ABSTRACT

Accountability’s multiple dimensions result in conflicting goals that leaders, decision makers and policy makers must weigh. The New Public Management’s focus on results over inputs risks sacrificing core democratic-constitutional values, such as transparency. This paper theorizes that conflict between mission-oriented goals and process-oriented goals produces a setting in which policy change becomes a function of the nature of conflict. Direct versus indirect conflict between an agency’s direct mission-oriented goals and the process-oriented goal of transparency provides a conceptual framework for assessing change across policy areas. Two policy areas (Economic Development and Homeland Security) are used to demonstrate how direct conflict may result in punctuated change whereas indirect conflict may be manifested through incremental shifts over time, resulting in non-uniform change across substantive policy areas.
Direct versus Indirect Goal Conflict and Governmental Policy: Examining the Effect of Goal Multiplicity on Policy Change

Introduction

Pressure for policy change is typically expected from actors in a closed policy subsystem, and typically addressing core policy elements. Or, as systems open, through advocacy coalitions vying against one another to influence policy according to their preferences (Sabatier 1999). Governmental policies are different. Governmental policies affect all policy arenas—all agencies, and all government employees—they define the processes and procedures through which government, and particularly the bureaucracy, does its work. We do not think of an open records lobby; it is not a particularly flashy topic. However, powerful groups such as the media and other watchdog agencies depend on the policy, and could be expected to come to its support if challenged. They certainly make broad use of its provisions. Moreover, we share a mutual acceptance of its necessity for good governance in a democratic society.

So the arena for governmental policies is as broad as government itself—diffuse in benefits, but also in costs (Wilson 1989). And such was the case in the passage of the initial open records/meetings laws. But with a big win for open government, and little argument about the efficacy of transparency in decision making, there is no strong majoritarian argument for continued policy adjustment. Nonetheless, while transparency policies (as I will refer to them henceforth) have not been adapted at their core, states and the federal government have affected the impacts of the policy by adjustment at the margin. This is different than “marginal change.” By adjustment at the margin, I refer specifically to adjustments where transparency policy—the governmental policy—overlaps arena-specific policies such as economic development or homeland security. Strong pressure from actors—typically governmental actors across the intergovernmental system—with strong interests in furthering direct mission-oriented goals in their respective policy arenas exert pressure on policymakers to exempt their activities from the transparency requirements inherent to transparency laws. Freedom from transparency makes their job easier, so rather than push for unpopular change to the underlying transparency laws, they seek simple exemptions. The efficiency gains to result from exemption are argued to be less than the costs that result from the “smoke-filled room” approach to decisionmaking. Figure 3 demonstrates the marginal applicability of transparency policy to various substantive policy arenas; figure 4 denotes the effects of arena specific efforts to reduce the applicability of such policies.

Performance management necessarily involves establishing program goals and measuring performance toward goal attainment. Superior public management systems differentiate among inputs, outputs, and outcomes in measuring performance and efficiency. This otherwise straightforward effort is necessarily complicated where program goals are multiple, vague, or in conflict, and where implementation is delegated to third parties whose interpretive view of program goals may further depart from those intended by policymakers (Frederickson & Frederickson, 2006).

“A transparent public organization grants access to the public, the press, interest groups, and other parties interested in the organization’s activities. In the American context, transparency has been institutionalized in the form of Freedom of Information Act requirements, sunshine laws, and other regulations that open up the governmental process to review” (Koppell 2005, 96). Exemplary of recent policy change has been the relaxation of transparency requirements for particular policies and programs through exemptions from state freedom of
information laws. Most notable among these are economic development and homeland security policies. Within the policy subsystems for both economic development and homeland security there are clear goals, though often not clearly prescribed courses of action. Overarching constituent policy such as open records and open meetings laws (like state freedom of information acts), while not in direct conflict with economic development policy, interferes with the competitive recruitment process at the state level, pitting direct mission-oriented development goals against non-mission oriented democratic-constitutional accountability goals embodied by transparency policy. State economic development officials would argue transparency hinders the competitive process; however, economically speaking, perfect information, by definition, leads to more efficient transactions.

In the alternative case of homeland security policy, transparency conflicts directly with the goals of U.S. federal and state policies intended to prevent and respond to emergencies such as terrorist attacks. Protecting sensitive information from public knowledge is a direct mission-oriented goal which falls into direct conflict with the democratic-constitutional accountability goals we observe in transparency policy. Moreover, in each of these cases, the direct and indirect goal conflicts are compounded by multiple conflicting definitions of accountability. This paper examines evidence of recent policy change in these two policy areas and suggests a theoretical framework to explain how different models of change apply to each as a result of the difference between direct and indirect applicability of transparency to the policy goals. A similar relaxation of transparency policy for both policy areas is likely to lead to improved policy outcomes for homeland security while the outcomes for economic development are less certain.

I begin with an overview of the history of the government transparency movement and then examine its present meaning as implied by state and federal law. Functions typically included and exempted from government transparency requirements are categorized. The study then turns specifically to economic development and homeland security, first discussing the mechanisms and goals central to each area, and then identifying exemptions to state transparency laws, making note of which states have such provisions and how they have changed over time (incrementally or rapidly). I conclude by examining the role of goal multiplicity and conflict as the impetus for policy change, finding that change is consistent with both incremental and punctuated equilibrium models of policy change under different conditions. The role of focusing events is examined (they may rapidly erode transparency as attention is firmly focused on the direct goals where goal multiplicity is at work; in other words, focusing events emphasize direct goals over indirect or non-mission oriented ones). I further portray transparency goals in terms of the broader New Public Management reforms, drawing on varied definitions of accountability as a basis of explanation for the observed conflict and the resultant observed trends. My adopted perspective is that goal multiplicity provides the impetus for policy change, but that how one chooses to portray accountability in a given setting explains the resulting policy choices.

