

Open Society

By Kojima Akira

The freedom-of-information law – officially called the “Law Concerning Access to Information Held by Administrative Organs” – took effect on April 1. Disclosure of information is a global trend, and Japan is belatedly jumping on the bandwagon. Disclosure of information is an infrastructure indispensable for a sound democracy and for a vital market economy.

In a democracy and the market economy system, it is important that information is fully disclosed to participants, that all people wishing to obtain information have equal access to information, and that the information disclosed is accurate. An informed citizenry can strengthen democracy and the market economy.

Simultaneously with the enactment of the freedom-of-information law, a system for evaluating administrative policies has come into being in Japan. Ahead of the central government, disclosure of information already started in the 1990s at the local government level against the background of grassroots discontent against the abuse of tax revenue and other irregularities by politicians and bureaucrats.

James Madison, U.S. President from 1809 to 1817 and one of the American leaders who drafted the U.S. Constitution, emphasized the importance of freedom of information in democratic society, saying that democracy does not exist where there is no freedom of information. A government governing people who has neither information nor means to get information is either comical or tragic, or both, he said. Noting that the knowledgeable can rule the ignorant everlastingly, Madison called on people to arm themselves with knowledge if they are to rule themselves.

I participated in the Transparency Symposium 2001 held in Tokyo in April as a panelist and gave my view on information disclosure under the

theme “Japan’s Role in the Building of Ethics, Sincerity and Accountability.” The symposium was organized by an international organization called Transparency International (TI) and supported by the Japanese Ministry of Foreign Affairs, the *Nihon Keizai Shimbun*, the United Nations Development Program and the Asian Development Bank, among others. TI is engaged in global campaigns to foster solidarity between the public and private sectors to prevent corruption and putrefaction.

I pointed out the following points in my report:

- 1) Only thorough disclosure of information can bolster democracy and the market economy.
- 2) Disclosure of information is a very effective means of promoting self-discipline among administrative institutions, companies and other organizations.
- 3) A country with advanced information disclosure has high transparency; is a predictable society; and is an open society in which not only its citizens but also foreign residents and companies can easily participate.

Japan remains less transparent and more secretive than other Western countries. Can the newly enacted freedom-of-information law convert Japan into an open and transparent society? That will depend on how actively Japanese people will exercise their rights granted under the law. This is because administrative authorities (bureaucrats), who have maintained their power by monopolizing and refusing to disclose information, would never volunteer to disclose information without public surveillance, though they are obliged to under the new law.

Japan’s central and local governments have implemented their policies through so-called *gyoseishido* (admin-

istrative guidance). *Gyoseishido* is a discretionary form of administration that lacks transparency. Such discretionary administration is the wellspring of bureaucratic power. Because administration is done by bureaucrats at their discretion, business persons approach government officials in order to 1) obtain information earlier than their competitors about government policies essential for their businesses, or 2) influence bureaucrats to opt for policies favorable for their business operations.

As a means of approaching administrative authorities, businesses have wined and dined officials and showered gifts on them. Since the bubble economy in the late 1980s, the practice has flourished, becoming a routine job for many companies. It has resulted in moral decay among government officials and the businesses under their jurisdiction.

Companies tried hard to get close contacts with government ministries and agencies which authorize or license their business operations. Financial institutions, for example, used to have officials specially tasked to cover the Ministry of Finance (MOF). These officials had the assignment of entertaining MOF officials and obtaining information from them. Such corrupt relationships between bureaucrats and the business sector had become part of the corporate culture in this country and lasted many years. It finally ceased to exist after being severely criticized by the public along with the MOF’s mishandling of bad loans, and the interests of the MOF and financial institutions began to conflict with each other.

Under discretionary administration, government ministries and agencies with licensing power let companies provide information and monopolized it. The monopolization of information made administrative power still stronger. Companies are supposed to open information to markets but they

