

FREEDOM OF INFORMATION PRACTICES OF JAPANESE LOCAL AUTHORITIES

Problems and Issues

Muneyuki Shindo

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1. Dual Topics for Freedom of Information

As we prepare to enter the 21st century, Japanese public administration at both the central and local government levels is on the verge of great changes. Government officials at the central and local levels occasionally talk about “carrying out accountability” or “achieving public administration with a high level of transparency”, and they have begun to present reform plans aimed at these goals. It is, naturally, difficult to say concrete reforms are proceeding quickly. However, along with the long-awaited passage in 1999 of the Freedom of Information Law, there has been a marked increase in the number of local governments passing freedom of information bylaws. A system of public comment is being introduced into government by permission, and one can see a movement to broaden public input. It has also been decided to establish policy evaluation divisions in all of the new ministries as part of the central ministry reorganization to take effect in January of 2001. And not only is a similar movement seen in local governments, but they are actually leading this effort. Thus, both the central and local governments are steering a course toward securing greater transparency and openness.

Three reasons driving these changes can be given: First, people's perceptions of

politics and administration changed during the '90s as the central and local fiscal situations worsened. At the end of 1999 outstanding government bonds in the central government account and local government normal accounts (all special accounts excluding general accounts and special public enterprise accounts) had reached a total value of ¥645 trillion. Japan's GDP in 1999 was about ¥500 trillion, meaning Japan's fiscal situation is extremely critical. Faced with this situation, citizens have clearly deepened their awareness as taxpayers. Along with questioning the appropriateness of government and local enterprises, given the times, people have also begun to cast a skeptical eye on the way taxes are used and policies are determined, especially for public works projects. The government is being forced to deal with these changes.

Second, concrete examples of the closed nature of government decision-making became quite clear in the 1990s. In the case of blood tainted with HIV, patients' groups pursued the issue of responsibility relating to the actions of the Health and Welfare Ministry's Drug Bureau (now the Pharmaceutical Safety Bureau). The Ministry consistently maintained that it was in no position to have knowledge of the dangers of AIDS contamination in untreated blood products. However, as a result of an intensive investigation conducted by Naoto Kan after he was appointed Minister of Health, file after file was found showing that despite debates about the danger of untreated blood containing the HIV virus, mainly within the Drug Bureau's Biological Production Section, there was no active effort to switch over to using treated blood products. It goes without saying that there was an intense public outcry over the Ministry of Health and Welfare's administrative responsibility. But the focus here was not simply on the Ministry of Health and Welfare, it was on the insularity of all central government ministries and local government offices. This is how the creation of the freedom of information law and carrying out accountability came to be political topics.

The third reason is a little more positive. In Japan in the late '90s decentralization and administrative reform were moving forward. As local government and citizen responsibility came to be emphasized, the Cabinet also began to make transparency in government one of the goals of administrative reform. Daily coverage in the mass media of topics like decentralization and administrative reform combined with the reasons given above to energize citizens' interest in the government. This brought about a change in the appearance of Japanese political culture, long said to be characterized by "the uncomplaining masses". In this way, reform of the entire government system at the central and local levels became an unavoid-

able issue.

Saying this, whether or not these changes actually become tied to real government reform probably depends first and foremost on the quality of the freedom of information system established by the government, regardless of whether at the national or the local level. At this moment the Freedom of Information Law (the law pertaining to the disclosure of information held by the government) is scheduled to take effect in April of 2001. At the local level, establishment of freedom of information bylaws has been proceeding apace, starting with passage of the first such bylaw in 1982 in Kanayama Town, Yamagata Prefecture. I will speak about this in more detail later. With passage of the long-awaited Freedom of Information Law, there are fewer and fewer local governments still without some such bylaw. However, even among local governments that have already passed a bylaw, there is already a movement in some places to review these.

Enshrining in law the rights and responsibilities pertaining to disclosure of information held by the government is tremendously meaningful. When citizens have the legal right to request access to vital information, based on their own judgement, and the government bears responsibility for that disclosure, then there is little room for government manipulation of information. Public decisions and action based on disclosed information is indispensable for democratic control of the government.

Creation of the legal framework for a freedom of information system in Japan began at the local government level. However, there are still many issues to be dealt with in actually implementing freedom of information bylaws at the local level, starting with determining the scope of offices subject to disclosure, the procedures to be followed, and the materials covered by the law. And simply establishing bylaws is not enough to achieve the kind of "public administration with a high level of transparency" or the "accountability" that local politicians and administrators speak about. There must be an active mechanism for disclosing administrative and policy information to go along with the freedom of information bylaws. It cannot really be said that this kind of disclosure has been actively conducted up to now. In this way, Japanese local governments carry a double burden relating to disclosure. One is establishing the initial legal framework for a freedom of information system, and the other is establishing an active mechanism of disclosure for administrative and policy information.

