

Transparency Evaluation of Brazil's

Public Prosecutor

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Transparency Evaluation of Brazil's
Public Prosecutor

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(Ministério Público)

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EXECUTIVE SUMMARY

With the enactment of Law 12.527/2011 on Access to Public Information (ATI law), Brazil became the 91st country in the world, and the 13th in Latin America to grant its citizens full rights of access to public information, which are limited only in exceptional circumstances. In practice, application of this right requires the participation of public institutions and public servants, as well as widespread use of the law's provisions by citizens, civil society, academics and students of Law and Public Administration. In 2014, the Public Transparency Program at the Fundação Getulio Vargas (PTP-FGV) evaluated levels of compliance with the ATI law through two surveys: an overall evaluation in four states, three cities and the federal government, covering a range of topics; and a specific assessment of Brazil's Judiciary. The current report employs similar methodology to assess all 29 branches of Brazil's Public Prosecutor (Ministério Público).

First, using the methodology developed by the PTP-FGV, this study examined the extent to which the various branches of Brazil's Public Prosecutor comply with the ATI law.

Second, the research focused on specific issues: remuneration of Public Prosecutors, mechanisms to prevent nepotism, and promotion criteria for prosecutors and attorneys. These are important issues for Brazilian society, especially given the current economic crisis and public cutbacks.

With these aims in mind, this study is designed to help foster more transparent institutions and entities.

The authors are committed to promoting both government transparency and rigorous academic research, and trust that this study has the potential to assist the Public Prosecutor to implement and improve its transparency practices. Public institutions, public servants, and society will benefit from improved government transparency practices, which make for more professional and efficient public administration.

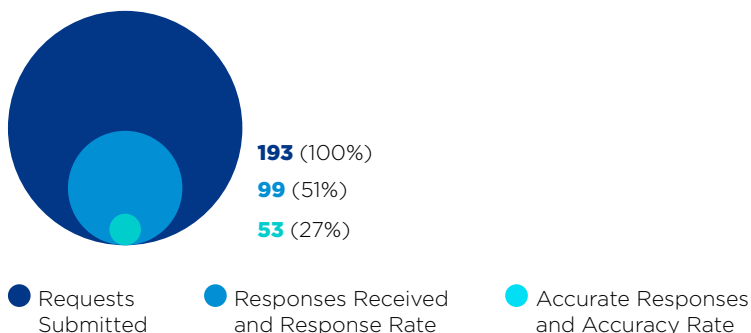
1 - Results

The results indicate that compliance with the ATI law by the Public Prosecutor is poor, although compliance does vary among its various branches. Evaluation of the 29 Public Prosecutor's Offices showed that half the ATI requests submitted went unanswered, while only one in four received even minimally accurate responses. Nonetheless, some concrete situations were identified where relatively simple measures could bring major gains in citizens' access – e.g., introduction of a specific Electronic Citizens' Information Service System (e-SIC) platform, and files supplied in machine-readable formats.

Figure 1 provides an overview of the study results.

Figure 1 - Overall Results

Overall Results



2 - Conclusions and recommendations

In view of the results presented above and the lessons learned from conducting this study, we recommend that measures be taken to:

- Secure robust commitments to promote, protect, and comply with the ATI law;
- Coordinate efforts among the various Public Prosecutor's Offices to improve information management, upgrade public transparency-related infrastructure, and build capacity among public servants tasked with answering requests under the ATI law;

- Use a specific system for receiving ATI requests and interacting with the public. All Public Prosecutor's Offices that currently use Ombudsman websites or the equivalent of a 'Contact Us' link to receive passive transparency requests should consider adopting a specific platform for receiving and processing ATI requests, preferably with the functionalities of the federal e-SIC platform;
- Monitor and follow up ATI request statistics more rigorously, and ensure they are properly published. The oversight body, National Council of the Public Prosecutor (Conselho Nacional do Ministério Público, CNMP), does important monitoring of active transparency. That can and should be extended on a larger scale to passive transparency;
- Suit ATI response practices to making information available in machine-readable formats, in keeping with the open public data principles endorsed by the Brazilian government by its commitment to the Open Government Partnership (OGP); and
- Delimitar de maneira mais precisa as exceções ao direito de acesso à informação, de acordo com as melhores práticas internacionais.

INTRODUCTION

This study examined compliance with Access to Public Information (ATI) Law No. 12.537/2011 on the part of the Public Prosecutor's 29 regional and federal Offices, by submitting access to information requests on issues of importance to Brazilian society, such as remuneration and promotion criteria for Public Prosecutors, and the existence of mechanisms to prevent nepotism.

Brazil's ATI law is one of the strongest in the world, according to Right-to-Information Rating, an international ranking that measures the strength of the ATI legal framework. Brazil's ATI law sets out rules fundamental to ensuring that citizens find information on government websites (one of the dimensions of active transparency) and can request information not previously made available by public authorities (passive transparency). In addition, the Brazilian law incorporates principles on open data, a concept that has evolved significantly at the international level in recent years, and refers to "data that can be freely used, re-used, and redistributed by anyone".

Public transparency is an essential tool for democracy that should be exercised to the fullest extent possible, such that citizens can access, re-use, and share public data freely, which can increase participation and social oversight of government actions.

In summary, the ATI law assures citizens more rights and, at the same time, requires that administration by public servants follow a new paradigm of responsiveness and good information management. By disclosing information on the public administration to civil society, the ATI law will motivate public servants to act more professionally, competently, efficiently, and diligently. After all, secrecy is the first refuge of incompetence, inefficiency, and maladministration.

1 - The General Research Question

■ IS THE PUBLIC PROSECUTOR COMPLYING WITH BRAZIL'S ATI LAW?

In addition to performing an essential role in the justice sector, the Public Prosecutor is constitutionally competent to protect fundamental rights, as well as diffuse and collective interests. Accordingly, given that the right to public transparency is among the fundamental rights guaranteed in the Constitution (Article 5, XXXIII), it becomes particularly important to examine how far the Public Prosecutor is in compliance with the ATI law. Not only is the fundamental nature of the right to transparency written into Brazil's Constitution, it is also reaffirmed in precedents at the Inter-American Court of Human Rights, which have ratified the right of access to public information in the cases *Chile v. Claude Reyes et al.*, and *Gomes-Lund v. Brazil*. In addition, a number of international treaties and conventions to which Brazil is a signatory, including the 1948 United Nations Universal Declaration of Human Rights, endow the right to access information with the status of a fundamental human right. As the guardian of this and other fundamental rights, the Public Prosecutor is expected to set an example for other public institutions in complying with the ATI law.

However, while the Public Prosecutor operates on a “principle of unity”, it is not one single office. Each Public Prosecutor's Office at the state or federal level reflects different institutional cultures, and can be evaluated using metrics such as workflow congestion, budget, prosecutors' productivity, and so on. Consequently, these institutions can also be compared by level of compliance with the ATI law; and that is the practice of the oversight body, the National Council of the Public Prosecutor (Conselho Nacional do Ministério Público, CNMP) in assessing compliance with its rules on active transparency. In this report, however, Public Prosecutor's Offices are evaluated for passive transparency only.

The general research question of this study was addressed using the methodology for evaluating passive transparency developed by the Fundação Getulio Vargas' Public Transparency Program (PTP-FGV). Development of the methodology drew on review of evaluations from around the world and those conducted by researchers from Brazil. As detailed in Chapter 1, the methodology applied three simple metrics: response rate, accuracy rate, and average response time. The response rate is the proportion of requests answered by a given institution. The accuracy rate is the proportion of requests that received responses providing a minimally accurate

answer. The average response time is the number of days between the dates when the request was submitted and the response received. These three metrics serve to gauge basic implementation and institutional commitment to the ATI law.

2 - The specific research question

- WHAT ARE THE CHALLENGES AND BARRIERS TO ACCESSING INFORMATION ON THE PUBLIC PROSECUTOR'S TRANSPARENCY PLATFORMS?

Problem identification is one indispensable first step towards improving the transparency practices of any public institution. By identifying the problems, public administrators have more information to guide decisions on how best to allocate funds earmarked for investment in transparency.

3 - Rationale of the ATI request subjects

In order to assess compliance with the ATI law, this study opted to focus on substantive administrative issues that have normative and financial impacts on the public administration and that embody a clear public interest in assuring social oversight. We focused on the subjects of public service remuneration and nepotism, which although politicized, permit an analysis not only of the Public Prosecutor's compliance with the ATI law, but also of whether it is abiding by the constitutional caps on public service remuneration. Other important issues examined included performance assessment mechanisms and criteria applied to Public Prosecutor's Office staff, financial management and, naturally, government transparency. These are certainly among the most sensitive and important issues in current discussions regarding the Public Prosecutor in Brazil. By analyzing responses to ATI requests, these issues can be discussed in greater depth, and a dialogue can be established with other academic research into important organizational aspects of the Public Prosecution service.

A recent Federal Supreme Court decision expressed the understanding that in the balance between the two constitutionally guaranteed rights - the right to privacy and the public interest in disclosure of information on remuneration of public servants identified by name - the public interest in comprehensive disclosure of individual information prevails. In healthy democracies, disclosure of information on public spending is indispensable, and functions as a veritable "oxygen of

democracy". Ultimately, all expenditure of public funds – with extremely rare and occasional exceptions– requires proper disclosure on the respective transparency portals.

However, this study was unable to obtain detailed data on civil servants' remuneration in a machine-readable format and aggregated to the specific parameter requested (i.e. annual data) from most of the Public Prosecutor's Offices. Nonetheless, additional measures were taken to collect some remuneration data, regardless of the quality of the responses received: standards of disclosure of remuneration information available at Public Prosecutor's Offices were mapped on active transparency platforms. Further details on standards of disclosure on remuneration can be found in Chapter 3 of this report.

Lastly, it was possible to obtain substantially more information on measures to prevent nepotism, because several institutions sent accurate answers on the subject.

