

**PUBLIC ADMINISTRATION: A CRITICAL ANALYSIS OF THE  
BRAZILIAN LAW ON ACCESS TO PUBLIC INFORMATION**

**UMA ANÁLISE CRÍTICA DA LEI BRASILEIRA SOBRE O ACESSO À  
INFORMAÇÃO PÚBLICA**

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**ABSTRACT**

The Law on Access to Brazilian Public Information 12,527 of November 18, 2011, also recognized as the Law on Access to Information, provides citizen participation and strengthens the Brazilian public management control instruments. The objective of this article is to promote a critical discussion about the implementation of the Brazilian Access to Information Law, in its legal context and its reflexes in the management of urban information. To achieve its purpose, the methodology was based on the deductive method, which characterizes the present research as descriptive, of a qualitative nature, delineated in a non-experimental and bibliographic character. The result reveals the organic disconnection of the Law, as well as its effects, to the existence of the conurbation spaces. The conclusion also reiterates the importance of democratizing access to and use of public information. However, it does not find in the regulations, the existence of urban spaces not limited by the legal boundaries of cities.

**KEYWORDS:** urban information management; conurbation; Brazilian information law.

## RESUMO

A Lei de Acesso à Informação pública brasileira 12.527 de 18 de novembro de 2011, também reconhecida como a Lei de Acesso à Informação, proporciona a participação dos cidadãos e fortalece os instrumentos de controle da gestão pública brasileira. O objetivo deste artigo é promover uma discussão crítica sobre a implementação da Lei de Acesso à Informação brasileira, em seu contexto legal e seus reflexos na gestão da informação urbana. Para alcançar seu propósito, a metodologia fundamentou-se no método dedutivo, que caracterizam a presente pesquisa como descritiva, de natureza qualitativa, delimitada de forma não experimental e de caráter bibliográfico. O resultado revela a desconexão orgânica da Lei, assim como os seus efeitos, para com a existência dos espaços conurbados. A conclusão reitera, ainda a importância da democratização do acesso e uso das informações públicas, todavia, não encontra na regulamentação e no texto da legislação, a existência dos espaços urbanos conurbados e não limitados pelas fronteiras legais das cidades.

**PALAVRAS-CHAVE:** gestão da informação urbana; conurbação; lei de acesso à Informação.

## INTRODUCTION

Access to public information, in its historical context, had its the first legal mark for access to information of public interest registered in Sweden in 1766, through a set of actions aimed at giving visibility to decisions made by the court (FERREIRA, 2013). However, although Sweden was the first to adopt an Act on Access to Information, it did not contain basic precepts in its text. These doctrines are present in the most recent legislation, such as proactive disclosure obligations, the possibility of independent administrative appeals and proactive measures to promote openness (MENDEL, 2009).

On the other hand, the United States of America passed the Freedom of Information Act, known as the Freedom of Information Act (FOIA), in 1966. FOIA has

since received various amendments aimed at adapting it to the specificities of urban management, no longer limited by the extremes of the municipality (SANTOS; BERNARDES; ROVER, 2012). In Latin America, Colombia pioneered by establishing, in 1888, a Code that granted free access to Government documents. On the other hand, the legislation of Mexico in 2002 was considered a reference, through the establishment of rapid access to information systems, and in this context, Chile, Uruguay, among others, also adopted laws on access to information.

Brazil, with the approval of Law 12,527 (Law of Access to Information - LAI) on November 18, 2011, advances towards the consolidation of its democratic regime, expanding citizen participation and strengthening the instruments of control of public management. It is possible through the regulation of article 5, paragraph XXXIII of the Brazilian Federal Constitution, that guarantees citizens the exercise of their right of access to public information. The problem lies in understanding, under epistemological tutelage, the effects of the implementation of the LAI, considering the different information levels of Urban information management. Considering the legal and regulatory fact of the implementation of the Law on Access to Information, the debate on its effects constitutes a justification for this article, to provide an academic discussion of its reflexes, in the context of urban information management.

The constitutional emergence of Brazilian municipalities can be considered as the first indication of citizenship. Its formation involves attributions and responsibilities, to different actors and concepts. The legal conceptions of the Municipality, with its borders and limits, does not define urban space since the term Municipality is described as concrete, the material space of social relations, the legal nomination of the existence of a common area. We can define the term Urban as the abstract side, where citizenship makes sense, the stage of politics, with a mixture of representations (DA SILVA, 2004; MENDEL, 2009). Access to public information, through its regulations, does not mention the municipal limits and, the obligation to do in the letter of the law is attributed to the City (CURY & MARQUES, 2016).

The epistemological and ontological positioning of the research problem is expressed by realism, a functionalist paradigm, and a post-positivist epistemological position, considering that the existence of reality is imperceptibly apprehensible because of human intellectual contradictions and limitations. The unmanageable

nature of the phenomena under observation, or the revolutions that some scientific discoveries gave to the different areas of science (BURREL, MORGAN, 1979).

