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# Transparency Reform and Advocacy Groups: The Strength of Freedom of Information Acts

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## Abstract

To understand the underlying circumstances that facilitate government efforts with robust transparency reform, this study examines the legal strength of Freedom of Information Acts (FOIAs) around the world. This analysis bridges the gap between the institutionalist and civil society focuses of extant research on causes of transparency reform. Given the constellation of major actors and their preferences, this research suggests that the presence of FOIA advocacy groups is an initiating cause for robust reform, while a country's internal institutional arrangement, especially the legislative strength of the chief executive, is a mitigating factor. This study tests two hypotheses — (1) the presence of transparency advocacy is associated with stronger FOIAs; and (2) the legislative vulnerability of the chief executive is associated with stronger FOIAs, conditional on the presence of transparency advocacy — using cross-national statistical analyses, as well as a comparison of British and German cases. Both support the current study's claim.

## Introduction

In May 2009, the British parliamentary expenses scandal caught the attention of the world. For weeks, mass media reported a series of humiliating disclosures on the expenses of the Members of Parliament (MPs), including pornography, home renovations, and even the construction of a floating duck house. Some claimed fraudulent expenses, such as reimbursement for a second official home, while collecting rents from it. In the end, 389 MPs were ordered to make repayments; six ministers and the Commons Speaker resigned; four MPs and two members of the House of Lords were incarcerated. What made these revelations possible in the first place was the Freedom of Information Act (FOIA) that Britain passed in 2000 (Brooke 2011). The British expenses scandal is one of many examples of the potential power of FOIAs.

FOIAs represent a significant legal instrument for enabling governmental transparency—accessibility and availability of government information to the public (hereafter referred to as transparency). They guarantee citizen access to government-held information unless it falls under one of the listed exemptions, and make explicit the procedural requirements that citizens need to follow to gain access to such information. While only a handful of countries had FOIAs until the 1980s, the number of countries with FOIAs has increased dramatically during the last several decades. As of mid-2013, about 90 countries have such laws.

As is the case with other laws, FOIAs exhibit significant variation in strength across nations. Variation can be found, for example, in the range of exemptions, and the time allowed for government response to requests. This article studies the factors that affect the strength of FOIAs. In particular, it highlights the roles of advocacy groups<sup>1)</sup> with regard to the legislative processes. Being generally undesirable for politicians both in the ruling and opposition parties, transparency reforms tend to be ignored and watered down in elite-level politics. Lobbying activities by advocacy groups, this article suggests, publicize the benefits of transparency and

enhance the policy competition, leading to the enactment of FOIAs containing robust provisions. Given the constellation of major actors and their preferences, the analytical framework herein suggests that the presence of FOIA advocacy groups is an initiating cause for robust reform, while the country's internal institutional arrangement, especially the legislative strength of the chief executive, is a mitigating factor. This study provides empirical evidence in support of this claim, based on a cross-national statistical analysis and a comparison of British and German cases. In particular, this research shows that (1) the presence of transparency advocacy is associated with stronger FOIAs, and (2) the legislative vulnerability of the chief executive is associated with stronger FOIAs *conditional on* the presence of transparency advocacy.

The current article contributes to several strands of emerging literature on public policy. First, it augments the studies on the causes of transparency. Despite recent interest in the issue among members of the policy community, academic research addressing its origins is still underdeveloped. Furthermore, among these studies, there is a disconnection between those focusing on political institutions and those on civil societies. This study proposes an analysis framework that integrates the two, in which their interaction can be studied. Additionally, as far as is known, the current study is the first to analyze the factors affecting the strength of FOIAs with global scope.<sup>2)</sup> Second, this analysis is related to the issue of accountability. Scholars, as well as many international institutions, have increasingly recognized the importance of various accountability mechanisms for realizing good governance (Przeworski, Stokes, and Manin 1999). This study is an addition to this literature, demonstrating how societal accountability (civil society groups) can lead to an establishment of horizontal accountability mechanisms (FOIAs).<sup>3)</sup> Third, this article addresses the question of how democracy leads to public goods provision, as transparency is one type of public goods. It highlights the importance of advocacy groups in providing certain types of public goods, such as transparency, that are less intuitively attractive to voters. This point is discussed further in the conclusion.

As a caveat, it should be noted that the implementation phase of FOIAs is beyond the scope of this article.<sup>4)</sup> As such, some might conclude that this study addresses something relatively unimportant, because what matters is not the design strength of FOI laws but their actual implementation. While it is evident that effective implementation is crucial, this study also stress that without a sound legal framework, implementation is likely to be stalled. For example, a recent World Bank's review of FOIA implementation in seven countries concluded that "setting up the formal institutional architecture for implementation was important to build capacity in the public sector to respond to RTI (right to information) requests, aligning incentives and creating a culture of openness" (Dokeniya 2013, 4). Moreover, studies of countries with relatively strong FOIAs, such as India, show that having a strong law has a substantial impact, even in the context where bureaucratic resources are relatively underdeveloped (Peisakhin and Pinto 2010). Thus, the authors maintain that the strength of legal framework for transparency is an important and worthwhile aspect to explore.

The sections that follow first discuss how FOIAs vary across countries with regard to the strength dimension, then proceed to lay out the analytical framework for this study, as well as hypotheses based thereon. The remaining two sections test the argument quantitatively and qualitatively.

## Measuring FOIAs' Strength

Scholars have used various types of transparency measures to study causes of transparency. These include, for example, a composite transparency index (Bellver and Kaufmann 2005), missing data in macro-economic statistics (Bueno de Mesquita, Smith, Siverson, and Morrow 2003; Rosendorff and Vreeland 2006), disclosure laws (Djankov, Porta, Lopez-de-Silanes, and Shleifer 2009), parliamentary rules (Stasavage 2004), and international standard for fiscal disclosure (Pitlik, Frank, and Firchow 2010). This article focuses on FOIAs because they are considered to be

