the research team for this study. The participation of diverse third-sector organizations in citizen science, especially those engaged with socio-political issues, is well-documented (Gobel et al., 2021). In our citizen science project focused on evaluating FOI in Belgium, we partnered with Anticor, an organization based in Brussels dedicated to fighting corruption and enhancing transparency to bolster citizen oversight over the Belgian political and administrative life.

Research indicates that third-sector organizations can assume various roles in citizen science projects, such as contributing to scientific knowledge production, managing research activities, and promoting knowledge dissemination beyond the immediate research findings (Gobel et al., 2021). Anticor brought to the project technical knowledge regarding Belgian FOI laws and also

experience in using FOI for information gathering. This expertise was crucial in developing the research design and in the training of the citizen scientists participating in the study.

The citizen scientists were selected from among 45 graduate students enrolled in the Master of Science in “Public Administration” program. During one of the program’s course, spanning 24 hours, the students were equipped with comprehensive insights into the policy cycle, evaluation’s significance in policy-making and foundational skills in data analysis. The students then delved into practical cases of government transparency policies, with a primary focus on FOI in various countries during the course. They were offered the opportunity to become citizen scientists in a research project evaluating FOI implementation in Belgium instead of undergoing a traditional exam. They were also informed that choosing the citizen science project would not impact the final course grades. 36 students willingly chose to engage in the project, formalizing their commitment through signing a non-disclosure agreement to ensure the confidentiality of all information used during the research. This recruitment process preserved students’ voluntary nature of participation in the field experiment.

### *3.3 The evaluation questions*

Our citizen science evaluation aims to assess Belgian municipalities' compliance with FOI laws. This involves two evaluation questions: EQ1) *Do Belgian municipalities respond to FOI requests and provide the requested information?* EQ2) *Do they discriminate among requesters?* Answering these questions implied submitting requests, quantifying and analyzing responses, assessing response quality, and exploring discriminatory practices in FOI request processing.

Consistent with the approach advocated by Senabre Hidalgo et al. (2021), our project engaged citizen scientists as collaborative researchers, acknowledging their significant contributions and direct experiences concerning transparency and the application of FOI at the local government level in Belgium. They were therefore actively involved in data collection, generation, analysis, and interpretation.

### *3.4 Data collection and analysis*

Building upon citizen science and prior contributions, our research team orchestrated a field experiment addressing the evaluation questions delineated above. The experiment is based on sending access to information requests to all Belgian municipalities. The requests pertain to the same subject matter but are formulated slightly differently, so as to be attributable to individuals with different profiles (a professor, an ordinary citizen, an advocacy organization active in the field of transparency) and demonstrate varying levels of familiarity with FOI legislation (mentioning it or not). These requests and municipalities were randomly paired.

To set up and carry out the experiment, the research team undertook the following tasks: (1) selecting the relevant document for FOI requests from municipalities, (2) creating and sending standardized email templates for the submission of these document requests to the municipalities, (3) meticulously coding and analyzing the interactions that occurred between the requesters (citizens scientists) and the municipalities in response to requests.

#### *3.4.1 Selecting the relevant document for FOI requests*

The team opted for exploiting FOI to request the explanatory note for the upcoming municipal council meeting, along with its annexes. The choice of this document followed several discussions with Anticor. This note, within the context of municipal council meetings, offers essential background information, context, and explanations about the topics, agenda items, or decisions set for discussion or decision-making during the forthcoming meeting. Its main objective is to equip council members and the public with a comprehensive understanding of the matters scheduled for discussion, elucidating the intent and importance of each agenda item.

Typically, this note includes attachments offering additional information and specifics pertinent to the explanatory note. The nature of these attachments can vary, reflecting the topic of the session and the practices of the local authority. Standard materials in the annexes encompass detailed reports, studies, or evaluations relevant to the agenda issues; documentation of relevant statutes, regulations, or legal interpretations; financial data, such as budget proposals, financial reports, or cost projections linked to agenda topics; and copies of significant contracts, agreements, or suggestions concerning the agenda. Anticor has emphasized the significance of this document for citizens in promoting democratic engagement. By providing access to this document, it enhances citizen participation in the governance process and ensures the council's accountability, facilitating public monitoring.

3.4.2 Creating and sending standardized e-mails for submitting requests to municipalities

During a classroom session, the team comprising academic researchers, Anticor, and citizen scientists composed an email to formally request the notes and related annexes from Belgian municipalities. The purpose was to investigate if public administrations show bias in handling requests depending on the requester's identity and the explicit reference to FOI legislation. To this end, two aspects of the email—the signature and a specific line citing the regional FOI legislation for legal justification—were varied, creating five different versions of the text:

- Request by a non-googleable<sup>5</sup> citizen not mentioning FOI law (“common citizen request”).
- Request by a non-googleable citizen mentioning FOI law (“common citizen + FOI request”).
- Request signed by a University Professor not mentioning FOI law (“Professor request”).
- Request signed by a University Professor mentioning FOI law (“Professor + FOI request”).
- Request by a non-governmental organization (“Advocacy organization request”).

The non-googleable citizen signing requests (a) and (b) was a Belgian citizen who collaborated but was not part of the citizen scientists' team. The University Professor signing requests (c) and (d) is one of the study’s co-authors. Requests (a), (b), (c) and (d) were administered by the citizen scientists divided in 4 groups, whereas Anticor administered the (e) request.

Each of the 581 Belgian municipalities was assigned to one treatment, a process conducted through randomization stratified by region and municipalities’ population size (<12k, between 12k and 50k, and >50k inhabitants). Table A2 provides a summary of the composition of the treatment groups.

**Table A2.** number of municipalities assigned to each treatment by region

<b>Treatment</b>	<b>Brussels-Capital Region</b>	<b>Flanders</b>	<b>Wallonia</b>	<b>Total</b>
a) Common citizen	4	60	53	117
b) Common citizen + FOI	4	61	52	117
c) Professor	4	60	53	117
d) Professor + FOI	4	60	53	117
e) Advocacy organization	3	59	51	113
Total	19	300	262	581

<sup>5</sup> A non-Googleable citizen is a person whose background and profile cannot be identified through a Google search.

The method for dispatching requests was systematized as follows: Citizen scientists accessed the email account assigned to their respective groups, initiated a new email, and accurately transcribed the subject line and body text designated for their group, ensuring linguistic precision. They then attached a digital copy of the requester's identification card and entered the municipality's email address into the "To" field from a provided list before dispatching the email. Each request was sent on an individual basis. Given that there were approximately 117 municipalities for each group, the responsibility was distributed among group members. To ensure consistency and uniformity across all communications, it was imperative that these requests were dispatched in a timely manner. This operation was executed between the 13th and 15th of March, 2023. The phase of collecting data concluded on the 10th of May, extending past the response period mandated by the legislation.