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## Passive Transparency in Brazilian Judiciary and the Socio-Educational Measures in Pandemic

### Transparência Passiva no Judiciário Brasileiro e as Medidas Socioeducativas na Pandemia

#### Ana Cláudia de Souza Valente

Doutorado em Administração pela Universidade de Brasília  
Mestra em Direito pelo Centro Universitário de Brasília  
Professora do Programa de Pós-Graduação do CEAD/UnB  
E-mail: [anaclaudias.valente@gmail.com](mailto:anaclaudias.valente@gmail.com)

#### Bruna Hamerski

Doutorado em Administração da Universidade do Estado de Santa Catarina  
Mestrado em Sociologia e Ciência Política pela Pontifícia Universidade Católica do Rio Grande do Sul  
E-mail: [bruh\\_hamerski@hotmail.com](mailto:bruh_hamerski@hotmail.com)

#### Leonardo Secchi

Doutorado em Studi Politici "Istituzioni e Politiche Pubbliche" Università degli Studi di Milano  
Professor titular da Universidade do Estado de Santa Catarina (Udesc/Esag), vinculado (PPGA/Esag/Udesc)  
E-mail: [leonardo.secchi@udesc.br](mailto:leonardo.secchi@udesc.br)

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#### Endereço: Ana Cláudia de Souza Valente

Universidade de Brasília, Campus Universitário Darcy Ribeiro, Brasília-DF, CEP 70910-900. Brasil.

#### Endereço: Bruna Hamerski

Av. Madre Benvenuta, 2007, Itacorubi, Florianópolis-SC, CEP: 88.035-901. Brasil.

#### Endereço: Leonardo Secchi

Universidade do Estado de Santa Catarina, Escola Superior de Administração e Gerência. Av. Madre Benvenuta, 2037, Itacorubi, Florianópolis, SC, CEP: 88035001. Brasil.

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## ABSTRACT

To speak of citizen participation in public policies implies discussing the different ways in which society can have access to or interfere in the content of administrative decisions made by the Public Power. When it comes to access to information, it can be said that this element belongs to the field of passive transparency, which takes place, in Brazil, primarily, through the Access to Information Law (LAI). This paper sought to investigate how passive transparency occurs in the sphere of the Judiciary, specifically about the socio-educational measures of admission and substitution for measures in the open environment, due to the pandemic caused by the SARS-CoV-2 Coronavirus. Through documentary analysis and a survey application, compliance with CNJ Recommendation 62/2020 was analyzed, which determined specific rules about the socio-educational measures of admission during the pandemic. For this purpose, questions were developed with the LAI support and forwarded to the Brazilian Courts of Justice through their websites, aiming to understand how compliance (or lack thereof) with the resolution in question has occurred. The results show that there are still challenges to guaranteeing passive transparency, with barriers that weaken access to information, making it difficult to monitor the Judiciary's actions.

**Keywords:** Democracy. Transparency. Passive transparency. Socio-educational system. Access to information.

## RESUMO

Falar em participação cidadã nas políticas públicas implica discutir as diferentes formas pelas quais a sociedade pode ter acesso ou interferir no conteúdo das decisões administrativas do Poder Público. Quando se trata de acesso à informação, pode-se dizer que esse elemento pertence ao campo da transparência passiva, que se dá, no Brasil, prioritariamente, por meio da Lei de Acesso à Informação (LAI). Este artigo buscou investigar como ocorre a transparência passiva na esfera do Judiciário, especificamente sobre as medidas socioeducativas de admissão e substituição de medidas em ambiente aberto, em decorrência da pandemia causada pelo Coronavírus SARS-CoV-2. Por meio de análise documental e aplicação de questionários, foi analisado o cumprimento da Recomendação CNJ 62/2020, que determinou normas específicas sobre as medidas socioeducativas de internamento durante a pandemia. Para tanto, foram desenvolvidas questões com o apoio da LAI e encaminhadas aos Tribunais de Justiça brasileiros por meio de seus sites, visando compreender como tem ocorrido o cumprimento (ou não) da resolução em questão. Os resultados mostram que ainda existem desafios para garantir a transparência passiva, com barreiras que fragilizam o acesso à informação, dificultando o monitoramento da atuação do Judiciário.

**Palavras-chave:** Democracia. Transparência. Transparência passiva. Sistema socioeducativo. Acesso a informação.

## 1 INTRODUCTION

The work aimed to investigate how the Brazilian Judiciary<sup>1</sup> responded to demands for transparency during the Covid-19 pandemic, specifically regarding the fulfillment of National Council of Justice (CNJ)<sup>2</sup> Recommendation No. 62/2020. It started with the discussion of passive transparency concerning access to information in the judiciary regarding socio-educational measures during the pandemic period.

