CHAPTER 13

Communication and Transparency

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13.1 Introduction

The management of public organisations has undergone considerable change over the past three or four decades as a result of increased pressure on results, greater autonomy in using resources and setting priorities, heightened accountability requirements and interest from citizens and the media in public decisions and action. Management tools—some from the private sector and others developed specifically for the public sector—have been added to the range of instruments available to public managers. Among these tools, communication—within organisations, with all the partners, with the community as a whole—plays an important role. Increasingly, those responsible for public action must present the issues involved in public policies, explain decisions that are taken, provide justification for the ensuing measures and respond to the needs of, and requests made by, the beneficiaries of services.

A number of factors account for the development of public communication over the past two decades. Among the most important are the following:

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- Growing autonomy in public administration and the desire of agencies to forge a distinct profile.
- Citizens' need for information to enable them to participate in democratic life.
- The mediatization of society, especially with respect to government and politics, together with the rising expectations of citizens regarding the capacity of public administrative bodies to account for their decisions and activities.

This chapter is divided into three parts. The first presents the various functions fulfilled by public communication in a modern democracy. The second sets out the principles of active communication, specifically communication organised by public administrations. The third and final part discusses the principles of transparency—also called passive communication, meaning communication issued in response to access to information (ATI) requests.

13.2 The Functions of Public Communication in Our Society

Public communication, unlike that in private organisations (whose primary goal is to persuade people to acquire goods or services), often has to fulfil a number of very different functions at the same time. Although it is difficult to rank these functions in the order of priority (any may be important, depending on the type of organisation, the field of public policy or the particular situation), core functions can be distinguished from complementary functions on the basis of legal requirements. Some tasks, such as informing the public or promoting values, are enshrined in laws. Other tasks, such as highlighting the activities of an organisation or receiving citizens, are generally accepted and recognised but not mentioned in laws, except perhaps indirectly.

13.2.1 Core Functions

Core functions normally arise out of a legal obligation placed on a public institution or organisation. Core functions can be divided into four main categories: information, explanation, promotion of values and dialogue.

13.2.1.1 Public Information

This is the most important function in a democracy and stems from the principle of publicity[1]. If a democracy is to function correctly, debates and decisions must be transparent and known to all. Democracies therefore oblige their governments to publish all laws, by laws and orders in publicly available documents and to transcribe and publish parliamentary proceedings. Similarly, trials and judicial decisions must be public[2].

The publicity principle applies to all decisions and actions of institutions and the administration, which have a responsibility to provide regular, comprehensive information on their activities and decisions, ranging from the publication of the appointment books of ministers and senior civil servants, to announcements of public appointments and detailed activity reports. This function is vital because, with increased demands from citizens, the complex institutional framework and "legislative inflation" (growth of legal norms), clear and accurate information must be readily accessible to those concerned.

13.2.1.2 Explanations and Complementary Information on Decisions

The complexity of public policies—as regards both their content and their implementation—together with a wider application of the accountability principle requires public institutions and organisations to provide explanations of the issues and scope of the decisions made and to accompany these decisions with communications measures. This function goes beyond information, since it involves anticipating questions that may be raised by those concerned and requires pedagogical skills to convey information that is often complex for non-professionals. For example, following the passage of a law in Switzerland that clamped down on undeclared work, the federal government instituted a series of measures to provide information and raise awareness, including a communication campaign targeting the general public. The primary aims of the campaign were to make people aware of the problem (including private households that hire domestic staff), to invite them to visit a website and to thank those who observed the rules.

[1] Kant (1795) considered the publicity principle to be fundamental for a democracy: "Every legal claim *must* be capable of publicity." Bentham (1830) held that general sittings of the legislature must be open to the public and that publicity is "the very soul of justice" (Gérard et al. 1987).

[2] The European Union has many portals for information access, such as EUR-Lex, the European law portal (http://eur-lex.europa.eu), the European e-Justice Portal (https://e-justice.europa.eu) and the Open Data portal (https://open-data.europa.eu).

13.2.1.3 Promotion of Values and Responsible Conduct
One of the tasks of the state is to protect and promote human rights and the basic values of the rule of law (equality, fair treatment, individual freedoms, etc.), as well as values recognised by society and institutions (e.g. the integration of people with disabilities) and responsible civic conduct (respect for the environment).