This research was a cooperation between the FGV Brazilian School of Public and Business Administration (EBAPE) and FGV Rio Law School's Center for Technology and Society (CTS). The topics in this study fall within the research agendas of the FGV Rio Law School, which has long focused on contemporary issues in the management of the justice sector, and its fundamental institutions; and the FGV EBAPE's research agenda, which for decades has been researching the evolution of public administration in Brazil. These issues also relate strongly both to major present-day problems (the economic crisis and the crisis in political legitimacy) and to historically persistent problems (social inequality and official privileges).

4 - The Public Transparency Program

In 2014, the Public Transparency Program coordinated by the FGV EBAPE and FGV Rio Law School's CTS performed two transparency evaluations. In the first, a general evaluation, 453 ATI requests were submitted to the three powers at the federal level, and to seven different subnational governments – at the state level (Federal District, São Paulo, Minas Gerais, and Rio de Janeiro), and the municipal level (the state capitals São Paulo, Belo Horizonte, and Rio de Janeiro). The second, targeting exclusively the justice sector, assessed 40 courts, including the 27 State Courts of Appeal, the three Supreme Courts (Federal Supreme Court, Supreme Court of Justice, and Supreme Labor Court), five Regional Labor Courts, and five Regional Federal Courts. The same seven questions were sent to each of the 40 courts, totaling

280 ATI requests.

Both surveys used the “simulated user” data collection technique, which is widely employed in transparency evaluations, and considered to be one of the most effective ways to measure public institutions’ compliance with ATI laws, because it simulates a citizen’s experience of the bureaucratic process of requesting and collecting information. The research methodology was designed to be simple and easily replicable by other institutions or individuals interested in evaluating the level of public institutions’ compliance with ATI laws.

These projects are in line with the institutional mission of the Transparency Audit Network, an international initiative supported by the Open Society Foundations, which connects a global network of scholars and institutions working in the public transparency field.

5 - Report structure

This report is divided into six chapters. Chapter 1 introduces the methodology used in the study as well as the statistical tests used to validate the research. Chapter 2 presents an analysis of the overall results and results for each question. Chapter 3 explores the Public Prosecutor’s transparency regulations in depth in order to establish the content of the ATI request questions, which are given in full. Chapter 4 discusses pro-transparency practices and barriers to transparency identified during this evaluation, and Chapter 5 analyzes the platforms through which ATI requests were submitted to the institutions evaluated. Chapter 6 closes the report with conclusions and recommendations.

CHAPTER 1 | METHODOLOGY

1 - Scope of the Evaluation

In all, 29 of Brazil's Public Prosecutor's Offices were evaluated. These included three federal offices - those of the Federal Public Prosecutor, the Labor Public Prosecutor, and the Public Prosecutor for the Federal District and Territories - plus each of Brazil's 26 State Public Prosecutor's Offices.

As regards the administrative organization of the Public Prosecutor, Law 8.625/1993, the National Framework Law of the Public Prosecutor (Lei Orgânica Nacional do Ministério Público, LONMP), regulates the service at the state level. Supplementary Law 75/1993, the Framework Law of the Federal Public Prosecutor (Lei Orgânica do Ministério Público da União, LOMPU), stipulates the organization, duties and bylaws of the Public Prosecutor at the Federal Level.

In order to ensure greater comparability with the transparency evaluation of the justice sector conducted by the FGV-EBAPE and FGV Rio Law School's CTS, this evaluation excluded the Military Public Prosecutor's Office and the Electoral Region Prosecutor's Offices in each state and the Federal District.

Also, although the Federal Public Prosecutor's and Labor Prosecutor's Offices have regional subdivisions, the ATI requests were not addressed to individual regional offices. This decision was due to the fact that the Federal Public Prosecutor's Office and Labor Prosecutor's Office have only one service channel each for ATI requests to their regional offices. Therefore, submission of separate requests mentioning each regional office individually would result in the same channel being tested repeatedly. Moreover, repeated identical requests might alert the responding agency that the requests were part of an ATI evaluation, which could bias the research results.

2 - Procedure

A total of 193 ATI requests were sent over a two-month study period.

The transparency evaluation of the Public Prosecutor applied the same simulated-user methodology as other transparency evaluations conducted by the FGV's Public Transparency Program. The methodology aims to replicate the steps that would be carried out by citizens interested in using the ATI Law, while minimizing the risk that several requests sent by a single individual might reveal that an evaluation was in progress, potentially biasing the responses. Accordingly, requests were made by four different identities: two PTP researchers and two volunteers interested in the study.

All research team members were trained to follow rules and procedures when submitting requests and recording responses. For each ATI request submitted, a specific form was completed with details on the submission process, such as the date, website used for filing the request, protocol number, and any difficulties encountered. A field was also left free for noting general observations, which subsequently informed a qualitative analysis. All the information contained in the form was synchronized with a real-time database, and verified by the study coordinators.

Requests were submitted without informing the government agency that the request formed part of a transparency evaluation – which, in any case, is not required, as the ATI Law (Art. 10, Paragraph III) expressly exempts inquirers from providing government bodies with the reasons for information requests. All ATI requests were sent with the same wording and any minor differences related only to aspects such as presentation and signature.

The following rules were applied:

- Requests were sent between March and May 2015 in order not to reveal to the institutions involved that a transparency evaluation was in progress;
- Responses received within 20 calendar days after the submission of the ATI request to the institution were recorded;
- Each team member responsible for submitting requests was instructed to do so by the most appropriate virtual means. In some cases, although the institution had made a specific platform available for receiving ATI requests, difficulties in web navigation meant it could not be located or accessed. In such cases, the mechanisms used to submit the request were the suggested alternative or

whatever seemed the most appropriate, such as the institution's Ombudsman website, "Contact Us" links or general e-mail addresses.

- Specific e-mail accounts were created for each user's ATI requests, and were monitored to identify receipt of responses. In addition, given that some agencies did not respond by e-mail, it was also necessary to monitor the passive transparency platforms used to submit the requests.

3 - Metrics

As mentioned in the Executive Summary, the quality of government agencies' passive transparency was evaluated on the basis on specific metrics, easily replicable by others interested in transparency evaluation.

The three main metrics used (response rate, accuracy rate, and average response time) are detailed below.

Using these three metrics, it is possible to analyze both objective aspects of a government agency's compliance with the rules of the ATI Law (response rate and average response time), and material aspects of response accuracy.

3.1 - Response rate

Response rate is a basic indicator of a government institution's commitment to fulfilling the obligations imposed by the ATI Law. After all, the absence of a response undermines any further analysis of the institution's passive transparency. The concept of response used here was broad and comprehensive, covering any kind of communication sent by email or accessible through the passive transparency platform, except for automatically generated responses announcing extended deadlines or the request's internal processing status. As a result, this metric includes responses that, for example, either rejected requests or reported that the information requested was unavailable.

3.2 - Accuracy Rate

Evaluation of accuracy was limited to identifying whether the response bore a minimum of correlation and congruence with the object of the ATI request. The concept of accuracy that was applied can be illustrated by the following example:

if a request for a list of the monthly amounts paid to the government body's public servants received, in reply, a copy of the internal rules governing public servant remuneration, this would not be considered an accurate response. In this hypothetical case, the agency would have provided a generic response that failed to address the object of the ATI request. Nor would a response be considered accurate if it: (i) rejected the request or (ii) reported that the information was unavailable.

In order to determine the response accuracy rate, the Public Transparency Program (PTP) developed a specific methodology involving three consecutive phases:

1. The accuracy evaluation criteria of the PTP methodology were adapted to the research questions of this study;
2. All responses received were coded on these criteria, by two researchers independently; and
3. The accuracy rate and inter-coder reliability rate were calculated.

3.3 - Coding of all Responses Received

To evaluate accuracy, two researchers coded the responses, and assigned them numerical accuracy scores. The coding process involved two separate stages. In the first stage, scores were assigned to each response, identifying it as completely accurate, fairly accurate or inaccurate. This calculation used the simple ordinal scale described below.



Accurate response (2 points)

The response relates directly to what was requested.



Fairly accurate response (1 point)

The response bears no direct relation to what was requested, but is nonetheless relevant enough to the ATI request in order to be evaluated.



Inaccurate response (0 points)

The response bears no relation to the ATI request.

A three-point ordinal scale was chosen because a dichotomous scale would not produce enough differentiation to determine response accuracy (on such a binary scale, the options would be limited to “accurate” or “inaccurate”). By contrast, a scale with more than three levels would be overly detailed for the coders, who would be required to rate a wide variety of questions.

The second phase began once the two researchers had completed the rating process. At that point, it was possible to obtain the arithmetical mean of the accuracy scores for each response and, subsequently, the average accuracy scores for the different agencies. Note that, for the purpose of this evaluation, for a response to be considered accurate it had to score at least one (1) from both coders.

3.4 - Inter-coder Reliability

Coding in pairs aims to make results more reliable by helping to reduce the risk of bias due to individual subjectivity. The Kappa correlation coefficient was used to test the reliability of this paired coding of response accuracy (by Coder T and Coder L). Calculation of this coefficient compares inter-coder agreement with the agreement expected if coding had been random.

Kappa coefficient values range from 0 to 1, where 1 means perfect agreement, and 0 means full disagreement. Following Landis and Koch, the following equivalents were used to standardize reference to values within this range:

Table 1 - Kappa value interpretation

Result	Agreement
0,00	Poor
0,00 a 0,20	Small
0,21 a 0,40	Fair
0,41 a 0,60	Moderate
0,61 a 0,80	Substantial
0,81 a 1,00	Near perfect

The Kappa test for the accuracy rating gave the following results:

Table 2 - Kappa Test Results

Variable	N	Kappa	Standard Deviation	Agreement	Expected Agreement	P-value
Accuracy	98	0.6328	0.0703	75.76%	33.98%	0,000

There was substantial agreement in accuracy coding (Kappa coefficient of 0.6328 and agreement ratio of 75.7%), with a result close to the 80% standard which serves as a benchmark of excellence in content analysis methodology. Accordingly, it was concluded that the coding process was reliable and consistent, and was very unlikely to reflect a subjective view.

3.5 - Compliance with the Legal Timeframe

Compliance with the legal timeframe was evaluated simply by counting the number of days from the ATI request submission date to the date the response was received. This indicator reflects the institution's commitment to complying with the requirements of paragraphs I and II of Art. XI of the ATI Law, which stipulate that requests must be answered within 20 days, although- if justified - this can be extended for an additional ten days.

