

They Talk the Talk – But Do They Walk the Walk? On the implementation of Right to Information Legislation in Sweden

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Abstract

Transparency is recognized as a crucial condition for accountability, good governance and democracy. As right to information (RTI) laws have spread, it has become crucial to ask whether ambitious legislative frameworks translate to *de facto* transparency. In this article, we test how well local governments in Sweden – a ‘most likely country’ for implementing RTI laws – comply with its comparatively ambitious *Public Access to Information and Secrecy Act*. As a side effect, we also gauge if New Public Management reforms, exemplified by increased public ownership of enterprises in local government, imply lessened compliance with RTI legislation. Requesting information from 462 randomly selected public administrations and municipally owned enterprises, counter-intuitive findings were observed. Fewer than half of the organizations respected the RTI legislation, and no significant differences were found between the public administrations and publicly owned enterprises. The findings have methodological as well as empirical implications. They highlight the importance of not only studying legislative frameworks – as has frequently been done in previous work – but also of analyzing actual implementation of RTI frameworks in everyday situations. Additionally, the findings demonstrate that problems relating to openness can be observed in low corrupt, mature democracies with strong bureaucratic capacity. Lastly, and contrary to conventional wisdom, the findings indicate that publicly owned corporations do not necessarily imply an ‘accountability deficit’.

Introduction

Keywords:
Right to information
Access to information
Transparency
Accountability
New public management

To encourage the free exchange of opinion and availability of comprehensive information, every Swedish citizen shall be entitled to have free access to official documents (Chapter 2, Article 1 of the Swedish *Freedom of the Press Act*).

It is widely acknowledged that transparency is an important condition for accountability. It is therefore also crucial for good governance and quality of democracy (cf. Hood & Heald 2006; Stiglitz 2002).¹ As the connection between transparency and democracy has gradually become recognised across the globe, Right to Information (RTI)² laws have practically swept through the world (e.g. Ackerman & Sandoval-Ballesteros 2006). As Fox (2007) puts it, today RTI has come to be regarded as a ‘basic democratic right’, which is perhaps best illustrated by the fact that the UN made public access to information a sustainable development goal in 2015 (UN 2015).

As RTI legislation has spread, several actors – scholars, NGOs, INGOs –

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have begun to monitor this progress using a variety of approaches (e.g. Lemieux et al 2015). An illustration of such monitoring initiatives is *Centre for Law and Democracy's* (2013) 'Global Right to Information Rating'³, which attempts to measure the strength of legal frameworks for RTI. As important as these monitoring initiatives are, ratings of this kind remind us of a general limitation in the study of RTI laws. Simply putting ambitious legal frameworks in place does not guarantee actual implementation. Without well-organized archives and a commitment to implementation by a well-educated and professional civil service, backed up by economic resources, even the strongest of laws does not guarantee transparency and accountability (e.g. Neumann & Calland 2007; Roberts 2006; Grigorescu 2003).

Against this backdrop, the overarching aim of the paper is to investigate *de facto* compliance with RTI laws in Sweden, a country with comparatively strong RTI legislation, a long history of public access to official documents and a reputation for having an effective bureaucracy. In addition to the overall aim, we can also assess whether the increased willingness of Swedish municipalities to implement NPM reforms – illustrated here by the corporatisation of parts of their public services⁴ – has had an adverse impact on compliance with Sweden's RTI legislation. We are thus able to test the recurrent proposition that NPM in general, and publicly owned corporations in particular, may have detrimental impacts on transparency. The paper consequently aims to not only contribute to the general study of RTI, transparency and conditions for accountability; but also to the literature on the alleged effects of NMP on the conditions for accountability.

As indicated, we argue that it might be rewarding to delve more deeply into the Swedish case if the objective is to gauge the quality of compliance with RTI laws. To all intents and purposes, there are four reasons to believe that Sweden is a 'most likely' setting to find conformity between legislation and behaviour. **First**, Sweden has often been described as the first country in the world to pass RTI laws, dating as far back as 1766 and the passing of *The Freedom of Printing Act*. Some scholars have hypothesised that the length of time since the law was passed may impact on the quality of implementation (e.g. Lemieux 2015). **Second**, the specific RTI law – *Principle of public access to official documents* ('offentlighetsprincipen') – is comparatively strong and ambitious. Importantly, it states that citizens may, anonymously and without giving any reason, be granted the right to read public records without delay in courts as well as in state, regional and local authorities. **Third**, and closely related, Sweden tends to score highly in various international ratings on transparency, rule of law, anti-corruption, and the strength of RTI legislation. **Fourth**, the conditions for high-quality implementation of RTI laws are favourable in Sweden, since it regularly rates highly in studies measuring bureaucratic professionalism, efficiency and capacity (e.g. Dahlström et al 2012; van de Valle 2006). Civil servants are expected to have both the knowledge and resources necessary to implement the legislation. At first glance, therefore, Sweden could be viewed as a 'most likely case' where strong and ambitious RTI laws are believed to be enforced thoroughly by civil servants working within, in this case, local public administrations.