Returning to the debate on citizen participation and its various forms, it is noted that there are cases in which society does not exercise any type of intervention in public policies, but has access to what is being decided. In this case, we are talking about transparency and public data disclosure (Oliveira & Ckagnazarof, 2023). Moving forward in the level of intervention, there are cases in which society can "control" the decisions of governing authorities, taking advantage of the existing rules to put the State in a position of submission to the citizen, controller of its acts (Siraque, 2009). Here, we are talking about social control.

However, when society interferes in public policies, it speaks of effective citizen participation, which can occur through the representative, deliberative or participatory model. First, society elects representatives who will make the decisions (Schumpeter, 1961). Second, the State should make decisions after reflection and/or debate with society (Habermas, 1997). Third, the decisions made by the State should be directly linked to the demands of Civil Society (Pateman, 1992).

In this work, it is of interest to investigate the cases in which Society may demand information from the State, which has a legal deadline to provide it (Cintra, 2016). When it comes to transparency, therefore, there are two types: active transparency, which is the information already made available on electronic sites by the government, and passive transparency, which is when society requests this information from the state.

The Judiciary's performance is an illustrative case for this study. During the Covid-19 pandemic, several documents were prepared to ensure not only the safety but also the health,

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<sup>1</sup> The Judiciary is one of the three powers that make up the Brazilian State. It has the role of judging, according to the law, conflicts between citizens, entities and the State. It is up to the Judiciary to interpret the laws and apply the Law in the judicial proceedings that are addressed to them. The Federal Constitution of Brazil guarantees every citizen the right to provoke Justice for the solution of disputes.  
<https://international.stj.jus.br/pt/Poder-Judiciario-Brasileiro#:~:text=%E2%80%8B%E2%80%8B%20Poder%20Judici%C3%A1rio,judiciais%20que%20lhes%20s%C3%A3o%20endere%C3%A7ados>.

<sup>2</sup> The National Council of Justice (CNJ) is a public institution that aims to improve the work of the Brazilian Judiciary, especially with regard to control and administrative and procedural transparency.  
<https://www.cnj.jus.br/sobre-o-cnj/quem-somos/>.

protection, and dignity of people deprived of liberty and working in places of detention, indicating the need to improve prevention and control measures in closed environments and increase access to health services (Valente & Sauerbronn, 2022). In the socio-educational area, on March 17, 2020, the CNJ issued Recommendation No. 62 to guide the courts and magistrates on preventive measures against the spread of the coronavirus in the criminal and socio-educational justice systems. Therefore, the question arises as to the effective fulfillment of what is stated in the recommendation.

According to the Access to Information Law (LAI), public institutions must submit information and respond to requests for access to information whenever demanded (CGU, 2011; CGU, 2019; Eggers, 2019; Mendonça, 2021; Oliveira & Mastella, 2019; Paes, 2011). Researches signal the challenges of transparency in the Brazilian justice system (Angélico et al., 2017; Rodrigues, 2019; Teixeira, 2017). However, few findings on access to information in the Courts of Justice have been found (Freire & Vieira, 2021; Silva, 2021), above all, on passive transparency in the acts of the socio-educational field.

With the foregoing in mind, the current study sought to examine the Judiciary's response to demands for passive transparency concerning the fulfillment of CNJ Recommendation No. 62/2020. Consequently, the investigation aimed to delineate the constituents of the Information Access Law (LAI) pertaining to passive transparency, solicit information from the courts regarding Recommendation No. 62/2020, and ascertain their respective stances on providing the requested information. Prior to delving into these aspects, however, a comprehensive presentation of the theoretical framework underpinning the subject matter addressed in this research shall be provided.

## **2 THEORETICAL REFERENCE**

### **2.1 From transparency to citizens' participation**

In Latin America, talking about citizen participation is not an easy task. In part, moments of retraction and expansion of public policies influence the intensity of participation (Côrtes, 2005). In part, because, despite several studies on the subject (Avritzer & Costa 2004; Avritzer, 2008; Tatagiba, 2004; Almeida & Tatagiba, 2012; Ventura, 2016; Gohn, 2019; Pogrebinschi, 2021; Pogrebinschi & Ross, 2021), there is no consensus in the literature on how best to implement participation tools.

Despite the existence of challenges regarding citizen participation in public policies, several participation tools have been created, from the availability of information to effective participation. When we talk about the availability of information, we call it transparency. The Administration must provide access to records and information about governmental acts. Thus, access to information is two-dimensional, in other words, there is the duty of active and spontaneous transparency of the state and the duty of passive transparency, which occurs when a person exercises the right to demand certain information from the state, which must respond in the legal form and deadline (Cintra, 2016).