First, these values and behaviours must be exhibited by public institutions and organisations, taking care to avoid inconsistencies that are often detected by interest groups and the media (such as a minister with responsibility for social solidarity who has undeclared domestic staff). Second, they must be conveyed to the population through organised events (women's rights day, mobility day, etc.), awareness campaigns aimed at target groups (children regarding nutrition, the elderly for flu shots, etc.) or public discussion. This function goes beyond the promotion of values; to guarantee a lasting effect, it must increasingly include support for those who observe these values.

13.2.1.4 Dialogue Between Institutions and Citizens
A notable feature of democratic life is citizen participation in institutions and debates. The development of multilevel governance with an increase in the number of political decision levels (European, regional, conurbation and inter-community) and the complexity of a great many public policies mean that both institutions and the administration have a responsibility to maintain an ongoing dialogue with citizens. Many organisations communicate only when they have information to convey. People cannot be expected to take in and process information if the organisation conveying the information is unknown and has little credibility. In a modern society, communication is an ongoing and interactive process.

13.2.2 Complementary Functions

Complementary functions differ from core functions not because they are less important in communications terms but because very often they have no explicit legal foundation. They arise out of a modern conception of public organisations.

13.2.2.1 Service Delivery
Very few laws address the manner in which citizens should be received by an administration, the information that is made available in advance, the physical comfort of the reception provided, the manner in which staff answer the telephone or attitudes displayed during personal interactions.

And yet the initial contact with an organisation, waiting time and comfort, the friendliness and empathy of staff and the ease with which contact is made with someone using appropriate attitudes and language are essential components in the evaluation of a public service. Signage, office layout, urban furniture and people's attitudes and behaviours are all part of an organisation's identity; public organisation managers are thus placing growing importance on establishing a distinct identity for their organisations and facilitating relations with the recipients of services, especially in cases where managers enjoy some administrative autonomy.

The office of a department dealing with personal bankruptcies pronounced by a judge (inventory of assets, liquidation of assets, etc.) was housed in a building showing all the classic stereotypes associated with bureaucratic administration: an anonymous, overheated reception area, personnel separated from the public by a narrow counter topped with opaque glass, manually opened counter windows and so on. Relations with administrative personnel were often tinged with aggression (no privacy and an insufficient number of—uncomfortable—seats). The managers of the department took the opportunity afforded by a move to consider how their clients could be received and played an active part in the interior architectural design of the reception area, which featured a waiting room that was comfortable but not luxurious, spaces for discussion with tables and chairs, low partitions to provide a minimum of privacy while protecting employees' safety and so on. Managers reported that relations with clients improved considerably following the introduction of these changes.

13.2.2.2 Responsiveness

Responding to the public goes further than simply interacting with citizens because it requires an organisation to have specific processes and instruments. Responsiveness does not refer to an individual official's ability to comprehend a person's needs and make an appropriate response, but rather an administration's aptitude for gathering information from users in an organised manner, synthesising it and making sense of it so that a political or administrative response can be made when necessary. Some traditional tools for accomplishing this are claims management, symposia for recording and discussing criticisms, discussions with organised user groups and other forms of citizen participation.

Surveys are very widespread in government and administrative spheres and are sometimes the subject of an official communications mission. They may be qualitative or quantitative and are used to assess the extent

to which members of the public are informed about and comprehend various topics, to sound out public opinion on a subject at a given time or to take note of as yet unidentified needs or expectations.

13.2.2.3 Organisational Legitimacy and Public Actions

Many public organisations are little known to the public. There are a variety of reasons for this: they only affect small groups of the population (prisons), deal with highly complex subjects (research centres) or are very rarely on the political agenda (legal metrology departments in charge of units of measurement, measuring instruments and methods).

Public organisations can accomplish their missions more easily if they are known to the public, recognised as legitimate and provide clearly identified services. Communication measures can therefore serve to raise public awareness, inform those concerned of their rights and obligations and the possibility of calling on the organisation's services and make it easier for the organisation itself to recruit staff.

13.2.2.4 Maintenance of Social Cohesion

While all the functions mentioned hitherto may be the subject of targeted measures and sometimes even purely ad hoc measures, the final function, maintenance of social cohesion, is more general and more difficult to pin down. It is nevertheless of vital importance, because a society's vitality depends on the bonds linking members to one another. Although well-integrated urban populations rarely experience problems with social cohesion, it is often difficult for those who are marginalised physically, geographically or socially to feel that they are full members of the community, to develop in the community and contribute to its development in their own way. Public authorities can also use communication to help forge and maintain social bonds among people who would like to do so. Support for local media and even the creation of such media (regional press, web TV solutions, etc.), the organisation of lectures and discussions and online forums are all examples of measures that contribute to social cohesion.