There are two additional reasons to study Sweden from an RTI-perspective. To begin with, as Neuman (2009) notes, Swedish RTI legislation is based on the ‘Ombudsman model’, which has an intermediary body responsible for enforcement that only has the power to issue recommendations. This model has unique features compared with the ‘Judiciary model’ found at, for instance, US federal level, and a third model where a commissioner or tribunal has the power to issue binding orders (Neuman 2009). Few studies have analysed *de facto*-compliance with RTI laws that are upheld by the Ombudsman model. Hence, this study contributes to filling a knowledge gap in the research on the implementation of RTI laws.

In addition, since the mid-1980s and specifically at the local level, several scholars have argued that Sweden has gone a comparatively long way in implementing organisational reforms associated with *New Public Management* (e.g. Montin & Granberg 2013; Hall 2012; Almqvist 2006; Green-Pedersen 2002 Forsell 1999; Montin 1992, 1997). This development has, for example, been characterised by an ever-increasing degree of public governance through networks of Public-Private Partnerships (Pierre & Sundström 2009) and the adoption of private sector style management models (Almqvist 2006). Several scholars have raised concerns that some of these reforms might be at odds with values intrinsic to the public sector, i.e. transparency, accountability and public ethics (e.g. Hondeghem 1998; Fredericks 1999; Box et al 2001; Sands 2006; Papadopoulos 2007; Lundquist 2007).⁵ It has frequently been argued that this is particularly true when it comes to enterprises operated by municipalities: scholars agree that transparency is muddied in publicly owned corporations; and hence accountability may become blurred (e.g. Bozec & Breton 2003; André 2010; Grossi and Thomasson 2015). Since more and more parts of Swedish local public administrations are run as corporations, a side-effect of our overarching aim is to test whether enterprises owned by municipalities perform better or worse than public administrations in implementing RTI legislation.

Previous studies

A review of the literature suggests that there are four main ways to go about studying RTI legislation (and/or its implementation): 1) the strength of *de jure*-legislation; 2) ‘objective’ measures, e.g. the types of information governments make public to their citizens and submit to organisations such as INGOs monitoring transparency across the globe; 3) studies based on expert judgements; and 4) more or less ‘experimental’ case-studies, attempting to gauge actual implementation of RTI laws. All approaches have their strengths and limitations and, below, we will argue which is most appropriate given the purpose at hand.

As ever more countries have introduced RTI laws and the UN has made public access to information a sustainable development goal, there has been an increased scholarly interest in the subject. An important strand of this emerging literature has compared RTI legislation between countries. For instance, several studies focus on comparing the strength of RTI laws in terms of factors such as time limits, exceptions, sanctions, duty to publish and so forth (see Mendel 2006; Centre for law and democracy 2013; Trapnell & Lemieux 2014). While we agree

that de jure quality of RTI laws is important, comparing the strength of RTI laws to evaluate the de facto-efficiency of such laws has its limitations.

Without the support of well-functioning institutions and a tradition of rule of law, and without economic and humanitarian resources, it is not evident that even the strongest of RTI laws would have an impact on the transparency of civil servants' everyday practice. Scholars have demonstrated that the implementation of relatively strong RTI laws in developing countries is weak, implying that strong laws do not automatically translate to accessibility, openness and transparency in practice (e.g. Nigam 2015; Trapnell & Lemieux 2014). Furthermore, many countries which have introduced RTI laws during the last few decades do indeed have stronger legislation compared with, for example, Sweden, which has a long history of RTI and often is hailed for its transparency and openness. The fact that many developing countries have comparatively strong legislation could be seen as a result of RTI laws being subject to regulatory innovations during the last few decades. Countries with newly implemented RTI laws typically adapt these innovations, while traditional RTI countries, which already have a functioning system of RTI laws in place, seldom reform them. Combined with differences in, for example, institutional efficiency, this results in huge gaps between strong regulations on one hand, and weak compliance on the other. An important lesson here is that it is neither necessary nor sufficient to have strong legislation in place, for a system to display actual transparency.