After this, in the main body of my talk, I will consider the situation regarding problems and issues pertaining to disclosure at the local level. However, before turning to the topic of disclosure at the local level, I would like to give you an outline

of the Freedom of Information Law. This law has both been influenced by the local bylaws that came before it and is recently influencing the review of these same bylaws.

2. An Outline of the Freedom of Information Law and Discussion Points

The movement to establish a freedom of information law in Japan began in the late 1970s in the wake of the Lockheed scandal. It was originally a citizens' movement led by academics like Professor Shinohara of Tokyo University, Professor Horibe of Hitotsubashi University, and Professor Shimizu of Aoyama Gakuin University. However, it wasn't until 1995 that the Japanese government moved publicly to establish such a law. The Murayama government at that time submitted an inquiry to the Administrative Reform Committee regarding the method for drafting a freedom of information law. The committee presented its findings to Prime Minister Hashimoto in December, 1996, in a report from its Freedom of Information Sub-committee entitled "Opinions Concerning Establishment of Freedom of Information Legislation". In March of 1998 the Hashimoto government submitted a bill to the Diet based on these recommendations. Debate of this bill was tortuous, due partly to the nature of the coalition government and shifting internal alignments within the political parties, but it was eventually passed unanimously in 1999.

The Freedom of Information Law establishes in its first article the right to request disclosure of official documents. This is an attempt to obtain much greater disclosure of information held by government offices in order to further the cause of fair and democratic public administration. However, because no widely accepted agreement came out of earlier debates on whether or not the concept of the public's "right to know" can be justifiably guaranteed, this guarantee has not been included in the present document. Both house of the Diet, though, have received numerous requests for continued debate on an incidental law to more clearly include the principle of the right to know within the law. This principle is certainly not stated in the majority of local government bylaws, although it has been vigorously lobbied for by citizens' groups and legal professionals.

The law applies to all offices under control of the Cabinet. These include the Prime Minister's Office, all ministries, committees, and agencies, as well as the Cabinet Secretariat, the Cabinet Legal Office, the Security Council, the National

Personnel Authority, and the Board of Audit. Due to the separation of powers, the applicability of this law to the legislative and judicial branches is up to their discretion, and they are not compelled to obey this law. Furthermore, all public corporations and enterprises, government financial institutions, etc. will be covered by separate measures. One hot topic of debate in the Diet was whether the National Public Safety Commission (National Police Agency) should also fall under this law. The "right of first judgement" on restricted materials was given to the commission. As I will discuss later, the debate over whether to include prefectural police agencies (the Metropolitan Police in Tokyo) and whether to give those included the "right of first judgement" is now a major element in the debate on the prefectures' bylaws.

The third article of the law says, "Any person may, according to this law, request from the head of an administrative organ access to documents held by that organ". This right extends to not just Japanese nationals, but also foreigners, as well as to both individuals and corporations. Requests for information must be made in writing, and include the applicant's name, address, the name of the document and other information to help identify the requested document. There is, however, no requirement to list the reason for requesting the document or the use to which it will be put. Furthermore, the "government documents" mentioned in the law don't just include legally adopted documents, but also anything written prior to a law's adoption or implementation that has bearing on an organization. This also includes floppy disks, magnetic tape, and any other electromagnetic recording methods. The fact that the national law includes the term "[a]ny person" will also have an unavoidable impact on local government bylaws. Looking at the overall situation, many local bylaws place some kind of restriction on who may apply for access to documents.

The Freedom of Information Law takes the position that, "in principle, all administrative documents are to be disclosed." In this way it is almost the same as the local government bylaws. However, because a firm, rational justification has been found to place restrictions on access to some information, the following six types of documents are listed as "not to be disclosed": 1) Personal information. Based on the idea of "individual identification", the law prohibits disclosing information that would allow the identification of a specific person or that would potentially harm a person's rights. 2) Corporate information. This includes information that may be harmful to a corporation's legitimate interests, or information provided by corporations on the condition that it not be made public. But even this information must be released if it is deemed necessary to safeguard people's lives, health, or

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property. 3) Information vital to national security or public safety. This includes information on foreign relations, defense, or investigations. The big debate surrounding this issue concerned the practice of automatically disclosing documents after a certain set period of time, as seen in the U.S. Official Secrets System (in the U.S. this period is 25 years). However, freedom of information is conducted on a case-by-case basis as requests are made, and this proposal was rejected as lacking practicality. 4) Information concerning ongoing discussions or investigations. As a rule, information is to be accessible from discussions still under consideration or where a final decision has not yet been made. But some information is not to be disclosed, in situations where revealing this information might prejudice a decision or cause an undue disturbance among the people or cause harm to a specific person. 5) Information concerning internal deliberations, debates, or matters under consideration by national or local offices. In principle, this is also subject to disclosure, but not in cases where disclosure would potentially harm the frank exchange of opinions or prejudice decisions. 6) Information concerning official business or public enterprises. Information may not be released if its being made public might be harmful to the quality or proper operation of the official business or public enterprise concerned.