**Transparency Policy: Opening a Sluggish Window**

Our modern democratic society has embraced the values of openness and transparency as keystones of accountable government. Most widely recognized is the federal Freedom of Information Act (FOIA), but it is not a singular policy. Multiple federal policies have enhanced government transparency over time, as have state FOI laws, open records laws, and open meetings laws—often referred to as ‘sunshine’ laws. Such change occurred in response to public pressure to make government more accountable and responsive following an era of corruption
and secrecy. The transformation ended the image of shady ‘smoke-filled room’ handshake deals, and became the newfound arbiter of efficiency and honesty in government. In short, transparency provides accountability in government.

Unique windows of opportunity often result in dramatic policy shifts, such as that demonstrated by the adoption of government transparency laws in the U.S., including the widely recognized federal Freedom of Information Act. However, transparency laws in the U.S. predate the FOIA by at least three decades, with gradual incremental shifts advancing the public’s right to know. In fact, some states already had open records laws in place when FOIA was adopted. As Piotrowski and Rosenbloom (2002) note, “From the 1940s to the present, considerable legislation and judicial effort has focused on infusing public administration with constitutional values” (p. 644).

Using the metaphor of a window to equate the opening of government actions to public scrutiny, we might think of the early 1930s as a window in a very old house, sealed shut by age, frosted over by many years without use or attention. The creation of The Federal Register marks a key initial step in opening the actions of government to public scrutiny. “Reasonable transparency of government and its accountability under law are enduring goals of the American public administration. The Federal Register, created in 1935 is a historic institutional tool designed for these purposes, and it represented a seismic shift in the way government functions” (Feinberg 2001, 359). The Federal Register transformed participation in American government by documenting the substance of, and the reasoning behind, regulatory action (Feinberg 2001). A decade later, incremental change continued; the Administrative Procedures Act (APA) of 1946 required agencies to solicit written public comment on their actions through notice of proposed rulemaking published in the Federal Register (West 2004).

One cannot consider these landmark policies to represent vast departure from the status quo, however. Bureaucratic resistance in implementation dramatically reduced their effectiveness—particularly the APA. “[A]dministrative secrecy was so ingrained by the late 1940s that the [APA]’s language requiring the release of information to persons ‘properly and directly concerned’ was immediately misinterpreted as a significant ‘standing’ requirement and misused to withhold information” (Piotrowski & Rosenbloom 2002, p. 644). The Freedom of Information Act of 1966 corrected this interpretive malady.

Further legislative change has continued to enhance government transparency. The Government in the Sunshine Act (1976), the Inspector General Act (1978), and the Government Printing Office Electronic Information Access Enhancement Act (1993) all provide the public with greater access to government information. The latter, for example, requires free online availability of The Federal Register (Feinberg, 2001)—taking information access far from its humble beginning into the 21st Century. Moreover, executive policy has also played a significant role in opening government information to the public, from President Clinton’s memorandum for Plain Language in Government Writing (Feinberg, 2001) to President George W. Bush’s E.O. 13392, Improving Agency Disclosure of Information. (I revisit this latter policy change below.) For a timeline of key transparency legislation, and legislation into which important transparency policy changes were written, see table 1.

The FOIA represented a more fundamental shift in thinking as it moved the burden from the requestor (to prove that they needed to know) to the government agency (to prove that there is an identifiable reason why the requestor should not obtain the information) (U.S. GAO 2006). Just as the APA was met with resistance in 1946, so the FOIA found resistance from a federal bureaucratic enterprise steeped in the tradition of secrecy. No “federal agency urged its passage,
and, for a time, even the president’s approval of it seemed uncertain” (Relyea 1975, 3). Looking back on the first decade of the FOIA, Relyea (1975) notes:

> Administration of the statute has not been particularly impressive. The bureaucracy did not want this law. Unfortunately, this attitude of opposition has manifested itself during the first years of the act’s operation in excessive processing fees, response delays, and pleas of ignorance when petitioned for documents in terms other than an exact title or other type of precise identification (4).

In spite of this resistance, Relyea (1975) goes on to observe that, “[a]lthough the administration of these laws has not always been consistent with the spirit of their enactment, these policy instruments generally reflect a desire to open government information, at least at the federal level, to the citizenry” (p. 8). The record demonstrates “a new operating presumption that government information, whether in documentary or observable form, be available to the public unless it is otherwise specifically exempted” (Relyea 1975, 8). Transparency policy change has adhered to fairly stable shifts throughout its history, but, if one overlooks the temporary bureaucratic resistance to the FOIA, that landmark legislation nevertheless represents a major reorientation of thought regarding the proper role of the public in the day-to-day business of government. “FOIA establishes a legal right of access to government records and information, on the basis of the principles of openness and accountability in government. … FOIA established a ‘right to know’ standard for access, instead of a ‘need to know.’” (GAO 2006, 4).

Diffusion of transparency laws through the several states was has taken place over time. The primary impetus came with the federal FOIA but diffusion and internal determinants have played a role in state adoptions since that time, enhancing transparency throughout the intergovernmental system (as state laws govern their non-sovereign local governments and public bodies). If we view the federal change from the perspective of a punctuated equilibrium (Baumgartner & Jones 1991), the dramatic shift has been followed by a lengthy period of relative incremental stability at the federal level and incremental change at the state level. In the post-transparency adoption environment, change has been gradual—with the obvious windfall punctuation in 1966 with the passage of the FOIA.