13.3 The Principles of Active Communication

A number of rules are found in almost every case, each of particular significance depending on the political system, cultural diversity and medium used.

13.3.1 Legal Bases

Although legal bases differ considerably from one country to another, a distinction can be drawn between general and specific legal bases (Barrelet and Werly 2011):

- General legal bases: legal bases vary between countries. In Switzerland, the provision of information is a duty defined in section 180 of the 1999 Constitution[3]. Details of this duty are set out in sections 10 and 10a of the Government and Administration Organization Act. Although a legal basis for public communication exists in most countries, there is wide variation in the formal level of this duty and especially in its material content. Perhaps on account of this very general nature—which is of little use in differentiating public communication from political communication—a number of countries have formulated internal guidelines to frame all such activities[4].
- Specific legal bases: numerous specific provisions are found in laws, rulings, decrees, orders and guidelines, some concerning a field of public policy and others a specific institution. In Switzerland, for example, section 10 of the Energy Law of 16 June 1998 stipulates that "The federal energy board and the cantons provide the public and authorities with information and advice on the conditions of economic and ecological energy supply, the possibilities for using energy efficiently and rationally, and the use of renewable energies […] and that […] the Confederation and the cantons may, as part of such activities and in collaboration with individuals, set up organizations tasked with providing information and advice to the public."

13.3.2 Identification of the Source

The first criterion is that the source, or issuer, should be clearly identified. It is very important that all those to whom a communication is addressed are able to identify promptly and without any doubt that the issuer is a public institution or organisation. The legitimacy of a message is first and

[3] Paragraph 2: "It informs the public about its activity in a timely and detailed manner, provided that this is not precluded by any preponderant public or private interest."

[4] Switzerland: *Information et communication du Conseil fédéral et de l'administration fédérale. Ligne directrices de la Conférence des services d'information de la Confédération* (2003).

foremost a function of the quality of its source. If the issuer is not known or not identifiable, there is a risk that the information will be given no more consideration than information released by any organisation without particular legitimacy.

The necessity for a clearly and easily identifiable source to some extent precludes the use of certain communications techniques, for example, those of viral marketing. Tools that enable messages to be transmitted quickly by directly asking all the members of a community or network to forward information must be handled with care in order to prevent any loss of control over the content or a biased interpretation due to the bearer's lack of legitimacy.

13.3.3 Maintaining Arm's Length from Electoral Issues or Referenda

The most sensitive criterion in the discussion over the use of public money for political purposes is the proximity of communications activities to election or referendum dates. A party in power or an elected representative may be strongly tempted to use government services to promote their political record or defend political choices that they have made when the public is called upon to cast their votes.

Although rules to counter such behaviour can be introduced with relative ease in countries with a representative democracy, the situation is very different in countries where citizens are called to the ballot box regularly. This is the case in Switzerland, where use of instruments such as the popular initiative and referenda can result in citizens' having to vote as many as four times per year at the federal, cantonal and communal levels. While the administration must show great restraint in communication activities connected with the subject of the vote, it is not excluded from the debate, since its members can participate, provided that they observe the principles of neutrality and proportionality. Often, the administration will publish reports and civil servants will take part in the debate, but such communications must remain technical in nature or help to explain the government's position. Taking a position could appear to be partisan and is thus prohibited[5].

[5] A senior civil servant was criticised for having authorised publication of a paid advertisement in which his photograph was shown next to remarks he had made. In answer to a question from a member of parliament, the minister stated: "[…] it is proper for a senior civil

So delicate is this subject, however, that such government or administration involvement is frequently the subject of political debate or court rulings. In 2008, the administrative court of the canton of Geneva annulled a referendum on the grounds that the government's summary of its position and opposing arguments in the official pamphlet mailed to citizens was "schematic" and "peremptory" and asserted a "partisan position" (ATA/583/2008 of 18.11.2008). In 2003, a group of citizens launched a popular initiative entitled "Popular sovereignty without political propaganda" demanding that both government and administration abstain from political debate concerning referenda (only an information brochure and a short position statement in the media would be authorised). Although the initiative was soundly rejected by over 75% of voters in a referendum on 1 June 2008, it highlighted the delicate balance that has to be maintained between the duty to inform, promoting a government project and political debate. Very recently (2017), the president of the city of Geneva was sanctioned for producing an imbalanced referendum brochure, leading to the referendum's cancellation.