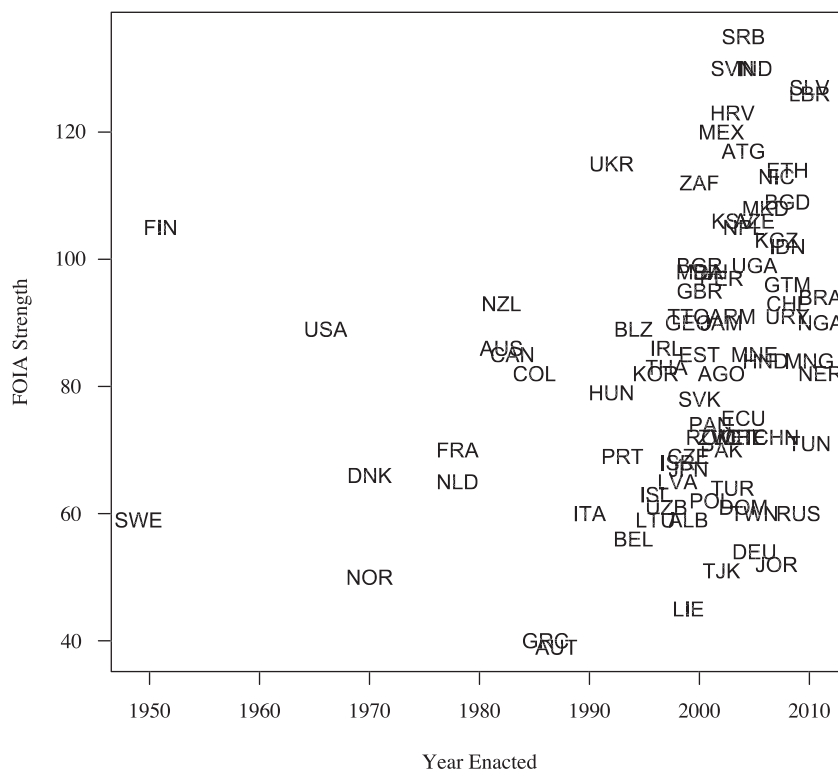
one of the most important and comprehensive instruments for transparency in the contemporary setting (Fenster 2012). The particular aspect of FOIAs studied is the strength of their legal provisions, which refers to the extent to which the law's provisions facilitate citizen use of this instrument. This analysis adopts the strength measure devised by two non-governmental organizations (NGOs): the Canada-based Center for Law and Democracy; and the Madrid-based Access Info Europe (hereafter, CLD measure; Center for Law and Democracy, n.d.). These NGOs evaluated the strength of all FOIAs existing as of 2012 on a scale from zero to 150.<sup>5)</sup> This measure, reflecting the model principles of FOIAs endorsed by the United Nations and the Organization of American States, can be considered as the most valid and reliable gauge of FOIA laws to date (Article 19 1999).

The strength measure exhibits a substantial variation across countries and time. Figure 1 plots the measure against the years in which the law was enacted or revised.<sup>6)</sup> It shows a moderate upward trend, presumably reflecting the political learning effects; Countries enacting FOIAs in later years were under pressure to enact stronger laws based on the experiences of other countries. Despite this moderate time trend, there is quite a variation even among countries that enacted FOIAs around the same time. For example, FOIAs of the United Kingdom (U.K.) and Germany, enacted in early 2000s, received contrasting scores (99 and 52 respectively), despite the similar geographic and socio-economic conditions. In light of varying strength of FOI laws, this article explores political factors that might explain this difference.

## Advocacy Groups in Transparency Reforms

Existing major studies on the causes of transparency employ institutional perspectives.<sup>7)</sup> In other words, various institutional settings surrounding political leaders create constraints on them, a situation which in turn leads to transparency reforms. For example, the existence of competitive elections create the fear of “unfair eviction” among political

FIGURE 1 Plot of FOIA Strength and Years Enacted



Source: Compiled by the authors.

elites, thus they might embark on transparency reforms voluntarily (Rosendorff and Doces 2006, 99; Bueno de Mesquita et al. 2003, 182-184; Hollyer, Rosendorff, and Vreeland 2011). Furthermore, some studies claim that political leaders facing fierce electoral competition have incentives for enhancing government transparency in order to “tie the hands” of the next government (Alt, Lassen, and Rose 2006, 8; Berliner 2011a) or to gain “expressive benefits” through reforms (Berliner 2011a, 18-19). Others maintain that substantial transparency reform is more likely when the chief executive has weak legislative support, since he or she would be more vulnerable to the opposition pressure (Michener 2010). Other theory

focuses on the constitutional structure, and posits that presidential government is more transparent than parliamentary government, since the former tends to create conflict of interests among different branches of the government (Persson, Roland, and Tabellini 1997; Alt and Lassen 2006). Others argue that leftist governments, in comparison to rightists, are more likely to embrace transparency reform, as they need to gain voters' trust in order to expand the size of the government (Ferejohn 1999).

While these studies have substantially advanced our understanding about transparency reform, one of the issues that have escaped a systematic empirical analysis is the role played by advocacy groups in promoting transparency reforms (hereafter referred to as transparency advocacy or transparency NGOs, interchangeably). There have been a number of studies that point to the importance of civil society groups (Ackerman and Sandoval-Ballesteros 2006; Florini 2007; Puddephatt 2009), but they remain rather descriptive. As a result, there is a disconnection between the institutional analyses and the studies focusing on advocacy groups.

This paper fills the gap in the literature by incorporating advocacy groups into the institutionalist theory of transparency.<sup>8)</sup> The following discussion highlights two potential roles they play in the legislative politics: they disseminate benefits of transparency to the public, whereby they facilitate active debates on transparency reform in political arena; and they monitor drafting and deliberation processes, to secure effective force of the laws enacted.

To begin with, politicians generally have inherent incentives to not increase transparency, because doing so decreases their information advantage, or may reveal their wrongdoings (Stiglitz 1999). Some might think that opposition politicians would prefer transparency, and thus, one should differentiate politicians in power from the opposition. The present analysis contends that unless the opposition sees transparency as an electorally viable issue, it remains opposed, or at best, indifferent, to transparency, since those politicians themselves would expect to suffer from the loss of information advantage when they occupy the government



in the future.<sup>9)</sup> Besides politicians, bureaucrats tend to go against transparency reform, for similar reasons. They generally also dislike FOIAs, because of the expectation that such a law simply increases their workload.

