

# **A Private Threat to Democratic Accountability?**

## *Measuring Transparency in Dutch Public-Private Partnerships*

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**Abstract**

This paper is about transparency in Public-Private Partnerships (PPP). In PPPs public bodies cooperate on contractual based agreements with the private sector to provide public goods. This new way of realizing public services could inhibit transparency, because not all relevant information is disclosed to the public. Especially information that might be commercially sensitive is kept confidential. This lack of transparency could threaten democratic accountability. Transparency is a really important component of accountability, without information the government can't be hold accountable. In the paper I'll explore important concepts like accountability, transparency and commercial confidentiality. Also I give information about studies conducted in foreign countries that provide evidence for a lack of transparency in PPPs abroad. Further I present a research I conducted among Dutch PPPs to establish if PPPs in the Netherlands have a transparency problem. The paper ends with the conclusions and recommendations.

## **Introduction**

According to several foreign studies (Gosling 2004, Mohr 2004, Hood 2006, Roberts 1998) commercial confidentiality is a real danger for accountability in public-private partnerships (PPPs). An overuse of commercial confidentiality undermines the transparency of PPPs and this leads to the threat of worse democratic accountability for citizens. Especially the survey Tim Gosling (2004) conducted in the United Kingdom gives good reasons to doubt transparency in PPP projects. Gosling is a researcher of the Institute for Public Policy Research (ippr), a progressive think tank in policymaking in the United Kingdom. Gosling's paper about openness in PPPs in the U.K. has an important role in my paper; it is used as a red line through my own research. Later in this paper Gosling's research is explored in more detail.

One common comment of these authors is that the introduction of contractual agreements with the private sector in delivering public services opens the way for information to be commercial confidential that may inhibit transparency. Especially the negotiation of the contract is a very delicate matter. This has to be done in fair competition and information can become sensitive. The information might harm the financial position of the state or the private partner and therefore can't be disclosed to the public. This harm might be done because rival companies can access information that could give them an advantage in the negotiation phase. Information about finances or certain methods for example. Keeping (insensitive) information secret by the government could harm good transparency. In Gosling's study (2004), for example, just fifty percent of the projects disclosed data about deductions or figures of the achievement of PPPs (Gosling, 2004; p.24-26). It should be clear that the public has a right to know how a PPP is performing while it's realized with public funds. Transparency also gives the public body an incentive to perform well. It should not be possible to hide questionable decisions and performance of the government behind commercial confidentiality. Finally transparency can also create important trust between public bodies and the citizens.

These are some reasons for transparency to be very important. The most important reason is though, that transparency is at the core of accountability. Without enough and good information it's very difficult to hold someone accountable for there actions. Later in the paper, in the first section, I'll explore these important concepts further.

In this paper I want to measure if PPP projects are a threat to democratic accountability in the Netherlands through a lack of transparency. I want to verify this question with a study on Dutch PPP projects. I expect that PPP arrangements will threaten democratic accountability through a lack of transparency because the earlier mentioned studies (Gosling 2004, Mohr 2004, Hood 2006, Roberts 1998) have already found similar evidence in other contexts. Another reason for my research is that the Dutch government states that PPP doesn't threaten democratic accountability (Kenniscentrum PPS, 2003). They don't justify this statement so it should be established with a research. Especially while there is not much Dutch work on this subject it would be useful to see whether Dutch PPP projects (like foreign countries) have a transparency problem.

The paper is divided in different sections. The first section explores all the important concepts used in this paper: democratic accountability, transparency, commercial confidentiality and the Dutch Freedom of Information Law ('wet openbaarheid van bestuur'). Also I present the research based evidence that back up my hypothesis that accountability can be threatened by a lack of transparency. Much attention will go to the survey Gosling conducted in the United Kingdom about openness (transparency) in Private Finance Initiative (PFI) projects. PFI is a structure for realizing public services that uses PPP. The second section contains the methodology of my study. Because Gosling's research is very similar to my own I've tried to replicate his methodology to research transparency in Dutch PPPs. In the third and final section I outline the results of my own research in the Netherlands. These results can answer my research question whether Dutch PPPs are a threat to democratic accountability due a lack of transparency.