4 - ATI Requests Submitted

Evaluation of the transparency of the Public Prosecutor sought to cover the same issues examined in the 2014 Transparency Evaluation of the Judiciary. The only changes were that one question about remuneration was removed (and incorporated into Question 2 of this study) and one question on ATI Law compliance statistics was added. Table 3 (below) summarizes the topics of the ATI requests sent to the Public Prosecutor's Offices.

Table 3 - Topics of Access to Information Requests Submitted

Question No.	Topic
1 e 2	Prosecutors' remuneration for 2012, 2013 and 2014
3	Mechanisms to prevent nepotism
4	Promotion criteria for Prosecutors
5	Budgets for 2012, 2013 and 2014
6	Criteria for monitoring and evaluating Prosecutors' judicial and extrajudicial performance in 1st, 2nd and 3rd instance proceedings
7	ATI Law compliance statistics

Requests were drafted to be clear and accurate so as to minimize the scope for interpretation by the institution, and reduce the likelihood that requests would be rejected. The appropriate legal terminology was used frame the object of the question, with references to the regulations used by the institutions. The full text of each request is discussed in Chapter 3.

CHAPTER 2 | RESULTS

This chapter presents the results of the transparency evaluation by the Public Transparency Program coordinated by the Brazilian School of Public and Business Administration, Fundação Getulio Vargas (FGV-EBAPE) and the FGV Rio Law School's Center for Technology and Society (CTS). The results are displayed in two different forms: nested bubble charts and consolidated tables.

The bubble charts display the following data:

- Number of requests sent;
- Number and percentage of requests answered (response rate);
- Number and percentage of requests with answers assessed as minimally accurate.

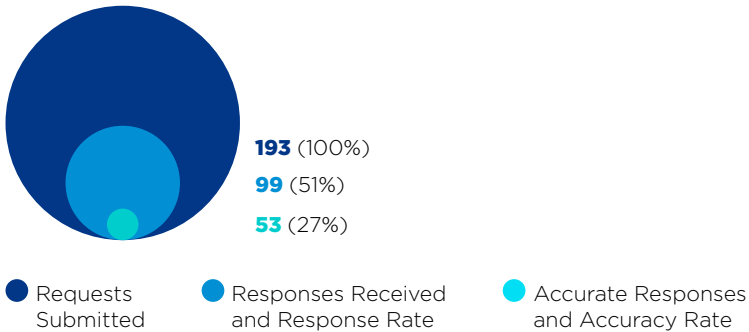
The consolidated table shows a performance ranking of Public Prosecutor's Offices based on the accuracy rate of their responses to the ATI requests used in this study. The table also shows each institution's response rate and average response time.

1 - Overall Results

The same seven questions were sent to each of the 29 Public Prosecutor's Offices, with valid ATI requests totaling 193. Of these 193 ATI requests, 99 were answered, corresponding to a 51.3% response rate. Fifty-three responses were rated as accurate (27.46%), that is, offered minimally relevant answers to the question.

Figure 1 - Overall Results

Overall Results



The ATI Law sets a 20-day deadline for responding to information requests, with a 10-day extension possible on justification (Article 11, § 1 and § 2). The institutions evaluated took an average of 21 days from submission to answer the requests. Of the 29 institutions evaluated, ten (34%) failed to meet the 20-day deadline for responses, and eight (27.5%) failed to respond to any information access request.

2 - Results by Question

This section describes how the institutions responded to each of the ATI questions.

Question 1

The first question requested information on the remuneration of active and inactive prosecutors and staff, and pensioners, at the Public Prosecutor's Office for all the months of 2012, 2013, and 2014, pursuant to Annex I of Resolution 89 of the National Council of the Public Prosecutor (CNMP).

The question asked for the information to be made available on a spreadsheet, in machine-readable format, so that the total amount of each prosecutor's credits and deductions in each given year could be calculated.

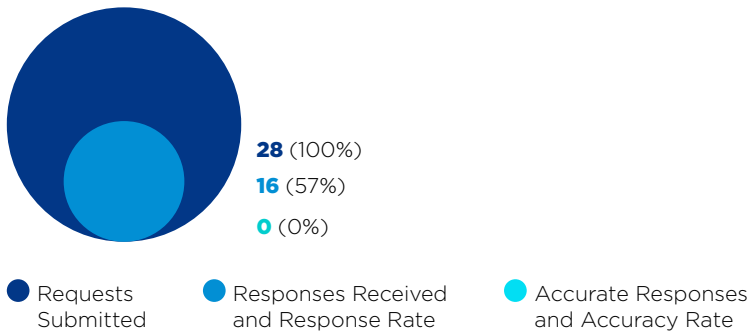
According to the CNMP, this information should be made available on institutional websites. However, as mentioned above, at the time of this research

(March to May 2015), most of the websites, while making the data available, either did not allow spreadsheets to be imported in suitable formats or actively prevented information from being downloaded. In some cases, the search depended exclusively on the interested party's having the name of the relevant prosecutor or public servant. For this reason, Question 1 was designed to obtain data in a form that could be processed and aggregated.

For this question, 28 requests were submitted, of which 16 (57%) received responses. None of the responses was assessed as accurate, as shown in Figure 2 below.

Figure 2 – Results for Question 1

Results for Question 1



The responses to Question 1, from all institutions under evaluation, followed a similar pattern, generally providing a reference or link to transparency portals or to the “Remuneration” section in a transparency portal.

In compliance with Article 7, item VII, of CNMP Resolution 89/2012, the institutions had posted staff remuneration data on transparency portals. However, what was observed in the responses to Question 1 was a broad interpretation of Article 11, Paragraph 6 of the ATI Law, which exempts public agencies or entities from the obligation of supplying information directly if such information is available to the public in printed, electronic or any other universally accessible form.

The legal opinion sent by the Alagoas State Public Prosecutor’s Office illustrates this situation, as shown below:

“The information requested is publicly available on the Transparency Portal and, accordingly, I recommend the interested parties be directed to access it on the Alagoas State Public Prosecutor’s website, pursuant to § 6 of Article 11 of Law 12.527/2011.”

As shown below, no provision for downloading the information requested was found on the website of the Alagoas State Public Prosecutor’s Office (and several other such offices).

It thus appears that, even if the ATI request requires a format different from the one available on the transparency portal, the offices consider themselves exempt from complying with the request.

Note that, under the ATI law and CNMP Resolution 89/2012, institutional websites must permit reports to be recorded in open, non-proprietary electronic formats, as well as allowing automated access by external systems in open, structured, machine-readable formats.

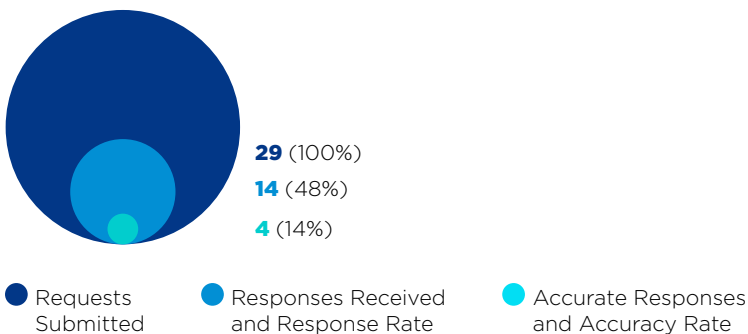
Question 2

The second question also requested information on the remuneration of prosecutors and civil servants in 2012, 2013, and 2014, as well as further details on the different types of remuneration, occasional remuneration, compensation, and statutory deductions.

Twenty-nine requests were submitted with this particular question, 14 of which (48%) were answered. Only four responses (14%) were rated as accurate.

Figure 3 – Results for Question 2

Results for Question 2



Of the four responses considered to be accurate, only those from the Ceará State Public Prosecutor's Office met the question's two requirements, by detailing the headings beyond what is given in the mandatory disclosure sheet, and providing the information in machine-readable format. However, the further details given did not cover all the items requested in the question, but disaggregated only a few headings.

The other three responses (from the State Public Prosecutors' Offices of Goiás, Mato Grosso and São Paulo) were rated as accurate, because the links sent contained the details requested (beyond what is required by CNMP Resolution 89/2012). However, the information could not be viewed in machine-readable format, and was available only by consulting individual prosecutors' payroll details.

The response from the São Paulo State Public Prosecutor's Office included a specific link to a website address (URL) on its remuneration queries page. Despite repeated visits to this website, this link to the data could not be found. This was due to poor visual design, i.e., the link was shown in uppercase letters above a list of other items, so that it resembled a static title rather than an accessible link. Although it was rated accurate, the São Paulo response refers to a URL for a non-nominal spreadsheet (i.e., one that does not identify prosecutors by name, only by registration number). Prosecutors' names can be viewed only by clicking on each of the registration numbers individually.

Lastly, in its response, the São Paulo State Office stated that it was not its responsibility to send data on payments to pensioners, and claimed that this was the responsibility of the São Paulo Social Insurance Department (SPPREV). It justified its response with an explanatory note referring the reader to the São Paulo State government's transparency portal. This justification however, is at variance with the provisions of CNMP Resolution 89/2012, Article. 7, VII.

Question 3

The third question addressed each institution's procedures to prevent practices classed as nepotism by CNMP Resolutions Nos. 01/2005 and 07/2006. Twenty-seven ATI requests were submitted, of which 15 (48%) were answered. Thirteen of the responses (45% of total requests) were assessed as accurate.

Responses to Question 3 achieved the highest accuracy rate in this study, significantly higher than the 26% average. The pattern varied among the responses considered accurate, from those that merely mentioned the laws, regulations and

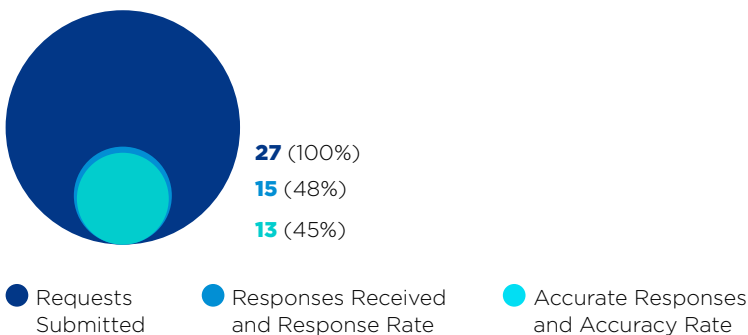
administrative acts regulating the matter, to those that sent links to documents or even copies of internal documents and record cards.