For most voters, transparency is rarely a major electoral agenda item, even though they might vaguely perceive it to be desirable.<sup>10)</sup> For them, transparency instruments are analogous to fire alarms: the devices' usefulness is only realized when there is a fire; in the case of a FOIA, wrongdoing committed by government officials. During normal times, the value of the fire alarm is hard to notice, and so it is with transparency instruments. On occasions, major political scandal may create momentum to raise citizen awareness about the importance of having a FOI law, but even then, sustaining citizen interest is difficult because of the technical nature of the issue. Transparency laws, including FOIAs, require technical knowledge to evaluate what works and what does not.<sup>11)</sup> In short, while the public might vaguely perceive a FOIA as desirable, it is rare for most voters to consider a transparency law as an important national issue, when compared with more tangible issues, such as employment, welfare, education, and health.

Given this constellation of interests among politicians and voters, transparency rarely enters the policy platforms of major political parties unless there is some pressure that shifts the incentive structure of the politicians.<sup>12)</sup>

At this juncture, domestic transparency advocacy groups serve as the agents of pressure in two respects. First, advocacy groups disseminate information to voters about the normative importance, as well as the practical benefits, of transparency. They usually engage in varieties of "outside lobbying" activities, such as conducting public seminars, running a publicity campaign through mass media, or sending newsletters to its members.<sup>13)</sup> These undertakings stimulate citizen interest in transparency reform, thereby likely increasing the strategic value of the issue among politicians.

Second, once a FOI bill is in preparation and in the legislation process,

advocacy groups can monitor the policy-making process. Our review of case studies reveals that politicians and bureaucrats typically attempt to water down the contents of FOI laws during this stage<sup>14</sup>). However, since understanding the subtleties of legal jargon usually requires technical knowledge specific of FOIAs, it is often difficult for ordinary citizens and even journalists to monitor the process of FOI legislation. Under such circumstances, transparency NGOs, equipped with legal expertise, can save the substance of FOI laws by conducting “inside lobbying,” such as pressuring political leaders and appealing to opposition politicians and citizens. These activities may ensure that legislatures enact stronger FOIAs.

While some might think that the role of mass media should be addressed, the current analytical framework omits their role for two reasons. First, promoting government transparency is not their inherent interest; depending on their pre-existing relationships with governments, they may be indifferent or even oppose transparency reform as in Argentina (Michener 2010). Second, when mass media reporting on FOIAs are important in promoting issue recognition among the public, their extent of coverage is often a function of the robustness of transparency NGOs.

Given the above description of typical FOI policy-making, it is expected FOIAs will be more robust if domestic advocacy groups conduct publicity campaigns and become involved in the deliberation processes. Thus:

*Hypothesis 1: A country is more likely to enact a stronger FOIA if that country has domestic FOIA advocacy group(s) during the legislative process, than a country that does not, other things being equal.*

Second, this study examines how advocacy groups interact with political elites in the legislative process. Michener (2010) suggests that a chief executive who lacks strong legislative support tends to enact a stronger FOIA, due to strong pressure from opposition parties. However,

opposition politicians may not have a strong incentive to insist on transparency reforms unless the issue has strategic value to compete over. This analysis predicts, as stated in Hypothesis 2, that lobbying activities by advocacy groups enhance public interests in transparency reforms, inducing opposition politicians to pressure the chief executive to enact a robust FOIA during the legislative process.

*Hypothesis 2: The vulnerability of the chief executive leads to a stronger FOIA, on the condition that a country has an active domestic FOIA advocacy group(s) during the legislative process.*

## Evidence From Cross-National Analyses

This section provides quantitative evidence on the role of advocacy in transparency reform. The following model is estimated to examine the hypotheses presented above.

$$Y = \alpha + \beta_1 \text{Advocacy} + \beta_2 \text{Majority}(\text{Advocacy}) + \beta_3 \text{Majority}(1 - \text{Advocacy}) + \gamma X + u$$

Our dependent variable  $Y$  is the strength of FOIAs as measured by CLD and Access-Info Europe. *Advocacy* is our key independent variable, which equals one, if and only if, one or more advocacy groups had been active for at least one year when the FOIA was enacted in the given country. The data are compiled from two websites, FOIANet (FOIANet n.d.) and FreedomInfo (FreedomInfo n.d.). They are the major networking platforms of FOIA advocacy groups around the world, and list the names of domestic FOIA advocacy NGOs. We collected information about the foundational years of NGOs through their individual websites. According to Hypothesis 1, this variable is expected to associate positively with FOIA strength.

*Majority* is the seat share of the ruling party in the legislature. This variable is used as a proxy for the political strength of the chief executive. The data are taken from the Database of Political Institutions (DPI; Beck, Clarke, Groff, Keefer, and Walsh 2001).<sup>15)</sup> To examine Hypothesis 2, this

variable is interacted with *Advocacy*:  $\beta_2$  and  $\beta_3$  represent the impacts of *Majority* when *Advocacy* equals 1 and 0, respectively. The hypothesis predicts  $\beta_2$  to be negative and  $\beta_3$  to be zero.

X represents the set of control variables to mitigate the biases due to the omitted variables. First, variables are included that code ideological positions of the ruling party, because, as Ferejohn (1999)'s predicts, a leftist government may enact a stronger FOIA. The dichotomous variables *Left and Right* indicate the ideology of the ruling party.<sup>16)</sup> They are constructed from DPI data.

Second, the analysis controls for the possible effects of executive-legislative structure (Persson, Roland, and Tabellini 1997; Alt and Lassen 2006). We include *Presidential*, a dichotomous variable indicating the country has a presidential system, including both pure presidentialism and semi-presidentialism. This variable is expected to associate positively with FOIA strength, and data is from the DPI.

Third, to control for potential impacts of political regimes, two dichotomous variables are incorporated, *Democracy* and *New Democracy*, based on the Democracy and Dictatorship database (Cheibub n.d.). They indicate, respectively, that the country was a democracy during the year when the FOIA was passed or revised, and that the country had democratized within ten years before that year. These were included because electoral competition in democracies potentially makes governments more transparent (Rosenforff and Doces 2006; Bueno de Mesquita et al. 2003). At the same time, observation has been made that momentum towards more transparency is created in the period shortly after democratization (Lord 2006, 6-7; Bennett 1997).