## Section I: Concepts

**Democratic accountability** is an important concept in liberal-democratic systems like the Netherlands. There are many definitions of accountability, some are very detailed, others more general. One thing about accountability must be clear: Most satisfactory definitions include, explicitly or implicitly, two essential features: *information* and *sanctions*. (Keohane, 2002; p.3-4; Manin, Przeworski and Stokes 1999:10; Schedler: 17; Oakerson 1989: 114)

An example of a more detailed definition of accountability arrives from **Jonathan Koppell**. He argues that accountability doesn't fit a single definition. He defines five dimensions of accountability:

- *Transparency* (did the organization reveal the facts of its performance?)
- *Liability* (did the organization face consequences for its performance?)
- *Controllability* (did the organization do what the principal desired?)
- *Responsibility* (did the organization follow the rules?)
- *Responsiveness* (did the organization fulfill the demands/needs?).

(Koppell, 2005;p.95-96)

In the dimensions of Koppell we find the essential feature of information (transparency). Disclosing information is important for a liberal system to be democratic accountable. Information about governmental issues can be disclosed towards an elected parliament or towards citizens. Both groups can hold a public body to account on their own way. The public can do this for example through elections or through some kind of referendum. This 'downward' notion of openness towards the public calls for a different approach than 'upward' openness towards a parliament. A parliament should always have access to any documents but this isn't necessarily the case for citizens. In this study I'm concerned with what information the public can access to hold governments to account. Can they gather enough and just information about governmental matters?

We can understand it's very difficult to hold someone accountable when we don't have enough information about that someone's actions. Through transparency an accountable organization cannot obfuscate its mistakes and transparency makes it possible to measure performance of the government which makes it thus at the core of all other accountability dimensions (Koppell, 2005;p.96). This is the main reason why this paper will be focused on the transparency dimension of accountability.

### **Transparency in PPPs**

PPPs change how public services are delivered and this can raise transparency questions. With traditional procurement, governments would either deliver services internally or perhaps contract out particular aspects to the private sector. In PPP governments and the private sector cooperate on the basis of long term contractual tied up agreements where responsibilities, such

as costs and risks, as well as public and commercial targets are outlined (Kenniscentum PPP 2003). This private sector is often a consortium, a special private company in which several private parties participate to realize the project. In smaller PPPs it's also possible that private companies realize the assignment on their own or without forming an official consortium. The idea is that the private sector with more responsibilities will be able to produce public services more efficient and innovative. They get an assignment of the government to produce a public service within certain criteria. How the service is produced is not the main concern as long as the criteria set up by the government are met by the private party. The introduction of long term contractual agreement with a private sector with more responsibilities in supplying public goods means a change compared to traditional procurement. It can be argued that PPP is a bit controversial because of these changes. The public and private parties have different objectives for instance (Bovens, 1996; p.159). Good example for this is the objective from the private sector to make a profit out of a project. Main concern here is that the quality of public services could be inhibited because the private sector wants to keep the costs down. PPP changes some things in the realization of public services and the need for the public to be well informed calls for transparency.

We can see that this call for openness is a bit acknowledged by public bodies, especially by the larger projects. All large projects have their own websites with proactive information for citizens about the PPP constructions (M.B. Nijhof & F.H. Simon; 2007). The information disclosed on these websites is though merely the basic information about what can be expected of a certain project and how the project will be realized. More specific information about contracts, risks or performance is mostly absent. This more concrete information is important for the public to get a correct idea of PPP. A good example of one sided information is the project 'Montaigne 2005'. This PPP was a pilot project for PPP in education and on the internet there is a lot of information about the project. In an evaluation was some information about the Public Sector Comparator (PSC). The PSC is a tool which compares the costs of PPP and traditional procurement to provide the public service. These calculations include all possible costs of the entire project. Including costs for transferring risks among the parties for example. In PPP 'Montaigne 2005' the PSC counted a sixteen percent cut in the costs when the project was realized with PPP and this was clearly mentioned in the evaluation (Ernst&Young,2005;p.26). What wasn't mentioned but turned up after a closer study of the project was that some risks were transferred back to the government to keep the private bids as low as possible (Strukton, 2005;p.55). This turned out to be a little

trick of the government to have an argument in favor of PPP while the project had to continue because it was a pilot. So eventually only some basic information about the PSC was available, while important specific information about the PSC wasn't easy accessible for the public.