The TI 2000 Corruption Perceptions Index

Rank	Country	Score	Surveys Used	Standard Deviation	Maximum-Minimum CPI Figures
1	Finland	10.0	8	0.6	9.0 - 10.4
2	Denmark	9.8	9	0.8	8.6 - 10.6
3	New Zealand	9.4	8	0.8	8.1 - 10.2
	Sweden		9	0.7	8.1 - 9.9
5	Canada	9.2	9	0.7	8.1 - 9.9
6	Iceland	9.1	7	1.1	7.3 - 9.9
	Norway		8	0.7	7.6 - 9.5
	Singapore		11	1.0	6.2 - 9.7
9	Netherlands	8.9	9	0.6	8.1 - 9.9
10	U.K.	8.7	9	0.6	7.3 - 9.7
11	Luxembourg	8.6	7	0.7	7.4 - 9.3
	Switzerland		8	0.3	8.1 - 9.1
13	Australia	8.3	10	1.0	6.7 - 9.3
14	U.S.A.	7.8	10	0.8	6.2 - 9.2
15	Austria	7.7	8	0.7	6.2 - 8.5
	Hong Kong		11	1.2	4.3 - 8.6
17	Germany	7.6	8	0.8	6.2 - 8.4
18	Chile	7.4	8	0.9	5.7 - 8.4
19	Ireland	7.2	8	1.9	2.5 - 8.5
20	Spain	7.0	8	0.7	5.9 - 8.0
21	France	6.7	9	1.0	4.3 - 7.7
22	Israel	6.6	8	1.3	4.3 - 7.9
23	Japan	6.4	11	1.3	4.3 - 7.8
	Portugal		9	0.9	5.3 - 8.1
25	Belgium	6.1	9	1.3	4.3 - 8.8
26	Botswana	6.0	4	1.6	4.3 - 8.2
27	Estonia	5.7	4	1.6	4.4 - 8.1
28	Slovenia	5.5	6	1.1	4.1 - 7.3
	Taiwan		11	1.4	2.5 - 7.2
30	Costa Rica	5.4	4	1.9	3.8 - 8.1
	Namibia		4	0.8	4.3 - 6.1

Rank	Country	Score	Surveys Used	Standard Deviation	Maximum-Minimum CPI Figures
32	Hungary	5.2	10	1.2	3.9 - 8.1
	Tunisia		4	1.5	3.8 - 7.1
34	South Africa	5.0	10	0.9	3.8 - 6.6
35	Greece	4.9	8	1.7	3.7 - 8.1
36	Malaysia	4.8	11	0.6	3.8 - 5.9
37	Mauritius	4.7	5	0.8	3.9 - 5.6
	Morocco		4	0.7	4.2 - 5.6
39	Italy	4.6	8	0.6	4.0 - 5.6
	Jordan		5	0.8	3.8 - 5.7
41	Peru	4.4	5	0.5	3.8 - 5.0
52	Czech Rep.	4.3	10	0.9	3.3 - 6.2
43	Belarus	4.1	3	0.8	3.4 - 4.9
	El Salvador		4	1.7	2.1 - 6.2
	Lithuania		4	0.3	3.8 - 4.4
	Malawi		4	0.4	3.8 - 4.8
48	Poland	4.0	11	0.8	2.8 - 5.6
	South Korea		11	0.6	3.4 - 5.6
49	Brazil	3.9	8	0.3	3.6 - 4.5
50	Turkey	3.8	8	0.8	2.1 - 4.5
51	Croatia	3.7	4	0.4	3.4 - 4.3
52	Argentina	3.5	8	0.6	3.0 - 4.5
	Bulgaria		6	0.4	3.3 - 4.3
	Ghana		4	0.9	2.5 - 4.7
	Senegal		3	0.8	2.8 - 4.3
57	Slovakia	3.4	7	1.2	2.2 - 6.2
	Latvia		3	1.3	2.1 - 4.4
59	Zambia	3.3	4	1.4	2.1 - 5.1
	Mexico		8	0.5	2.5 - 4.1
60	Colombia	3.2	8	0.8	2.5 - 4.5
	Ethiopia		3	2.5 - 3.9	
	Thailand		11	0.6	2.4 - 4.0

Rank	Country	Score	Surveys Used	Standard Deviation	Maximum-Minimum CPI Figures
63	China	3.1	11	1.0	0.6 - 4.3
	Egypt		7	0.7	2.3 - 4.1
65	Burkina Faso	3.0	3	1.0	2.5 - 4.4
	Kazakhstan		4	1.2	2.1 - 4.3
	Zimbabwe		7	1.5	0.6 - 4.9
68	Romania	2.9	4	1.0	2.1 - 4.3
69	India	2.8	11	0.7	2.3 - 4.3
	Philippines		10	1.7	4.7
71	Bolivia	2.7	4	1.3	1.7 - 4.3
	Ivory Coast		4	0.8	2.1 - 3.6
74	Venezuela	2.6	8	0.7	2.1 - 4.3
	Ecuador		4	1.0	2.1 - 4.3
76	Moldova	2.5	4	0.9	1.8 - 3.8
	Armenia		3	2.4 - 3.5	
77	Tanzania	2.5	4	0.6	2.1 - 3.5
	Vietnam		8	2.1 - 3.8	
79	Uzbekistan	2.4	3	0.9	2.1 - 3.7
80	Uganda	2.3	4	0.6	2.1 - 3.5
81	Mozambique	2.2	3	0.2	2.4 - 2.7
82	Kenya	2.1	4	0.3	2.1 - 2.7
	Russia		10	1.1	0.6 - 4.1
84	Cameroon	2.0	4	0.6	1.6 - 3.0
85	Angola	1.7	3	0.4	1.6 - 2.5
	Indonesia		11	0.8	0.5 - 3.2
87	Azerbaijan	1.5	4	0.9	0.6 - 2.5
	Ukraine		7	0.7	0.5 - 2.5
89	Yugoslavia	1.3	3	0.9	0.6 - 2.4
90	Nigeria	1.2	4	0.6	0.6 - 2.1