13.3.4 Continuity

While private organisations and political parties are free to choose whether or not to communicate about a given subject, the same does not apply to political and administrative authorities. The two elements that must be taken into account are continuity in communication and timely transmission of information.

Continuity in communication means that organisations cannot wait until the end of a process or until they have all the relevant information before communicating. Thus partial results, variants and intermediate stages must also be presented to the public even though definitive answers cannot be given at the time. This implies that authorities cannot keep important information hidden for tactical reasons or to avoid embarrassment.

Information must also be passed on in a timely manner in order to fuel democratic debate and facilitate the work of elected representatives and the media. Generally speaking, information is of value only at certain times

servant to explain the technical reasons that support the Federal Council's point of view; his photo may even accompany his statements, but he should not appear in the visuals of a paid advertisement" (Bulletin officiel du Conseil national, 11.06.07, AB 2007 N 766/BO 2007 N 766).

and information that is released too early or, more problematically, too late is in many cases useless. For example, authorities frequently time the release of information to coincide with holiday periods or school holidays, with the aim of avoiding extensive media coverage.

13.3.5 Transparency of Funding

The financing of communications activities must be transparent with regard to both the amounts and origins of the sums spent. If public communication is directly or indirectly funded other than out of the public purse, this information must be clearly conveyed so that the receiver can, if applicable, take into account the relationship between the issuer and the source of funds when interpreting the message.

13.3.6 No Favourable Treatment for Recipients

Although a communication may be addressed for objective reasons to certain target groups, it must not discriminate against members of these groups. Public communication must therefore refrain from favouring particular journalists or particular elected representatives by informing them pre-emptively or more fully and thus ensure that all recipients of the message are treated the same way. This guideline is not always easy to follow, particularly in view of media needs and expectations. Given the competition between media and their different publishing or broadcasting schedules, the timing of the release of information may favour certain media to the detriment of others.

13.3.7 Objective and Comprehensive Content Tailored to the Target Audience

Most internal guidelines within an administration specify that messages must be objective and thorough. Although total objectivity in communication is impossible, and all the information available often cannot be released for reasons of time and space, public communication must strive to be objective by not suppressing criticism and by providing balanced information.

Adapting the content of communication to target groups is also very important. While specialists may be familiar with technical terms and acronyms, non-experts and the general public are not. In fact, the challenge in formulating a comprehensible message is not only to avoid the use of

technical language but to consider whether people who are not proficient in the national language(s) are able to take in and understand official information. When one takes into account residents from foreign cultures and those who lack the ability or skills to read (the visually impaired and people of low literacy[6]), one can assume that a significant part of the populace is unable to understand typical messages disseminated by public authorities (the police, schools, administrative authorities, etc.). When formulating any important communication, administrations must consider the information needs of potentially marginalised populations and tailor the message accordingly.

13.3.8 Consistent and Coordinated Communication Between Administrative Departments and Levels of Government

In matters involving public policies affecting several departments of an administration, administrative departments at different institutional levels, and sometimes private stakeholders as well, those responsible for communication must coordinate the messages issued by all actors involved and ensure their consistency. This is particularly important in conflict or crisis situations where there is a high risk that even minor differences in content and a lack of coordination in the timing of messages could cause confusion that is difficult to remedy subsequently. In their communications activities, public institutions and organisations must make it a priority to coordinate messages and see that they are consistent—a delicate task, especially if the theme of the communication is a subject of much political controversy.

13.3.9 Communication Proportionate to Objectives and Target Audiences

A very useful criterion for differentiating public communication from political communication is proportionality with regard to objectives and target audiences. Although some political parties or elected representatives focus a significant share of their communications on a very small number of subjects, public communication must cover all subjects and

[6] According to the *Association lire et écrire*, one in six adults in Switzerland does not have the expected reading and writing skills. Source: https://www.lire-et-ecrire.ch/ressources-et-outils/lillettrisme-en-bref (retrieved on 4 January 2018).

deal with them in a proportionate manner. While public institutions and organisations are rarely criticised for failing to cover certain subjects, extensive media coverage of other subjects can be seen as politically significant.