Fourth, the log of the gross domestic product (GDP) per capita, called *GDP*, is included, to isolate the potential effects of economic development. The data is retrieved from World Development Indicators (World Bank n.d.).<sup>17)</sup> Fifth, the study also includes the population fraction of Catholics, Muslims, and Protestants in 1980.<sup>18)</sup> These variables control for alleged influence of religious make-up of countries; Protestant-dominant countries are said to be more transparent than Catholic and Muslim-dominant

Table 1 Basic Statistics on Dependent and Independent Variables

	Mean	Std. Dev.	Min
FOIA strength	85.151	21.268	39
Advocacy	0.516	0.502	0
Majority	0.574	0.156	0.141
Left	0.387	0.490	0
Right	0.204	0.405	0
Presidential	0.466	0.502	0
Democracy	0.807	0.397	0
New Democracy	0.097	0.297	0
GDP per capita	13285.243	17229.760	323.650
Catholic	34.667	38.647	0
Muslim	15.711	30.734	0
Protestant	13.983	24.077	0
British Origin	0.247	0.434	0

Source: Compiled by the authors.

countries (Holzner and Holzner 2006, 18–22). Sixth, *British Origin* is a dichotomous variable that indicates that the country has a legal system of British origin. This variable captures the potential influence of the legal system, as some scholars have argued that countries with common law tradition are more market oriented, and thus tend to be more transparent than those adopting other legal traditions, such as the civil law system (Alt and Lassen 2006; Wehner and de Renzi 2013). The summary statistics are presented in Table 1.

In addition to estimating the model by ordinary least squares (OLS), we also apply the Heckman correction to correct for potential sample selection bias (Heckman 1979). In our context, OLS estimates can be biased, as they are estimated from a set of countries that have enacted a FOIA. The Heckman model controls for this bias by modeling explicitly the determinants of FOIA passage. In the first stage, a dummy variable indicating that the country has enacted FOIA is regressed on a set of control variables; a dummy that indicates that advocacy group(s) existed in the country, the fraction of time being the democracy within the period, the log of average GDP per capita, and the *IGO Context* variable for FOIA enactment. The IGO context variable, following Berliner (2011a), is defined as the average of the proportion of countries that have enacted FOIAs among the given country's IGO partners. This variable represents

1st Q.	Median	3rd Q.	Max	#Obs
69	85	99	135	93
0	1	1	1	93
0.497	0.554	0.652	1	84
0	0	1	1	93
0	0	0	1	93
0	0	1	1	88
1	1	1	1	88
0	0	0	1	93
1579.103	4755.334	17218.394	82048.226	92
0.5	13.1	76.5	97.3	89
0	0.5	10.6	99.5	89
0.2	2.4	15.875	97.8	88
0	0	0	1	89

socialization pressure exerted by international governmental organizations to enact a FOIA (Berliner 2011a).<sup>19)</sup> In the second stage, the OLS model is estimated along with the inverse Mills ratio derived from the first stage.

### Graphical Analyses

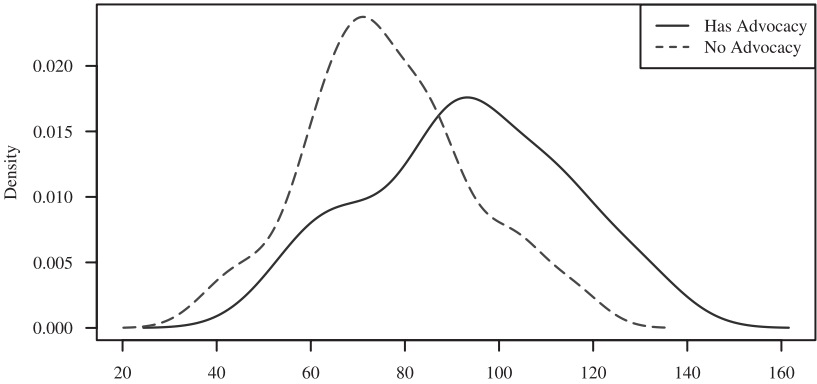
Figure 2 shows correlation between FOIA strength and the presence of advocacy groups. It plots the kernel density estimates of the FOIA strength for those countries that had an advocacy group at the time of passage/revision, and those that did not. The graph clearly indicates that countries with advocacy groups tend to have a stronger FOIA, as predicted by Hypothesis 1.

Figure 3 plots FOIA strength against the ruling party's seat share in the legislature. Black squares are the countries with an advocacy group, and the white ones are those without. While the plot exhibits a weak negative association overall, the correlation is stronger for countries that had an advocacy group. For those where no advocacy group existed, the correlation is zero or slight positive. This is consistent with Hypothesis 2.

### Results of the Regression Analyses

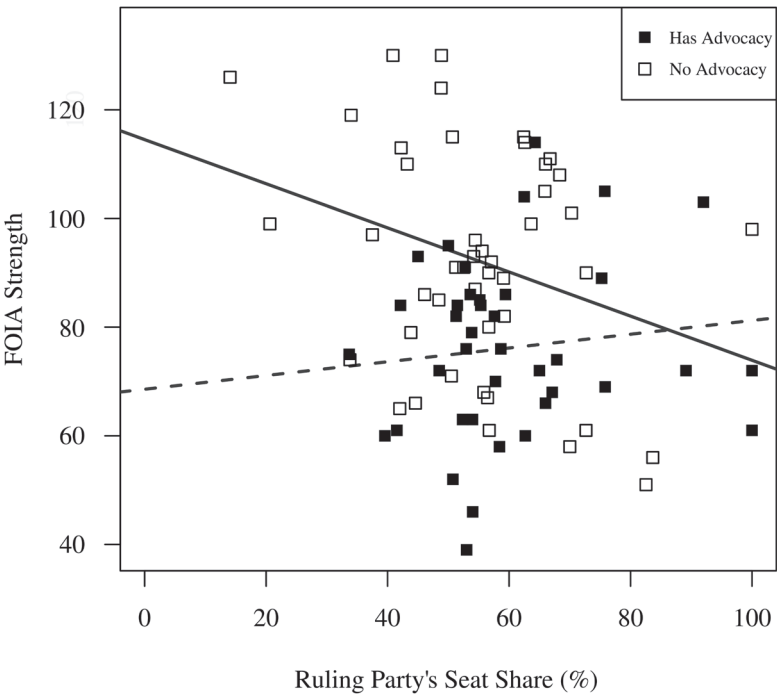
The results of the regression analyses are summarized in Table 2. The columns 1 and 2 show the OLS estimates; 3 and 4 show the estimates

FIGURE 2 Density Plot of FOIA Strength and Advocacy



Source: Compiled by the authors.