However, this shift has not been unidirectional as one might suspect. The FOIA’s reach has been constrained by altered interpretations over time. Even as soon as it was passed, a stalwart administration began to incrementally carve out additional exemptions. President Nixon’s E.O. 11652 expanded exemption from issues of national defense to interests of national defense or foreign relations (Relyea 1975, 6). While transparency serves a high purpose, most states and the federal government have rejected its universal application in favor of varied exemptions. Today, the federal Freedom of Information Act, for example, includes nine categories of exemptions under which requests may be denied in whole or in part (GAO 2006; see figure 1). The most commonly used exemptions among federal agencies to deny requests for information are personal privacy related (item 6 and 7c in figure 1; U.S. GAO 2002). Other exemptions include national defense, law enforcement techniques, the location of wells, and so forth.

Incremental broadening of the general scope of transparency laws has continued at the state level as well, as has the concomitant narrowing of applicability to certain situations and in particular policy arenas. The field of economic development provides one example which I elaborate below. While sunshine laws, public meeting laws, and other transparency policies have been added by states over time, the application of those laws has generated concern for
performance of particular functions, such as industrial recruitment, leading to gradual exemption of those specific government functions from the ever-broadening general policy. Alternatively, the events of September 11, 2001 represented a window of opportunity—resulting in a key punctuation of transparency policy generating a rapid promulgation of additional exemptions at the state level, because transparency is seen as a direct impediment to policy goals in the security arena. In essence, information pertinent to homeland security and to the perpetuation of government has been exempted from release under these policies. Again, I examine the features of policy change in the homeland security arena below. To summarize, although changes to governmental transparency policy have been general in nature, the actualized policy change across substantive policy fields has not been uniform. Transparency exemptions for economic development may be characterized as incremental, gradually diffusing across states (see Berry & Berry 1990), whereas the events of September 11, 2001, focused attention on homeland security and led to rapid reviews of, and exemptions from, transparency laws.

In order to fashion a better understanding of the changes we observe in transparency policy—both historically and in the present—it is worthwhile to review the rationale dictating transparency’s application to governance. The following section provides that rationale, drawing on transparency’s role as a core democratic-constitutional value necessary for government accountability, and then elaborating the ensuing conflict resulting under the New Public Management’s dictum of performance measurement. I now turn to considering the competing meanings of ‘accountability.’

Transparency and Accountability: Core Values in Conflict

“Belief in the openness of government to regular inspection is so firmly ingrained in our collective consciousness that transparency has innate value” (Koppell 2005, 96). Why have we come to place such a high value on transparency? Perhaps because the “The growth in the size of the bureaucracy and the development of immensely technical and complex fields of specialization have placed tremendous powers in the hands of public officials” (O’Brien, Clarke, Kamieniecki 1984, 339). Powerful parties in government require checks on their actions. Whereas the bureaucracy was impotent in the early days of the republic, it required no significant checks on its action. The Constitution institutionalizes checks among the executive, legislative, and judicial branches of government because it grants each of them specific powers. The bureaucracy has increased in power over time as it has expanded in size beyond the manageable limits of executive control by the President.

Piotrowski and Rosenbloom (2002) contend that transparency policies make the administration “comport better with U.S. democratic-constitutional values” (645). “In democratic-constitutional theory, the question is not simply whether government does the right thing most of the time. A central issue…is how to prevent it from doing the wrong thing some of the time—or ever.” (p. 648). What determines whether an action is wrong? How is it that we should not trust public officials to execute their duties honestly and rightly? The founding fathers struggled with such difficult questions, but had the foresight to understand that government must come with restrictions to prevent it from overstepping its intended bounds. Writing in Federalist 51, James Madison observed:

“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to
control the governed; and in the next place oblige it to control itself. A
dependence on the people is, no doubt, the primary control on the government;
but experience has taught mankind the necessity of auxiliary precautions”
(Madison 2006).

In Madison’s words we find recognition of a stark reality—a government by the people is
fallible, and so precautions must be taken. Speaking from hindsight, or experience, as he does,
Madison brings to mind the atrocities of government unbound by limitations on its action. As
the framers agreed, checks and balances are necessary for government to control itself. This
basis serves as a foundation of values upon which our government is built, and central among
them is transparency. “If the fundamental basis of democracy is an alert and aware public, active
in the affairs of government, such measures [as the Freedom of Information Act] seemingly have
a potential for fostering an informed citizenry” (Relyea 1975, 3). Moreover, “[t]he fundamental
basis of a democracy lies in an alert and articulate public, active in the affairs of state. Without
that participation, a democratic government cannot truly be said to exist” (Relyea 1975, 8).
Piotrowski and Rosenbloom (2002) suggest that “the Freedom of Information Act embodies the
democratic-constitutional value of government transparency; …Freedom of information is an
archetypal democratic-constitutional value” (649).

Transparency is a core democratic value; however, its value comes not from its existence
but from the results it brings to bear. Transparency fosters accountability, holding public
officials and administrators responsible for their actions. We rely on transparency to examine
the inner workings of an agency and to assess its performance. What makes an organization
transparent? According to Koppell (2005), the “critical question for evaluating organizational
accountability along the transparency dimension is straightforward: Did the organization reveal
the facts of its performance?” (96). Public meetings are one mechanism for ensuring
government transparency. Such meetings provide valuable opportunities for citizen participation
in the political process; public meetings may not contribute to deliberation or rational persuasion,
but they do allow opportunities for providing information, showing support, shaming, and
agenda setting, among others (Adams 2004). In other words, they may influence, but not
directly change votes.

West (2004), writing on the value of public comment in agency rulemaking procedures,
finds that variation in the level of public participation in such activities varies as a result of the
level of controversy surrounding the rule, the breadth of its effects, the degree to which it is
based on agency discretion as opposed to legislative or judicial directives, and the resources
available to participants. This suggests that it is not necessary to receive public comment on
every action—in fact there will be many actions that do not receive nor require comment—but
that the public must at least have the opportunity to participate. “Obviously, public comment
must occur in order to influence what agencies do” (West 2004, 70). Scholars have variously
assessed the effects of agency rulemaking procedures as an opportunity for interests to
participate and influence policy, as a symbolic gesture, and as a ‘fire alarm’ mechanism to
trigger political accountability: “rulemaking procedures promote responsiveness by triggering
political involvement in the administrative process” (West 2004, 73).