Two cases, however, were striking from the outset for their departure from the best practices otherwise observed. The response from Alagoas State Public Prosecutor's Office requested that the applicant visit the agency to obtain the information requested. Although this practice is permitted by law, this was the only case in all the accurate responses where the information could not be provided via the Internet.

The Paraíba State Public Prosecutor's Office (MP-PB) forwarded the ATI request to the CNMP, claiming that it is the "agency that exercises administrative and financial oversight of the entire Brazilian Public Prosecution Service, and of its prosecutors' performance of their functional duties". Although this statement is true, it is not the responsibility of the CNMP to respond to ATI requests for information from individual offices, especially as the Paraíba State Office should itself have full knowledge of the information requested (on internal procedures used to prevent practices that can be considered nepotism).

Figure 4 - Results for Question 3

Results for Question 3



Question 4

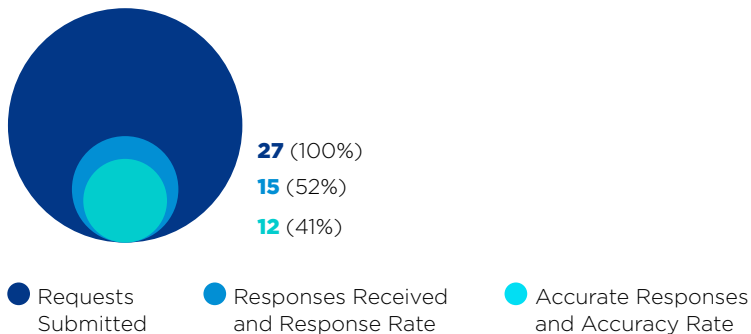
The fourth question requested the full text of each Public Prosecutor's Office's internal rules on promoting its prosecutors, and the minutes of meetings where this

subject had been discussed. Twenty-seven ATI requests were submitted; 15 (52%) received responses, 12 (41%) of which were assessed as accurate.

Most of the responses contained links to the sections of the institutions' websites where the minutes of the High Council and resolutions regulating the issue can be found. In most cases, the answers containing the links and directions were assessed as accurate, and were submitted before the legal deadline (an average response time of 16 days).

Figure 5 - Results for Question 4

Results for Question 4



Question 5

Question 5, addressing the institutions' budgets for 2012, 2013, and 2014, requested details on the amounts allocated to goods and service procurement, and expenditure on human resources. Twenty-seven ATI requests were submitted, 12 of which received responses (41%); of these, 4 (14%) were assessed as accurate.

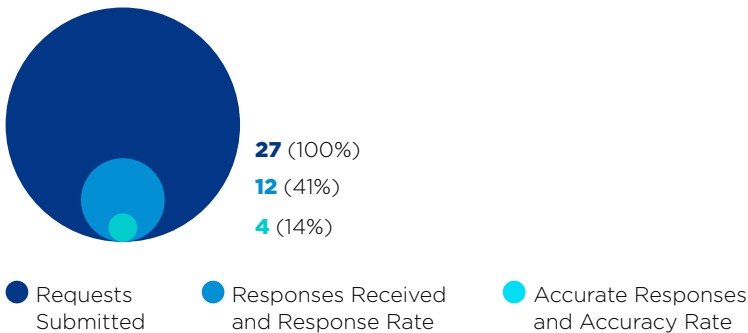
The responses to Question 5 returned the lowest accuracy rates. They also showed the same practice as mentioned in relation to Questions 1 and 2. This question requested further details on public information on the budget and, accordingly, responses were assessed as accurate if they referred inquiries to transparency portals where the overall budget was generally already available, providing it was possible to locate the information requested.

Some situations encountered here illustrate the challenges facing public agencies in meeting ATI requests. The offices of the Federal District and Territories

and of Goiás State attached files with electronic documents, where the data listed in the ATI request was highlighted. While, on the one hand, this made it easier to locate the information requested, on the other, sending attachments can create technical difficulties due to bandwidth, file size and users' e-mail service storage capacity. Even given these challenges, sending attachments highlighting the requested information was considered good practice.

Figure 6 - Results for Question 5

Results for Question 5



Question 6

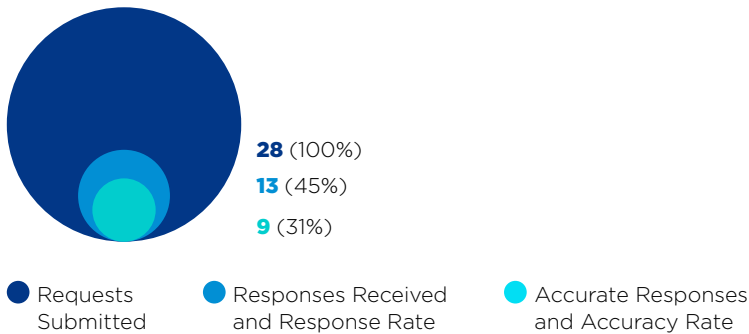
Question 6 asked the institution to provide the criteria for monitoring and assessing its prosecutors' judicial and extrajudicial performance in first, second and third instance proceedings. Twenty-eight requests were submitted, of which 13 (45%) received responses; 9 of these were assessed as accurate (31%).

Although the average accuracy rate for this question was slightly higher than the mean of 26%, Question 6 also returned the highest average response time (34 days). Note that, although CNMP Resolution 89/2012, Article 7, IX requires disclosure of "statistical surveys and studies of performance," those institutions that were assessed as providing accurate responses were more attentive to the specifics of the question, and not only offered links to their performance reports, but also endeavored to meet the other demands of the ATI request by, for instance, indicating or sending the rules and documents that specify the criteria for monitoring the performance of

the office and its staff. This may explain the longer response time for this question than for the other questions, as the answers may have taken staff longer to prepare.

Figure 7 – Results for Question 6

Results for Question 6



Question 7

Question 7 requested a machine-readable spreadsheet stating how many ATI requests had been received in 2012, 2013, 2014, how many had been denied, and the decisions and reasons for denial. Twenty-seven requests were submitted, of which 14 received responses (48%); 11 of these were assessed as accurate (38%).

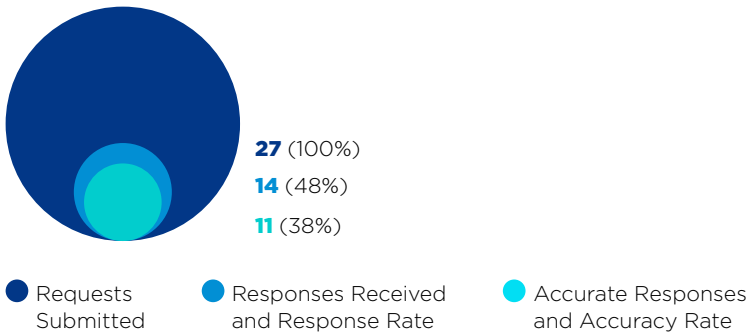
Both the ATI law (Article 30) and CNMP Resolution 89/2012 (Article 25, III) require publication of annual statistical reports containing the number of ATI requests received, answered and denied, as well as general information about the applicants.

In spite of this requirement, and contrasting with the approach taken to other questions, most responses to Question 7 provided no link to the transparency portal. Instead, responses had spreadsheets attached or contained information in the body of the email. Responses of this type were considered accurate.

However, non-exhaustive preliminary research indicates that not all the offices' websites post ATI request statistics for viewing or download. Further research is recommended to determine whether receipt of, and response to, ATI requests is being recorded and controlled effectively, and whether these data are being published in the manner required by the ATI law and CNMP Resolution 89/2012.

Figure 8 – Results for Question 7

Results for Question 7



3 - Institutional Analysis

Table 4 shows the State Public Prosecutor's Offices assessed in this study ranked by their response accuracy rate, as well as the overall results for each in terms of response rate and response time. The ranking reveals that most performed unsatisfactorily on both response rate and accuracy.

The Federal District performed second best of all the Public Prosecutor's Offices evaluated. The Federal Public Prosecutor's Office and Labor Prosecutor's Office responded to 100% of the requests. The former, however, answered only three of the seven questions (43%) accurately, taking an average of 35 days. The latter, on the other hand, responded accurately to four questions (57%), within the much shorter average period of eight days.

Of the State Public Prosecutor's Offices, Sao Paulo performed best of all those evaluated. Piauí and Rio Grande do Sul ranked third and fourth, respectively, with above-average performances, including compliance with deadlines.

The most important finding to emerge from the table is that eight (31%) of the 26 State Public Prosecutor's Offices did not respond to any ATI requests. Two responded to only one request, but inaccurately, making a total of 11 state offices (42%) with no responses rated accurate in this study.

Only seven of the 29 offices assessed responded accurately to at least 50% of the ATI requests.

Only five offices (the Labor Public Prosecutor and the Sao Paulo, Piauí, Rio Grande do Sul and Rio de Janeiro State Public Prosecutor's Offices) answered all the requests submitted.

As regards average response times, the evaluation found need for improvement in the practices of responding to ATI requests. In addition to the case mentioned previously, of the Federal Public Prosecutor's Office (36 days), poor response times were achieved by the State Public Prosecutor's Offices of Rio de Janeiro (37 days), Sergipe (36 days), and Alagoas (33 days). Note that the ATI law provides for a 10-day extension of the initial 20-day deadline, given written justification (Article 11, paragraph 2). However, none of the institutions assessed requested an extension to respond to the ATI requests in this study.