The Freedom of Information Law has these excluded items, and these rules are, on the whole, no different from those of local governments. Of course, even if the law contains certain items that are not to be disclosed, it still requires that the head of a government office must respond to any request when other, non-excluded parts of those documents may be meaningful. But, as can be seen at the local government level, there are certain to be some fierce battles over how the "excluded items" are determined by the government once the law takes effect.

Because of all this, it is very important to have a system for dealing with complaints about undisclosed documents. This is why the law has provided for the Prime Minister to appoint, with the approval of both houses of the Diet, a nine member Freedom of Information Review Committee within the Cabinet Office (starting January 6, 2001). Applicants wishing to contend a decision will make their first appeal to this committee. It has the authority to review the documents in question (in camera), and to ask that documents be provided to applicants after being sorted and arranged (Vaughn Index) according to methods laid out by the committee. In the event of complaints about the committee's decisions, applicants can file suit, according to the Administrative Incident Lawsuit Law. One consideration that slowed down the passage of the Freedom of Information Law was the

debate over whether such lawsuits should only be heard at the Tokyo Court or whether they should be heard at the court of jurisdiction where the plaintiff resides. The governing and opposition parties eventually compromised on this point, establishing that these appeals can be made at any of the eight district courts around the country.

The law establishing this kind of access to information ultimately requires that, "The head of each government office provide information specifying materials held by that office, and take other appropriate steps out of consideration for applicants to allow them to easily and accurately apply for access to information." (Article 38) In one way, this is a common-sense requirement. But it is a fact that there have been problems with the inadequacy of some of the preconditions governing the functioning of disclosure practices at the local government level. Therefore, Article 41 of the Freedom of Information Law requires that, "Local governments, in accordance with the aim of this law, must devise and implement necessary policies regarding the disclosure of information held by them." This should lead to reform of local government policies and practices regarding information disclosure.

3. Conditions Surrounding the Enactment of Freedom of Information Bylaws at the Local Level

Ever since the period surrounding passage of the national Freedom of Information Law there has been increased activity in preparing bills for the local governments that have not yet passed disclosure laws, along with a review of such existing laws at the local level. In the local government system in Japan there are 47 prefectures and 3,264 municipal governments. These local governments have extremely uniform political and administrative systems, based on a dual representative system of a directly elected executive opposite a directly elected legislature.

According to a Ministry of Home Affairs study among communities running late in establishing freedom of information measures, as of April 1, 2000, there were 1,379 municipal governments with such measures. This is roughly a 60 percent increase in the one year from April 1, 1999. Already, at the prefectural level, following Ehime Prefecture's establishment of a freedom of information bylaw in 1997, all prefectures are looking at establishing these laws. If prefectural governments are included in the figures for local governments having freedom of information laws, then 43.2 percent of Japanese local governments have already enacted such legislation.

Of course, the movement to enact these laws varies greatly from area to area. Looking at the enactment rate for municipalities within each prefecture, Nagano Prefecture comes in first with a 99.2 percent enactment rate, followed by Akita Prefecture with a 97.1 percent rate and Yamagata with an 88.6 percent rate. On the other end of the spectrum is Okinawa with 5.7 percent, followed by Kagoshima with 6.3 percent and Miyazaki with 11.4 percent. Looking at the country as a whole, Eastern Japan has a higher rate of enactment and Western Japan a lower one.

There is no clear set of factors to account for this difference. The Okinawa Prefecture Municipal Affairs Division says, "The ability of small towns and villages to create these bylaws is quite limited. On top of that, basing issues and economic development get the most attention, leaving little time for other issues like freedom of information." The Kagoshima Prefecture General Affairs Section says, "It's an issue of personnel and ability." While it's true that this is one reason for the problem, Nagano and Akita also have many small towns and villages. It is hard to attribute the failure to enact these laws merely to a dearth of ability and human resources. It must be said that the fundamental factors governing the presence or absence of freedom of information laws are the strength of citizens' watchdog groups and the political inclinations of the executive.