If we can observe the organization’s outputs, and the process by which they were derived,
then we can make valid assessments about its effort and overall performance. In order to hold an
agency accountable for its actions, one must be able to observe those actions. Accountability
conjures images of effective and responsible government when used in such general terms, and
indeed that may be the result. The reality is a much clumsier term with varied and often misunderstood interpretations. What is accountability?

“Accountability is good—there is little disagreement on this point… And yet while everyone agrees on its desirability, the meaning of accountability remains elusive.” (Koppell 2005, 94). Koppell’s (2005) key concern with accountability is that the scholarly literature has failed to achieve a uniform understanding as to what the term means; it refers to bureaucratic control in some contexts and transparency in others. He adds: “[r]elying on a single word to convey disparate conceptual understandings masks disagreement over a core issue of political science. The perpetuation of fuzziness regarding this important term is a failing of our discipline” (Koppell 2005, 94). And “[l]ack of conceptual clarity presents more than a rhetorical problem. The many meanings of accountability suggested by the varied use of the word are not consistent with each other: that is, organizations cannot be accountable in all of the senses implied by this single word” (Koppell 2005, 95).

So does accountability refer to control by political principals, or does it mean openness to public scrutiny? The answer is ‘yes,’ but under different conditions. These two conceptualizations together still do not cover the gamut of meanings accountability carries. Romzek and Dubnick (1987) differentiate accountability in terms of the source (internal or external) and degree (high or low) of control, labeling varied realities as bureaucratic, legal, professional, or political in nature. Roberts (2002) proposes an administrative model of accountability that includes direction-based accountability (goals and objectives), performance-based accountability (specification of outputs and outcomes), and procedure-based accountability (specific laws and rules for conduct of bureaucratic activity).

Transparency is one of five dimensions of accountability, including transparency, liability, controllability, responsibility, and responsiveness (Koppell 2005). The problem of accountability is that each component of this set of varied conceptualizations of the term results in a different expectation for the agency; hence, an organization’s effectiveness may be decreased to the extent it faces conflicting expectations derived from simultaneous application of conflicting definitions of the term. Such a situation is what Koppell (2005) refers to as the multiple accountabilities disorder. The disorder manifests itself when an organization alternates among behaviors consistent with conflicting definitions of accountability, sometimes serving principals, sometimes serving clients, but pleasing neither in the end (Koppell 2005). The five dimensions, while potentially conflicting, are not purely mutually exclusive. Transparency and liability, according to Koppell (2005), are prerequisites for the remaining three substantive dimensions, among which conflict is expected to be more heated. Transparency, then, is essential to accountability because it is a tool without which other forms of accountability would not be possible.

At the end of the day, tension among various conceptualizations of accountability exists, and it often leads to difficulty for administrators striving to prioritize particular roles and functions of their agencies. The essence of the problem is that, agreeing on the necessity of accountability, there is little agreement on which particular accountability mechanisms should receive priority (Roberts 2002). Different parties can—and do—press for accountability for such diverse concerns as finances, performance, and fairness (O’Connell 2005). Most notable among these pressures are the oft divergent foci of achieving core organizational tasks and providing the due process and transparency necessary to ensure a properly-functioning democratic government. As O’Brien, Clarke and Kamieniecki (1984) have observed, “[t]he problem that public officials now face is how to combine the core democratic values of accountability [sic] and
representativeness with the tenets of administrative efficiency, e.g. increasing demands for technical expertise, economy, and efficiency” (339). The varied meanings of accountability, and the varied mechanisms for achieving it, result in a web of overlapping accountability relationships in which public officials must work (Roberts 2002).

Variations in accountability are not always irreconcilable. Roberts (2002) finds that the paradox of accountability can be avoided even in complex settings with multiple actors. She found that dialogue, while time consuming and resource demanding, enabled participants to build a “system of responsibility based on personal agency, accountability to authority, and obligation to external principles and standards” that reinforced traditional accountability mechanisms by making them more transparent and visible (Roberts 2002, 666).

O’Brien, Clarke, and Kamieniecki (1984) emphasize the new era ushered in by the advancement of transparency policy: “expertise and economy were the values emphasized in the past. Today, however, these must be tempered by more democratic norms, i.e., greater public involvement and a more open decision-making process” (339). As trends are wont to change in cycles, the emphasis on accountability to the public (through democratic values derived from transparency policy) has given way to focus on the performance aspects of accountability (holding government agencies accountable for their performance) as a result of the performance emphasis of the New Public Management. The reality of the complex web of meaning surrounding accountability has real significance for our understanding of organizational performance, particularly under the NPM which emphasizes outputs and outcomes as the basis of agency success. As Koppell (2005) notes:

> [T]he lack of specificity regarding the meaning of accountability—or failure to articulate a choice—can undermine an organization’s performance. First, the organization may attempt to be accountable in the wrong sense. Second, and perhaps worse, an organization may attempt to be accountable in every sense” (95).

The NPM focuses on achieving results in the most cost effective manner, rejecting input and process requirements in favor of output and outcome expectations; the NPR viewed democratic-constitutional values as incompatible with highly cost-effective, results-oriented public administration (Piotrowski & Rosenbloom 2002). The problem, simply stated, is that transparency and similar red tape requirements redirect time, energy, and resources away from the agency’s primary goals, and thus negatively impact outcome performance over what might be possible under a system with no such constraints. As Piotrowski and Rosenbloom (2002) have succinctly described, “much of what encumbers conventional administration is the requirement that it comport with democratic-constitutional values such as transparency and due process, which in the NPM’s sense are neither mission-based nor part of a results-oriented calculus” (p. 643).