Because of the methodological limitations mentioned above, some scholars have tried to complement comparisons of regulation by searching for 'objective measures', usually employing qualitative analyses of the efficiency of RTI laws (for example Centre for law and democracy 2013; Freedom of Information Advocates Network 2013; McClean 2011). While such approaches are an improvement in some ways compared with analyses of just de jure-legislations – at least if one wants to know if the laws are followed – they have limitations of their own. After all, these judgments are constrained by the information that is readily available, usually a combination of regulation, available government statistics and a general appreciation of institutional efficiency in the country studied. As mentioned, the correlation between the de jure-strength of RTI laws, and the actual implementation of them, is not self-evident.

An additional, 'objective' way to study RTI and transparency is to analyse the information governments publish, for instance, electronically, or how much – and the type of – data governments choose to report to international organisations (e.g. Hollyer et al 2013; Hazell & Worthy 2010; Grigorescu 2003). Although objective measures of this kind have their inherent attractiveness, they too have limitations. They only tell us how much, and what type of information governments are willing to display openly, for example on the internet, or to hand over and display freely – upon request – to international organisations. Hence, as Bauhr and Grimes (2012) point out, studies of this kind cannot capture whether citizens and journalists have real opportunities to request and receive information that governments themselves have chosen not to publish.

Furthermore, statistics on the actual practice of RTI laws are not always available or are of doubtful quality and are therefore not very reliable; see for instance the trouble Lemieux et al (2015) had comparing implementation of RTI

laws because of limited data quality in several of the countries studied. Obviously, governments have incentives to present statistics that indicate high transparency and, in the case where promotion of such statistics is impossible, have no incentives to present statistics at all. For example, in a study by Worker and Carroll (2014) – about requests and appeals in countries with newly implemented (or reformed) RTI legislation – it was shown that most of the countries did not present statistics on response time or delivery. Considering that slow response time might be a strategy to minimize citizens' or journalists' requests for information, it can be concluded that exclusion of delivery time statistics creates a severe limitation in evaluating the actual efficiency of RTI laws.

Recognising the limitations of studying de jure-legislation and different versions of 'objective' measures of the kind described above, Bauhr and Grimes (2012) employ an expert survey and pose a question regarding experts' perceptions of the extent to which government documents and records are open to public access. The initiative is worthy of praise: 1) the survey data still gives us ample opportunity to conduct large-n analyses without the kind of disturbance for example Lemieux et al (2015) faced, while 2) simultaneously going beyond pure de jure-legislation to say something about actual transparency and the implementation of RTI laws.

However, a few doubts should be raised in relation to expert-survey approaches. The reliability of data based on expert judgement has been questioned (e.g. Tetlock 2006); and as Bauhr and Grimes (2012: 12) highlight themselves, we cannot know what yardstick experts are using when answering. Is it a universal, objective, normative measure to ensure comparability between experts and countries; or could it be a context-bound yardstick relative to a country's or region's own legislation or RTI-tradition? In addition, a small number of experts per country equates to great uncertainty. In Bauhrs and Grimes' case, we know that only three experts were consulted for some of the evaluations. This is arguably at the lower end of what should be accepted in expert surveys.

Taking these critical remarks into account, and setting aside the issue of comparability between countries, we find variations of 'field experiments' attractive when it comes to assessing the quality of compliance to, and implementation of, RTI laws within one and the same country. This is a methodology to be preferred if we wish to test the extent to which governments at various levels actually comply with their own RTI legislation. Such research designs have been employed by, for example, Ben-Aaron et al. (2017) and Wood & Lewis (2017) concerning fulfilment of public record requests in the US.⁶ Yet, to our knowledge, no previous studies have estimated the compliance of RTI laws in a country based on the 'Ombudsman model', such as in Sweden. We intend to fill this gap by estimating the level of compliance to the Swedish RTI laws.

Previously, there have been a few such attempts. The backdrop has been the same. As in many OECD countries (e.g. Grossi & Reichard 2008), enterprises that are owned by municipalities have grown rapidly. There were circa 1 300 such hybrid organisations at the start of the new millennium, and today there are approximately 1 800 in Swedish local government. Many scholars have

questioned the quality of transparency in such organisations, since they may mimic attitudes from private companies such as secrecy and monolithicity. Since enterprises owned by local government are subject to the Principle of public access to official documents, some studies have queried whether they adhere to this legislation (e.g. Hyltner & Velasco 2009; SOU 2011:43). In general, the findings are far from impressive. These ‘stress tests’ have shown that public enterprises are not particularly good at turning over information they are required, by law, to do.