Another aspect of participation is social control, defined by Bravo and Correia (2012) as a "control of society over the State," more precisely over its acts. We differentiate citizen participation from social control, which means that participation is a kind of collaboration in the decisions and formation of state legal norms, and control is a way to take advantage of previously elaborated rules to submit the state to the position of submission to the citizen, controller of its acts (Siraque, 2009).

Moving forward, representative, deliberative, and participatory democracy stand out. In a representative democracy, democracy is a procedure for choosing representatives, a concept widely adopted for its simplicity in dealing with many voters, with Schumpeter (1943) as its main author. For Schumpeter, "[...] democracy is a political method, that is, a certain type of institutional arrangement to reach a political decision (legislative or administrative)" (Schumpeter, 1961, pp. 295-296).

In deliberative democracy, politics involves negotiation and argumentation, and there is a need to establish a joint plan of action. Language is used to obtain mutual understanding, through the influence of one over the other (Habermas, 1997). Thus, it consists of decision-making after reflection or consultation. More important than consultation is reflection (Dicio, 2023; Habermas, 1997). Finally, participatory democracy places participation in a broader context, stating that it is possible to consider the participation of ordinary citizens as central (Pateman, 1992).

It remains to be understood how the different forms of participation materialize in the spheres of power. In the Legislative Branch, participation is materialized through the vote or using popular initiatives and referenda. In the Executive branch, through participatory instruments of decision, consultation, and control, such as councils (Perez, 2004). In the Judiciary, it can occur through popular juries, collective writs of mandamus, and popular actions, with the figure of the "amicus curiae" (in which organs or entities that are

representative of society will have the right to speak on the record to the extent of the relevance of the discussion), or public hearings (Santos, 1988).

In all spheres of power, the LAI can be used as a tool for passive transparency, allowing any citizen to request information. Understanding the passive transparency in the framework of LAI about the judiciary's fulfillment of socio-educational measures during the pandemic is necessary. Next, the relationship between access to information and passive transparency will be discussed to comprehend the Judiciary's role in the democratic process as a promoter of passive transparency when triggered by citizens, except in cases involving legal prohibitions.

## **2.2 Access to information as a mechanism of passive transparency in the Judiciary**

An effective means of implementing passive transparency is by ensuring access to information. In Brazil, the normative framework was established with the enactment of the Federal Constitution of 1988, which guaranteed the right of everyone to receive information from public agencies, as long as it is not confidential or its disclosure does not entail high costs (Brazil, 1988). However, it was only in 2011 that Law No. 12.527/2011 (LAI) was enacted, providing regulatory norms for this right. Despite the existence of legislation, numerous challenges arise in the implementation of access to information, especially within the Judiciary, which hinders passive transparency in its actions.

In this context, since the LAI and access to information operationalization are recent in Brazil, the literature points out challenges to passive transparency and, in the case of access to information, the obstacles can only be overcome through the effectiveness and application of existing mechanisms, such as the LAI, ombudsman offices or information access portals that effectively respond to the requests for access to information made (Ventura, 2016).

One of the first studies that examined the LAI from the perspective of passive transparency in the Brazilian Judiciary is from 2014 and found that only a few courts applied the legislation (Warmling et al., 2014). The matter gained visibility with the increase of information and communication technologies, arousing other researchers, which verified the implementation of LAI in the portals of the Courts of Justice, noting that the LAI was implemented incipiently concerning passive transparency (Oliveira & Dinarte, 2015).

Meanwhile, the Courts must interpret the cases involving LAI; they are the passive subjects that must obey its dictates. However, it was the most closed and opaque power concerning access to information (Hija, 2015; Teixeira, 2017). The judiciary resistance to

bending to the norms of access to information has also been seen in research that compared the level of passive transparency in the organs of the three branches (Drehmer & Raupp, 2018) and that demonstrated the excessive formalism and the bureaucratic structure of the Judiciary, little committed to the provision of information (Cruz & Zuccolotto, 2021).

Therefore, the Judiciary is the most resistant to the approach to society, which is why the discussion about the need to expand access to information in the judiciary, especially, regarding transparency (Santana & Pamplona, 2019) has gained strength. Despite the criticism, there are instruments of participation and creation of bodies that contemplate the judiciary, such as the CNJ, TV Justice, Radio Justice, Social Networks, and Ombudsman Offices.

Moreover, Article 3 of the LAI establishes principles such as the observance of publicity as a general precept and secrecy as an exception; the spontaneous disclosure of information of public interest on their portals; the use of means of communication made possible by information technology; the promotion of a culture of transparency in public administration; and the development of social control of public administration (Brazil, 2011).

Also, the LAI states that it is the citizen's right to obtain information about activities performed by agencies and entities, including those relating to its policy, organization, and services, and that any interested party may submit a request for access to information to agencies and entities, by any legitimate means and the request must contain the identification of the requester and the specification of the information required, being sure that the applicant's specification of the requester cannot include requirements that make the request unfeasible (Brazil, 2011).