Note: The larger the number, the more upright officials are.
Source: Gallup International

tended to do the opposite.

Administrative authorities are basically secretive, because information is the source of their power, and they can maintain their power by withholding it. Administrative authorities recently advanced a proposal for establishing an "electronic government," but administrative information available to the public through Web sites in Japan will be very limited in quantitative-qualitative terms compared with those in the United States and other Western countries. A former vice minister of finance who served as a university professor for some time after retiring from the government service admitted to me that Japan lags far behind Western countries in information disclosure. He said he realized this through accessing the Web sites of both the Japanese and U.S. governments to obtain information needed for his lectures. The difference in the level of information available on their Web sites was appalling, he said. Very few public organizations, including the Bank of Japan, manage Web sites which include satisfiable information.

In his recently published book *Joho Kokai Ho: Kanmin no Himitsu-shugi wo koeru tameni (Information Disclosure Law: Beyond Adminis-*

trative and Private Sector Secretiveness) (Chuokoron-Shinsha, 2001), Hayashida Manabu, a scholar specializing in information disclosure, quoted former U.S. President Bill Clinton's remark on information disclosure. According to Hayashida, Clinton sent letters to the chiefs of all federal administrative organizations shortly after taking office in 1993. Clinton said in his letter that the U.S. Freedom of Information Act played an unparalleled role for more than a quarter of a century in making the U.S. government more democratic. Clinton noted that the Freedom of Information Act, essential for an informed citizenry in the democratic process, was enacted on the reality that the more Americans know about their government, the better the United States is governed; and an open government is essential for accountability, and the legislation is an essential foundation of an open government. He urged all government agencies to respond to requests for information from Americans in consideration of their positions because people are customers of the government.

Not only in Japan but in any other country, administrative authorities, more specifically, bureaucrats, tend to

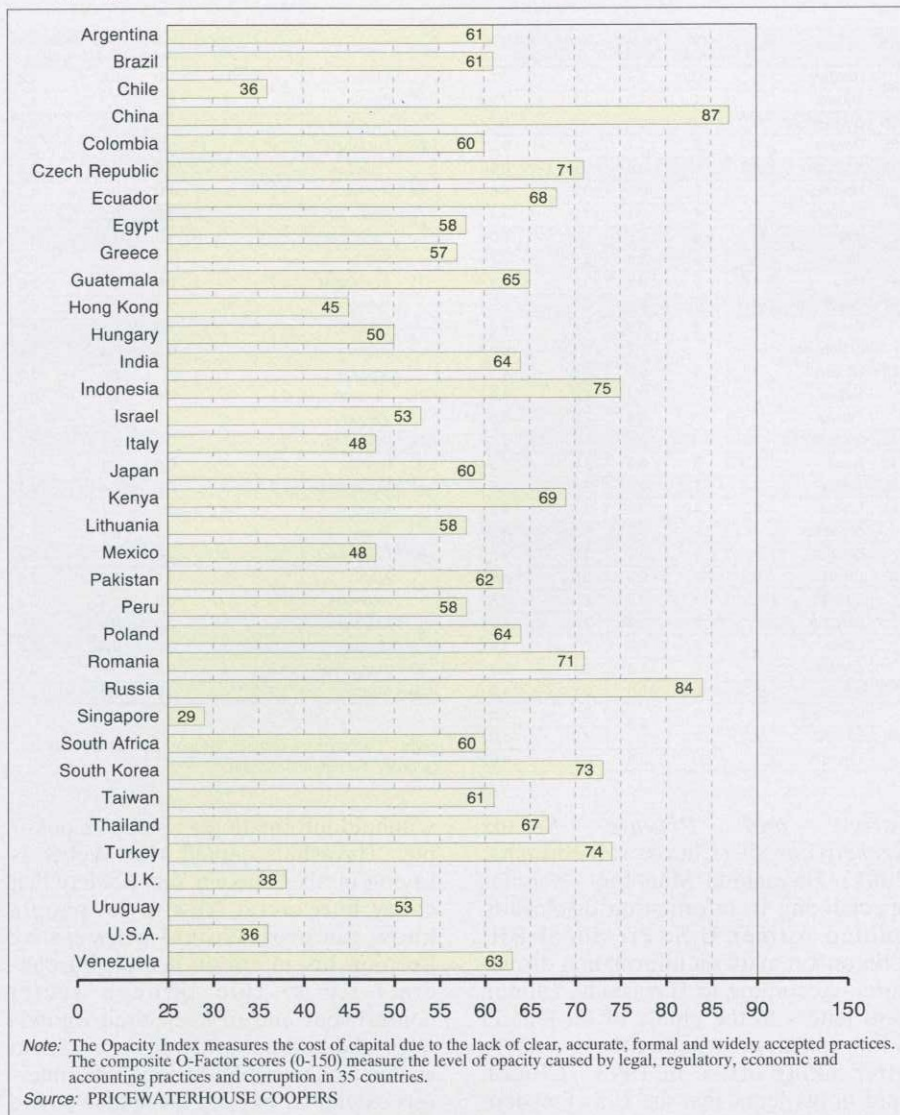
withhold information as much as possible. Hayashida quoted Max Weber as saying in his *Economy and Society* that every bureaucrat tries to let people know his professional prowess by keeping his intention secret; bureaucrats try to rule through secret conferences and to keep their knowledge and actions away from criticism as much as possible; bureaucratic interests extend far beyond the sphere where their professional secrets can be produced; and the concept of a professional secret, peculiar to the bureaucratic system, is fanatically defended by bureaucrats.