Table 4 – Ranking of Public Prosecutor's Offices

Office	Ranking	Accuracy Rate	Mean Response Time (days)	Response Rate	Requests Submitted	Responses	Accurate Responses
MP de São Paulo	1º	86%	16	100%	7	7	6
MP do Piauí	2º	57%	24	100%	7	7	4
MP do Rio Grande do Sul	2º	57%	14	100%	7	7	4
MP do Goiás	3º	57%	8	86%	7	6	4
MP do Rondônia	4º	50%	31	83%	6	5	3
MP de Rio de Janeiro	5º	43%	37	100%	7	7	3
MP de Santa Catarina	6º	43%	11	86%	7	6	3
MP de Pernambuco	6º	43%	24	86%	7	6	3
MP do Mato Grosso	7º	43%	27	71%	7	5	3
MP de Minas Gerais	8º	43%	9	43%	7	3	3
MP de Sergipe	9º	20%	36	80%	5	4	1
MP de Alagoas	10º	14%	33	57%	7	4	1
MP de Paraná	11º	14%	11	29%	7	2	1
MP do Rio Grande do Norte	11º	14%	4	29%	7	2	1
MP de Ceará	12º	14%	10	14%	7	1	1
MP do Acre	13º	0%	27	57%	7	4	0
MP do Bahia	14º	0%	24	29%	7	2	0
MP do Maranhão	15º	0%	18	14%	7	1	0
MP do Amazonas	16º	0%	-	0%	6	0	0
MP da Amapá	16º	0%	-	0%	5	0	0
MP do Espirito Santo	16º	0%	-	0%	6	0	0
MP de Mato Grosso do Sul	16º	0%	-	0%	6	0	0
MP do Pará	16º	0%	-	0%	7	0	0
MP do Paraíba	16º	0%	-	0%	7	0	0
MP de Roraima	16º	0%	-	0%	7	0	0
MP do Tocantins	16º	0%	-	0%	5	0	0

1 - Transparency procedures in the Public Prosecution Service

On August 28, 2012, three months after Law 12.527/2011 on Access to Public Information (ATI Law) came into force, the National Council of the Public Prosecutor (*Conselho Nacional do Ministério Público*, CNMP) issued Resolution No. 89 regulating the law's application in Public Prosecutor's Offices at both Federal and State levels. This was not the first time that the CNMP had addressed the matter of public transparency, however. It has been discussing the topic specifically since at least 2009, when Resolution No. 38 of May 26, 2012 provided for transparency portals. Regulations on active transparency measures to be taken by the Public Prosecutor were amended on two other occasions in 2011 and 2012, until the CNMP issued Resolution No. 86, on March 21 2012, revoking previous guidelines and setting out the current rules.

The CNMP reports that, since this last resolution, information published on the transparency portal has been arranged more systematically, prioritizing quality and objectivity. In addition to reordering and detailing information more clearly, Resolution 86/2012 instituted a Permanent Steering Committee for the Public Prosecutor's Transparency Portal (CNMP-PRESI Order No. 93, June 25, 2012), which is tasked with preparing, improving and distributing the Transparency Manual to serve as a guide for the various units of the Public Prosecutor when disclosing information on request.

CNMP Resolution 86/2012 also establishes practical rules for implementing transparency portals: Article 3 stipulates that access should be by way of shortcut icons on the webpage of each State Public Prosecutor's Office and branch of the Federal Public Prosecutor, while Article 4 tasks the CNMP Administrative and Financial Oversight Commission with oversight of the Resolution's provisions.

Article 5 of Resolution 86/2012 requires that the following information be

actively disclosed, that is, independently of any request:

- I. Budget and financial information;
- II. Information about tenders, contracts, and agreements;
- III. Information relating to personnel.

CNMP Resolution 86/2012, providing for the Transparency Portal, and CNMP Resolution 89/2012, regulating the ATI law, can be seen to intersect at Article 7, paragraph 3 of the latter, which designates the Transparency Portal as an instrument for applying the ATI Law in practice by providing information of collective or general interest. These obligations are understood as “Active Transparency”, that is, information that must be provided whether or not they are requested.

The CNMP's efforts to implement and improve the Public Prosecutor's transparency portals are demonstrated by the highly detailed support materials that have been developed. These include the Transparency Portal Manual, which provides guidance for managers on standardizing and disseminating information on the budget, financial, and administrative execution of the whole Public Prosecution Service. Another practice that illustrates the endeavor to improve the transparency portals is the “Transparency-meter” (*Transparentômetro* in Portuguese), a tool with which the CNMP's Administrative and Financial Oversight Commission conducts an annual assessment the Transparency Portal of the State Public Prosecution Offices, as well as the Federal Public Prosecutor's Office, Labor Prosecutor's Office, Military Prosecutor's Office, and the CNMP itself, in order to assess compliance with Resolutions 86/2012 and 89/2012. The assessment covers 209 items, which are graded as “met,” “partly met,” or “not met,” to produce a ranking of all Public Prosecutor's Offices and a verification report.

These provisions contribute to greater active transparency on the part of the Public Prosecutor, and pave the way for other institutions to improve their transparency practices.

While good active transparency practices are in place, on the other hand, the Public Prosecutor has also to be scrutinized for compliance with the passive transparency requirements of the ATI Law, which was the focus of this study. This requires, firstly, understanding how the CNMP has operationalized passive transparency under Resolution 89/2012.

2 - Regulation of the ATI Law by CNMP Resolution 89/2012

At several points, CNMP Resolution 89/2012 reiterates provisions of the ATI Law and Decree 7.724/2012, with some modifications to adjust them to the Public Prosecutor.

Article 6 of CNMP Resolution 89/2012 recommends that each Public Prosecutor's Office regulate a unit within its administrative structure to be responsible for a Citizens' Information Service (*Serviço de Informação ao Cidadão*, SIC). Paragraph 1 of the same article indicates that the SIC may be operationalized through the Ombudsman function or another existing unit in each office's organizational structure. As a result, it was found that not all the offices surveyed had a SIC to respond to ATI requests, while many of those that did referred citizens to existing Ombudsman's service and information structures, which handle, for instance, complaints, requests for action, suggestions, or requests for information on legal proceedings and investigative procedures.

This survey was not intended to assess the effectiveness of a service provided jointly by the SIC and the Ombudsman. In terms of economic and administrative efficiency, it is reasonable to provide ATI request services through an ombudsman's office. On the other hand, as discussed in Chapters 4 and 5, important adjustments must be made to ensure an ombudsman's office is able to receive and address all requests appropriately. In any case, an analysis of the online interface for forwarding ATI requests and receiving responses suggests the specific requirements of the ATI Law are best met by a dedicated system for managing ATI requests.

3 - ATI requests in full and regulatory considerations

Questions about Remuneration

Questions 1 and 2 were designed to obtain information about the remuneration of Public Prosecutors. After the administrative reform of the State was approved and implemented under Constitutional Amendment 19/98, a wage ceiling was set for government employees. Within the Public Prosecution Service, this matter is regulated by a complex series of laws and regulations involving not only constitutional rules, but

also the framework laws of the Public Prosecutor, miscellaneous legislation, and CNMP Resolutions 9 and 10 of 2006.

As with the Judiciary, remuneration of Public Prosecutors is subject not only to intricate rules and regulations, but a large volume of judicial decisions, as well as challenges and requests for action filed with the CNMP.

In this context, it is of fundamental importance to assure the transparency stipulated by CNMP Resolution 89/2012, which regulates the ATI Law and requires, with regard to the remuneration structure of public prosecutors and Public Prosecution Service staff, publication of the *“remuneration and benefits received by all the institution’s active and inactive prosecutors, pensioners, and civil servants, including allowances and other amounts paid for whatever reason, as well as statutory deductions, identifying each prosecutor or beneficiary individually by name and the area to which they effectively provide services”*.

As will be seen below, the Resolution adjusts the Public Prosecutor’s active transparency standards to those set down in the ATI Law, and requires additional information on financial and budget management, such as tender procedures and the institution’s budget. This is an important advance that the oversight body of the Judiciary, the Brazilian National Justice Council (*Conselho Nacional de Justiça*, CNJ), has yet to make. At the time this report was prepared, the CNJ had not yet regulated implementation of the ATI Law in the Judiciary.

Both CNJ Resolution 102/2009 and CNMP Resolution 89/2012 require publication of a table containing data such as basic salary, non-recurrent or temporary staff remuneration, deductions, and allowances.

However, there is an important difference between CNJ Resolution 102/2009 and CNMP Resolution 89/2012. The latter requires, *a priori*, that all amounts of non-recurrent or temporary pay be listed and discriminated into “Position of trust or discretionary appointment,” “Christmas bonus,” “Annual paid leave (plus Constitutional one-third bonus),” and “Bonus for working beyond full retirement age.” The mandatory disclosure schedule for the Judiciary classifies amounts such as “Bonus for working after full retirement” together with other amounts as “personal benefits,” while “annual leave”, “Christmas bonus”, and other amounts are classified with retroactive payments as “non-recurrent benefits”. The standard set by the CNMP can be considered to offer better active transparency than the standard applied by the CNJ.

Considering these rules and categorizations adopted by the CNMP, Questions 1

and 2 were submitted as follows:

Question 1

Question 1 asks for the monthly remuneration spreadsheets for 2012, 2013, and 2014, as in Annex I of Article 7, VII of CNMP Resolution 89/2012, as amended by Resolution 115/2014.

A survey carried out as part of this research found only five institutions make monthly spreadsheets of their prosecutors' remuneration available on their transparency portals in machine-readable format. These are the Federal Public Prosecutor's Office and the State Public Prosecutor's Offices of Goiás, Ceara, Mato Grosso do Sul, and Paraíba. This survey is summarized in Table 5, below.

Table 5 - Status of access to data on remuneration

Status of access to data on remuneration	Public Prosecutor's Offices
Monthly data downloadable in machine-readable format	Goiás, Ceará, Mato Grosso do Sul, Paraíba, Federal
Monthly data downloadable as PDF	Piauí, Labor, Santa Catarina, Sergipe, Federal District and Territories, Rio Grande do Norte, Tocantins, Pernambuco
Monthly data with no download	Rio de Janeiro, Mato Grosso, Alagoas, Bahia, Maranhão, Espírito Santo, Roraima, São Paulo
Consultation by prosecutor's name only	Paraná, Rio Grande do Sul
Not posted or not found due to technical problems	Rondônia, Amazonas, Amapá, Acre, Minas Gerais, Pará

Annual staff remuneration information was accessible only where institutions had made the data available in machine-processable spreadsheets. In these cases, it was necessary to download 36 files (12 for each year) and process the data. Where data was not available in machine-processable format and, accordingly, it was

impossible to automate information analysis, it would still be possible to calculate and assess remuneration patterns by year, but at much greater, unnecessary cost. This would probably be unworkable for ordinary citizens or researchers.