Nonetheless, there are methodological flaws in previous studies from the Swedish setting. They have queried publicly owned enterprises exclusively. Without comparisons, we cannot know whether they are worse – or better – than public administrations implementing the Swedish RTI legislation. This limitation has determined the specific design of our study. To know whether public administrations proper are better than publicly owned enterprises, we must test the propensity to turn over official documents of both ways of organising and managing public affairs. Therefore, we now turn to our methodological considerations and a description of the research design.

Methodological considerations

Context for the case - i.e. Sweden - is provided before going into details of our research strategy. For the purpose at hand, it is important to note that Sweden is a mature democracy and a relatively early adopter of universal and equal suffrage, which was approved in 1919 and implemented at the 1921 election. Today, the country is not only viewed as one of the world’s strongest democracies (e.g. *Global Democracy Ranking* 2016; *EIU Democracy Index* 2016) with a high degree of press freedom (*Freedom of the Press* 2016), it also has a reputation for having a strong, professionalised and effective bureaucracy (Dahlström et al 2012; van de Valle 2006), marked by a strong rule of law (*Rule of Law Index* 2016) and having few problems with corruption (*Corruption Perception Index* 2016).

Well before laying the foundations for a developed representative democracy, Sweden embarked on a path towards a strong Weberian bureaucracy through a series of reforms in the mid-19th century, eradicating much of the corruption that had allegedly plagued its civil service in the 18th century (D’Arcy et al 2015; Rothstein 2011). However, it is a law dating back over 250 years – *the Freedom of the Press Act* from 1766 – that is crucial to the aims of this paper, since it grants the public access to official documents. It is the first known RTI legislation in the world and is better known as the *Principle of Public Access* (‘offentlighetsprincipen’). The principle states that the public is entitled to access the activities of government at all levels, and that public information should be handed over immediately upon request. Also, and importantly, all official documents that are handled by the government are public, unless they contain information that has been classified as secret under the *Public Access to Information and Secrecy Act*. The principle applies to all levels of government, i.e. including Sweden’s 290 municipalities, which are at the center of the present study. In addition, since 1995, all enterprises where local government own half or more of the shares, are subject to this law; bound to hand over official documents immediately upon request.

In the introductory section, we argued that Sweden is a suitable case to study the implementation of RTI laws. When choosing *what* we should target within Sweden, there are methodological as well as substantial empirical reasons to focus on public administration in local government. The methodological argument is that there are many municipalities to choose from (290); hence, it is convenient to design and conduct a large-n study and get reliable results. The empirical argument for choosing the municipal level is twofold. Firstly, local government in Sweden is important. It is responsible for the implementation of core policy areas in the welfare state that are crucial for citizens e.g. schools, elderly care, and social security. This means that local government expenditure is extensive and amounts to approximately 25 percent of GDP. Secondly, studying compliance with RTI laws at the local level is relevant for policy reasons, since several of the responsibilities handled at local level have been deemed to be danger-zones for corruption (e.g. Bergh et al 2015; Andersson & Erlingsson 2012).

To test the compliance of the Swedish *Principle of public access to official documents*, we first asked *all* local public administrations, and *all* enterprises owned by municipalities, in a representative sample of 30 Swedish municipalities⁷, to submit information that – according to law – should be made available upon request. The information we asked for was **1)** salaries and benefits for CEOs (for enterprises) and directors (for public administrations); **2)** the Curriculum Vitae (CVs) for the CEOs and the directors from the time of application for their current positions; and **3)** the name of all individuals who applied for the position of CEO and director the last time the respective organisations hired their current heads. The number of local public administrations from this sample was 168, and the number of enterprises was 107. All in all, a total of 275 organisations were included in this first, what we called, ‘stress test’.

This test, however, could be vulnerable to criticism. Some policy areas are almost exclusively run as administration proper (for instance, social services), while others nearly always as municipally owned enterprises (for instance, social housing, and energy). If the first experiment revealed differences in the level of compliance to RTI-regulations between administrations proper and publicly owned enterprises, one could object and ask whether it is the mode of operation that affects the level of compliance (i.e. ‘administration’ versus ‘enterprise’), or if it could hinge on the substance of the policy area respective operations tend to manage (i.e., for instance, ‘social services’ versus ‘housing’).

In an attempt to control for the role mode of operation plays, we conducted a second ‘stress test’. A policy area that municipalities sometimes choose to operate as administration proper and sometimes through enterprises, is the management of water and sewage. After mapping how water and sewage is organised and managed by local government in Sweden, we included 140 public administrations and 52 municipally owned enterprises in this second test.⁸ We also asked these organisations to hand over the same information about the CEOs and directors as in our first test.