In any event, in March of 1982 Kanayama Town, in Yamagata Prefecture, was the first local government in Japan to enact a freedom of information bylaw. At the city level, Kasuga City, in Fukuoka Prefecture, was the first, in 1983. At the prefectural level, Kanagawa, in October of 1982, and Saitama, in December of 1982, were the first, followed by Okayama, Nagano, and Osaka in 1983. Tokyo proclaimed its bylaw in October of 1984. This means that it has taken roughly 20 years for about half of Japanese local governments to enact freedom of information bylaws. However, as I touched on earlier, the enactment of these bylaws since 1980 has not proceeded evenly. As of the end of 1997, there was a combined total of 426 prefectures and municipalities with bylaws, meaning there has been a rapid increase in the number of enacting governments over the last few years. Establishment of the national law could be given as one factor spurring the pace of enactment. It could also be said that, as I will discuss in more detail later, this is due to the marked increase in activity during the latter half of the 1990s by citizens' groups utilizing these bylaws.

It is impossible to speak in detail about the ever-increasing number of local systems established through these freedom of information bylaws. However, the frameworks for the freedom of information systems established from the early 1980

s to the early 1990 s were identical in almost all local governments. Many local governments do not allow “any person” to apply for access to information, limiting this right to those who have a direct interest in that place, such as corporations or people who live in or commute to that jurisdiction. Kawasaki City was the first to extend this right to “any person”, in 1984, but this practice did not spread. As of 1996 it did not exist at the prefectural level. The bylaw applies to administrative offices under the executive, the Board of Education and other committees. Documents covered under the bylaw include “public documents”, but this does not cover such modern forms of information storage like electromagnetic tapes or disks. For example, the Kanagawa Prefecture bylaw includes “documents and drawings (this includes microfilm)”. Furthermore, while some documents are available to the public in principle, there are provisions for documents that under the law may not be disclosed. Documents with personal information on individuals, matters still under deliberation, and matters concerning discussions with the national or other local governments are all subject to being withheld by the authorities at their discretion. The appeals system consists of a Freedom of Information Review Committee, functioning as an advisory body to the executive. And if there is a complaint about this committee’s decision, the way is opened to file an administrative lawsuit. However, there is really no local government that has established an in camera system for its review committee.

Enactment of freedom of information bylaws, as witnessed by the fact that these were originally begun in Kanagawa and Saitama, heralds the “age of the local governments” and owes much to the leadership of governors who were trying to take the initiative in decentralization. This then went on to reach local governments heralding citizen participation in administration. However, the creation of freedom of information mechanisms in the early 1980 s shows strong indications of groping for answers, without thinking deeply about what might happen in the future.

4. Application of Freedom of Information Bylaws and the Appearance of Problems

I was personally involved in the drafting of bills in Tokyo’s Sumida Ward and Mitaka City in the 1980 s. After that, I was a member of the Freedom of Information Review Committee and the Freedom of Information Council in Nerima Ward and Toshima Ward. Even in light of these experiences, it is hard to say that such bylaws were aggressively utilized by citizens in any locality from the 1980 s to the

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early 1990s. There was even a period where the only applicant was a pet food company. This company wanted access to pet owners' names and addresses for a direct marketing campaign, and the local governments had this information because they had forced dog owners to register their pets according to the Rabies Prevention Law.

It was around 1994 that citizens' watchdog groups began to aggressively utilize these local bylaws. Watchdog groups began to spring up around the country, centered around lawyers or certified public accountants who called themselves "citizen ombudsmen". Citizens' groups developed who asked for the details to be released on governors' and mayors' spending on entertainment, food, business travel, and other expenses.

This movement appeared quite rapidly in the mid-'90s, and Osaka led the way. Citizen ombudsmen first came into existence in 1980, comprising lawyers, certified public accountants, legal secretaries, and others who formed the nucleus of these groups. In 1982, following the creation of the Osaka Citizens' Ombudsman, there was a scandal surrounding the falsification of accounts by the Osaka City Water Department. Using the freedom of information bylaw, the ombudsman requested access to records of Water Department meeting expenses and the governor's entertainment expenses. A portion of the governor's entertainment expenses were revealed, showing some applications for repayment to cover business expenses, but everything else was deemed restricted. Requests for access to meeting expense information like bills, payment slips, and receipts were all rejected. Then the ombudsman filed a lawsuit in Osaka District Court seeking full disclosure. The District Court and the Osaka Supreme Court both overturned the prefecture's decision to restrict access to this information. Most notably, in February of 1990, the Osaka Supreme Court ruled that, "The administering authority must provide proof that it has justification for restricting access." When Osaka made its first appeal to a panel of judges from the Supreme Court, they fundamentally supported the lower court decisions in their December 1992 ruling, saying the prefecture must provide proof that the fair and appropriate conduct of its duties would be harmed by releasing the requested information. Finally, after being handed this decision, the prefecture released all the requested documents.