As no standard is defined for the provision of information on Public Prosecutors' remuneration, our first question asked for each institution to provide remuneration spreadsheets in machine-processable format, so that monthly payments could be totaled and annual remuneration calculated for each institution's prosecutors and civil servants.

The complete wording of Question 1 is as follows:

*Under Law 12.527/2011 on Access to Public Information, I would like to obtain figures for the remuneration and benefits received by all the institution's active and inactive prosecutors and civil servants, pensioners, and collaborators, including allowances and amounts paid for whatever reason, as well as statutory salary deductions, identifying each prosecutor or beneficiary individually by name and the area to which they actually provide services, as provided for by **Annex I of Article 7, VII of CNMP Resolution 89/2012**.*

I request the monthly spreadsheets for 2012, 2013, and 2014 in machine-processable format, so that the annual amounts of the data above can be calculated and verified, and the active and inactive prosecutors and civil servants, pensioners, and collaborators who received these amounts can be identified individually by name.

Question 2

Question 2 was designed to elicit higher-quality information on remuneration of Public Prosecutors. It requested that data consolidated, as in **Annex I to Article 7, VII of CNMP Resolution 89/2012** (for example, "Remuneration", "Allowances", "Non-recurrent Pay", and "Statutory deductions"), be disaggregated.

The question was worded as follows:

Under Law 12.527/2011 on Access to Public Information, I would like to obtain information, in machine-processable format, on the remuneration and benefits received by all this Public Prosecutor's Office's active and inactive prosecutors and civil servants, pensioners, and collaborators in the years 2012, 2013, and 2014, so that the annual amounts of the above data can be calculated and verified, and the

active and inactive prosecutors and civil servants, pensioners, and collaborators who received those amounts can be identified individually by name.

The data requested should be more detailed than displayed in the mandatory spreadsheet in **Annex I to Article 7, VII of CNMP Resolution 89/2012**, as described below:

(i) amounts paid under the heading “Remuneration of permanent position” should be detailed and discriminated in such a way as to distinguish the amounts paid in (a) salary, (b) bonus for working for the Public Prosecutor (*Gratificação de Atividade no Ministério Público da União, GAMPU*), (c) bonus for training or qualifications, and (d) other amounts that make up the item.

(ii) amounts paid under the heading “Other statutory or judicial payments” should be detailed and discriminated so as to distinguish amounts paid as (a) nominally identifiable personal benefits (*Vantagens Pessoais Nominalmente Identificadas, VPNI*), (b) length-of-service bonuses, (c) “fifths and tenths” (bonuses for staff holding permanent positions, plus positions of trust or discretionary appointments), and (d) benefits resulting from court orders or administrative decisions extending court orders. Where amounts are paid under court decisions, please specify the respective decision.

(iii) amounts paid under the heading “Allowances” should be detailed and discriminated so as to distinguish amounts paid as (a) meal allowances, (b) travel allowances, (c) housing allowances, and (d) subsistence allowance and others of this kind.

(iv) amounts paid under heading “Non-recurrent or temporary remuneration” should be detailed and discriminated so as to distinguish amounts paid for (a) position of trust or discretionary appointment, (b) Christmas bonus, (c) annual leave, and (d) bonus for working after retirement age, under CNMP Resolution 89/2012.

(v) The statutory deductions should be detailed and discriminated so as to distinguish deductions into (a) social security contributions, (b) income tax, and (c) amounts withheld for exceeding the constitutional wage ceiling; and

(vi) Amounts paid in arrears or as retroactive remuneration under CNMP Resolution 89/2012, with the appropriate reasons for each payment and the months to which the late payments refer.

Where it was possible to attach documents to the request, we added a spreadsheet that specified the format for the information requested. In these cases, the request was supplemented with the following text:

“In order to facilitate the response to this information request, an example of the model of spreadsheet that will meet the information requirements is provided.”

Question 3

Question 3 requested information on the institution's procedures to prevent nepotism in the engagement for permanent positions and discretionary appointments. The full text of the question follows:

Under Law 12.527/2011 on Access to Public Information, I would like to request the information below.

*In addition to self-declaration forms, does the Office use any other procedure(s) when engaging personnel for either discretionary appointments or when investing a permanent civil servant in a position of trust to ensure there are no kinship relationships with any of the Office's other prosecutors that might constitute nepotism as defined by **CNMP Resolutions 1 and 7 of 2006**?*

Please send me the documents (orders, instruments, resolutions) relating to such procedures that are used by this Office when engaging or appointing staff to positions of trust or making discretionary appointments in 2012, 2013, and 2014.

Question 4

This study also examined the criteria used when promoting Public Prosecutors. The full text of Question 4 is given below.

Under Law 12.527/2011 on Access to Public Information, I request the following information and documents regarding the promotion of prosecutors of this Public Prosecutor's Office:

(a) all this Public Prosecutor's Office's internal rules (e.g., orders, resolutions etc.) relating to promotion of prosecutors. Please provide the full text of these rules.

(b) all minutes of meetings of the competent authority (High Council or equivalent) deciding on promotions of prosecutors where this matter has been discussed.

Question 5

Question 5 asked for information that is already available on the transparency portal, but is aggregated in a different format, i.e., by year and fragmented (only amounts for goods and service procurement, in addition to human resource costs). Question 5 is given in full below.

I would like to obtain the following information under Law 12.527/2011 on Access to Public Information:

What was this Public Prosecutor's Office's budget for 2012, 2013, and 2014? Please also provide details of the amounts spent on goods and service procurement, as well as the amounts earmarked for human resource costs.

Question 6

The sixth question requested the criteria used to monitor and evaluate Public Prosecutors' judicial and extrajudicial performance in first, second, and third instance proceedings.

Under Law 12.527/2011 on Access to Public Information, I would like to request the following information:

What criteria are used for monitoring and evaluating the judicial and extrajudicial performance of this Office's personnel in first, second, and third instance proceedings? Please provide access to the rules and documents that specify these criteria.

Also, please provide a spreadsheet, in machine-processable format, with the data and numbers used by the Office to measure the performance of its prosecutors (identified by name), by thematic area (unit of the federation, when applicable), and subject, in 2012, 2013, and 2014.

Question 7

Lastly, Question 7 sought information on how Offices are monitoring requests for access that have been denied since 2012. Under the ATI Law and CNMP Resolution 89/2012, this information must be posted on each office's web site. This was the only request that did not follow the same pattern of topics as investigated in the survey of

the Judiciary. It was decided to include it in the evaluation of the Public Prosecutor, because these statistics were not available on the offices' transparency portals, and because ATI requests were being handled together with other demands put to the Ombudsman, and so mixed in with other citizen requests to the Public Prosecutor's Office. Accordingly, in order to assess transparency in the Public Prosecutor, the request sought data on how these agencies have been monitoring ATI requests. The full wording of Question 7 is given below.

Under Law 12.527/2011 on Access to Public Information, I request:

(i) a spreadsheet, in machine-processable format, with the number of access to information requests submitted to this institution and the number of requests denied, by month, in 2012, 2013, and 2014, in such a way that it is possible to calculate and verify the annual figures for that data.

(ii) the decisions that have denied access to information and their reasoning, as established by Article 14, sole paragraph, of CNMP Resolution 89/2012. Please specify the number of access to information requests denied on grounds of confidentiality or judicial privilege, as provided for by Article 5 of CNMP Resolution 89/2012.

1 - Introduction

The results presented in Chapter 2 of this report serve as indicators of whether or not there is institutional commitment to public transparency. However, analysis of quantitative metrics – such as *response rate*, *accuracy rate*, and *average response time* – in isolation may not be sufficient to give readers a broader understanding of some of the important knowledge acquired during this study.

Accordingly, this chapter will present:

- (i) a sample of good responses to access to information (ATI) requests obtained through this study, which stood out for their quality, and serve as examples to be followed; and
- (ii) systematic barriers to transparency imposed by some offices.

2 - Good ATI responses

The cases described below illustrate how Law 12.527/2011 on Access to Public Information (the ATI Law) can be a powerful tool for civil society to obtain important public information when public institutions respond appropriately to ATI requests;

- Two responses to Question 4 are notable here. This question requested all internal rules relating to the promotion of public prosecutors, as well as the minutes of meetings of the respective High Council where the subject of prosecutors' promotions was discussed. The first response, from the Mato Grosso State Public Prosecutor's Office, contained precise links to the transparency portal where all the information requested was then found. Note that the Mato Grosso State Office's transparency portal has an extensive database of all the rules and regulations concerning promotion of its prosecutors, as well as the minutes of specific High Council meetings. Also worthy of mention was the

response from the Rio de Janeiro State Public Prosecutor's Office, which sent copies of the minutes of dozens of its High Council meetings, which revealed appropriate procedures for the management and organization of information about promotion of prosecutors.

- The Rio Grande do Sul State Public Prosecutor's Office responded well to Question 6, which requested information on the judicial and extra-judicial performance of its prosecutors in 2012, 2013, and 2014. In addition to details on performance monitoring and evaluation, the language of the response was clear and concise, and explained the issues raised by the ATI request appropriately.
- The Sao Paulo State Public Prosecutor's Office gave a complete, accurate response to Question 7, which requested details of ATI requests received, by month, in 2012, 2013, and 2014, as well as information about decisions denying access. The Office sent a spreadsheet in machine-readable format containing the numbers of ATI requests received, by month, and the full text of what was allegedly the only denial of an ATI request in the period.

3 - Barriers to Public Transparency

More detailed analysis of the responses to ATI requests revealed that challenges remain to be overcome in order to achieve the right of access to information from the Public Prosecutor.