All requests were sent out by e-mail to the dedicated e-mail addresses of the organisations included in our test. Where official addresses were not available, the requests were directed to the CEOs’ or administrative directors’ e-mail

addresses. Our requests were submitted between 13th March and 1st May 2017. During this period a new request was sent to organisations which had not responded to our requests after seven working days. Importantly, we did not disclose the purpose of the study, or inform about the content of the law. This was done, for example, in the experiment conducted by the OFUKI-investigation (SOU 2011:43). We made clear that we represented academia and a research project on how publicly-run enterprises operate, and then simply asked for the information we wanted without giving further context.

Ultimately, a key decision is what yardstick to use to judge whether the organisations have complied with the Swedish RTI legislation or not. Providing information, or at least giving reasons as to why not everything we asked for could be provided, was the minimal requirement for our test. However, the temporal aspect is central too. But where should the time limit be drawn? A few previous tests have used a three-day limit (*Dagens Nyheter* and the OFUKI-committee); while others have been more generous, using a week as their yardstick (Hyltner & Velasco, *Sveriges Radio*).

We opted to stay as close to the wording of the law as possible. *The Freedom of Printing Act* (2 ch, 12§) states that public records must be made available ‘immediately’ or ‘as soon as possible’ upon request. However, how this has been interpreted in individual cases has a certain subjective element. That said, the Parliamentary Ombudsman (Justitieombudsmannen, JO), has tried cases and concluded that, normally public records should be made available *the same day* as they are asked for. Nonetheless, the JO has also stated that a delay of one or two days is acceptable if a secrecy examination is needed; or, if the material asked for is deemed to be very extensive (see, for example, cases tried, JO 4209-09, JO 5308). Taking our cue from *The Freedom of Printing Act*, as well as the reasoning in the cases that the JO has ruled, we ultimately set our yardsticks at 1) answering our questions within four days by e-mail, or 2) within six days by snail mail. Since we wanted to give the surveyed organisations the benefit of the doubt, this is generous compared with RTI-regulations, but not too far from the lawmakers’ intentions.

Results

Let us turn to the results and see how willing the organisations in our sample were to hand over the information we asked for. We will start by 1) presenting the results from the broader, general test, where all administrations and municipally owned enterprises in 30 municipalities were asked to hand over the information we wanted, and then 2) present the results from the narrower test, which asked for information from all administrations and municipally owned corporations in all of Sweden’s municipalities that operate water and sewage.

Table 1 below shows the results from the first test that included 168 administrations and 107 municipally owned enterprises. Those that answered our request within four days (by mail) or six days (by snail mail) were categorised as ‘passing’ the test, according to the yardstick we agreed upon.

Table 1. Public administrations versus public enterprises: How many passed the yardstick? (Test 1)

Type of organisation	Total number	Total number passed	Share passed (percent)
Public administration	168	74	44
Public enterprise	107	55	51

Comment: The table shows the number and share of public administrations and municipally owned enterprises that passed the test of handing over the information asked for within the time frame that the law stipulates.

The results are surprising and provide additional information, considering how the issue has traditionally been discussed: 1) theory suggests that publicly owned enterprises should have lower levels of transparency than public administrations proper, and 2) previous empirical research in Sweden claims that this is also confirmed in their data. However, Table 1 demonstrates that the enterprises fare somewhat better than public administrations in our test. 51 percent of the publicly owned enterprises passed our test and responded within the time frame, while the corresponding figure for public administrations was 44 percent. The difference is not statistically significant, but given the observations, it can at least be concluded that both ways of organising public affairs are equally weak when it comes to adhering to the Swedish *Public Access to Information and Secrecy Act*.

One way of demonstrating our findings is to show how many that passed our yardstick. Another way to display the results is to take a closer look at the mean and median values of the time it took for the respective organisations to hand over the material. As Table 2 shows, the overarching impression remains: the differences between public administrations proper and municipally owned corporations are small.

Table 2. Public administrations versus public corporations: Median and mean values (Test 1)

Type of organisation	Median (days)	Mean (days)	Share non-response (percent)
<i>Public administration</i>	5	6.4	11
<i>Public enterprise</i>	3	4.4	20