FIGURE 3 Plot of FOIA Strength and Legislative Majority



Source: Compiled by the authors.

with the Heckman correction. In columns 1 and 3, *Majority* is not interacted with *Advocacy*, and 2 and 4 show the results of the interacted model.

The coefficient of *Advocacy* is positive and significant for all specifications, as predicted by Hypothesis 1. The FOIA strength score is about 15 points (0.7 standard deviation) larger for the countries where one or more advocacy groups were active at the time of passage or revision.

The results also render support for Hypothesis 2. The coefficient of *Majority* is negative, but not significant, in the models with no interaction (models 1 and 3). When *Majority* variable is interacted with *Advocacy* (models 2 and 4), the estimate becomes significantly negative only for those countries with advocacy. When it has 15 percent point larger share in the legislature, the FOIA enacted by the government is about 6 points weaker (about 0.3 standard deviation).

Coefficients on the control variables reveal interesting patterns. The impact of partisan ideology is mixed: A significant difference is found only for rightist governments. The negative coefficient of *Right* indicates that rightist governments tend to enact a weaker FOIA by around 11 points, in comparison to the rest of the ideological categories (Center and No Information). However, the coefficient for Left is not significant, indicating that leftist governments do not particularly have an affinity with transparency, as Ferejhon's model predicts.

The coefficient of *Presidential* is consistently negative, and even significant, at the 10 percent level, for the OLS specification. This suggests that, contrary to existing arguments, presidential governments actually enact *weaker* FOIAs in comparison to parliamentary systems. The rationale behind the existing argument is that presidentialism is more prone to have minority (divided) government where the legislature is likely to demand greater transparency. In the current model, however, *Majority* controls for the expected effect of minority government. This may mean that, other things being equal, presidents may have larger political resources to expend in order to avoid substantial transparency reform than prime ministers.



Table 2 Results of Regression Analyses

Model	OLS	OLS	Heckman	Heckman
<i>Advocacy</i>	14.212*** (4.716)	35.474** (16.884)	17.12*** (5.943)	40.657*** (15.418)
<i>Majority</i>	-26.623 (16.388)	. (.)	-22.895 (14.609)	. (.)
<i>Majority</i> × <i>Advocacy</i>	. (.)	-42.99** (20.533)	. (.)	-41.061** (18.113)
<i>Majority</i> × (1 - <i>Advocacy</i> )	. (.)	-6.692 (22.292)	. (.)	-0.773 (19.621)
<i>Left</i>	-4.122 (5.14)	-4.536 (5.122)	-4.274 (4.62)	-4.709 (4.553)
<i>Right</i>	-12.002** (5.891)	-11.835** (5.862)	-10.664* (5.41)	-10.675** (5.32)
<i>Presidential</i>	-9.528* (5.224)	-8.991* (5.212)	-7.869 (5.027)	-7.486 (4.948)
<i>Democracy</i>	3.606 (6.874)	2.447 (6.895)	4.904 (6.233)	3.388 (6.197)
<i>New Democracy</i>	3.647 (7.037)	1.469 (7.195)	3.89 (6.156)	1.638 (6.203)
<i>GDP</i>	-6.04*** (2.045)	-5.649*** (2.056)	-5.957*** (1.9)	-5.61*** (1.88)
<i>Catholic</i>	0.091 (0.069)	0.091 (0.068)	0.093 (0.065)	0.099 (0.064)
<i>Muslim</i>	0.031 (0.092)	0.018 (0.092)	0.032 (0.083)	0.02 (0.082)
<i>Protestant</i>	0.165 (0.105)	0.164 (0.105)	0.219** (0.097)	0.224** (0.095)
<i>British Origin</i>	6.867 (4.991)	7.951 (5.033)	7.005 (4.488)	8.339* (4.489)
Year Trend	Yes	Yes	Yes	Yes
Heckman correction	No	No	Yes	Yes
R Squared	0.394	0.409	0.403	0.423
Adjusted R Squared	0.278	0.285	0.273	0.286
N	82	82	79	79
N in the 1st Stage			79+93	79+93

Standard errors in parentheses.

\*: p&lt;.1, \*\*: p&lt;.05, \*\*\* p&lt;.01

The coefficient of *GDP* is negative and significant at the 1 per cent level in all models, suggesting that less developed countries tend to enact stronger FOIAs. One interpretation for this result is that since governments in poor countries tend to be more corrupt, citizens may demand stronger FOIAs in those countries. As for religion, some specifications reveal that countries tend to enact stronger FOIAs when the fraction of Protestants is larger, as consistent with the claim by Holzner and Holzner. Finally, the coefficient for *British Origin* is positive and significant, indicating that countries with common law transition tend to enact stronger FOIAs than those with other types of legal traditions.

### Comparing the U.K. and Germany

**Backgrounds.** To complement the cross-national analyses, case studies were conducted of FOIA policy-making processes in the U.K. and Germany. This pair makes a “most similar cases comparison” (Seawright and Gerring 2008), in which most of the possible factors influencing transparency are similar *except* the variable of interest: the degree of domestic advocacy group involvement. The purpose here is to illustrate how the variation in the robustness of advocacy group activities has different impacts on the final design of FOIAs.

The U.K. and Germany share many aspects in social, economic, and political settings. Located in Western Europe, their memberships in international organizations also overlap significantly, including the European Union, the Council of Europe, and the Organization for Security and Cooperation in Europe. This means that they are surrounded by a similar international standard for what an ideal FOIA should look like. Socio-economically, they have similar levels of development in terms of income, education, and urbanization. They also share comparable general political environments; both are well-established parliamentary democracies with relatively well-disciplined political parties. Another important similarity is that both countries have relatively low levels of governmental corruption. A country with rampant corruption may potentially have a bigger demand for transparency reform, thus comparing countries that

differ in the degree of corruption would not be desirable. But this does not apply for the U.K.-Germany comparison.

Specific political contexts at the time of FOIA enactment in these two countries were also alike. When they enacted FOIAs, both had a center-left government. In the U.K., the Labor party came to power after the 1997 election. In Germany, the coalition of Social Democratic Party (SPD) and the Green Party had been in place since 1998.<sup>20)</sup> More importantly, both Labor and the SPD-Green coalition had included FOIA in their electoral platform. Passing a FOIA has been an item in the party platform of the Labor Party since 1974 in every election. In Germany, the Green Party's election program in 1994 mentioned that a FOIA is necessary for civic participation. When the Greens and SPD formed coalition before the 1998 election, their treaty included that a FOIA would be enacted in their government.