As for the response time, the LAI determines that the public body or entity must authorize or grant immediate access to the information available. Unable to immediately provide access, the public body or entity that receives the request must grant access within a period not exceeding twenty days, which may then be extended for additional ten days upon express justification, of which the applicant will be notified. It is necessary to indicate the factual or legal reasons for the total or partial refusal of the desired access (Brazil, 2011). Furthermore, the LAI determines that it is necessary for public institutions, when requested, to indicate to the citizen requesting information the correct place to search for the desired information, whenever they are not responsible for that information.. However, despite the principles and determinations contained in the LAI and the norms of the CNJ, social participation within the Judiciary, regarding the control of its acts, still lacks adjustments, which has already been experienced in previous research and will be confirmed below.

### 3 METHODOLOGICAL PROCEDURES

The Covid-19 pandemic made social problems visible, among which are the precarious conditions of inpatient units in Brazil. In this context, the first guidelines from world health authorities were social distancing, the use of masks, and hand sanitization as precautions to contain the spread of the disease. As for the spaces of deprivation of liberty, the WHO- World Health Organization (2020) reinforced that states were required to ensure the safety, health, protection, and human dignity of people deprived of freedom and working in places of detention, indicating the need to improve prevention and control measures in closed environments and increase access to quality health services (Valente & Sauerbronn, 2022).

On March 17, 2020, the CNJ issued Recommendation No. 62 to guide courts and magistrates regarding the prevention measures in the criminal and socio-educational justice systems. The recommendation took into account the context of the virus dissemination, the preferential incidence of open social-educational practices, and the review of judicial decisions on provisional internment, the reevaluation of social-educational measures of detention and semi-freedom, for eventual replacement by the semi-open regime, suspension of orders or granting of remission. In other words, the recommendation sought to reduce the number of adolescents in prison by reducing the flow of people in detention units.

In this context, information from the Brazilian Courts of Justice was requested regarding the "acts of the Court" and the "acts of other institutions" of the social-educational system, such as the Executive.

The Brazilian Judiciary is made up of five segments of justice, namely: State Justice and Federal Justice, which are part of the Common Justice, and Labor Justice, Electoral Justice and Military Justice, which are part of the Special Justice (CNJ, 2023). These segments are distributed across the 26 Brazilian states plus the Federal District. In this research, questionnaires were sent by electronic message only to the State Courts of Justice of the 26 Brazilian States and the Federal District, through the electronic portals of each Court. The responses were cataloged in an Excel table and treated according to each research objective.

The questions had as assumptions some elements that are present in LAI, namely public agencies must disclose information in an easily accessible place; they must have a content search tool that allows access to information objectively and transparently; any interested party may submit a request for access to information; the identification of the requester cannot contain requirements that request information unfeasible; agencies must



provide an alternative for access requests through their official websites; they must make information available immediately or within 20 (twenty) days; the organs must indicate the factual or legal reasons for the total or partial refusal of the desired access; the organs must communicate that they do not have the information, if acknowledged, the organ or entity that holds it, or, further, forward the request to that organ or entity, informing the interested party of the forwarding of his request for information; the requester must be informed about the possibility of appeal, deadlines and conditions for its interposition, and the competent authority for its consideration must also be indicated (Brazil, 2011, art. 8 to 11). Based on the above assumptions, six questions were prepared for the courts, sent through the use of LAI, and will be presented in the following table, followed by the reason why each one was requested.

**Table 01 – LAI requested information and its purpose in the present study**

Info	Target
Amount of review of court decisions of this JW that ordered provisional detention between 2018 and 2021, separately by year.	To know if they prefer the decree of open social and educational measures and revised the decisions of provisional internment during the pandemic, comparing it to the period before the pandemic.
Amount of substitution of measures of restriction of freedom or semi-liberty for open measures between 2017 and 2021, separately by year.	Check whether there was a reevaluation of the detention and semi-freedom program, for eventual substitution by a measure in the open environment, suspension of the applied measure, or granting of remission.
Number of <i>teenagers</i> contaminated by covid-19 and servers 2020 and 2021.	Check whether the measures imposed by Resolution No. 62/2020 have achieved their goal regarding the containment of the disease.
The number of deaths by covid-19 (Servers and adolescents in juvenile detention - specify which).	To verify the relationship between the number of deaths and the socio-educational measure carried out.
Number of riots, rebellions, and death by acts analogous to homicides or suicides in detention facilities in the years 2017, 2018, 2019, 2020, and 2021 separately.	Verify the availability, quality, and thoroughness of the information. Also, verify if another body was indicated or sent the request to this body or entity, notifying the interested party of the sending of his request for information.
About education and professionalization, for how long were the adolescent inmates kept without classes in the socio-educational units? Was the remote model used? If positive, as of when? Indicate ordinances.	Verify the availability, quality, and thoroughness of the information. Also, verify if another public body has been indicated or delivered the request to that body or entity, notifying the interested party of forwarding the request for information.