The research problem, access to public management information, has its legal basis recognized in Brazilian legislation. However, there are indications that access to information is segmented by federal managers, making them disconnected from urban reality. Still with the same problem, considering the urban space, as a space that transcends the legal limits of the cities, and the management of urban information, in turn, passes freely among its users, regardless of the limits, arises the research problem: Does the Brazilian Access to Information Law, effective since November 18, 2011, serves the conurbation spaces, formed by different cities?

The scientific uneasiness of the present study starts from the need to know how the information of public and managed access, since the urban spaces are not limited the territorial dispositions of the city. Still, as a justification for research, the Brazilian legislation, previously described, does not mention or relate urban spaces, which may constitute beyond the borders of a municipality, which contributed to the restlessness and the need for understanding.

The objective of this study is to provide a theoretical-critical discussion about the implementation of the Brazilian Access to Information Law, in the specific context of urban information management, considering the urban spaces as disconnected elements of said legislation. The methodology was based on the deductive method, using standard methodological criteria, which characterize the present research as descriptive, of a qualitative nature, delineated in a non - experimental and bibliographic form.

## **2 REGULATION OF ACCESS TO PUBLIC INFORMATION**

The LAI is also called the Transparency Law, had as its central focus on the regulation of access to public information. In fact, provided in Subsection XXXIII of the fifth article, Subsection II of the third paragraph of the thirty-seventh article of the Federal Constitution, repealing or amending the previous specific legislation (BRAZIL, 2011). The debates about public transparency and access to public information have

for a long time been marked by the liberal idea of state control, and in this context, the LAI was foreseen in the 1988 constitution and considered an achievement for Brazilian civil society, constituting in a comprehensive public policy.

In his first article, the LAI establishes that government entities like Union, States, Federal District, and Municipalities are subject to it. In its single paragraph, stipulates that public bodies (Composed of the administration including the Courts of Accounts, the Judiciary, and the Public Prosecution Service) subordinate the LAI. (BRASIL, 2011; CARVALHO, 2013).

Thus, in its Subsection II, of the single paragraph of the first article, also, municipalities, public foundations, public enterprises, mixed-capital companies and other entities directly or indirectly controlled by the Union, States, Federal District, and Municipalities are also subject to its provisions. The second article of the LAI also establishes that its provisions apply to private non-profit entities that receive, for public interest purposes, government resources directly from the budget or through social subsidies, management contract, the term of Partnership, Agreements, contracts, adjustments or other instruments.

The single paragraph of the second article clarifies that the publicity, which is submitted to the entities mentioned above, refers to the share of public resources received and their destination, without prejudice to the accounts to which they are legally obliged. (CONDEIXA, 2012; CARVALHO, 2013).

In this regulated context, access to public information is passed on to the agenda, respecting the responsibilities and obligations of each public or private entity involved in the process of facilitating and disseminating information to the citizen user. The organic structure of the LAI has six chapters, with the following structure: Chapter I - General Provisions; Chapter II - Access to Information and its Disclosure; Chapter III - The Procedure for Access to Information; Chapter IV - Restrictions on Access to Information; Chapter V - Responsibilities; Chapter VI - Final and Transitional Provisions (BRASIL, 2011, SANTOS, BERNARDES, ROVER, 2012, CARVALHO, 2013).

The municipalities, as well as the other federative spheres, are characterized in their introductory chapter, Chapter I, which describes who is the obligation to do, regarding access to public information, respecting the specificities of agencies

members of the direct administration of the Executive, Legislative, and Judicial Power. The access to the public information of the municipality, in the law, extrapolates concepts and general definitions of City and Urban conception, and so is not the object of this article, to study its ontologies. However, seeks to establish relations of the application of this law for urban management, which does not stop at the extremes of a municipality.

Thus, the procedures outlined in the LAI, in its third article, "[...] are designed to ensure the fundamental right of access to information and must be carried out in agreement with the basic principles of public administration [...]" (BRAZIL, P.1, 2011).

In this context, information of public interest, regardless of the limit of its extremes, and without the express reference of eventual secrecy, should have free access, considering the observance of publicity as a general precept and secrecy as an exception. The concept that space is registered before that of the territory with its boundary constraints. Studies on territory have developed over a hundred years, and geography was incorporated by Friedrich Ratzel (1904), a German geographer and ethnologist, who treated the territory as a necessary space for the intertwining of natural and human elements (CURY & MARQUES, 2016).

Also in the third article of the same law, the LAI directs that the disclosure of information of public interest, regardless of requests, despite the scope of public coverage, should contain minimal information without the citizen having to ask them in advance.