13.3.10 Communication Focused on Dialogue

Because of the functions it must perform, public communication must stimulate dialogue and favour media that allow interaction between the organisation and the recipients of the message. It is often much easier to purchase advertising space to publish an announcement than it is to take on the task of organising and participating in debates and facing criticism. For many governments, the concept of dialogue is broader still and includes taking note of citizens' opinions through studies and surveys.

13.4 Passive Communication (Transparency)

Passive communication involves information issued by the administration in response to a request from a person under ATI rights. These rights are generally enshrined in freedom of information (FOI) laws, also known as transparency laws (Pasquier and Villeneuve 2007; Pasquier and Meilland 2009).

Historically, the foundations of the principle of access to government information were laid in Sweden, with the Freedom of the Press Act of 1766. In recent history, Finland in 1951 was the first country to protect citizens' right to information in its laws. Since then, many other countries have followed suit: the United States in 1966, France and the Netherlands in 1978 and Canada in 1983. In the early 1990s, it was the turn of southern European countries to pass transparency laws: Spain in 1992 and Greece and Portugal in 1993. More recently, similar legislation came into force in the United Kingdom in 2005 and in Germany and Switzerland in 2006.

FOI laws are similar from country to country and often have the same characteristics:

- Information that can be consulted: the basis of any FOI legislation is the possibility for citizens to request information, or a document containing the desired information, without having to give reasons for the request. The documents in question can be very varied in nature:

reports, notes, minutes of meetings, letters, emails and even unwritten documents such as telephone conversations. FOI laws must thus explicitly state what information is available and what is not.

- Exceptions: generally, these laws apply to all government and administrative bodies. However, exceptions are provided for on grounds of higher interests of the State (international relations and security services) or protection of citizens (courts and privacy).
- Assistance provided by the state in the search for information: given the complexity of government operations, citizens cannot be expected to know about all the documents that exist and are thus available to them. Depending on the country or the institution concerned, mechanisms are provided to inform citizens of the type of documents produced by the government.
- Time required for delivery of information: laws and regulations generally stipulate the time frame within which the government or body concerned must respond to an ATI request. Governments cannot therefore keep citizens waiting unduly. This is a vital point, considering that information often loses its value over time (subject no longer topical, important vote taken, etc.).
- Search costs and fees: generally, access requests are free or carry a nominal charge that will not create a significant obstacle. If search costs exceed a certain threshold (high number of photocopies, research time, etc.), they may be billed. However, the amounts in question must be reasonable, so as not to put access rights beyond the reach of some citizens.
- Remedy procedures: generally, a distinction is drawn between levels of remedy within the administration and the right to go to court to defend ATI rights when the administration refuses to comply, exceeds the permitted time frame or bills unreasonable charges.

Even though FOI legislation varies in the different countries that have adopted such legislation and processes can take diverse forms, the main objectives often present similarities. Governments claim that the public can obtain information and use it to verify that they work in the citizens' interests. From a philosophical point of view, Bentham directly connects secrecy with conspiracy and thus affirms that public officials will be less tempted to misuse power because of external monitoring (Hood 2006). Despite such support from both governments and citizens, it should be noted that, in some countries, there has been relatively low use of the new

legislative instruments so far. Although the capacity to obtain more information about government through legal processes intuitively implies more transparency, two limitations remain. First, ATI requests in certain countries are mainly submitted by journalists, lawyers and interest groups. Second, low usage of ATI may reflect either a lack of interest or complex procedures for obtaining access. Consequently, greater access to governmental and administrative information may create a more transparent environment, but a real increase of transparency would probably involve more citizen participation. Figure 13.1 shows how requests have evolved over the last few years.

The number of ATI requests depicted above excludes requests made by phone, email and so on and those submitted at subnational levels. In Switzerland, cantons adopted transparency laws at different times. Bern was the first to legislate on the matter (the law was adopted in 1995), followed by 14 cantons between 2001 and 2011. A transparency law at the federal level (Ltrans) was voted in 2004 and enforced two years later.