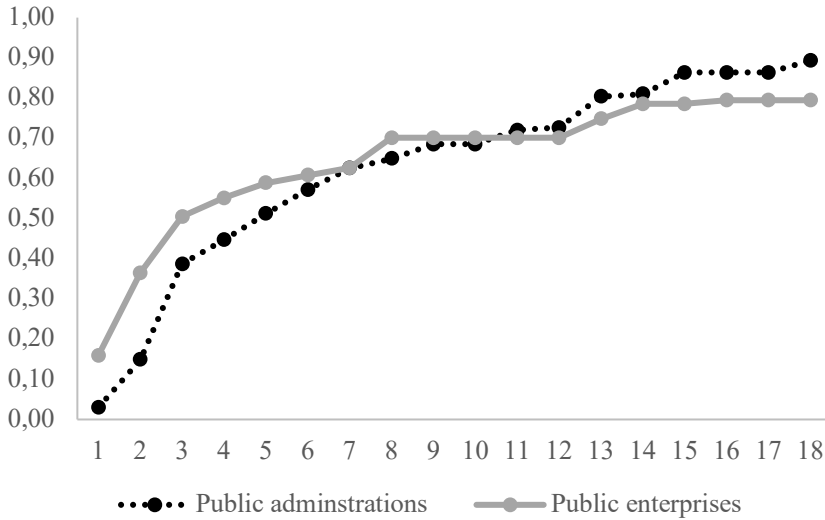
Comment: The table shows how long it took for the organisations we tested to hand over the information we asked for, as well as the share of organisations that did not respond at all.

As is evident, when it comes to speed of response, the enterprises in our sample performed better than the public administrations; and the difference in response time is statistically significant. However, it is worth noting that when it comes to the information that was ultimately handed over, public administrations performed better: 89 percent of them had responded to us by the time the cut-off for the experiment was reached. The corresponding figure for the enterprises was 80 percent, i.e. one fifth of the enterprises did not give satisfactory responses to our questions.

A third way of displaying our results is to cumulatively visualise on which day we received a certain share of answers. This is done in Figure 1. This way of looking at the data confirms the picture that public administrations were

somewhat tardy at the outset, but eventually picked up, and after eight days they were on the same level as the enterprises.

Figure 1. How many answered after X number of days (test 1)?



Comment: The vertical axis indicates the percentage of the organisations in the sample that had answered our requests after x number of days. The horizontal axis depicts the number of days after our first request. We have subtracted two days from those who responded by snail mail.

Figure 1 shows that two days into the test, just about 15 percent of the public administrations had responded to the requests, while the corresponding figure for the enterprises was 36 percent. Thereafter, public administrations picked up speed. All in all, in this first and more general test, we can conclude that public administrations performed worse when it comes to adhering to speed and expedition; however, they did better when it came to the actual quality of the information that was eventually delivered.

Turning to our second test, remember that we kept the policy issue constant here (management of water and sewage), but let the form of organisation vary (i.e. water and sewage managed by either public administrations or municipally owned enterprises). Table 3 shows the overall findings from this test.

Table 3. Public administrations versus public enterprises: How many passed the yardstick test? (Test 2)

Type of organisation	Total number	Total number passed	Share passed (percent)
Public administration	140	75	54
Public enterprise	52	20	38

Comment: The table shows the number and share of public administrations and municipally owned enterprises that passed the test of handing over the information asked for within the time frame that the law stipulates.

As is evident from Table 3, public administrations performed better than in our first test (54 percent passed), a result that is confirmed when we look at the mean and median values of response time in Table 4 below. In this latter and somewhat more concentrated test – where we tried to isolate the effect of type of organisation – enterprises performed considerably worse regarding response time, both compared with public administrations and with how they fared in the more general first test. However, there were only very small differences in the material that was eventually handed over.

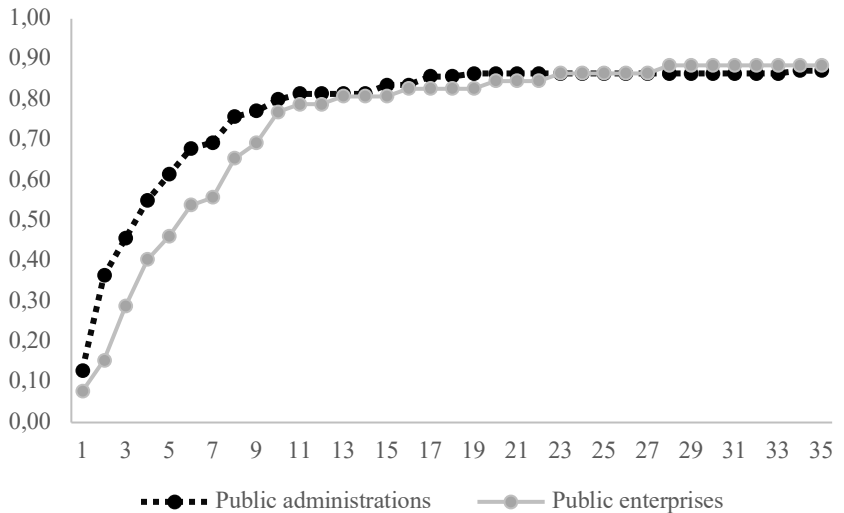
Table 4. Public administrations versus public enterprises: Median and mean values (Test 2)

Type of organisation	Median (days)	Mean (days)	Share no response at all (percent)
<i>Public administration</i>	3	4.8	13
<i>Public enterprise</i>	5	6.8	12

Comment: The table shows how long it took for the organisations we tested to hand over the information we asked for, as well as the share of organisations that did not respond at all.