Transparency is, though, not only about what information is disclosed. It's also important when the information is disclosed. The disclosure of certain information has to be at the right time because otherwise it will lose its value. Outdated information is of no use for the public, so the time of disclosure is also a feature of transparency. An example is data about performance in the exploitation phase. The exploitation phase is the phase when the project is up and running. The project is in use by its customers and needs to be maintained. But is the public service delivered well by the private partner? How is it all performing? Did the government have to penalize the private sector for bad performance? This is important information in the exploitation phase that should be disclosed to the public while it's still running. The public can monitor the project and failure can be adjusted. When this data is released too late it's difficult for the public to keep an eye on the achievement of a PPP and the information will lose its value.

The right transparency question is: Did the public organization reveal all the relevant facts of its policy and performance to the public and did this occur at the appropriate time? This question raises another question: What information should be disclosed when? Of course not all information has to be released to the public. Only the information that is relevant for the public to hold a public body to account should be released.

An important aspect of withholding information from the public is '**commercial confidentiality**'. Commercial confidential information is; "*Information whose disclosure could lead to improper gain or advantage or would prejudice.. the competitive position of a department or other public body or authority*" and "*Information including commercial confidences, trade secrets or intellectual property whose unwarranted disclosure would harm the competitive position of a third party.*" (Lord Chancellor's Department, 1998)



In a PPP the government works together with a private party on an equal basis and in the agreements between the parties there are definitely grounds for some information to be confidential. Not every detail has to be disclosed to the public for a PPP to be transparent. There is, for example, no need to lay all internal processes of the private companies bare. This information might be interesting for rival companies but citizens are more concerned with aspects of PPPs as ‘value-for-money’ and performance. Information about ‘value-for-money’ is information about what has been purchased. What does the government get for how much money? If the government is open about ‘value-for-money’ and performance of a project it’s not really necessary to disclose (sensitive) information about all internal processes (Gosling, 2004; p.4). This ‘output-transparency’ could be different from transparency in traditional procurement but isn’t necessarily worse. With ‘output-transparency’ I mean holding the government accountable with information about ‘outputs’ like ‘value-for-money’ and performance instead with information about procedures and internal processes of the PPP. At the end it’s just important that citizens get enough information to hold a public body accountable.

What other information besides internal processes can be commercially confidential? In this sense the definition of commercially confidential information is a bit abstract. I think an important feature of commercial confidentiality is that *ex-ante* information could be commercial sensitive, and *ex-post* information has very little value in a commercially sensitive sense. This is certainly the case with financial information, the sensitivity of specific technical information can be less depending on time. A good example would be the contract between the parties. In the negotiating phase of a project it’s normal to achieve fair competition to keep details of the bids and Public Sector Comparator (PSC) confidential. After financial close this isn’t the case anymore and the key elements of the contract and PSC should be disclosed to the public. This way the public knows what has been purchased and how value-for-money is achieved. Another example of sensitive information is information about performance. Some public bodies withhold this kind of information about projects (Gosling 2004). Information about penalties for poor performance for example, is affecting profits and losses and could be seen as sensitive. The ippr argued in Building Better Partnerships (2001) that in these cases the wider public interest is overriding the sensitivity of the information and that therefore information about performance of public services should be disclosed. At the end of the day most information that holds PPPs to account should not be

commercially sensitive, with exception of course of the negotiation with bidders phase (Gosling, 2004;p.10).