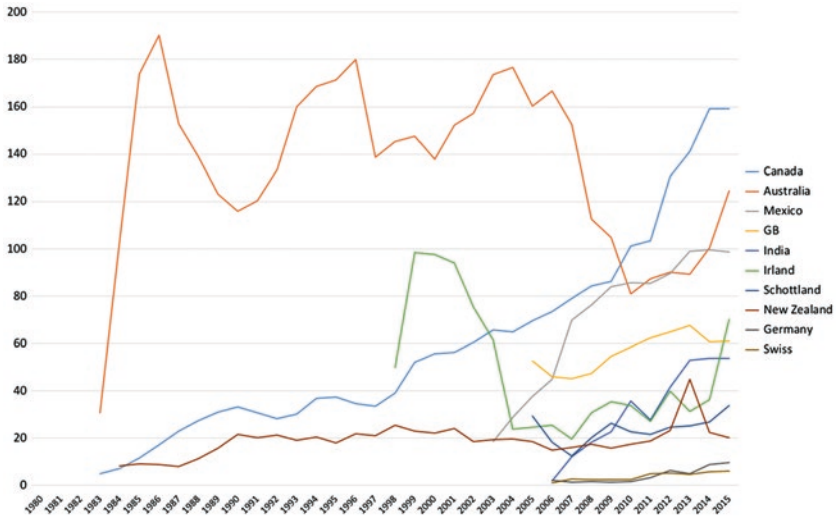

Fig. 13.1 Changes in the number of requests since FOI legislation was introduced in various countries (number of requests per one million inhabitants). (In Canada and India, requests are based on the fiscal year, running from April 1 to March 31, and in New Zealand and Australia, from July 1 to June 30. All other collected data are calendar year based)

Explanations given for the low number of ATI requests vary. One issue is how much awareness is there of the right to information among the population and certain specific groups, such as journalists. Since the right was granted relatively recently in Switzerland, it appears not to be well known to the public.

The country's communications policy, its ability and its willingness to disclose information proactively—mainly through making it available in a structured manner on websites—undoubtedly have a very great impact on the number of requests recorded. If information is freely accessible through directories, most people with access to a computer can easily download documents without the administration being able to count such downloads as access requests. One can assume, therefore, that a high number of officially filed requests correlate negatively with the possibility of accessing available information directly and freely.

Another reason often mentioned in the literature is the level of trust that citizens place in the government and authorities. The higher the trust, the lower the number of access requests should be, since one of the reasons put forward to account for the development of ATI rights is the possibility of holding the administration accountable and establishing a relationship of trust. The level of trust in the government is higher in Switzerland than in any other European country. A low level of trust may therefore account for a high number of requests.

Because the countries being compared have very different political systems, the information needs of certain groups and of the population as a whole at a given time may vary considerably. In a system with a governing majority and a minority in opposition, numerous requests are made by the opposition parties. They ordinarily receive limited information and as opposition, seek to counter the plans of the party in power. But in a system where the main parties are in power and have direct ATI held by the administration, as is the case in Switzerland, this need is significantly reduced.

The last reason concerns the level of government in charge of public policies. Citizens need information that affects their daily lives (schools, roads, land use, health, various authorisations, etc.) and the corresponding public policies fall within the purview of different levels of government in different countries. In the United States, Canada and Switzerland, many requests are not addressed to the federal government because the matters at issue fall under the jurisdiction of a region or municipality. This being so, all requests filed at all levels of government would have to be recorded in order to establish an accurate picture of the use of the right of ATI.

Naturally, the number of requests filed is not a sufficient indicator to determine the level of openness of any government but, combined with other indicators and interpreted in the light of the characteristics of the political system, it does provide evidence of citizens' interest in information held by the administration.

13.5 Conclusion

Public communication in Switzerland is characterised by two essential components of the country's political system: federalism and popular rights.

With three levels of government (Confederation, cantons and communes) and a large number of institutions working through networks (inter-cantonal conferences, urban areas, inter-communal organisations, etc.), the number of actors involved in communication is very high. In addition, most are very close to residents because public services are offered or managed by the lower levels of government (cantons and communes). Communication is thus highly decentralised, with strong proximity between the transmitter (administration) and receiver (citizens).

The second important characteristic, which is very specific to Switzerland, is popular rights, particularly referenda and popular initiatives. Because laws enacted by parliaments may be subject to a referendum, the way that information is managed by the administration and the needs of political parties differ from those in other countries. Often, it is not in the administration's interest to conceal information when preparing a parliamentary debate, because doing so could rebound against the government when a referendum is held, which may be several years later. Conversely, political parties and lobbyists do not necessarily need to access information ahead of parliamentary proceedings, because they know that they still have the referendum as a means of getting their ideas across, which is clearly not the case in countries where a government can push a law through parliament in a matter of months, with no possibility of a referendum.

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