This "victory" by the Osaka ombudsman also became the direct opportunity for the creation of ombudsman movements around the country. At the same time, this period of the 1990s also saw increased public scrutiny of how public money was being spent as the bursting of the economic "bubble" brought about a deepening

recession. Due to this, there was a dramatic increase in requests for information on expenditures by government officials. Newspapers and other mass media, along with reporting the activities of ombudsman, also utilized freedom of information laws themselves in conducting investigative reports into how public money was being managed.

As if encouraged by this activity, the citizens' groups didn't just stop with requesting information on public spending, but also came to include plans for dams and other public works, internal documents and instruction records for schools, and local government studies for facilities connected with nuclear generating plants. There was a dramatic broadening of scope of not only the documents requested, but also the agencies coming under scrutiny.

However, this increase in requests brought into sharp relief the problems connected with local government freedom of information bylaws. There is truly a rich assortment of these problems, but they can be consolidated into the following five points.

1) Location and management of public documents : Many operational guidelines based on freedom of information bylaws don't necessarily ask that one give a specific document name when requesting access. They generally ask that you "please note the name of the document or a summary of the items about which you would like to know." There are really very great differences in how various local governments respond to citizens' requests. Still, despite the fact there are criticisms of "insufficient" government response, there are many places where this cannot be helped. Even if one requests "information concerning such-and-such a matter", there are some places that will demand the applicant supply the specific names of the documents. Because of this, there are many instances where questions are raised about the public servants manning the 'public disclosure corners', etc. regarding their knowledge of the law. Now, the first thing that should be done is to list all documents subject to disclosure and make sure that everyone has access to these lists. However, there are still many local governments that have not done this. Furthermore, there is an increasing body of opinion that disclosure laws should be extended to cover electronically stored information as well, to keep pace with recent rapid technological developments. The filing problem is becoming more important, and with this comes increasing questions about the rules concerning document management. Various local governments have formulated different rules for document management and established time periods for which different categories of documents must be preserved. However, there has not

been sufficient publicity as to whether this applies to all documents. Also, there has been little aggressive review of file preservation time requirements that conform to the guidelines of the freedom of information system. Furthermore, aside from a few prefectures and municipalities, there is still no system in place to have a third party examine documents to determine their possible historical value, place them in a permanent storage facility and make them available to the public once their required preservation period has expired.

- 2) Even in the wake of Osaka's refusal to disclose documents and the subsequent decision by the Supreme Court regarding the lawsuit brought by the ombudsman, there are still many local governments that refuse to disclose the names of the people listed as receiving money on expense report documents for food, entertainment, and other items. Information on how decisions were reached is also not disclosed, on the grounds that there is fear its release may harm the impartiality of the government. This gives rise to battles with applicants. A similar problem can also be cited concerning the records of advisory bodies to local governments. These records are also withheld on the grounds that their release would hinder the ability of committee members to make fair and impartial statements. On top of this, there have been many cases where a student's personal information, such as internal documents and teaching records from schools, have been withheld. This is ostensibly due to concerns that their release would harm a person's self-esteem and desires for the future, and discourage evaluators (teachers) from making impartial judgements. In short, while it is unavoidable that implementing institutions must employ a certain amount of discretion in making decisions on disclosure, still, the institution may not adequately deliberate on the standards for determining what to disclose or not to disclose. As a result, a big part of the ultimate decision is left up to each office's discretion. Guarantees of disclosure of personal information and the right of individuals to correct inaccurate information about themselves are usually not written into protection of privacy laws, meaning these become freedom of information issues.
- 3) Disclosure of information on partial cooperatives, wide-area unions, and local government public service corporations : Japanese local governments, especially municipal governments, form special local authorities that are unions of local public bodies, otherwise known as partial unions, in order to cooperate with neighboring municipal governments in managing certain public services like water, fire, emergency rescue, garbage collection, and crematoriums. A similar system would be wide-area cooperatives. These wide-area cooperatives have

been springing up around the country in recent years in order to operate the long-term care insurance system. The head of a cooperative and its committee members are selected from the local government bodies forming the cooperative. By law, these officials can be directly elected by the citizens of the jurisdictions involved. But in practice this does not happen anywhere, and they are chosen in the same fashion as the managing union. However, these special local cooperative organizations have no rules governing disclosure of information. Even when the local governments involved have such laws, the organizations are not covered by them, since the organizations exist as separate corporations and are not included in the scope of these laws. Therefore, citizens have no way to apply for access to information concerning the activities of these bodies. All they can do is apply for access to information held by the local governments involved. Also, especially evident in prefectures and large cities, local governments have created many public housing corporations and urban development companies to carry on public works and investment. Not only do these public works and investment corporations receive operating funds and subsidies from the general revenue fund every year, but many of their employees are also on temporary leave from government offices. However, these public works and investment corporations are not covered by local freedom of information laws. The worsening state of local finances, especially prefectural finances, in the latter half of the 1990s is partially the result of declining business tax revenue resulting from the prolonged recession, made worse by continuing disbursements to these corporations. The interest citizens show in the functioning of these affiliated organizations, by itself, demonstrates the seriousness of the problem and raises questions about disclosure issues.