A key problem with commercial confidentiality is that the parties in a PPP agree in advance to keep information confidential to ensure nobody will be harmed by the disclosure of certain documents. This is even so when it's very much the question if any harm will be done. In a study of Roberts (1998) on public service and the freedom of information for citizens I have the following illustration of the effect that the problem of commercial confidentiality can have in PPP. In a case where the Saskatchewan public body worked together with private medical laboratories the Saskatchewan General Employees' Union requested a copy of the contract with the private laboratory. The public body refused the disclosure of any part of the contract. The 'most compelling reason' for its decision was the information was confidential. The Board observed:

“Most of the clauses of the agreement consist of an exchange of information relating to the affairs and operations of the parties, which information was explicitly supplied in confidence by each party. The agreement itself contains a broad confidentiality clause prohibiting dissemination of the contents of the agreement by any of the parties” (Regina Health District Board, 1995).

Roberts argues that the troublesome part of the response was its failure to argue whether it would do someone any harm when the contract was released. The need to argue the harm that disclosure could do is confirmed by the definition of commercial confidentiality standing above. The contract was obviously relevant to the public debate over privatization of laboratory services. It was however enough for non-disclosure that the contract was confidential in character (Roberts, 1998;p.11). Because the partners agreed in advance that information was confidential they had an argument not to disclose the contract. This way both parties were certain no harm could be done. The public's right to know however didn't really seem to matter. Actions like these undermine transparency towards citizens because certain information that should be released is not accessible for the public.

Commercial confidentiality is an exception ground of the Freedom of Information Law, in the Netherlands called '**Wet Openbaarheid van Bestuur**'. (WOB) (Book IX.2 Bestuursrecht, Wet Openbaarheid van Bestuur; art. 2 en art 10). This law means that civilians have the right to access governmental information. They can address a request based on the WOB to receive information about certain governmental matters. PPP arrangements are also attached to the

WOB. This is, besides website information, also a way to gather information about PPPs. The government is in beginning obliged to give the requested information, but there are some exception grounds:

First the government can refuse disclosure of information when the information could harm the safety of the state or when the data concerned relate to companies and manufacturing processes and were furnished to the government in confidence by natural or legal persons. These are absolute grounds for refuse of disclosure. The important relative grounds are when the information harms the financial or economic position of the State or the prevention of disproportionate advantage or disadvantage to the natural or legal persons concerned or to third parties. Information will not be disclosed when these relative grounds outweigh the public interest (Book IX.2 Bestuursrecht, Wet Openbaarheid van Bestuur; art. 2 en art 10).

Information can be confidential when it's applicable to one of the exception grounds of the WOB. Problem is that these exception grounds, like the definition of commercial confidentiality, are a bit arbitrary. It could be arbitrary if certain information, for example, could bring disproportionate disadvantage to the competitive position of a third party. What is disproportionate disadvantage exactly? Is it outweighing the public interest? And who is the arbiter in these cases? According to PPP experts (M.B.Nijhof & F.H.Simon, 2007) in the Netherlands an information request will be handled by the manager of a project or it will be a judicial matter whether certain information is released following the WOB.

This **arbitrariness** brings up a problem; the government can overuse commercial confidentiality. An example of arbitrariness in the release of some information comes out of my own research (more about this research later in the paper). I requested the scope and output specifications of the PPP project 'Detentie Rotterdam'. These documents were confidential in character but when I told someone of the project who contacted me over the phone I needed the information for a study assignment the people of the project decided to release the documents. The project managers decided I, as a student, could get the information. It's very much the question though if I received the documents when I was, for example, a journalist. This arbitrariness can inhibit transparency. When I receive the requested information, why is it confidential in character? This gives room for an overuse of commercial confidentiality.

Foreign research has established that the overuse of commercial confidentiality to keep certain information secret is a problem in PPPs that inhibits transparency. Most important research about this matter is the study of the earlier mentioned Tim Gosling (2004). He conducted a survey to examine the openness of PFI projects in England on transparency towards citizens. Gosling requested information from a number of projects that should be made available for him. This way he wanted to see whether citizens have access to important information of PFI projects. The projects are divided in three phases, because each different phase has to disclose different information.

These are the three different stages of PFI projects which demand different information disclosure;

- Midway through the procurement process: Can the public gain an accurate picture of what is being contracted for and how the procurement is progressing
- Financial close: What has been purchased, what will it cost and how the key decisions were arrived at.
- Operational phase: Can the public gain access on how a project is performing?