In 2014 the Public Transparency Program of the FGV Brazilian School of Public and Business Administration (EBAPE) and FGV Rio Law School's Center for Technology and Society (CTS) conducted a transparency evaluation of the justice system, which examined the transparency practices of 40 Brazilian courts and grouped the barriers identified into three analytical categories:

- Bureaucratic barriers - relating to the process for accessing information, such as the procedure for submitting requests (dedicated platform, e-mail, mail, in person, etc.), to the requirements (e.g., the administrative information necessary) for submitting a request or to identification of the agency or department responsible for receiving requests, and so on;
- Legal barriers or barriers of interpretation - relating to the legal grounds for denying an ATI request or to broad interpretations of exceptions to the right of

access to information contained in the ATI law; and

- Technical or information processing obstacles – relating to the formatting or level of aggregation of the information requested, which can make it difficult to display or process.

These three categories will be used to explain the main obstacles identified by this assessment of passive transparency in the Public Prosecutor.

3.1 - Bureaucratic barriers

CNMP Resolution 89/2012, which regulates application of the ATI Law to the Public Prosecutor, stipulates that each Public Prosecutor’s Office “shall provide, in its administrative structure, the unit responsible for the Citizens’ Information Service”, and that this function may be performed by the Ombudsman’s Office.

As discussed in Chapter 5, which contains an in-depth analysis of the platforms used for submission of ATI requests, there is a wide range of means by which citizens can submit requests to the Public Prosecutor. In some cases, more than one electronic medium (an e-mail address, Ombudsman’s Office or “Contact Us” link) can be used for this purpose.

As discussed in greater detail in the next chapter, a dedicated platform designed specifically to receive and process ATI requests is essential to facilitate citizens’ access and simplify the office’s internal management process. Consequently, the absence of a specific platform for this purpose constitutes a serious barrier to transparency.

The most common practice identified in Public Prosecutor’s Offices was to combine the passive transparency platform with the contact channel to the Office’s ombudsman function. This practice, although far from ideal, is in compliance with CNMP Resolution 89/2012, which states that Public Prosecutor’s Offices may operationalize the Citizens’ Information System through existing structures, such as the Ombudsman’s Office. This flexibility can also optimize the use of existing citizen service resources and structures.

Despite the potential benefits, it must be emphasized that using the same interface to process ATI requests and other demands typically directed to the ombudsman can create difficulties for citizens who want to submit ATI requests.

Shared platforms have characteristics that serve other public demands on the agency, such as complaints, requests for action, suggestions, or requests for

information on court proceedings and investigative procedures. These requests follow different rules and procedures to those governing ATI requests.

For example, the Ombudsman service allows users to request that their personal data be kept confidential and, on the Federal Public Prosecutor's Office platform, for example, users even have to state the justification for requesting confidentiality. Some of the ombudsman services examined in this evaluation required applicants to indicate whether or not they wished to receive a response, a requirement that is incompatible with the whole idea of an access to information request. Also, some ombudsman platforms are designed to receive complaints and, therefore, require citizens to provide personal information that is unnecessary or does not apply to an ATI request, such as: "company name", "business address" and "number of workers affected" (Labor Public Prosecutor's Office); and "place of occurrence" or "municipality where the incident occurred", "persons involved", and "witnesses or people who can help clarify the facts" (e.g., the Acre and Minas Gerais State Public Prosecutor's Offices).

3.2 - Legal barriers or barriers of interpretation

The 2014 transparency evaluation of the Judiciary found a large number of ATI requests were denied on what was considered to be a very broad interpretation of the exceptions to the rights assured in the ATI Law, particularly exceptions arising from existing regulations for the Executive, which specify exceptions for generic, disproportionate, or unreasonable requests, or those requiring additional analysis.

This situation did not arise in the transparency evaluation of the Public Prosecutor. Only one request was refused on the basis of the additional work clause: the Rio Grande do Sul State Public Prosecutor's Office refused to provide a pay schedule in the format requested on the argument that it involved too much work. Few requests were refused on the grounds that they were too generic. The Acre State Public Prosecutor's Office responded to the ATI request by asking for further details. They also requested the reason for the request, contrary to Article 10, paragraph 3 of the ATI Law, which explicitly prohibits "any requirements relating to the reasons determining the request for information of public interest".

There was, however, a pattern of broad interpretations of Article 11, paragraph 6, of the ATI Law, which exempts public agencies or entities from the obligation to supply information directly if it is publicly available in print, electronic, or other

universally accessible form. This occurred most often in response to the ATI requests in Questions 1, 2 and 5 of this evaluation.

Questions 1, 2 and 5 requested information in machine-processable formats or with details different from those established by the CNMP resolutions. Question 1 requested the remuneration spreadsheets in machine-readable format. Question 2 requested an additional breakdown of the remuneration spreadsheets, and Question 5 sought a breakdown of the Office's budget (including amounts allocated to goods and service procurement, as well as the amounts allocated to human resource costs).

Although the information requested was available on the Offices' transparency portals, it was not presented in the format requested by this evaluation, or did not provide aggregation and disaggregation filters and mechanisms that would facilitate viewing and processing. In this sense, Questions 1, 2 and 5 called for greater detail than already provided by the agencies.

All responses (100%) to the ATI requests on remuneration (Questions 1 and 2) referred the inquirer to the transparency portal, mentioning a generic or specific link to the section of the portal where staff remuneration could be consulted. Only four responses were considered accurate in meeting the specifications of the request: from the Ceará, Goiás, Mato Grosso and São Paulo State Public Prosecutors' Offices.

Responses to Question 1 were divided between those that: (a) provided a specific link to the part of the website that contained the requested data (from the Labor Prosecutor, and Rio Grande do Sul, Mato Grosso, Paraná, and Pará); (b) provided a generic link to the transparency portal (Bahia, Rio de Janeiro, Santa Catarina, and Goiás, and the Federal Public Prosecutor's Office); or (c) only mentioned the transparency portal, without giving its Internet address (Piauí and Alagoas). None of these responses was regarded as accurate, because they did not meet the specifications of the request.

The Public Prosecutor's Offices that responded to Questions 1 and 2 were thus found to consider that the remuneration information already available on their transparency portals exempted them from any further compliance with the format and detail required by this evaluation. Some Offices referred explicitly to Article 11, Paragraph 6 of the ATI Law in their responses (for example, the Alagoas State Public Prosecutor's responses to Questions 1, 2 and 5).

The same was observed in the answers to Question 5, which requested a breakdown of the Office's budget (amounts allocated to goods and service

procurement and payment of human resource costs). In this case, different levels of accuracy were observed in the responses. In most cases, Offices sent a generic link to their transparency portal. In only a few cases were spreadsheets provided with detailed information for the requested periods (by São Paulo and Goiás, for example, and the Federal District and Territories).

3.3 - Technical or information processing barriers

As noted above in Table 5, the transparency portals differ in how they display remuneration information. Essentially, all of the transparency portals separate staff remuneration data by month, with no provision for consulting the amounts received by prosecutors per year. The information could be downloaded in machine-processable format in five cases, and in PDF format in eight cases. In all other cases, information could not be downloaded.

Note that both the ATI Law and CNMP Resolution 89/2012 address the issue of machine-processable formats, requiring websites of public institutions to permit information, especially financial information, to be recorded in a variety of formats, in order to facilitate analysis (ATI Law, Article 8, Paragraph 3, item II and CNMP Resolution 89/2012, Article 8, III), and to enable automated access in machine-readable formats (ATI Law Article 8, paragraph 3, item III and CNMP Resolution 89/2012, Article 8, III). In the specific case of the Public Prosecutor, information on remuneration and budgets is among the types of data whose disclosure on Offices' websites is mandatory.

CHAPTER 5 | EVALUATION OF PLATFORMS

This chapter presents the results of the analysis of digital platforms provided by Public Prosecutor's Offices for submitting access to information (ATI) requests.

1 - Context

For an ATI law to work effectively and be used, the process of submitting requests and receiving responses must be as simple as possible. It is therefore vital that the digital platforms developed make this process uncomplicated and efficient. The use of a digital platform to facilitate access to information simplifies a process which can be complicated for citizens and, because each request is recorded, can reduce the likelihood of the request's being ignored.

In Brazil, the Electronic Citizens' Information Service System (e-SIC) used by the Federal Executive has a number of attributes that make it easy to request information. The e-SIC is available free of charge from the Federal Comptroller General's Office (*Controladoria Geral da União*, CGU) to any Brazilian government agency interested in implementing its functionalities, which greatly simplify the process of receiving and managing ATI requests. For citizens, the e-SIC facilitates the process of sending ATI requests, because it has an intuitive, organized graphical interface, and provides for rights assured by the ATI Law (for instance, the right to appeal). For public institutions, the e-SIC enables them to generate the reports stipulated by Article 30, item III of the ATI Law automatically.

CNMP Resolution 89/2012 stipulates that the Public Prosecutor use a Citizens' Information Service (SIC), but also allows ATI requests to be managed by the Ombudsman's office or by another existing unit in the organizational structure. Therefore, the CNMP regulation does not place specific parameters on passive transparency platforms.

2 – Attributes of Good Platforms

Previous research by the Public Transparency Program identified some of the key attributes of a good platform, as shown below in Table 6.

The absence of one or more of these attributes does not mean that the organization is violating the ATI Law. However, it may mean that the electronic mechanisms for citizens to exercise their ATI rights are unfriendly and need improvement.

2.1 - Confirmation of Delivery

It is important that, after submitting an ATI request, citizens receive some kind of confirmation that the institution has received their request. On this criterion, we examined whether the institution sends an e-mail or other confirmation of receipt of the ATI request.

2.2 - Response Notification

An e-mail advising that the ATI request has been answered makes the inquirer aware of the response more quickly. To assess this criterion, we examined whether the institution sends an e-mail or another form of alert when responding to an ATI request.

2.3 - Input field for lodging an appeal

Appeal in cases where the response is unsatisfactory is an important civil right provided for under the ATI Law. Several platforms, however, lack a specific field for filing appeals after receiving a response. In such cases, citizens who wish to appeal have no option but to submit the appeal the same way as they would submit a new ATI request.