- 4) Disclosure of information from local legislative bodies : Most freedom of information bylaws do not extend to legislative assemblies. In principle, the assembly and its committees are open to the public. However, each assembly has its own rules governing visitors, and there are many assemblies that effectively limit the ability of citizens to observe sessions. The records of general sessions are produced in detail and distributed ; but in most cases, even at the prefectural level, records of committee meetings only list the main points. On top of this, many assemblies have used parliamentary procedure to establish a closed "full conference session", where the executive and the assembly meet together in private. Observation of these sessions is not allowed, and records of them are not made public. And rather than having the Parliamentary Procedure Committee handle

the scheduling and personnel procedures, as laid down in the Local Government Law, there is a tendency to have the Party Representative Committee, an informal body made up of faction heads from the different parties, make these decisions. Added to this low level of openness regarding procedural matters is the low level of openness regarding the official expenses of the assembly members, including the speaker and deputy speaker's entertainment expenses and members' research expenses. Citizens are beginning to demand the same type of access to information on the assemblies that they are demanding of the executives, and access to this information is one important topic for reform of freedom of information bylaws.

- 5) Disclosure of information concerning the police : The police system in Japan is based on the prefectural police units. However, police officers working in prefectural headquarters at the superintendent level or above are considered to be national civil servants. At the national government level, the National Police Agency is under the National Public Safety Commission, headed by the Minister of State. The National Police Agency is responsible for managing police matters. The management staff of the agency consists of elite bureaucrats who have passed the First Level of the National Civil Service Examination. Many upper ranking prefectural police officers, starting with the chief of police, have not passed the prefectural police headquarters recruitment exams, but are instead candidates for upper level bureaucratic positions recruited by the National Police Agency. Due to the nature of police organizations, information on investigations, naturally, as well as staff and accounting figures are shrouded in a veil of secrecy and they are not included in freedom of information laws. However, in 1999, on top of this opacity of information on accounting issues, there was a string of scandals in police departments across the country. Among those was the hard-to-believe case of the chief of the Kanagawa Prefectural Police personally directing the cover-up of marijuana use by his officers. This led to a heightening of public opinion that disclosure laws should be revised to include police agencies. On another front, the inclusion of the National Public Safety Commission (National Police Agency) in the central government agencies covered by the national freedom of information law has added to this argument for broader inclusion.

5. Reviewing Freedom of Information Bylaws

As I said at the beginning, establishment of local government freedom of information bylaws is proceeding at an increasingly rapid pace. Along with the new

bylaws, there are also efforts in the various local governments to reform existing bylaws to cope with the issues I have just discussed. This means it is extremely difficult to examine individually the details of the over 1,000 local bylaws existing now. However, let's take a look at these laws on the prefectural level, focusing on the issues listed above.

There has been a firm belief among academics and citizens involved in this effort that along with organizing the filing system for documents covered by the laws, "the right to know" should also be clearly spelled out in order to guarantee citizens' ability to exercise their rights and place limits on the discretion allowed government offices. As I said before, "the right to know" was not clearly spelled out in the national law. However, as of April 2000, 21 prefectures, including Iwate, Fukushima, Tokyo, and Osaka, have enshrined this right in their laws. Tokyo, in revising its law in 1999, added a preamble that included the following: "We are well aware of how great a role the citizens' right to know has played in establishing the freedom of information system, and this public disclosure must continue to proceed." There are undoubtedly certain psychological limits involved in how far some people are willing to go in acknowledging the principle of "the right to know", but I think this review process will continue. Because of this, I think it is possible to say that government offices will also become more conservative in handing down decisions that exclude documents from disclosure. At the same time, I think this will also have an effect on deliberations during the judicial appeals process surrounding these documents withheld from disclosure.

As of April 2000, there are 25 prefectures that include the prefectural assembly in their freedom of information laws, including Aomori, Miyagi, Tokyo, and Kanagawa. This is over half of all prefectures. In these prefectures, along with access to information on deliberations, citizens may also request disclosure of entertainment expenses for the speaker and deputy speaker, and records on how the legislature is using public money. This trend of including legislative bodies under the laws will undoubtedly extend to other local governments.

There are 13 prefectures, including Tokyo, Yamanashi, Kanagawa, and Hyogo, that have included their prefectural police under the freedom of information laws, as of April 2000. All of these were revised after 1999, when, along with establishment of the national law, there was also a string of scandals involving the police. However, these laws follow in the footsteps of the national law's regulations in that they adopt rules restricting disclosure of "information where the authorities recognize significant reason to believe there is a danger of damaging efforts to prevent

crime or conduct investigations.” This means that the primary right of decision as to whether or not to disclose information lies with the police (the chief of police), and they have been left with quite a bit of room to exercise discretion in these matters.