Source: survey data (2023).

As can be seen, each question sent to the Courts had a specific objective. Besides its purpose, we also sought to verify whether the Judiciary indicated to the citizen the competent public body to answer questions that it was not qualified to give, knowing that it is the local Executive that coordinates the execution of socio-educational measures and, therefore, would be better able to provide answers, according to art. 2 of Law No. 12.594/2012 (Brazil, 2012).

The requests for access to information were made on 12/02/2021, 12/06/2021, and 12/14/2021. One caveat: the requests were made in December, before the court recess. During the recess period, procedural deadlines are suspended. However, this element cannot influence the disclosure of information, but it may have impacted the response times. The results and discussion will be presented below.

#### 4 RESULTS AND DISCUSSION

The responses and the data from the websites were analyzed, seeking to understand to what extent they are in line with the assumptions present in the LAI. First, an outline was prepared with the main responses: whether the court responded, how long it took to respond, whether another organ was indicated, whether it partially responded, or whether it denied the response. Subsequently, the content of the answers was analyzed. At this stage of the analysis, four categories emerged, namely: fulfillment of the minimum requirements of the LAI, quality of responses, gaps in the passive transparency of the courts, and challenges to the effective passive transparency of the courts. Table 2 presents the overview of the responses obtained.

**Table 02 – A quantitative overview of the responses**

State	Passive transparency indicators (based on LAI)			
	Replied	Complied with deadline	Indicated another organ	Reason of denial
<b>Acre</b>	Partially	No	No	-
<b>Alagoas</b>	No	-	Yes	Forwarded to an internal sector, which did not respond.
<b>Amapá</b>	No	-	-	High Expense
<b>Amazonas</b>	No	-	-	Requested information, but didn't answer.

<b>Bahia</b>	No	-	-	Asked for personal data to send e-mail, but didn't answer the e-mail.
<b>Ceará</b>	Request not sent	-	-	Requested registration on the site, which didn't work out.
<b>Espírito Santo</b>	No	-	No	Had no one in charge - he couldn't name the agency.
<b>Goiás</b>	Partially	No	No	-
<b>Maranhão</b>	Yes	No	No	-
<b>Mato Grosso</b>	Request not sent	-	-	Difficulty sending - link not working.
<b>Mato Grosso do Sul</b>	No	-	-	Requested for e-mail and registration on a portal, but did not provide the information.
<b>Minas Gerais</b>	No	-	-	Technical difficulties on the website.
<b>Pará</b>	No	-	-	Informed that it would be analyzed, but gave no answer.
<b>Paraíba</b>	No	-	-	Informed that it would be analyzed, but gave no answer.
<b>Paraná</b>	Partially	No	No	-
<b>Pernambuco</b>	Partially	No	Yes	Due to not having a complete answer, he indicated another organ but did not give contact details.
<b>Piauí</b>	Request not sent	-	-	Technical difficulties on the website.
<b>Rio de Janeiro</b>	Request not sent	-	-	Technical difficulties on the website.
<b>Rio Grande do Norte</b>	No	-	Yes	Asked for more time, claiming it was complex - they sent it to the Local Executive, with no response.
<b>Rio Grande do Sul</b>	Request not sent	-	-	Request complex registration
<b>Rondônia</b>	Request not sent	-	-	Link not loading
<b>Roraima</b>	Request not sent	-	-	The site demands to know which sector. When put presidency or childhood, nothing appears.
<b>Santa Catarina</b>	No	-	-	Very generic request.
<b>São Paulo</b>	No	-	-	Demand to be a researcher.
<b>Sergipe</b>	Request not sent	-	-	Information did not load.

<b>Tocantins</b>	No	-	-	-
<b>Distrito Federal</b>	Request not sent	-	-	Server error, request did not load.

Source: survey data (2023).

Based on the initial outline, some findings can already be made. Concerning the Courts that complied with the request, only five responded to the request and only one provided a complete answer, and four responded partially. On the other hand, thirteen were the cases in which the answer was denied, which is almost half of the cases. Attention should be drawn to the cases in which the request could not be made, due to technical limitations and difficulties in the electronic site. In this case, attention is drawn to nine cases.

Regarding both full and partial responses, none responded on time, and 3 indicated another organ. About the cases without any response, which was 22, 7 said the reason, while 5 established a dialogue but did not provide a reply. Furthermore, 9 were the courts for which the site did not allow registration or access due to technical difficulties. Finally, there was one case with no response and no justification.