(Gosling, 2004;p.6)

The results are based on whether he received the information he asked for or that his request was refused on, for example, commercial confidentiality. More details on how Gosling conducted his research I'll explore later in this paper. I tried to replicate his methodology for my own study.

**Main conclusions** of the survey were that transparency in the PFI projects surveyed is poor. Except for the National Health Service (NHS) projects only 50% of the requested information was available. Especially in the second and third stage of the project disclosure was poor, while NHS information was almost always available;

*Table: Showing which areas of government replied with the requested documents*

Area of Government	Pre-Contract Signature	Post-Contract Signature	While Operational
NHS Hospitals	4/4	4/4	1/2
Local Government	4/4	0/4	1/2
Education (Schools)	3/4	0/4	1/2
Central Government	N/A	0/4	0/2

(Gosling, 2004;p.20) (For specific details about the research results:Gosling,2004;p.24-26)

An important question about commercial confidentiality is raised by this survey: If some PPPs (NHS, according to Gosling's survey) are able to provide certain information, why are other PPPs able to hide similar information behind commercial confidentiality? So an important conclusion we can make out of this survey is that certain information that wasn't released by public bodies because of commercial confidentiality wasn't that confidential while the NHS disclose the requested documents. This provides evidence that governments are overusing commercial confidentiality to keep information hidden for the public. Gosling's study points out that the NHS projects are an example of 'good transparency'; the NHS almost always provided requested documents.

Main reason for the NHS to be so transparent is the special guideline they have for the disclosure of information. Gosling and also the Institute of Public Policy Research (ippr) acknowledge the NHS guidance as superior towards other disclosure guidelines (Gosling 2004;p.16 and Building Better Partnerships, 2001;p.243). The NHS guideline is an example for how a public body should be transparent according to Gosling (2004) and the ippr (2001). They state that the NHS guidance is better than other guidelines because it's binding and mandates a timetable for the release of certain information (Gosling, 2004;p.15). I have to mention that it is arguable that the openness of the NHS can have something to do with the controversy of PPP in the health sector. Health service is a very important core public service so the introduction of the private sector calls for transparency. This controversy on PPP in the NHS could of course be a reason for NHS projects to be transparent. I think though that this controversy resulted in the use of the specific guideline and that this guideline made sure NHS projects are transparent. At the end I don't think that PPP in NHS being a bit controversial means that other projects have strong arguments to keep similar documents confidential.

The NHS guidance central document is the business case. This documents has three stages; The Strategic Outline Case (SOC), Outline Business Case (OBC) and the Final Business Case (FBC). These documents develop gradually over the procurement process resulting in the Final Business Case and contain the following information:

- The need for the project (OBC: scope and output specifications)
- The reasons for choosing PFI (FBC: value-for-money information and key elements contract)
- How the project meets the identified needs (performance data)

(Gosling, 2004;p.15).

The NHS guidance:

- Mandates a timetable for proactive release of documents
- Stipulates that the Strategic Outline Case and Outline Business Case should be available largely intact
- Mandates the release of the Final Business Case and the key terms of the contract

(Gosling, 2004;p.15).

The NHS guideline leaves little room for information to be commercial confidential. Only certain information in the negotiation phase is kept secret. Gosling (2004) and the ippr (2001) argue, as stated before, this is the way for a PPP to be transparent towards the public.

Some other studies of abroad have similar findings about commercial confidentiality in PPP projects. Jay Mohr, for example, studied the PPP projects of the London Underground and the Copenhagen Metro. Key question Mohr considered in his research is ‘do PPP’s offer more opportunities for weaker transparency?’ His conclusions were that both the UK and Danish researched PPP (The London Underground PPP and Copenhagen Metro) are characterized with low levels of transparency and openness (Mohr,2004;p.8-9).

Both the UK and Danish PPP’s are characterized by the prevalence of formal public accountability procedures are conducted behind closed doors. Informal mechanisms involving public engagement and bottom-up procedures of accountability were of little or no effect. Further the unavoidable transfer of some risk/responsibility from the public to the private sector in PPP schemes continues to pose a serious challenge to transparency and the wider issue of public accountability whereby access to publicly-relevant information including processes of decision-making was constrained by ‘commercial-in-confidence’ clauses and highly-technical language (Mohr, 2004;p.12).