Piotrowski and Rosenbloom (2002) examine the extent to which democratic-constitutional values are integrated into agencies’ performance calculi, finding, to their surprise, that freedom of information is not integrated. Their analysis finds that “improving performance on the FOIA is, in fact, not a substantial goal—or even any part—of major federal agencies’ performance plans” (p. 651). They fear that the exclusion of transparency measures from agency performance plans is a natural side effect of the NPM, and without finding ways to explicitly include it in measurement, the democratic values will be displaced by performance goals. You get what you measure, so to be sure you get democratic values, their performance ought to be measured as well.
Concern that renegade agencies may disregard democratic values and the foundational accountability resulting from transparency is warranted, though somewhat premature. To allay some of the concern, the U.S. Government Accountability Office (2006) finds that FOIA requests received and processed continue to rise. The NPM indeed focuses on results, and hence agency effort is directed toward performance of those direct mission-oriented tasks, but few agencies function with singular goals, instead pursuing multi-pronged programs and various activities aimed at achieving multiple objectives. Simply ensuring that non-mission oriented transparency is a priority, alongside traditional mission-oriented goals, means that performance outputs and outcomes for those efforts, too, may be tracked and monitored under the framework of the NPM. “The Constitution recognizes higher values than speed and efficiency” (Piotrowski & Rosenbloom 2002, p. 646). Better linking rewards to the stated goals is essential to effective performance management systems.

President George W. Bush issued E.O. 13392, Improving Agency Disclosure of Information, in December, 2005. The Executive Order requires agencies to develop FOIA improvement plans, and focuses “agency managers’ attention on the important role that FOIA plays in keeping citizens well-informed about the operations of government. By requiring measurable goals and timetables, the Executive Order provides for a results-oriented framework by which agency heads can hold officials accountable for improvements in FOIA processing.” (U.S. GAO 2006, p. 26-27). This effort reflects a desire to prevent freedom of information from being overshadowed in the NPM environment, though freedom of information is only one component of the larger transparency picture. Moreover, the fact remains that efficiency in attaining the mission-oriented goals will be compromised by transparency activities; focusing on accountability for results necessarily leads to neglect of other kinds of transparency, and vice versa. Focus on results decreases commitment to democratic-constitutional values, especially when they are not a priority, or are not central to the organization’s goals (Piotrowski and Rosenbloom 2002). Or more generally, “the NPR was correct that the accretion of administrative law and other regulations sometimes stifles results-oriented public administration. Nevertheless—both in theory and in practice—deregulated, empowered, results-oriented administrators imbued with a utilitarian ethos can create a tension with the rule of law” (Piotrowski & Rosenbloom 2002, p. 649).

Theory

The different views of accountability, and the conflict resulting from the challenges of the New Public Management provide a theoretical foundation for explaining the differences we observe in arena-specific transparency policy change over time. The foundations of such a theory have as their focus the nature of conflict among multiplicitous goals (direct versus indirect) and distinctions regarding the definition of accountability applied. These differences play out in two observed responses: the degree of attention transparency policy receives (integration, neglect, or abandonment) and the speed with which policy change takes place (incremental versus rapid).

I begin with the nature of conflict. If transparency goals do not conflict with the direct mission-oriented goals of an agency, then transparency policy is expected to be fully integrated into agency activities. Such is rarely to be the case, because administrators allocating time and resources to information-providing activities frequently view such activities as detracting from the mission-oriented focus with which the agency is charged and evaluated by political principals. As Piotrowski & Rosenbloom (2002) suggest, transparency policies “can be an
impediment to reinventing government because they require considerable attention to process and deflect resources from the achievement of mission-based results” (646). In other words, these policies have the capacity to “encumber” the administration in spite of their importance to our democratic-constitutional values (Piotrowski & Rosenbloom 2002, 645).

More realistic, then, is the likelihood that there will be some inherent conflict between non-mission oriented process goals embodied in transparency policies and an agency’s mission-oriented goals. Such conflict may be indirect, meaning that the exercise of transparency policy is merely an inconvenience to administrators as they pursue their goals, or direct, meaning that the exercise of transparency necessarily detracts from the success of the mission-oriented goals.

If goal conflict is observed, it is likely to be the result of problems with properly interpreting agency accountabilities. The presence of multiple simultaneous accountabilities has previously been discussed in the literature (Koppell 2005) though not in terms of stimulating goal conflict, nor further in explaining observed policy change. The definition of accountability an agency applies in a particular setting may determine the extent to which transparency policy is seen to conflict with mission-oriented goals. If agencies view their primary accountability to be toward citizens, transparency will not be in conflict with the agency’s mission orientation as it maintains high responsiveness to citizen concerns. If the agency maintains a focus on political accountability to elected principals, transparency may conflict with the elites’ desired direction and action for the agency. Alternatively, public participation may aid elected officials by serving a fire-alarm function (McCubbins & Schwartz 1984) that pinpoints areas of public concern toward agency approach, leading to some tradeoffs. And, if the agency maintains a performance accountability approach toward its mission-oriented goals, transparency may come into direct conflict—particularly if the agency trades in information asymmetry of any kind (as do law enforcement, homeland security, and economic development agencies).