Sweden was the first country in the world to enact information disclosure legislation, but it is believed that the global current of information disclosure was created by the United States.

After World War II, campaigns seeking people's right to know were launched in the United States against the background of the mass media's vexation with the government's secretiveness. The move prompted the enactment of freedom of information laws at the state level first and led to the enactment of the federal Freedom of Information Act in 1966.

Other Western countries followed

The Opacity Index



suit with the enactment of similar laws: Norway in 1970, the Netherlands in 1978, Canada, Australia and New Zealand in 1982, Austria in 1987 and Belgium in 1994. In Asia, South Korea enacted its information disclosure law in 1996.

In contrast, Japan, said to be a country of bureaucrats, lagged far behind. In the 1970s, public demand for information disclosure began to emerge following the Lockheed payoff scandal and other corruption cases involving politicians.

Opposition parties included enactment of an information disclosure law in their campaign slogans in the 1979 general election. The Liberal Democratic Party (LDP) suffered a major setback in the election and

formed a coalition with the New Liberal Club, a splinter LDP group, to maintain power, by concluding a policy agreement that incorporated enactment of an information disclosure law. But most LDP Diet members were against or cautious about such legislation and the party back-pedaled on the move.

The LDP's resounding victory in the 1980 general election that followed the sudden death of Prime Minister Ohira Masayoshi snuffed out any chances of an early enactment.

Contrary to the LDP's negative attitude toward the freedom of information law, voters became increasingly vocal about the necessity of such legislation. Against such a background, various local governments began to focus on people's access to information.

Kanagawa Prefecture enacted an ordinance on information disclosure in October 1982, becoming the first local government to do so. Other local governments followed suit and all 47 prefectural governments now have information disclosure ordinances.

The enactment of the freedom of information law was delayed on the national level. Proposals by opposition parties for the legislation were all rejected. Only in May 1999 did the freedom of information bill clear the Diet after many twists and turns.

The *Nihon Keizai Shimbun*, of which I am a staff member, carried a 10-part series of editorials titled "Kokai Shakai eno Michi (The Road to Information Disclosure)" in 1998, urging the enactment of a freedom of information law. The editorials reflected Japanese journalists' sense of crisis about the country in the midst of the exposure of unhealthy relationships between MOF and financial institutions and their boundless corruptions.

We emphasized in the editorial series: The United States enacted its Freedom of Information Act as early as in 1966. Administrative authorities still monopolize information in Japan and their opaque discretionary administration goes unchallenged. The country is now paying for the negligence so dearly that complaints can be heard in various parts of society. For the healthy development of democracy and the market economy, it is essential for people to rightfully share administrative information. People can be equal with administrative authorities only by sharing information, paving the way for active national discussions and the development of healthy democracy.