From this initial overview, it is already possible to see that the passive transparency scenario is not favorable to citizens. Regarding the qualitative discussion of the data, four categories emerged from the analysis, namely: compliance with the minimum requirements of the LAI, quality of responses, gaps in passive transparency in the courts, and challenges to effective passive transparency in the courts. The discussion of the categories will be presented below.

#### 4.1 Fulfillment of LAI's minimum requirements

The LAI states that any interested party may request access to information from the organs referred to in the law, provided it is by a legitimate medium that contains the identification of the requester and the identification (Brazil, 2011). In this work, only five courts responded to the request; that is equivalent to a little over 18%, and, of these, only two provided a completed response (just over 7%), and three courts indicated another organ or sector to respond.

Note that the information requested may be considered unfeasible due to resource limitations, which may burden the agency and make disclosure impossible (Brazil, 2011). However, there are no onerous requests, given that this is quantitative information about

decisions rendered during the pandemic. Even so, two courts claimed "high cost" and "very complex request" to deny the information requested.

Furthermore, the LAI states that, in cases where information may not immediately be given, the organ has a maximum period of twenty days to respond (which may further be extended by ten days), either by explaining the reason for not being able to provide the information or by indicating the organ that holds it (Brazil, 2011). Despite this, none of the courts responded within the initial deadline, and only six of them responded within the maximum period (30 days), both in cases of full and partial answers and in those where the information would not be sent or they would indicate another organ.

In this research, the questions asked fell under the competence of the Executive Branch through its specific secretariats. But only one court gave this information to the requester. One of the courts reported that it experienced technical difficulties and did not answer them but indicated specific organs. However, we chose not to consider their indication, instead, we inserted them in the percentage of those who did not answer the question.

Twenty-two unanswered cases should have informed the reason for non-response by the LAI, of which only seven courts mentioned the reason, five communicated with the requester but not providing any information, and nine courts did not provide it due to an error in the website server. One court, specifically, provided no response or justification, although an exception, it is a big gap in passive transparency that shall be addressed.

In contrast to the literature on passive transparency, which deals with the state's duty to respond in a legal manner and within a legal deadline (Cintra, 2016), the vast majority of courts do not meet the minimum requirements outlined in the LAI. Even if, based on the literature, at all levels of government, the citizen may request information through the LAI. Even so, highlighting the potentialities identified in the research about compliance with LAI. Thus, even if the cases of response recorded have been few, it is worth discussing the quality of the information made available.

## 4.2 Quality of responses

As mentioned above, five were the cases in which it was possible to obtain a response, with one case with a complete response and four with a partial response. In LAI, there is no information about the content of the answers, the law only states that the agency must provide the requested information. Therefore, the purpose of each question was taken as a basis, in

order to understand if it was possible to obtain the information. The information will be presented by court.

**Table 3 – Quality of responses**

<b>Court</b>	<b>Goal 01</b>	<b>Answers</b>
Maranhão (complete)	Determine whether open social and educational interventions were prioritised during the pandemic compared to the pre-pandemic period and whether temporary detention decisions were reviewed.	No review
<b>Goiás</b> (Partial)		It informed that it had submitted the parameterized data to the CNJ and determined that the applicant should search the data available in the CNJ portal.
<b>Acre</b> (Partial)		Presented the number of reviews of court decisions of this TJ that ordered provisional internment between 2018 and 2021, separated by year, noting that the system did not provide results for research for 2019. In this sense, it indicated more than 71 provisional internments in 2021, while in 2020 there were only 09 and in 2018 there were 15.
<b>Paraná</b> (Partial)		Informed that by consulting the Projudi - Data Explorer of the Business Intelligence Tool, information was found on the Subject Provisional Internment processes between 2018 and 2021. It also studied the list of processes that received the movement and found 823 decrees of Provisional Internment. They were separated by year, but still presented complex tables that made analysis impossible.
<b>Pernambuco</b> (Partial)		Provided quantitative figures on the issuance of a temporary internment measure in the following periods: 2018 (534), 2019 (618), 2020 ( 657), and 2021 (706).
<b>Court</b>	<b>Goal 02</b>	<b>Answers</b>
<b>Maranhão</b> (Complete)	Check whether there has been a re-evaluation of the internment and semi-detention measures with a view to their possible replacement by a measure in an open environment, the suspension of the applied measure or the granting of a remission.	From 2017 to 2019, the system did not capture this information. But from August 2020 the data started to be recorded manually. Thus, in 2020 they recorded 02 LAs in place of semi-liberty measures and applied 27 LAs. In 2021, they applied 06 LAs in place of semi-liberty measures and applied 65 LAs.
<b>Goiás</b> (Partial)		No answer
<b>Acre</b> (Partial)		No answer
<b>Paraná</b> (Partial)		No answer
<b>Pernambuco</b> (Partial)		Stated that could not automatically determine whether or not measures of deprivation of liberty or semi-freedom were replaced by measures in an open environment. To determine this, they would have to access the text of each sentence.