Given this situation, Miyagi Prefecture is currently attracting national attention concerning its efforts to include the police in a revised freedom of information law. According to the proposal for revision submitted to the prefectural assembly by Governor Asano in September of this year, rules regarding non-disclosure extend to “situations where there is a fear that the release of information may be harmful to human life, the prevention or investigation of crimes, the protection of people and property, or other aspects of public safety or order.” The police have objected strongly to this, saying “there is a fear that the government’s proposal to force the release of certain information would result in a danger to public safety by reducing the ability of the police to gain cooperation in investigations and by giving an advantage to criminals who might gain access to this information.” The prefecture disagrees, saying the proposal has struck a balance between protecting information on investigations and crimes and releasing information that should not be concealed, and they are intent on passing this into law.

The debate is focused on determining how to categorize information on investigations and crimes. Public disclosure regarding police administration has always been minimal up to now. Budgets and even personnel numbers have not been revealed, due to the fear this information would harm investigations. Even though it can be said that the police have confirmed budgetary propriety through internal audits, there are still cases where it has been revealed that secret accounts have been used. For example, in 1996 the Tokyo Metropolitan Police Akasaka Precinct made it look like they were paying money to informants who really didn’t exist. Questions have already been raised previously in Miyagi Prefecture about the lack of transparency in the police budget. In 1999 citizens requested access to budget information on food and travel expenses for police department personnel, claiming these fall under the governor’s budgetary authority. The governor ruled against disclosure, but in response to a lawsuit filed by citizens the Sendai District Court and the Sendai Supreme Court ruled in May of this year that these documents should be disclosed. When the governor requested these documents, the police blacked out the issuing department and person responsible, the names of people involved and all other information except the dates and amounts of expenses. It can be said that the police have broadened their interpretation of the category of “information regarding

investigations and crimes". By sticking to this argument, the police can only be trying to maintain their hold on the "right to first judgement" through narrowing the field of intervention by third parties in the areas of "information regarding investigations and crimes".

There is no certainty as to whether the Miyagi Prefectural Assembly will pass the proposed revisions to the Freedom of Information Bylaw. A revision was also prepared for the freedom of information bylaw in neighboring Iwate Prefecture that would expand this law to the police and follow the national law in giving the "right to first judgement" to them. However, Governor Masuda, based partially on the events in Miyagi, decided to re-examine this proposal. There are 16 prefectures, including Iwate, which intend to submit a revision bill to their assemblies this year to expand freedom of information laws to the prefectural police. The events in Miyagi will undoubtedly have a major effect on all of these. Expanding freedom of information laws to include the police and determining how best to handle questions about the "right to first judgement" if the laws are expanded have become the biggest topics surrounding local freedom of information mechanisms.

On the other hand, no work has been done on laws pertaining to access to information concerning public corporations supported by public money. These investment corporations, set up by local governments, have built up a collection of debts and land no-one wants. A freedom of information mechanism must be set up for them, too. But on the national side, a legal framework has been prepared for disclosing information on special corporations and other entities, and a movement similar to the one for expanding freedom of information laws to include the police may spring up in the near future. It is also the case that many local governments have taken no action to address issues like expanding the definition of who may apply for access, applying for access to personal information, or disclosing information stored digitally. However, at least on the point of who may apply for access, many local revisions will probably be linked to the national law's provision that "any person" may apply. For digitally stored documents, the issue of filing remains, but the fact that "administrative documents" are included in the law will probably mean local governments will be forced to revise their own laws. Work is proceeding on the national level to prepare the legal framework for access to personal information, which will probably lead to local revisions on this point too.

6. Decentralization and Local Information Disclosure

Up until now I have talked about the application of local freedom of information bylaws and reforms to these systems. There is great meaning in codifying into law the rights and responsibilities relating to disclosure. However, beyond answering disclosure requests from citizens based on freedom of information bylaws, local governments are also faced with the issue of providing information of their own accord on a regular basis.

In order to achieve decentralization, various revisions to the laws, including the New Local Autonomy Law took effect on April 1, 2000. With these changes, local governments have swept away their character as local organs of the central ministries and strengthened their characters as autonomous governments representing local interests. With this goes the need for aggressive freedom of information.

In the reforms instituted following Japan's defeat in the Second World War, governors and mayors came to be directly elected by the people. However, behind the scenes, laws and directives positioned these offices as local branches of the various central ministries and a system of delegated functions was introduced where these officials performed their duties under the guidance of the minister. Duties under this system numbered about 150 in 1947, but had increased to 561 by 1995. Delegated functions make up about 70 or 80 percent of a prefecture's work and about 50 percent of a municipality's work. With implementation of the decentralization policy in April 2000 the system of delegated functions is being eliminated, to be replaced by autonomous functions, legally entrusted functions, and a quite limited program of directly executed duties.