Figure 2 presents a conceptual model based on the complex nature of accountability overlaid with the degree of conflict among agency goals, as described above. I hypothesize that where transparency policy conflicts directly with mission-oriented policy goals, abandonment of the transparency policy will be the norm. Certainly this can be seen in the exemptions written into initial laws, but as time continues, situations arise where new rationale for exemption is revealed. In these situations transparency policy will be abandoned, resisted, and exemption will be sought—usually in extremely short order. When the transparency conflict is indirect—that is, it is a significant inconvenience to the successful achievement of agency goals, such policy will be neglected. Neglect may come in various forms, such as delays in response to FOIA requests, resistance to the policy, and through gradual efforts to exempt particular activities from transparency requirements. Whereas directly conflicting goals should be pronounced through rapid change, goals indirectly in conflict should be realized through incremental shifts over time. As the mission-oriented accountability of an agency increases in salience, the process-oriented accountability is expected to wane in salience, and thus in priority, reflecting the agency responses. Were additional resources available, such might not be the case, but under fixed capacity accountability goals involve trade-offs. These tradeoffs should reveal themselves in policy change response. Where there is no conflict, there should be no effort for policy change. When there is indirect conflict, incremental change is expected. And where there is direct conflict, dramatic punctuated change should be the norm.

The Policy Arenas: Economic Development
One of the more common exemptions to state open records laws covers negotiations tied to state economic development activities, and particularly industrial recruitment. States continue to view industrial recruitment as a competition, offering hefty incentives and tax breaks to footloose firms in search of a future home; Eisinger (1995) observes this reversion to industrial recruitment in light of significant increases in state competition for firms and the drastic increases in incentives states have placed on the table to land major manufacturers. Economic development performance has been particularly challenging for researchers and practitioners to measure as a result of disagreements regarding which outcomes are most important and as a result of plausible alternative explanations. Thus, the adage “shoot anything that flies, claim anything that falls,” which emphasizes the importance of firms landing in one’s own jurisdiction.

Firm location choices are observable, as are the jobs they create, so performance-minded development practitioners are apt to focus on this aspect of their role; firm locations become the mission-oriented goal of many state development strategies. Once a firm has settled on a short list of potential sites, government incentives have been shown to affect firm location decisions. Academicians have found that incentives prove to be effective only when a place is already on a firm’s short list, but the effects of economic development efforts are generally very limited (Goss & Phillips 1997, Clark & Montjoy 2001, Saiz 2001). As such, a state’s (or community’s) competitive edge results from offering the best incentive package out of a short list of competing sites. Information asymmetry among the players forms the basis of negotiations, with firms asking for more than they need, and governments offering as much as (or more than) they can afford; revealing the details of your offer provides an edge for those places competing against you. Cautious prescriptions have been offered for governments to evaluate the relative costs and benefits of incentive packages (such as with Tax Increment Financing, Weber 2003), seeking to offer only an amount the net present value of which is less than the expected net present value of benefits to be derived from the investment.

Firms locate where they maximize profits, and government incentives interfere with otherwise efficient market decisions. Since all firms must locate somewhere, industrial recruitment has often been called a zero-sum game; to be sure, there is no prize for second place. In order to capitalize on the inherent information asymmetries among contenders, states have adopted transparency policy exemptions to protect the details of these negotiations from public scrutiny. The value of jobs and industrial growth—the direct mission-oriented goals of economic development efforts—in these states would seem to outweigh the potential negative consequences of recruitment packages developed outside the scrutiny of the public eye.

The Policy Arenas: Homeland Security

Homeland Security policy provides a sound basis for examining simultaneous multiple goals in conflict. Homeland Security policy is accountable to direct mission-oriented goals of maintaining public safety, as well as the perpetuation of government by preventing (or responding to) a terrorist attack. Transparency policy has as its goal open government accountable to its constituents through ready and complete availability of information. Transparency policy is a non-mission oriented goal that applies generally to government, and thus comes in direct conflict with the mission-oriented goals of law enforcement and homeland security agencies. Making available schematics, blueprints, emergency preparedness plans, vulnerability assessments, or similar records and documents to ill-intentioned persons (who are not likely to disclose such intentions) poses a hazard to security. There is little disagreement that
this is the case, and thus little argument when it comes to prioritizing among the mission versus non-mission oriented goals, or in deciding which definition of accountability receives priority.

An additional feature that distinguishes homeland security policy from economic development policy is the predominance of one level of government over another in matters of concern to each respective field. The federal government has historically dominated states in matters of security, and states have historically been leaders over the federal government in economic development efforts (notwithstanding federal equalization efforts). So, to the extent states pattern their open records laws on the federal FOIA, they would be expected to respond more readily in the Homeland Security policy area because of changes to the federal law (which does not address issues of economic development). A cursory examination of state laws finds that relatively few are patterned directly on the federal FOIA, so these effects are expected to be mild (Reporters Committee for Freedom of the Press 2007).

Exclusions and Exemptions: Evidence of Goal Multiplicity in Two Arenas

The effects of goal multiplicity—expected to vary according to the degree and type of conflict (related to the model of accountability in use)—are observed in differences across states, but also across policy arenas. Concurrent with the theme of this paper, the indirect conflict between the goals of economic development policy and transparency policy has led to alterations in state transparency laws (such as exemptions for specific activities)—open meetings, open records, or freedom of information more generally—over time. Direct conflict between homeland security policy and transparency, on the other hand, has manifested itself through outright exclusion by modification of the core information statutes in a rapid fashion. I begin with direct goal conflict (and the resulting direct exclusions from transparency laws) exemplified by homeland security policy, and then continue with the case of indirect goal conflict (and partial, temporary, and varied exemptions) found in economic development policy.