<b>Court</b>	<b>Goal 03</b>	<b>Answers</b>
<b>Maranhão</b> (Complete)	Check whether the measures imposed by Resolution No. 62/2020 have achieved their goal regarding the containment of the disease.	Data from 2020 and 2021 show that 30 servers were contaminated and only 17 socioeducants were infected with Covid-19.
<b>Goiás</b> (Partial)		No answer
<b>Acre</b> (Partial)		No answer
<b>Paraná</b> (Partial)		No answer
<b>Pernambuco</b> (Partial)		It was said that it could not inform, in an automatic way, whether or not there was substitution of measures of restriction of freedom or semi-freedom for measures in an open environment. To make this identification it would be necessary to access the text of each sentence.
<b>Court</b>	<b>Goal 04</b>	<b>Answers</b>
<b>Maranhão</b> (Complete)	Verification of the relationship between the number of deaths and the socio-educational measure implemented.	There were no deaths among socio-educational individuals participating in socio-educational interventions.
<b>Goiás</b> (Partial)		No answer
<b>Acre</b> (Partial)		No answer
<b>Paraná</b> (Partial)		No answer
<b>Pernambuco</b> (Partial)		No answer
<b>Court</b>	<b>Goal 05</b>	<b>Answers</b>
<b>Maranhão</b> (Complete)	Check the number of riots or rebellions by comparing the pandemic period with the period before that.	There were 02 rebellions in the pandemic period, none in the period from 2017 to 2019.
<b>Goiás</b> (Partial)		No answer
<b>Acre</b> (partial)		No answer
<b>Paraná</b> (partial)		No answer
<b>Pernambuco</b> (partial)		No answer
<b>Court</b>	<b>Goal 06</b>	<b>Answers</b>
<b>Maranhão</b> (Complete)	Check if it has been given another job in	Not applicable, all questions answered.

<b>Goiás</b> (partial)	order to answer the questions.	Indicated other internal bodies and the CNJ for the applicant to do further research.
<b>Acre</b> (partial)		No answer
<b>Paraná</b> (partial)		No answer
<b>Pernambuco</b> (partial)		Indicated looking for the Executive Secretariat of Resocialization.

Source: survey data (2023).

From the analysis of the table above, it is evident that the courts were unable to provide satisfactory answers to the requested questions. Those who did respond did so incompletely and, at times, indicated a reinforcement of the measures implemented during the pandemic, contrary to the CNJ's recommendation. This lack of information signals non-compliance not only with the Information Access Law (LAI) but also with CNJ Recommendation No. 62, calling for the need to reflect on how to enhance passive transparency within the courts, a matter to be addressed further ahead.

#### 4.3 Gaps in the passive transparency of courts

The cases where there are gaps were considered as those with no answer. Based on LAI, when an answer is refused, it is necessary to state the reason, communicate that one does not have the information, and indicate, if known, the responsible organ. When the information is totally or partially classified, the requester must be informed about the possibility of appeals, as well as the deadlines and conditions for such.

As mentioned earlier, there were 13 cases in this paper where the answer was denied, which is almost half of the courts. These cases are considered major gaps in the passive transparency of the Brazilian judiciary.

In the cases where a negative answer was given, a wide variety of reasons were given, such as "high cost", "too general a request", "requirement to be a researcher", "too complex a request". However, some elements should be pointed out in this context. First, the cost of answering such a request is zero and can be consulted by any citizen, since it is numerical and non-confidential data. Second, precisely because it is quantitative information, the request is neither complex nor general, since the information requested is very specific. Therefore, the answers given by the courts are not justified.



Some courts required additional information to respond, such as sending an e-mail, personal information, or registering on a website. However, even in those cases where an e-mail was sent, a registration was made, and the requested additional information was provided, the requests were not replied to. Even with the context of "dialogue" with the organ, it can be considered that it was not possible to get the answer.

It is also important mentioning those courts that indicated a different location or internal area but did not respond. Another case claimed not to be responsible for the information but could not specify which office would be in charge. There was also one case that claimed not to have the complete answer but did not indicate which office would be responsible.

Likewise, there were two cases where we were told that the request would be considered, but even six months after the request, there was no further response. And finally, there was one case where there was simply no response. *The* latter is the biggest obstacle to passive transparency, as there is still a long way to go here. Although the latter case is the most serious, all the cases mentioned here should be considered gaps in passive transparency, as they could not be effective due to bureaucratic reasons, incomplete information, non-response to requests, etc.

Although the right to information is already enshrined in the 1988 Federal Constitution (Brazil, 1988), these findings corroborate the literature that the judiciary is the most closed and opaque power when the subject is access to information (Teixeira, 2017). In this context, the results of this category are also consistent with the literature that states that the fulfillment of the minimum requirements of LAI can ensure the effectiveness of passive transparency (Ventura, 2016). As the literature has also shown (Warmling et al., 2014), only a few courts guarantee passive transparency by adhering in practice to LAI.