In this way, local governments are seeking to create and implement policies based on their own judgement. At the same time, they are facing an age when competition will become unavoidable among local governments on policy issues. Furthermore, as I mentioned at the beginning, local government finances have come under increasing pressure since the late 1990s. This means that local governments must disclose information as widely as possible so that citizens, executives, assembly members, and employees can develop policies based on the same information.

From the 1970s Japanese local governments began placing emphasis on the ability to hold public hearings and disseminate public reports, and they poured considerable effort into establishing the capacity to do these things. Since then, along with measuring public opinion through gatherings where the executive can speak with the people and through the letters (and faxes) sent to the executive, local governments

have also put out public information fliers and handbooks. Through these public information efforts local governments have made public basic information on public administration such as social and economic statistics, macro-level revenue figures, trends in spending, and numbers of employees and salary levels.

However, now people are asking for even more information. First, they would like basic information on the details of finances. This especially includes making clear the costs of individual public enterprises. Citizens have a hard time now determining the costs associated with an enterprise, simply working from the information contained in the budget papers based on the Local Government Law Implementation Order. There is a strong public demand for a budget paper organized by enterprise type that can be easily understood by people, aside from the present budget paper required in the Order. While it is a small community, an experiment in Niseko Town, Hokkaido, is receiving quite a bit of attention. The town is attempting to improve the efficiency of its local administration by distributing to each home a copy of a Budget Paper with costs organized by enterprise type that can be easily understood by its citizens.

Second is information about points of debate based on these financial details. Local governments were originally asked to provide a choice of policies or enterprises for solving certain problems. However, unfortunately, there was no effort to present these as points of debate so that citizens could participate in choosing the most appropriate policies or enterprises. This is one reason that insufficient explanation also came to be seen as a problem. Since the late 1990s, Japanese local governments have seen an increasing movement toward using referendums to ask people's opinions about the appropriateness of planned projects. Despite the fact that this movement is driven by different specific factors in each locality, the basic overarching factor driving this is that there is no guaranteed public forum where choices are clearly listed and citizens can debate the issues based on them. Full public participation through active disclosure of points of debate is absolutely necessary.

Third are policy and enterprise evaluation reports. Citizens have naturally come to ask questions about the effectiveness and necessity of public works projects in this age of increasingly tight budgets. In answer to this, local governments are trying out new policy and enterprise reporting systems. Mie Prefecture has received praise for getting off to a quick start in its efforts to establish such a system. However, in general, local governments have concentrated more on creating a "perfect" evaluation system itself, and have not done a very good job of actually

announcing the results. Since one really can't expect there to be a "perfect" evaluation system, it is necessary to announce the results at each step of the process and work to improve the system based on the resulting public debate.

It would be safe to say, looking at this, that many local governments still do not have an aggressive disclosure system in place for policy information. Any reforms in this area will probably not move forward until local governments undergo decentralization and work to improve their ability to develop their own policies. Up until now, when local governments were allowed to depend on national directives and central ministry manuals on how to conduct policy implementation and enterprise development, there was very little need to create and disseminate local information on policy matters. Whether or not local governments devote themselves to developing their own methods of disseminating information will be an important measure for evaluating how well they are progressing with their internal reforms.

Conclusion

Until now, we have been considering the workings of the freedom of information system and related issues, centered around the local freedom of information bylaws. Work has begun on a legal framework for disclosure mechanisms at the local level, and these are tied to the creation of the national legal framework. Portions of the national law are more "advanced" than the local bylaws, and the national law should serve to prompt reforms in the local bylaws. In any event, if citizens don't make use of the laws there will be no reforms to them, and problems with local administration will not come to light either. We will probably see a convergence of the local disclosure bylaws and the national disclosure law resulting in further development of freedom of information in Japan.

Today I have already discussed the mountain of issues surrounding freedom of information at the local level. However, there has been a massive change in people's awareness of political and administrative matters, especially since the 1990s, and Japanese are already ceasing to be "the uncomplaining masses". Local government political and administrative leaders are no longer able to ignore this shift. Therefore, disclosure on the local level will continue to develop in combination with competition among local governments, against a background of changes brought about by decentralization reforms. And this will include not just freedom of information bylaws but also routine disclosure of information on policy matters. What can be said with certainty is that the 1947 local government reforms were imposed

on Japan from the outside, while “internally generated” local reforms got moving in the late 20th century. We are able, despite the fact that deficiencies remain, to watch the concrete manifestations of dramatic progress in the freedom of information laws.

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