In Figure 2, the response time of the two types of organisations can be viewed in more detail. Contrary to test 1, public administrations were faster than enterprises, which did reach the same level of response when two weeks – and one reminder – had passed; and then only 80 percent reacted to our requests. When our test period was over, 13 percent of public administrations and 12 percent of public enterprises had not answered our requests at all.

Figure 2. How many had answered after X number of days? (Test 2)



Comment: The vertical axis indicates the percentage of the organisations in the sample that had answered our requests after x number of days. The horizontal axis depicts the number of days after our first request. We have subtracted two days from those who responded by snail mail.

Concluding discussion and implications

Two results stand out and need elaboration. The first is the low *general* level of compliance with the law, especially regarding speed of expedition. The enforcement of the law must be regarded as disappointing, at least when the yardstick is the demands made by the Swedish RTI legislation i.e. that public records must be made available ‘immediately’ or ‘as soon as possible’ and with a delay of up to two days at most (if arguments for this can be made). Adding both our ‘stress tests’ together, we requested information from a total of 462 public administrations and enterprises owned by local governments.⁹ Only 220 of them – fewer than half – responded within the time-limit; and the time limit we employed as a yardstick was generous given the wording of the law.

It is worth emphasizing that the test was forgiving in two additional ways. The information we asked for is not particularly sensitive, compared with, for instance, if we had asked for procurement contracts or sponsorship agreements. In addition, and admittedly, the quality of the answers we received could have been more harshly evaluated. When this dimension is added, it should be mentioned that in several cases the answers were of doubtful quality. Nevertheless, since speed of expedition was our focus, we categorised these as ‘passed’, provided that the organisations responded to us within the time limit and gave us a satisfactory explanation as to why they could not give us all the information requested.

One should also note that 13 percent of the organisations did not respond to our requests at all, despite the prolonged test period and the fact that we submitted reminders after seven working days. This is in line with what has been found by investigative journalists making similar explorations (e.g. *Dagens Nyheter* 2010; *Sveriges Radio* 2017), thus adding strength to the validity of our findings.

The purpose here has not been to *explain* the ‘loose couplings’, that is, *why* we observe comparatively low levels of *de facto* compliance with the Swedish RTI law. However, grounded in Lennart Lundquist’s (1987) theory of implementation, at least three hypotheses present themselves. According to Lundquist, implementation can be unsuccessful for the following reasons: The civil servant:

- 1) **cannot** implement because of lack of resources (i.e. time, staff, money, proper routines);
- 2) does not **understand** that (s)he needs to implement (i.e. because knowledge about the law/instruction is not spread throughout the organisation);
- 3) does not **want** to implement the law/instruction (in our case, that there could be political or other reasons to obstruct, hide or intentionally delay the provision of information).

It is for future research to delve deeper and develop explanations for the comparatively poor compliance observed in the present study. However, given our experience with the data conducting our tests, the impression is that the delays observed in our material may have more to do with (1) and (2), than with (3). An important factor, we believe, is a lack of routine when it comes to handling requests like ours. For instance; what happens when the person

responsible for answering the requests is on parental or sick leave? Perhaps more pressing, there are reasons to believe that there is a lack of knowledge about the content of the RTI legislation: many civil servants simply do not seem to know the strict demands the law puts on them. There are no compelling reasons to believe that it is deliberate obstruction that drives our findings. Nevertheless, it is worth noting that the Swedish ‘Ombudsman model’ (Neuman 2009) does not include the option to put sanctions on agencies or civil servants. In the case that civil servants do not want to implement the RTI law for one reason or another, the costs of non-compliance are limited.