However, once these center-left governments took off in the late 1990s, the policy-making process of FOIAs took a divergent course. In the UK., its FOIA was enacted in 2000, within three years of the new Labor government. Based on the CLD rating, the UK.'s Freedom of Information Act scores 99 out of theoretical maximum of 150, which is ranked 25<sup>th</sup> out of 93 countries with FOIAs. In contrast, the SPD-Green government did not enact a FOIA in its first term, and only did so at the very end of their second term in 2005. The German Freedom of Information Lawscores 52 out of 150, and ranked the fifth from the bottom of the list. Despite having many similarities as described above, why do the U.K. and Germany have such a different FOIA strengths? This study argues that the varying degree of advocacy group involvement is an important factor that led to this divergent outcome. In the U.K., there was long-standing and active advocacy, whereas Germany had only a short-lived and weak one. The following sections illustrate how the roles of advocacy groups differed in these two countries.

The U.K. The U.K.'s most active FOIA advocacy group has been the Campaign for Freedom of Information (CFOI), established in 1984.<sup>21)</sup> It was

an offspring of an umbrella campaign organization called Citizen Action, launched by political activist Des Wilson, who later became the President of Liberal Party. CFI has had relatively small operation from the beginning, having only several full-time staff. Despite its small size, it “quickly acquired consultative states with the government due to the tireless work of its Director, Maurice Frankel, and the links it succeeded in establishing with politicians of all parties” (Hunt and Chapman 2006, 4). CFI practically drafted the FOI bills that were submitted in 1984, 1991, and 1992. It also assisted with the drafting of other information bills, such as the Access to Personal Files Act (1987), Access to Medical Reports Act (1988), and the amendments to the Official Secrecy Act (1988).<sup>22)</sup>

The U.K.’s FOIA was enacted under the administration of Prime Minister Tony Blair (in office 1998-2007). While the Labor Party was in opposition, CFI had urged the party to enact a FOIA once they came to power. At CFI’s annual awards ceremony in 1996, Blair, then leader of the opposition, officially pledged his commitment to enact a FOIA should his party come to power. Subsequently, the Labor included FOIA as one of the priorities of the new government in the 1997 election campaign (Worthy 2007, 115-118; Puddephatt 2009, 36). Once elected, however, the Labor government’s enthusiasm to initiate reform quickly fizzled away. There was no FOI bill submitted during the first year of his term. Instead, the government published a White Paper entitled “Your Right to Know” drafted by David Clark, who was the Chancellor of the Duchy of Lancaster at that time (Worthy 2007, Chapter 6). CFI served as one of the advisors in drafting this document, and it had many progressive provisions that positively surprised many. However, Clark was fired soon after the publication of the White Paper, and Home Secretary Jack Straw was tasked to draft a bill. It took Straw one and half years to publish a bill, and it was a much watered-down version of the White Paper. For example, the number of exemption items in the White Paper was 7, and the subsequent bill had 20. One of the grounds for exemption in the White Paper was when the disclosure would cause “substantial harm.” This was changed to a much weaker wording “prejudices.” In the bill, ministers could veto the

disclosure order of the Information Commissioner, thereby practically adding even more exemptions (Birkinshaw and Parry 1999).

Disappointed by the Straw bill, CFI drafted a number of amendments to the bill, and asked MPs from all parties to introduce them during the deliberation process.<sup>23)</sup> In the end, the government made several compromises. First, it shortened government response time from 40 days to 20 days. Second, although retaining the ministerial veto against the disclosure order of the Information Commissioner, only the cabinet-level ministers, but not the ministers of state, were given this authority.<sup>24)</sup> At the same time, however, there were other areas that could not be compromised, which include the retention of the “substantial harm” clause, and exempting the policy advice document. The bill became law in December 2000. Since its 2005 implementation, it has been evaluated that the law achieved two of its primary objectives: “greater transparency of government and stronger accountability” (Hazell, Worthy, and Glover 2010, 252).

**Germany.** In Germany, enacting a FOIA became a national policy agenda item of the incumbent government around the same time as in the U.K. The first SPD-Green coalition was in power from 1998 to 2002. In 2000, the Ministry of Interior drafted a weak FOI bill. Due to disapproval by the Green Party, the bill never passed the parliament. In the 2002 election, the SPD-Green formed a coalition and won. Enacting a FOIA was again one of the issues listed in the coalition agreement, but apparently, the SPD leaders were not enthusiastic about fulfilling their promise (Redelfs 2005).

Frustrated by the government’s inaction, a group of SPD and Green parliamentarians, mostly with legal backgrounds interested in civil liberties, started drafting a private member’s bill on FOI around January 2004. This “Working Group” met privately on Thursday mornings and submitted a bill in December 2004. The bill was referred to the Committee of Internal Affairs, and passed the lower house on June 3, 2005, and the upper house on July 8. The IFG was one of the last Acts that SPD-Green coalition passed before the end of the parliamentary term.

FOIA advocacy in Germany came late in the legislation process, and it was relatively weak compared to that of the U.K. Around the time the Working Group began meeting, the “Transparency Initiative” (hereafter the Initiative), a campaign advocating for FOIA was launched by five NGOs working in the fields of journalism, anti-corruption, and civil liberty.<sup>25)</sup> By April 2004, the Initiative submitted a model bill to the media and to every MP. Nevertheless, the model bill itself was rather weak by international standards. This was because the group mostly consulted with the laws that existed at the state levels in Germany, which were more conservative than the international standard at that time. In relation to the Working Group, some members of the Initiative attended several meetings, but they were not directly involved in the actual drafting of the bill,<sup>26)</sup> unlike the U.K.’s CFI. The Initiative also appealed to the public, conducting a poster campaign in Berlin, and setting up a webpage signature campaign in which supporters of FOIA could sign their names. Despite these efforts, the Initiative’s leader Manfred Redelfs recalls that their campaign “did not capture people’s attention so much, and the law ended up very restrictive.”<sup>27)</sup> The German FOIA, which came into effect in 2006, has been severely underutilized. In comparison to the British central government, which received 0.72 requests per 1,000 in 2010, the German counterpart had only 0.02 per 1,000 people (Holsen and Pasquier 2011, 284).