#### **4.4 Challenges to effective passive court transparency**

As challenges to passive transparency, the cases in which technical and operational difficulties hindered access to information were considered. The law states that data should be disclosed in a place of easy access, and there should be a search tool that objectively allows access to information, enabling access to information by some tool of their official websites (Brazil, 2011).

The sites must attend, among others, the following requirements: a) contain a search tool that allows access to the information in an objective, transparent, clear, and easy-to-

understand manner; b) enables the recording of reports in various electronic formats, such as spreadsheets and text, to facilitate the analysis of the information; c) enable automated access by external systems in open, structured and machine-readable formats; d) disclose in detail the formats used for structuring the information e) ensure the authenticity and integrity of the information available; f) keep the information available updated; g) indicate a location and instructions that allow interested parties to communicate electronically or by telephone with the organ or entity that owns the site; h) adopt the necessary measures to ensure accessibility of content for people with disabilities (Brazil, 2011).

When considering the cases in which the application could not be submitted due to technical limitations and difficulties on the electronic website, 9 cases are pointed out. Among the reasons that led to the technical difficulties, the main elements of the survey were grouped as follows: 1) the registration on the website did not work; 2) the link to the registration does not work/load; 3) the registration is too complicated; 4) the website asks for certain information, but even if it is entered, there is no response; 5) the information after registration does not load; 6) server error: the access request was not loaded.

Thus, regarding the above elements, the courts have not provided simple tools for access to information and have imposed a bureaucratic obstacle that is inconsistent with LAI. Some indicate the court portal to fill in the electronic form, however, when trying to access it, the answer was that the application was offline, or said it needed to access another system but refused to register, stating that it already existed, even if no prior registration had been made.

Some access links did not load, and others still required the user to know and indicate the specific department responsible for the information. However, no citizen is obligated to know the internal administrative structure of public institutions to obtain the information they need. The lack of standardization in the access to information services poses a significant challenge, as it creates difficulties in obtaining information, given that not all Courts provide a specific field for directly requesting information from the local Judiciary. Other data indicates that the principles and guidelines of the Information Access Law (LAI) have not yet been fully implemented. All these findings point to the need for the creation and implementation of new public policies for access to information within the Judiciary, including stricter measures in cases of non-compliance by public authorities.

## 5 CONCLUSIONS

This paper aimed to investigate how passive transparency occurs in the judiciary, more specifically about the socio-educational measures of internment and substitution for measures in open environment, due to the covid-19 pandemic. The findings demonstrate the weaknesses of the Judiciary in access to information, not only because it does not consider the legal deadline, but also because, for the most part, it does not provide the objective data requested. In addition, some courts were not accessed due to various problems, such as in the identification in the registration and in the request for access to information, for example, the link did not work or the requirement to know which sector was responsible for the demand.

Moreover, the responses of the courts show that passive transparency through access to information in the judiciary is of low density and that actors are hardly able to access information, either because the judiciary uses standard responses that are often subjective or because it refuses the request for access to data that could reveal its course of action. Thus, the work substantiates previous work on the non-compliance of the LAI guidelines and principles from the perspective of the effectiveness of passive transparency by the Brazilian judiciary. Thus, the work contrasts with the duty of presence advocated in the literature on passive transparency, which argues the need for the state to respond in the legal form and time limit (Cintra, 2016).

Regarding the quality of the information, it should be noted that the vast majority of courts failed to provide it. For those that did, the responses are incomplete and, in some cases, show that the resolution was not followed. Thus, not only did the courts fail to follow LAI, but they also failed to follow the CNJ's recommendation, which was the focus of the investigation. In addition, gaps in passive transparency are identified in cases where the response was denied without any justification and in cases where an incoherent response was given for the denial, implying that the objective was not to allow the requested information. "In addition, technical difficulties in obtaining information are pointed out, indicating that the courts make no effort to ensure passive transparency for citizens".

Therefore, the discrepancy between the enthusiasm with which participatory spaces were embraced in democracy and the limited impact of this participation in challenging the reproduction of dominant patterns ingrained in the current structures of the Judiciary is reaffirmed. Consequently, the understanding solidifies that the Judiciary is a closed institution, in need of improvements, and requires reflections that create and implement more

effective public policies for access to information within the Judiciary, including reinforcing penalties for non-compliance by the authorities.

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1) concepção e planejamento.	X		
2) análise e interpretação dos dados.	X	X	X
3) elaboração do rascunho ou na revisão crítica do conteúdo.	X	X	X
4) participação na aprovação da versão final do manuscrito.	X	X	X