That said, for the purpose at hand we maintain that it is sufficient to state that even though a country **1)** has had ambitious *de jure* RTI regulations in place since the 18th century; **2)** is continuously ranked as being among the world’s most transparent, and **3)** has a bureaucracy which is ranked among the world’s most effective; this does *not* guarantee that its RTI legislation is implemented with high quality in everyday application. We believe that observing this in a mature welfare state, which regularly performs well in transparency, anti-corruption and rule of law rankings, adds to the knowledge in the field, which has, in the past, predominantly discussed the lack of implementation in relation to developing countries that have newly passed RTI laws. Here, scholars have explained poor implementation with reference to the ‘immaturity’ of bureaucracies, e.g. poor archive management, lack of human and economic resources, and low levels of awareness by civil servants and citizens about the existence of the legislation (Neuman & Calland 2007). But, as we have seen, difficulties implementing ambitious laws are also observed in our ‘most likely’ setting.

The second result worth delving into, is the surprisingly small differences found between public administrations on the one hand, and publicly owned enterprises owned by the municipalities on the other. Previous research, and arguments from theories on NPM reforms, would lead us to expect a lack of transparency – and hence lower adherence to RTI legislation – among the enterprises (e.g. Bozec & Breton 2003; André 2010; Box et al 2001; Hondeghem 1998; Grossi & Thomasson 2015). When parts of the municipality’s operation are corporatised, a distance is created between those who ‘own’ the operation on the one hand, and those who ‘manage’ it, on the other; and sometimes, more secretive private sector values may be imported (e.g. Svärd 2016). This is believed to make transparency muddier and accountability blurred. Also, private sector culture is expected to promote secrecy and wanting respect for public ethics. However, the hypothesis of ‘accountability deficit’ publicly owned corporations is not what was observed, at least in this particular test. In the first test, enterprises performed even better when it came to speed of expedition. However, they performed somewhat worse when it came to ultimately handing over the information requested: more enterprises than administrations did not submit the information we asked for.

Nevertheless, given what is observed here, it would be misleading to conclude that hybrid organisations, such as enterprises owned and operated by municipalities, are systematically worse at implementing RTI laws than public administrations proper. To avoid any misinterpretation of the findings, this does not imply that publicly owned enterprises are *good* at adhering to RTI

legislation. On the contrary. Instead, it must be concluded that public administrations in Swedish local government are *also* – somewhat surprisingly – comparatively weak when it comes to implementing the legislation.

Ultimately, our conclusion must be then that both publicly owned enterprises and public administrations are wanting when it comes to reactive transparency of this sort, especially when it comes to respecting the demands of speed of expedition that, by law, they are obliged to follow. This is surprising, and somewhat disheartening, from an RTI point of view, considering 1) how comparatively well Sweden fares in rankings and indices that study transparency and *de jure* legislation and/or are based on subjective expert surveys, and 2) that the conditions for implementation are good in Sweden, since its bureaucracy is professionalised, well-educated, efficient and has – at least relative to most other countries – more than sufficient resources and, hence, strong capacity.

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Notes

¹ However, see for example Lindstedt and Naurin (2011) as well as Cucciniello et al (2017) for a slightly different, sceptical and critical perspective on the beneficial effects on transparency.

² These kinds of laws are sometimes referred to as ‘freedom of information’ (FOI) laws or ‘access to information’ (ATI) laws. However, in this paper, we have chosen to call them RTI laws.

³ <http://www.rti-rating.org/>

⁴ That ‘quasi-privatisation’ through the creation of publicly owned enterprises should be seen as a part of the general NPM wave is argued by, for example, Christensen and Læg Reid (2003), (See also Hood 1991).

⁵ One should, however, note that there are arguments in the NPM literature which claim that NPM reforms have, in fact, increased accountability mechanisms in the public sector through, as Bovens et al (2008) point out, ‘benchmarking, monitoring, accreditation, and planning and control cycles’.

⁶ Approaches along these lines have been employed by e.g. Saez-Martin et al (2017) and Berliner (2017) when investigating implementation of RTI laws within Spain and South Africa respectively. However, their methodology differs significantly from the methodological approach we use in this paper.

⁷ The 30 municipalities were randomly drawn from a stratified sample of Swedish municipalities. We first divided the total number of municipalities into five groups, depending on how many public enterprises they owned, and the total number of employees in those enterprises. Then we drew six municipalities from each group to ensure that our sample was representative when it came to the structure of ownership of enterprises.

⁸ Since the sum of tested organizations in this test is not 290 – the same as the number of municipalities in Sweden – this is not an exhaustive list of the ways water and sewage is managed. In our test, we have not included some less common ways to organize water and sewage: inter-municipal joint arrangements (in total 8); and publicly owned enterprises that are owned jointly by two or more municipalities (in total 16).

⁹ Note that five enterprises that operate in water and sewage were included in both tests since they fulfilled the selection criteria for both ‘stress tests’. However, only one request was sent to these enterprises, since the request procedure towards enterprises was identical for both experiments.