Another foreign research is that of Hood, Fraser and McGarvey (2006). They state that data collection and transparency of information within PPP is most notable by its absence (Hood,2006;p.46). They argue that commercial confidentiality along with the complexity of PPPs constrains the release of specific information about risk allocation and financial details about PPP projects. The PSC calculations, for example, are not placed in the public domain until well after the PPP projects has commenced. (Hood,2006;p.45) This threatens governmental transparency towards the public. A case study proves their statement that the

private partners of PPP projects are not transparent enough. There's considerable lack of transparency while their financial reporting was very opaque. (Hood, 2006; p. 56-58)

The study of Roberts (1998) is related to the statement of Hood, Fraser and McGarvey that, for example, PSC calculations aren't disclosed at the appropriate time. As I stated before in this paper, transparency is not only about what information is disclosed but certainly also about when information is disclosed. The problem Roberts identified in Canada with PPP projects and openness was again commercial confidentiality. When citizens (non-governmental stakeholders -- including public interest groups, businesses, unions, and the media and so on) made a request for information about a particular PPP project, the information (that could be confidential) has to be released with approval of the private partner. The problem is that private partners can protest against the decision to disclose certain information. These protests can delay the disclosure for months or even years (as some cases point out; Roberts, 1998; p.12-13). After there is decided that the private partner didn't have valid grounds for its appeal the information can be disclosed but isn't sensitive anymore through the delay. The private partner has won enough with the delay (Roberts, 1998; p.11-13). In the study of Roberts we find the problem of the arbitrariness of commercial confidentiality. It's not clear which information can be disclosed and this results in appeals, delays and judicial matters. This way commercial confidentiality inhibits transparency, while important information isn't disclosed to the public at the right time.

Above we find several studies that give evidence for a transparency problem in PPP projects. This evidence counts for PPPs in other countries than the Netherlands. To establish whether Dutch PPPs also do have a transparency problem I conducted a research among Dutch PPPs. In the following sections I describe this research and its results.

## **Section two: Methodology**

To establish whether the PPPs in the Netherlands lack transparency I've conducted a survey under thirty-one Dutch PPP projects. For the methodology of my research I've tried to replicate the methodology Tim Gosling (2004) used in his study about openness in PPPs in the U.K. In the survey I make information request to the public bodies about the PPP projects.

To establish what information I should request from the projects I've translated the documents Gosling requested in his research towards similar documents that are applicable for Dutch PPPs. Gosling based his requests of documents to the standards of the NHS guidance, which, as proved in Gosling's study, is an example of 'good' transparency (Gosling,2004;p.17). While there are no Dutch guidelines for information disclosure I've decided to also use the NHS guidance as the standard for 'good' transparency.

The transparency of the projects is measured by whether requested information about the PPPs is disclosed to me by the responsible public bodies. The requested documents should be disclosed to the public according to the NHS guidance (and agreed by Gosling (2004) and the ippr in the Building Better Partnerships (2001) report) and not be hidden from the public. This way I can see whether the public bodies in the Netherlands disclose information that should be released to the public or that they, for example, overuse the exception ground commercial confidentiality. While my study is very similar to the study of Gosling I can compare my results to his and I can draw conclusions about transparency in Dutch PPPs.

### **How and what to measure.**

Like Gosling I divided the PPP projects into three phases, while the projects in each phase have to disclose different information. A project that is not yet in the exploitation phase cannot give information about performance and while the negotiation phase has reasonable grounds for information to be confidential, contract elements, for example, should be released after the financial close of the project.

*Phases:* There are three different stages of PPP projects which demand different information disclosure.