**Alternative Explanations.** Some might argue that the varying strength of FOIAs in the U.K. and Germany is due to their difference in mode of interest intermediation, that is, degrees of corporatism (or pluralism at the opposite end). Germany is known to have a corporatist structure, where the peak associations of business and the labor have centralized a monopolistic influence vis-à-vis the government. In contrast, the U.K.’s policy-making process has a feature of pluralism, in which various interest groups compete in the parliamentary process to influence policies (Lijphart 2012, 165). Tom McClean (2010) argues that countries with a corporatist mode of interest intermediation is less conducive to be transparent, because the peak associations with privileged access to government

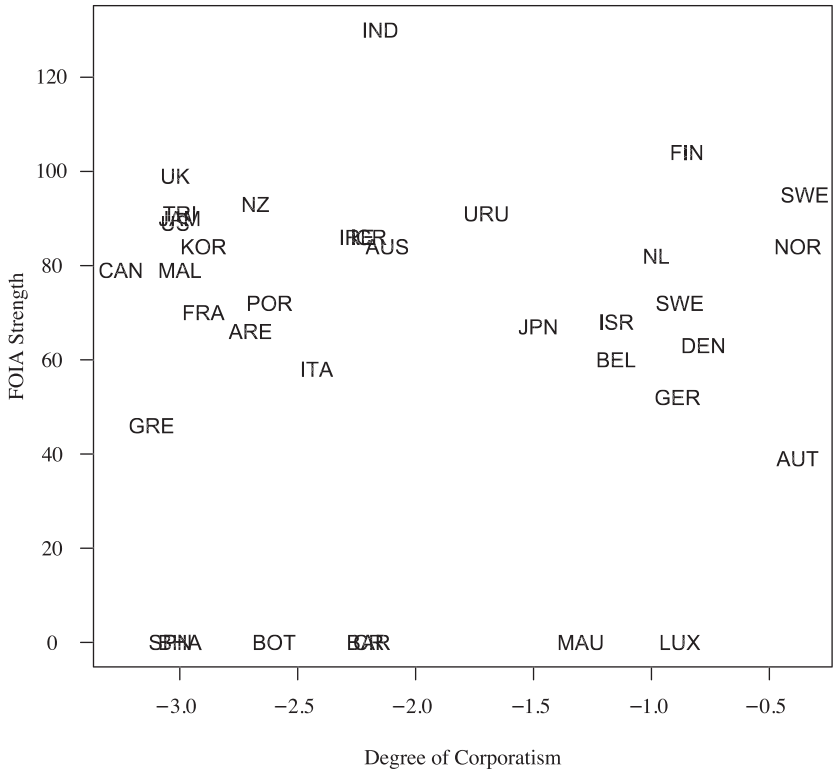
information would block the attempts for transparency reform in order to maintain the status quo.

There is some evidence that suggests that corporatism is not a significant factor affecting transparency reform. Figure 4 plots the degrees of corporatism and the strength of FOIAs for 36 countries where both data are available. It suggests that there is no positive and statistically significant relationship between corporatism and FOIA strength among sample countries. For example, Spain has even higher degree of pluralism than the U.S., but has not enacted a FOIA as of 2013. Also, some countries ranking high in corporatism score have strong FOIAs, as in Finland (104), Sweden (95), and Norway (84). In our investigation of the German case, the umbrella organization for German businesses, the *Bund der Deutschen Industrie* (Federation of German Industry), which claims to represent 100,000 companies in Germany, did take a position explicitly against the FOI bill (*Bund der Deutschen Industrie* n.d.). Similarly, however, its British counterpart had expressed strong opposition to FOIA (Eaglesham 1999). The Confederation of British Industry officially claims to “speak for more than 240,000 companies” (Confederation of British Industry n.d.). In sum, based on existing data, it is difficult to conclude that Germany’s weak FOIA was due to the resistance of the business sector along with its corporatist structure.

A second possible alternative explanation is the difference in legal systems. An existing argument goes that common law countries have more transparent governments than those with civil law tradition. Indeed, our cross-national analyses have revealed that countries with the British legal tradition tend to have 8 points higher FOIA strength score than countries with other legal traditions. However, the gap between British and German FOIAs are almost fifty points (99 and 52 respectively). Thus, the difference in legal tradition cannot explain sufficiently the divergent outcomes in these countries.

To summarize, the cases of the U.K. and Germany provide a concrete illustration about how the variation in the strength of FOIA advocacy makes a difference in the strength of FOI law contents. The U.K. had a

FIGURE 4 Plot of FOIA Strength and Degrees of Corporatism



Source: Compiled by the authors based on Lijphart (2012, 165) and CLD measure.

small but consistent and focused FOIA advocacy since the early 1980s. It informed the public about the importance of a FOIA, provided newsworthy stories to mass media on the issue, and persuaded politicians to make it an electoral issue. Once FOIA's legislative process started, the U.K.'s FOIA advocacy provided technical details to both politicians and civil servants, and most importantly, curtailed the governmental attempts to water down the FOI bill. In contrast, FOIA advocacy in Germany came very late and weak, and in comparison to the U.K.'s CFI its impact on the final outcome appears minimal.



## Conclusion

This article has investigated the factors influencing the robustness of transparency reform by focusing on the strength of FOIAs around the world. It incorporated advocacy groups into the institutionalist theory of the causes of transparency, to highlight their roles in the legislative processes. Advocacy groups, by conducting inside and outside lobbying activities, publicize the benefits of transparency reforms and monitor the deliberation processes against politicians' attempts to dilute the bills. These activities increase the strategic value of the transparency as an electoral agenda item, intensifying the elite level competition. The cross-national statistical analysis and case studies provide evidence consistent with this account. First, countries that had transparency advocacy groups during the process of legislation tend to enact stronger FOIAs. Second, legislatively vulnerable chief executives tend to enact stronger FOIAs *conditional on* the presence of advocacy groups.