National security has been excluded from transparency policy since its inception at the federal level, and the states have followed with exclusions mirroring those found in the federal FOIA. The advent of the attacks of September 11, 2001, the ensuing restructuring of the federal government and the wars in Iraq and Afghanistan overshadowed the onslaught of evaluation and reconsideration taking place in state capitols regarding the relative importance of security and transparency. Most states have amended their transparency laws to reflect the need for security in the wake of these events, with an emphasis not on national security, which is out of their realm of responsibility, but on homeland security, as it has been newly carved out of a web of new and existing government programs and responsibilities. In the way of example, Alabama incorporated such provisions into its new Open Meetings Act in 2005. Specifically, it provides for executive sessions to be held “To discuss security plans, procedures, assessments, measures, or systems, or the security or safety of persons, structures, facilities, or other infrastructures, including, without limitation, information concerning critical infrastructure, as defined by federal law, and critical energy infrastructure information, as defined by federal law, the public disclosures of which could reasonably be expected to be detrimental to public safety or welfare” (Code of Alabama 36-25A-7(a.4)). West Virginia’s statute now includes an exemption for “Records assembled, prepared, or maintained to prevent, mitigate, or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health” (WV Code §29B-1-4(a.9)), among others. Kentucky altered its policy to include exemptions for homeland security purposes in 2005 with the passage of HB 59. This bill was
passed with an emergency clause (allowing it to take effect immediately) and added the following specific language to the list of exemptions:

Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:

a. Criticality lists resulting from consequence assessments;

b. Vulnerability assessments;

c. Antiterrorism protective measures and plans;

d. Counterterrorism measures and plans;

e. Security and response needs assessments;

f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;

g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and

h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical location of hazardous, chemical, radiological, or biological materials (2005 KY Acts Ch. 93).

These states are representative of the changes to state transparency laws with regard to homeland security goals. The changes are similar, rather uniform, pursuant to similar changes to federal law, and are generally broader, all-encompassing exemptions. Naturally, the broader the exemption, the more room for discretion to expand it through bureaucratic policymaking (i.e., the determination of what is and is not included in the exemption—a process that often lacks an appeals process outside the courts).

Turning to economic development (and industrial recruitment, specifically), I focus primarily on the South, where most states have at least some exclusion, exemption, or exception for economic development recruitment activities in their FOI laws. The variety of exemptions and their diversity necessitates a greater number of examples. To identify provisions in state law pertaining to transparency, I first look to the core statute governing government procedures for meetings or information, and subsequently review the authorizing statutes for economic development activities. The latter category serves as the primary mechanism for exemptions, in the least transparent fashion possible. That is, the FOI law is not directly amended, as with Homeland Security policy exemptions, but its effect is marginalized for specific activities or for economic development more generally in program authorizing legislation by exempting those activities from transparency statutes.

I begin with the short list—those that do not appear to have an exemption to FOI for economic development activities. Delaware lacks an exemption (Title 29, Ch. 100, Delaware Code). Georgia presently lacks an exemption, but the topic has received attention. Georgia House Bill 218 was introduced in 2005 to “provide for an exemption for certain records of an agency engaged in a program of economic development” (Georgia General Assembly, 2006).
The bill passed the state House, but was ultimately tabled in the Senate. Maryland does not have a specific exemption for economic development, but has a general provision allowing records to be withheld if their inspection could be “contrary to the public interest,” allowing significant discretion in interpretation (Maryland Code §10-618(a)). Maryland does have a more specific exemption for confidential financial information of the Maryland Technology Development Corporation (Maryland Code §10-618(i)); Though MTDC is an economic development venture, it operates as a corporation, so this exemption should probably not be construed as an exemption for economic development competition purposes.

Moving to states that have some specific form of exemption, we find increased variety. Alabama has a specific exemption for economic development in the open meetings statute, but no specific exemption in the open records law (36 Code of AL 25A-7). South Carolina has the exemption, but once a recruitment offer is accepted, or the deal is announced (whichever is later), the exemption expires (S.C. Code of Laws 30-4-40.9). Virginia has an exemption that permits discretion on the part of the custodian as to whether or not to release the record (Code of Virginia 2.2-3705.6) (Virginia’s law also permits closed meetings for the purpose of discussing economic development recruitment [Code of Virginia 2.2-3711(5)]). Florida permits exemption, but the potential beneficiary of the economic development negotiation must first request in writing that records indicating their interest be kept confidential (2005 Florida Statutes 19-288.075(2)). Perhaps more interesting is the tradeoff observed in subsection (4) of the same statute, which prohibits a public officer from entering into a binding agreement with such a party until 90 days after the information has been made public.

Tennessee exempts any record the release of which is determined to “harm the ability of this state to compete…for economic or community development” for 5 years time (Code of Tennessee 4-3-730(c)(1-2)). And Mississippi also exempts economic development records that disclose client information for a period of two years (MS Code § 57-1-14(1)). North Carolina’s exemption is intriguing, on the one hand allowing for exemption of records associated with an industrial development project (§132-1.2(1.c)), but on the other specifically requiring the release of methodology and assumptions used in cost benefit analyses associated with such projects (§132.1.11(a)). Arkansas exempts records maintained by the Arkansas Economic Development Commission related to “any business entity’s planning, site location, expansion, operations…unless approval for release of those records is granted by the business entity” (AR Code 25-19-105(b.9A)), though the exemption doesn’t apply to expenditures or grants made (AR Code 25-19-105(b.9B)). Kentucky exempts public records “pertaining to a prospective location of a business or industry” (KRS 61.878(1.d)). So secretive is the KY Economic Development Cabinet that the Commonwealth’s Legislative Research Commission has been unable to access information regarding the level of tax breaks received by individual companies. KY House Bill 745 (2006) sought to ‘open’ the records to state government itself! (Stamper, 2006). Louisiana permits exemption of records (or identifying information on financial records) when requested in writing by the beneficiary for a period of 12 months (LRS 44:22(A-C)). Texas, Oklahoma, and West Virginia each have similar exemptions to FOI laws for economic development purposes.