More than 30 years later than the United States, Japan finally enacted its own freedom of information law providing a means of nurturing an open society. How this legislation checks opaque discretionary administration and boosts democracy and the market economy depends on how aggressively people take advantage of the law and try to build an open society.

Ironically, the freedom of information law came into being at a time when the Japanese bureaucracy was reeling from

the effects of the arrest of a foreign ministry official on charges of swindling tens of millions of yen from secret government funds. Public interest in the corruption case is directly linked to the freedom of information law.

The importance of information disclosure is not limited to administration. Information disclosure is equally important for all organizations including private companies and non-governmental organizations whose activities are increasingly attracting public attention lately. Through information disclosure, organizations will discipline themselves and can ensure their social legitimacy. An open society in which the public has access to information makes participation by foreigners and foreign companies easier.

Some time ago, I met Dennis Weatherstone, then chairman of JP Morgan & Co., and asked him what he thought were the necessary conditions for the financial and capital markets of a country to win global competitiveness. He listed the following criteria.

- 1 Market-friendly regulations and rules
- 2 Transparency of regulations and rules
- 3 Good infrastructure, including communications and transportation
- 4 Cosmopolitan culture not excluding outsiders
- 5 Providing capable manpower and human resources with possibilities of equal access
- 6 Attractive culture which makes life affluent, including good restaurants and art museums
- 7 Shared language
- 8 Reasonable living costs
- 9 Reasonable business costs
- 10 Strong will of a national government and a society to ensure the system which meets these conditions

The first and second points are directly linked to information disclosure. Weatherstone said to the effect that the critical thing for an open society is that regulations and rules are transparent and not applied in an ad hoc manner. In such a society, all people, including foreigners, can lead normal lives, and companies can conduct business according to plan, because

administration is predictable there. If information is fully disclosed and administration is done without discretion, nobody needs to, nor would try to, entertain bureaucrats in order to obtain information or induce government measures favorable to their business.

Most of the points cited by Weatherstone concern the private sector. Problems of information disclosure are not limited to public administration.

There is a symbolic episode about the lack of information disclosure in Japan. A massive loss suffered by the New York branch of Daiwa Bank, exposed in 1995, resulted from unruly transactions by a staff dealer. The dealer hid the loss and continued unlawful operations for years and finally confessed to his offense to the head office after his loss snowballed so enormously that he found it impossible to hide any longer. His offense went unchecked as the bank had no mechanism in place to check transactions. The dealer was arrested by U.S. law enforcement authorities and Daiwa Bank was expelled from the U.S. financial market. The MOF was criticized by the U.S. government for its laxity in supervising financial institutions, and all Japanese banks were penalized with higher interest rates in their foreign currency fund raising.

U.S. authorities made an issue with Daiwa Bank's filing of false reports and its destruction of evidence. At the same time, they took the MOF to task for failing to promptly inform them of the case after receiving information about it from Daiwa Bank.

The "Japan premium," as the punitive high interest rates for Japanese banks are called, was imposed due to the suspicion Western financial markets hold about Japanese banks. The Western financial markets suspect that all Japanese banks, like Daiwa, submit reports to MOF only superficially and do not fully disclose information or provide false information to markets, shareholders and customers. The Japan premium was in fact a risk premium placed on unreliable information.

Transparency International regularly makes public its global Corruption Perceptions Index (CPI). The attached

table is the fifth CPI, released in October 1999, which ranks 99 countries in order of the degree of corruption of public officials. The larger the number, the more upright officials are. The ranking was conceived mainly as a means of judging the trend of bribes major exporting countries pay to officials of the countries which are export destinations. It was compiled by Gallup International on the basis of 800 interviews with corporate executives, lawyers, accountants, bankers and senior officials of chambers of commerce in 14 major emerging markets.

The Opacity Index is based on a survey conducted by Pricewaterhouse Coopers, an auditing office, in 35 countries in the fourth quarter of 2000 on opacity in regard to corruption, accounting standards and regulatory regimes. The larger the number, the more opaque countries are.

Transparency International and Pricewaterhouse note that the lack of transparency of systems and practices tends to cause unlawfulness and unfairness, which raise corporate costs and stifle developing countries' growth. Both organizations thus attach importance to transparency.

At a time when countries of the world are becoming more and more dependent on each other and the revolutionary development of information technology is accelerating, information disclosure is becoming an important common global issue.

For Japan, the progress of globalization is a new process different from the previous trade-oriented internationalization. At stake is not merely the opening of its borders but the transparency of its domestic systems. Japan faces the important task of building an open society in the 21st century. **UJI**

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