The availability of public information, at the municipal level, is the responsibility of the municipality, however, in a conurbation context, where districts merge KAROÑ (2012). The management of public information advances by the borders of the city, and the spaces, call conurbation, are not impeded by the legal limits or borders. In fact, the information is not restricted, constituting, by the citizen a point of convergence to strategic urban management.

### **3 URBAN INFORMATION MANAGEMENT**

Municipal management, in the 80's, showed a depletion of their managerial capacities, since the Traditional Administrative Action was no longer functional. In this context, the municipality began to be managed with a focus on development, and the Administrative action began to be recognized as Urban Management, in which the competencies of the Urban Manager are increased, due to the growth of the administrative complexities observed in urban spaces. (REZENDE; CASTOR, 2006; ULTRAMARI; REZENDE, 2011)

Municipal management, through its multiple actors, involves different concepts and approaches related to the science of management, and its concept, from the perspective of management, is related to a set of resources for the development and application of management activity. The processes that make up, or are involved, in the management act, constitute actions to achieve objectives, previously defined, through the application of the science of Administration. (DÖLLNER, 2006; REZENDE, 2012)

Considering the extrapolation of the municipal borders, the urban space advances as a dynamic organism with difficulties, contrasts and informational needs that go beyond the municipal legal boundaries and, in this scenario, the urban environment management plays a relevant role to contribute to the decrease of these contrasts and difficulties. (ULTRAMARI; REZENDE, 2011)

Urban management, in one of its conceptual relations, can be conceived as urban governance and, in this context, represented a new model of public and political management, insofar as urban space is not limited to the boundaries of the municipality. Although the theoretical concepts of governance are multifaceted, we can understand the urban management as the set of resources of the science of administration. With the focus on the quality of infrastructure and urban services, providing the best living conditions and bringing the Citizens in the decisions and actions of public governance, using the resources of information technology and communication through electronic democracy and governance. (HIRST, 2000; RHODES, 2000)

The conurbation, in turn, constitutes a space, in the physical-geographical sense, from the fusion of the urban areas of neighboring municipalities, representing a continuous urban land, surpassing, therefore, the regulatory political limits of each one

of the members (FREITAS, 2012). The combination of the processes involving the conurbation gave rise to the metropolitan regions, as a physical and socioeconomic phenomenon, recognized by the theoreticians (ALVES & CHAVEIRO, 2007; FREITAS, 2012).

The conurbation space, about the responsibilities of access to Public Information, can be institutionalized by the public power, with a focus on the management of common problems of the municipalities. However, the current LAI does not include in its provisions, the regulation of these spaces. In this way, the arrangement described of the LAI creates a paradigm between the public responsibility to promote access to information, the interests of the citizen users of a conurbation region and the geographic limits of each municipality. In a strategic context, considering the implementation of the City Statute in 2001, "there is a series of actions encouraged by the federal government that led to the format of a possible national urban policy" (ULTRAMARI, RESENDE, 24, 2011).

The system that supports the statute is in line with the assumptions of the LAI (2011). However, the specificities of the dynamics that compose urban spaces, and with them, conurbation, do not emerge in the LAI since it does not regulate the intermunicipal urban areas. It is in the divergence of the tendency of the 1988 Constitution, announced as Municipalities, as well as in disagreement with the trend towards informational socialization of the Statute of Cities.

The Urban Information Management advanced, considering the needs of its citizens and governed by the legal system in the words of Ultramari and Resend:

[...] urban management expands its responsibilities, through greater commitment and widespread participation. A compromise divided between environmental demands, social requirements and economic restrictions and access to information. (*free translation by the authors*), (ULTRAMARI; RESENDE, 27, 2011).

Despite the progress made by the implementation of the City Statute and the LAI, it is worth reading the process according to the paradigms announced by Thomas Khun (1996), which reiterates the importance of any changes or advances that take place in

the leaps rather than on an ongoing basis, without breaking long-established structures.

#### **4 RESEARCH METHODOLOGY**

The epistemological and ontological positioning of the research problem is expressed by realism, as mentioned previously by Burrell and Morgan (1979). In this methodological context, Kuhn (1975) asserts that the existence of reality is imperceptibly apprehensible because of human intellectual contradictions, the unmanageable nature of the phenomena under observation, and the revolutions that some scientific discoveries have provided. In this way, the generalizable results are the expression of the understanding of the scientific truth (KOTHARI, 2004). In this methodological scenario, the present research is characterized by an applied nature approach of a circumstantial theoretical reality, with emphasis on the deductive method, favored by the documentary survey and by the non - participative observation of the informational systems of the studied cities.

The criteria established by Gall (1996), Kothari (2004), Marconi and Lakatos (2009) and Gil (2010) were used, which show the nature of the problem, the way of approaching the problem, its objectives and technical, scientific procedures for research.