The implications of this article's findings are the following. Theoretically, the findings address the relatively unexamined factor in the literature on the relationship between democracy and public goods provision: advocacy groups. As a mechanism in which democracy is better at providing public goods than autocracies, the majority of the literature has focused on institutional aspects, such as the presence of universal suffrage and competitive elections (Bueno de Mesquita et al. 2003). When societal factors are considered, the focus has been on the society-wide spread of associational life (Putnam 1993), or the role of mass media (Sen 1999; Adsera, Boix, and Payne 2003). In contrast, this study highlights the importance of advocacy groups specifically working on the target policy issue. In addition, our findings imply that depending on the type of public goods, there may be different mechanisms leading to their actual provision. For the type not immediately appealing to voters as an electoral issue, advocacy is likely to be particularly important. Transparency is one such case. Another example of this type is human rights protection, and researchers have found that advocacy to be important (Kim 2013). In

contrast, in cases involving the type of public goods directly attractive to voters, such as public health (Lake and Baum 2001) and education (Ansell 2013), electoral competition can be the main driver for their realization.

Second, this article's practical implication is that to further facilitate and sustain transparency reform around the world, the international community should provide more support, both financial and technical, to domestic transparency advocacy groups. Pressure by transparency advocacy groups is important not only in legislating a robust reform as shown in this article, but also in preventing governments to slide back to secrecy. Left to themselves, governments have a tendency to return to secrecy, as their inherent preference is to guard information. There have been a number of governmental attempts to revise FOIAs to be more restrictive, and FOIA activists have been important players in preventing such moves (Mendel 2011).<sup>28)</sup> Inter-governmental organizations, aid donors, public and private funding organizations can provide an enabling environment to initiate, strengthen, and sustain transparency reform by supporting transparency NGOs.

- 1) Advocacy groups here refer to the non-profit citizen groups attempting to influence both governmental decision makers and citizens at large in order to promote the collective interests of the general public and under-represented groups (Jenkins 2006).
- 2) Michener (2010) was the first to empirically study the causes of FOIA strength variation, but his country coverage is limited to Latin America. Berliner (2011a) analyses the timing of FOIA passage with global scope, but not the strength.
- 3) On societal accountability, see Smulovitz and Peruzzotti (2000); on horizontal accountability, see O'Donnell (1998).
- 4) Another limitation of this study is that we do not study the origins of FOIA advocacy groups. See Kasuya (2013) for more on this question.
- 5) Our study used the version of CLD measure updated in September 2012.
- 6) The scores are given to the latest version of the laws. This means that if a country has revised its FOIA, the revised version of the law is the one

evaluated. Among 93 FOIAs, 53 are the first FOIA ever enacted in that country; the remaining 40 have undergone revision(s).

- 7) For the existing arguments that have been suggested but not fully empirically tested, see Michener (2010).
- 8) This paper is mostly concerned with the roles of domestic advocacy actors, but not international ones such as transnational NGOs and inter-governmental organizations such as the U.N. Our focus on domestic actors is because these international actors usually channel their resources through domestic NGOs in promoting transparency reforms. About how domestic transparency NGOs interact with international actors, see Kasuya (2013).
- 9) Opposition leaders are mainly interested in transparency reform for electoral purposes. This is reflected in their change of attitudes after being elected. Examples include Prime Minister Tony Blair of the U.K. (Worthy 2007), President Vicente Fox of Mexico (Michener 2010), and President Benigno Aquino III of the Philippines (FreeformInfo 2013). They all made unmistakable promises to embark on transparency reform when they were the opposition candidates; once elected to office, they quickly backed off and resisted enacting a strong FOIA.
- 10) Lack of public interest is one of the most frequently mentioned problems in the survey among transparency NGOs worldwide (Kasuya 2013).
- 11) An illustrative example is India's recent anti-corruption movement (Washington Post 2012).
- 12) This analysis also sheds light on the reasons why FOIAs in many countries have been enacted only during the past several decades, despite their long-standing experience of electoral competition—one reason being the absence of external pressure to make politicians perceive transparency as an electorally attractive issue.
- 13) Kasuya (2013) reports the types of activities based on the survey conducted among transparency NGOs worldwide. The distinction between “inside lobbying” and “outside lobbying” is from Kollman (1998).
- 14) Michener (2010), as well as authors' interviews with Dave Banisar, Richard Calland, Helen Darbisher, Maurice Frankel, Manfred Redfels, and Shaker Sign (see the Reference section for their titles, interview dates and locations).
- 15) This study uses the version updated in January 2013. *Majority* counts the

- seat share of the ruling party (coalition) at the lower chamber in the cases of bicameral systems. While ideally the chief executive's legislative strength should be measured by accounting for upper and lower chambers in bicameral countries, this study considers this to be the best available cross-national measure. This can be justified because in bicameral systems the lower chamber is often constitutionally more influential (Lijphart 2012, Chapter 11).
- 16) The DPI contains a variable called *EXECRLC*, a categorical variable that indicates the ideology of the government. We define *Left* equals 1 if and only if *EXECRLC* equal 3 (Left), and *Right* equals 1 if and only if *EXECRLC* equals 1 (Right). A country has zeros for both *Left* and *Right*, if its *EXECRLC* is coded as 2 (Center) or 0 (No information).
  - 17) Taiwan's data is supplemented by the IMF World Economic Outlooks. The value of the year 2011 is used for 2012, as the data has not been updated as of the writing of this article.
  - 18) Data for religious groups and legal origins are from the Quality of Government Institute (n.d.).
  - 19) Data are from the Correlates of War (n.d.).
  - 20) One might think that the type of cabinet (whether a single party majority or a coalition cabinet) might explain the different outcomes. If it did, theoretically speaking, the U.K. should have had a weaker FOIA, because the single party majority would have an easier time resisting enactment of a strong FOIA, which is the opposite of what had happened. Thus, we do not look into the difference in cabinet structure.
  - 21) Another major group that advocated for FOIA, although less involved than CFI, was Charter 88, formed in 1988 to promote constitutional reform (Puddephatt 2009, 33–38; Gundersen 2008, 224–243).
  - 22) Interview with Frankel.
  - 23) Ibid.
  - 24) Interview with Redelfs. The minister of state is a position below a secretary of state and above an under-secretary of state. There can be more than one minister of state at any government department.
  - 25) These included *Netzwerk Recherche*, *Deutsche Journalistinnen-und Journalisten Union in Ver.di*, *Deutscher Journalisten-Verband*, Transparency International's German Chapter, and the *Humanitish Union*.

- 26) Interview with Redelfs. In the German legislative process, most bills are executive bills submitted by the cabinet. A private member bill signifies that the sponsor(s) of such bill is strongly interested in the issue addressed.
- 27) Interview with Redelfs.
- 28) Berliner (2011b) also argues that advocacy groups' involvement is important in implementation phase of FOIAs.

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