These examples demonstrate the variety of approaches states have taken to restricting access to information that may place them at a disadvantage in competition for economic development. None of the states listed here provides absolute exemption for such activities, but partial, temporary, or contingent on custodial discretion. This list is for exemplary purposes and should not be taken as a complete catalogue of state exemptions.
Conclusion

This initial foray into understanding observed change to government transparency policy over time provides a foundation on which further research may build. I develop a model of policy change based on the concept of goal multiplicity, and on its underlying cause—conflicting definitions of accountability. Process accountability is a core democratic value that focuses attention outward toward citizens; task accountability focuses attention toward political principals, professional expectations and citizen expectations. I find this conceptual model to be consistent, prima facie, with evidence of policy change manifested in two policy arenas—homeland security and economic development policy. Both areas face task accountability demands, but the perceived importance of those demands affects the relative position held by process accountability expectations as officials (and policymakers) carry out their work, leading to the observed characterizations of policy change—slow and stable for economic development, but rapid and significant for homeland security. In the case of homeland security, exclusions are broad, general, similar across the states, and brought about through the focusing events of September 11, 2001. Economic development exemptions, on the other hand, are less uniform, tend to be very specific, vary from state to state, and appear to be in flux as ideas and opinions are exchanged about the efficacy of openness versus successful industrial recruitment.

Using the conceptual model, homeland security policy’s direct mission-oriented goals (task accountability) directly conflict with the non-mission oriented goal (process accountability) of transparency, resulting in responses consistent with ‘abandonment’ in figure 2. Economic development efforts are greatly inconvenienced by the disclosure of offers to the public—and potential rival states—but the plethora of research finding that these efforts work poorly, or that they are too costly for the return they generate, suggests sound rationale for keeping recruitment practices and negotiations subject to public scrutiny. The various exemptions to state laws are consistent with the pattern of neglect, though with substantial variation—a good clue that debate has extolled the virtue of both sides of the argument. More detailed analysis and further examination of these patterns will improve our understanding of policy change in this active, though often overshadowed and overlooked area of governmental policy.

There is ample room for leadership to influence these policy outcomes. In fact, the distribution of mission-oriented versus process-oriented goals reflects a key leadership conundrum. Where accountability is shared, based on multiple goals, and purely complex, leadership decisions will determine the ultimate direction agencies take, and how they prioritize one set of values over another. A second lens highlights the role leadership can play with respect to policy change. Where there is a culture among politicians and policymakers emphasizing secrecy over accessibility, advances in transparency can be incrementally whittled away through statutory exemptions and gradual change without drawing attention to or debating the core transparency law itself. It is ultimately the collective leadership actions of state officials in each policy arena that determines how transparency outcomes will fare vis-à-vis direct mission-oriented functions. The New Public Management would seem to emphasize the latter, but as we begin to view transparency as a policy outcome, performance measurement for that function should prove no more difficult than the many other government functions for which agency leaders are responsible and accountable.
References


Tables and Figures:

Table 1: Timeline of Major Federal Transparency Policy Change

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1935</td>
<td><em>The Federal Register</em> created</td>
</tr>
<tr>
<td>1946</td>
<td>Administrative Procedures Act</td>
</tr>
<tr>
<td>1966</td>
<td>Freedom of Information Act</td>
</tr>
<tr>
<td>1970</td>
<td>Legislative Reorganization Act</td>
</tr>
<tr>
<td>1972</td>
<td>Federal Advisory Committee Act</td>
</tr>
<tr>
<td>1974</td>
<td>FOIA amended</td>
</tr>
<tr>
<td></td>
<td>Congressional Budget and Impoundment Control Act</td>
</tr>
<tr>
<td></td>
<td>Privacy Act</td>
</tr>
<tr>
<td>1976</td>
<td>Government in the Sunshine Act</td>
</tr>
<tr>
<td>1978</td>
<td>Inspector General Act</td>
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<tr>
<td>1980</td>
<td>Regulatory Flexibility Act</td>
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<tr>
<td></td>
<td>Paperwork Reduction Act</td>
</tr>
<tr>
<td>1986</td>
<td>FOIA amended</td>
</tr>
<tr>
<td></td>
<td>Paperwork Reduction Acts</td>
</tr>
<tr>
<td>1990</td>
<td>Chief Financial Officers Act</td>
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<td></td>
<td>Negotiated Rulemaking Act</td>
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<tr>
<td>1993</td>
<td>Government Performance and Results Act</td>
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<tr>
<td></td>
<td>Government Printing Office Electronic Information Access Enhancement Act</td>
</tr>
<tr>
<td>1995</td>
<td>Paperwork Reduction Act</td>
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<tr>
<td>1996</td>
<td>Small Business Regulatory Enforcement Fairness Act</td>
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<tr>
<td></td>
<td>Congressional Review Act</td>
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<tr>
<td></td>
<td>FOIA amended</td>
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</tbody>
</table>

Figure 1: Exemptions to the federal Freedom of Information Act

Source: U.S. GAO 2002, p. 67
Figure 2: Integrated Conceptual Framework of the Effects of Goal Multiplicity and Conflict on Transparency Effort and Outcomes in Public Agencies

<table>
<thead>
<tr>
<th>Presence of Conflict</th>
<th>Type of Conflict</th>
<th>Expected Response</th>
<th>Potential Observable Actions</th>
<th>Policy Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Between transparency and Mission-oriented goals</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NO</td>
<td>NONE</td>
<td>Integration</td>
<td>1. Performance measures for FOIA are incorporated into agency performance plans</td>
<td>None</td>
</tr>
</tbody>
</table>
| | INDIRECT | Neglect | 2. Delayed response to FOIA requests  
3. Resisting policy/strategic delay  
4. Gradual effort to obtain activity-specific exemptions  
5. Conditional temporary exclusions; suspension | Incremental |
| YES | DIRECT | Abandonment | 6. Exemptions included in initial open records/meetings law  
7. Immediate and rapid effort to obtain “classification” exemptions  
8. Extensive delay or flagrant non-response to FOIA requests | Punctuated |
Figure 3: Transparency Policy without Exemption is Peripheral to, but Impacts, all other policies.

Figure 4: Pressure within certain substantive policy arenas at the Margin, decreases the efficacy of transparency policy toward those arenas.