The research data were obtained through the application of the mapping technique, identified as "Infomapping," a method created in 1988 by Cornelius Burk Jr. and Forest Horton Jr., to manage the information resources of a public organization or Private in a hierarchical way. This method was applied through non-participatory observation in urban information management systems of two cities, with different information realities; The city of Curitiba, in the State of Paraná, Brazil and the city of Belo Horizonte, in the state of Minas Gerais, Brazil (our emphasis). The author intentionally chose the cities mentioned above for the present research. The intentionality in the choice of the research universe is in line with the procedures adopted, for a case study Gall (1996), Kothari (2004), Marconi and Lakatos (2009) and Gil (2010).

## **5 DEVELOPMENT AND FINAL CONSIDERATIONS**

The intelligent systems of urban information constitute in topics of interdisciplinary investigation, which confers articulation and intelligence the management of the digital city, in addition to informative urbanisms. The theoretical foundation of urban information systems begins with the sociological city of Weber and advances to the city of inquiry, described by Jacobs (1969), Friedmann (1995), Castells (1999), Taylor (2004), Rezende (2012), Barth (2017). Considering the democratization of the access and use of public information, the Brazilian law, LAI - Law of Access to Information (2011) originated, in addition to the rigor, the regulation of the information disclosure procedures. However, urban spaces arise through the social accommodation of their citizens and can unite different areas in different cities. At this point, the opportunity of critical evaluation arises, considering that the LAI does not bring in the text, the conception of the Urban spaces, as well as, it limits actions and procedures the borders of a city.

Considering the objectives of to present a theoretical-critical discussion about the implementation of the Brazilian Law of Access to Information, in the context of information management in urban and conurbation space, its variables were listed and conceptually discussed, making the objectives attended.

The legal context of the approval and implementation of the LAI in 2011, In particular, the responsibility of the Municipality, in the management of information, limited by its physical boundaries, whose obligation to do, provided in law, does not include urban municipal spaces Inter-municipal. Still, in this context, the municipal borders do not limit the information traffic, since the access to the information of public nature, from the promulgation of the law, does not mention the spaces or urban limits. However, the obligation to do it in the LAI is attributed to the municipality (DA SILVA, 2004; MENDEL, 2009).

The collection of the public informational data, made available on the website of the cities surveyed, demonstrates the partial fulfillment of LAI, especially in the area of access to public information. In each city surveyed, through their respective websites, nine common informational variables were listed, thus totaling a base of 27 (twentyseven) informational flows adhering to the Citizens Services theme. In this way,

the information pertinent to each service was mapped, through the application of the *infomapping* technique, and the respective flows confronted with the description proposed by the Law of Access to Information. This survey presented indicative of a disconnection of the flows, in what concerns the conception of the information by the public organ, its availability and its perception or contextualization with the citizen.

Considering the base of 27 (twenty and seventy) informational research variables, the analysis identified 2 (two) disconnection in each city surveyed, between what is delimited in LAI, and the urban reality of the conurbation in which the citizen is inserted. The Brazilian Information Access Law - LAI, presents in its text the structure of responsibility in the informational conception and describes the rigor for its implementation, however, it does not connect the citizen to the urban context. The cities surveyed, through the mapping of the variables described above, are exposed as data, without the attributes of information, as meaning and context with the environment it represents.

The theoretical discussion of the LAI's reflexes, public responsibilities and the absence of urban limits meet the objective of this article, insofar as it facilitates the conceptual deepening of municipal and urban management, under the effects of the Law of Access to Information. The academic contributions of this article reiterate the need to model information; Conventional, personalized and timely, to contribute to the constant improvement of municipal services and the need for effective participation of the citizens in municipal planning, decisions, and actions in line with the LAI parameters (CURY & MARQUES, 2016)

Nevertheless, there are still confused spaces, with no precise definition of public responsibilities, since the LAI does not suggest the existence of such urban areas. Consequently, the present discussion emphasizes the need for a better understanding of the issues of responsibility, reflecting the assumptions of the LAI and the reality of Brazilian urban management.

The main limitation of this work is in its theoretical proposal without adequate case studies in conurbation spaces. However, its importance is ensured through the discussion and critical analysis of the public policies of access to information and its reflexes in a dynamic urban context. For the local prefectures and researched the alert for an information management with a focus on the urban context and the conurbation

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spaces. On the other hand, the methodological procedures applied, through the Infomapping technique, indicate that cities with a focus on digital management - Strategic Digital Cities (REZENDE 2012; BARTH, 2017) present information systems in line with the differentiated technological structure, a topic for another paper.

In this sense, from this proposal, we can elaborate other researchers and other studies, mainly those aimed at improving the ideas described, either in scientific methods, in the proposed models or as answers to new questions of urban information management.

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