The absence of this option makes it more confusing for citizens to appeal against a decision. It can also hinder the timely processing of appeals by the institution in question, which will find it more difficult to separate appeals relating to previous ATI requests from newly submitted ATI requests. In addition, in order to exercise the right to appeal, the applicant must be aware that this possibility exists. In the absence of a specific field to submit an appeal, it is even more necessary for

the applicant to be adequately informed about both the possibility of appealing and the means by which to do so.

2.4 - Login instead of a protocol number

Several of the platforms examined allow applicants to access the responses to their ATI requests only after they enter the protocol number generated when the request was first submitted. These platforms offer no alternative mechanism for applicants to access responses without a protocol number.

Although this feature does not infringe the provisions of the ATI Law, it may make the platform less user friendly, and pose a problem in cases where ATI applicants fail to record their protocol number properly.

On this criterion, it was ascertained whether each institution allows applicants to register on the platform, and track their demands by means other than the protocol number.

2.5 - Text search of previous ATI requests

Although the e-SIC system does not offer the option of searching prior requests submitted and answered, the platform is considered a good example of passive transparency. However, even the federal e-SIC would benefit by gaining a tool to search the content of other ATI requests. Noteworthy in this respect is the *Zoom* platform, introduced by the Mexican government's information access and data protection authority (*Instituto Federal de Acceso a la Información y Protección de Datos*, IFAI), which is responsible for implementing and overseeing ATI rights.

3 – Comparative Analysis of Platforms

Table 6 below shows data for the platforms of the 28 Public Prosecutor's Offices that were examined, except for Paraná State, which had no specific website for ATI requests until after the study was completed, and Paraná State, which could not be evaluated due to difficulties of access.

Table 6 – Assessment of Platforms

Office	Possesses a specific platform for requesting information?	Is the an electronic form?	Is a confirmation and notification of response provided?	Can responses be viewed from the platform?	Can appeals be made from the platform?
MP de Alagoas	X	X	✓	X	X
MP de Minas Gerais	✓	✓	X	X	X
MP de Mato Grosso	✓	✓	✓	✓	X
MP de Pernambuco	✓	✓	✓	✓	X
MP do Rio de Janeiro	✓	✓	X	✓	X
MP de Santa Catarina	✓	✓	X	✓	X
MP do Acre	X	X	X	X	X
MP de Amazonas	X	X	X	X	X
MP do Amapá	✓	✓	X	✓	X
MP da Bahia	✓	✓	✓	X	X
MP do Ceará	✓	✓	X	X	✓
MP do Distrito Federal	✓	✓	X	X	X
MP do Trabalho	✓	✓	✓	✓	X
MP do Espírito Santo	✓	✓	X	✓	X
MP Federal	✓	✓	✓	✓	X
MP de Goiás	✓	✓	✓	X	X
MP do Maranhão	✓	✓	X	X	X
MP de Mato Grosso do Sul	✓	✓	X	✓	X
MP do Pará	✓	✓	X	✓	X
MP da Paraíba	✓	✓	X	X	X
MP do Piauí	✓	✓	X	✓	X
MP do Rio Grande do Norte	X	X	X	X	X
MP de Rondônia	X	✓	X	X	X
MP de Roraima	✓	✓	✓	✓	X
MP do Rio Grande do Sul	✓	✓	X	X	X
MP de Sergipe	X	✓	✓	✓	X
MP de São Paulo	✓	✓	✓	X	X
MP de Tocantins	✓	✓	X	✓	X

A primeira coluna identifica se a entidade analisada possui ou não uma plataforma específica para envios de pedidos de acesso à informação. As quatro colunas seguintes referem-se aos atributos que devem estar presentes em boas plataformas de transparência passiva.

4 - Conclusion on the Evaluation of Platforms

Links to some form of communication channel between citizens and the Public Prosecutor's Offices were generally displayed clearly on the platforms evaluated. This feature is important for ensuring the right to access to information.

On the other hand, mechanisms that are extremely important to the platforms' function (including some of the typical features of the Federal Executive's e-SIC system) have not been implemented by Public Prosecutor's Offices. To summarize: 18 of 27 platforms did not confirm receipt of ATI requests; only 14 of 27 platforms provided a channel for monitoring the progress of requests sent; and almost none (the exception being Ceará State) provided a channel for lodging an appeal.

In many cases, although the platforms generated a protocol number and a password, that did not guarantee that the status of the ATI request could be monitored. On several platforms tested, including those of the offices in Pernambuco, Santa Catarina and Mato Grosso do Sul, this device did not work.

Other platforms offered the option of evaluating the service, allowing users to indicate whether the response was useful and the service provided was good, poor, or very bad. Although commendable, this practice does not enable users to lodge an appeal.

CHAPTER 6 | CONCLUSION

The evaluation of the Public Prosecutor undertaken by the FGV's Public Transparency Program demonstrated the need for stronger commitment to Brazil's Access to Public Information (ATI Law), 12.527/2011. This is especially true of an institution whose mission it is to defend the fundamental rights of Brazilian citizens, of which access to information is one.

The overall results indicate that ATI requests sent to several Public Prosecutor's Offices were ignored, with one in every two ATI requests going unanswered. Our evaluation also revealed that, when responses are forthcoming, they do not always provide the information requested. Only one in four ATI requests received a response that met minimum standards of accuracy.

The scope

This study involved sending 193 ATI requests to 29 different offices of Brazil's Public Prosecutor, including all 26 State Public Prosecutors' Offices and three Federal institutions (the Federal Public Prosecutor's Office, the Labor Public Prosecutor's Office and the Federal District and Territories Public Prosecutor's Office).

This study chose to focus on issues central to personnel, including remuneration and policies on nepotism, as well as queries on budgeting, promotion, and performance. These topics account for some of the most sensitive and important issues in current discussions of the Public Prosecutor in Brazil.

Methodology

The methodology was designed to be simple and replicable, while also meeting the requirements of academic rigor. Replicability is paramount; it enables this evaluation to be carried out in the future using similar definitions and metrics. As detailed in Chapter 1, three simple metrics – response rate, accuracy rate and average response time – were chosen for the analysis.

Results

Seven different questions were sent to 29 Public Prosecutor's Offices, totaling 193 ATI requests. Of these 193 requests, 99 received responses, corresponding to a response rate of 51.30%. Of these responses, 53 (27.46%) were assessed as accurate.

Assessment of response time showed that the offices took an average of 21 days to respond to the ATI requests. Of the 29 institutions evaluated, 10 (34%) failed to meet the 20-day deadline for responding, and eight (27.5%) failed to respond to any ATI requests.

Among the Public Prosecutor's Offices, the Federal District and Territories stands out as the second best performer in the overall ranking of the 29 institutions evaluated. Note also that the Federal Public Prosecutor's Office and the Labor Public Prosecutor's Office responded to 100% of the ATI requests. However, the former responded accurately to only three of the seven questions (43%), with an average response time of 35 days, while the latter responded accurately to four of the seven questions (57%), with an average response time of eight days.

These results also point to differences in performance among the Public Prosecutor's Offices. Of the 26 State Public Prosecutor's Offices, eight failed to respond to any ATI requests. A further three responded to only one ATI request, and all these responses were assessed as inaccurate. By the methodology of this study, a total of 11 State Public Prosecutor's Offices failed to provide a single minimally accurate response to an ATI request.

Only seven of the 29 offices evaluated responded accurately to at least 50% of the ATI requests.

Only six offices answered all the ATI requests sent - the Federal Public Prosecutor's Office, the Labor Public Prosecutor's Office and the State Public Prosecutor's Offices of São Paulo, Piauí, Rio Grande do Sul, and Rio de Janeiro.

With regard to average response times, this evaluation illustrates a need to improve procedures for managing and responding to ATI requests. In addition to the Federal Public Prosecutor's Office, as mentioned above (average response time of 35 days), the State Public Prosecutor's Offices of Rio de Janeiro (37 days), Sergipe (36 days), and Alagoas (33 days) also evinced conspicuously long response times. Note that, while the ATI law establishes a response deadline of 20 days, it

also allows a 10-day extension upon written justification (Article. 11, paragraph 2).

The study identified three different types of barrier to access to information: (i) bureaucratic; (ii) legal or interpretative and; (iii) technical or information processing.

Bureaucratic barriers (those related to the procedures for submitting ATI requests) identified by this evaluation include the fact that most of the offices contacted use their ombudsman as the authority responsible for handling requests. Using the ombudsman as a complaints-and-requests handler is inappropriate, as detailed in Chapter 4 of this report.

With regard to legal barriers, the Public Prosecutor's Offices often applied excessively generous interpretations to Article 11, Paragraph 6 of the ATI Law, which exempts institutions or public entities from providing information directly if such information is already available to the public in printed, electronic or other universally accessible form. This exemption was most commonly used in responses to Questions 1, 2 and 5.

The study found that – as with the judiciary, evaluated by the Public Transparency Program in 2014 – the Public Prosecutor's Offices are not yet fully compliant with the ATI Law's requirement that they make documents available in machine-readable formats. In the course of this evaluation, many requests for documents in machine-readable format were not properly met.

Overall recommendations

This study identified some immediate challenges to be met in responding to ATI requests, which should receive attention from the National Council of the Public Prosecutor. In view of the findings and the authors' overall opinion, it is recommended that the following measures be taken:

1. Commitments should be made to promote, defend, and comply with the ATI Law, a fundamental right enshrined in international treaties and jurisprudence.
2. Dedicated public transparency infrastructure should be improved and capacity building should be undertaken for civil servants tasked with responding to ATI requests.
3. ATI request statistics should be monitored more strictly and they should be published and released. The oversight body of the Public Prosecutor (CNMP)

already monitors active transparency, and this practice can and should be extended to passive transparency.

4. A specific system should be used for receiving ATI requests and managing interaction with citizens. All Public Prosecutor's Offices that use their Ombudsman's website or a "Contact Us" mechanism as a means of receiving passive transparency demands should consider adopting a specific platform for receiving and processing ATI requests, preferably with the functionalities of the Federal e-SIC platform.

5. Information should be made available in machine-readable format, respecting the principles of open public data adopted by the Brazilian government as part of its commitment to the Open Government Partnership (OGP).

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