- *Midway through the procurement process:* Can the public gain an accurate picture of what is being contracted for and how the procurement is progressing
- *Financial close:* What has been purchased, what will it cost and how the key decisions were arrived at.
- *Operational phase:* Can the public gain access on how a project is performing?  
(Gosling, 2004;p.6)

Inspired by the NHS guideline Gosling requested the following documents for each phase;

- First Phase: Outline Business Case and Invitation to Tender



- Second Phase: Full Business Case and Key Terms Contract
- Third Phase: Availability of deductions (performance)

(Gosling,2004;p.18-19)

While in the Netherlands there are no specific documents like an Outline Business Case (OBC) or a Full Business Case (FBC) I had to change those documents into documents that are used in Dutch PPPs. The OBC contains the scope and output specification of the project so I requested those two elements of the PPPs. In the Netherlands these two features can come up in different documents like a ‘masterplan’ or a ‘leidraad’ of the project. It differs among the projects in what kind of document the scope and output specifications can be found. The FBC I changed to the Public Sector Comparator (PSC) because the PSC contains all important information about ‘value-for-money’ and is an important reason for the government to chose for PPP instead of traditional procurement. The PSC is important information for citizens to hold a project to account and should be disclosed to the public after the contract is signed. I have to make a note that not all local projects used a PSC, when this was the case I just requested the key contract terms. Also not all local PPPs made use of deductions; other material about performance (figures about achievement for example) was requested instead.

I requested the following information of the public bodies for each phase;

- First Phase (negotiation phase): Scope, Output specifications of the project and Invitation to Tender.
- Second Phase (after financial close): Public Sector Comparator (PSC) and Key Elements of the Contract (or the whole contract).
- Third Phase (exploitation phase): Information about deductions (performance) and any information about the achievement of the project.

For each phase I’ve picked around ten PPPs and they can also be divided into national and local projects. While it was rather difficult to come up with a proper list of the PPPs in the Netherlands I used the projects I could find and could categorize into a phase. Lists with Dutch PPPs seemed to be very outdated. I gathered PPPs from governmental lists, earlier studies on PPP and some other material I could find. After that I searched for information about the PPPs so I could categorize them into the different phases. At the end I had a list of thirty-four PPP projects, but after contacting them three PPPs were already cancelled. So

picking the projects wasn't really difficult but finding them was more of a problem. Especially information about local PPPs is very hard to find.

To the responsible public body of the selected PPP projects I sent letters or emails with the request for the specific information (these letters can be found in the appendix). I made use of the Dutch FOI Law, Wet Openbaarheid van Bestuur (WOB), to make sure the public bodies would respond within a certain time, while I had a tight time-schedule for the research.

According to the WOB a public body has two weeks to respond to an information request and they have the possibility to delay (motivated) their decision with another two weeks. When the public body didn't react on time I made a follow up phone call/mail to ask what's going on.

I've used the following projects for my study;

Table: Dutch PPP Projects used in survey

<u>First Phase</u>	<u>Second Phase</u>	<u>Third Phase</u>
2e Coentunnel*	N31*	A59*
A15 Maasvlakte*	HSL Bouw*	Montaigne School
Corridor PMZ*	HSL Vervoer*	Vathorst Amersfoort
Zuidas Amsterdam*	Renovatie ministerie* Financiën	Wateringse Veld Den Haag
2° Maasvlakte*	Afvalwater Haagse Regio	Marienburg Nijmegen
Zuiderzeelijn*	Delft Spoorzone	RW Den Helder
A2 Maastricht	Waterwijk Lelystad	Stadshart Amstelveen
Kromhout Kazerne *	Nesseland Rotterdam	IJburg Amsterdam
Detentie Rotterdam*	Spoorzone Breda	Fortuna Sittard
IB-Groep Groningen*	Sittard Revisited	
Belasting Doetinchem*		
Meerstad Groningen		

\* National Government (large) Project

The results of the survey are presented in the next section.

## Section 3: Research Results

### *Data results*

In this section I present the results of the conducted research among PPP projects in the Netherlands. As we can see in the table transparency is poor among Dutch PPP projects. Only fifty percent of requested documents were disclosed. This is similar to the study of Gosling. He also received just fifty percent of the requested documents (not counting NHS PPPs).

*Table: Results study on Dutch PPPs.*

PPP Project	First Phase	Second Phase	Third Phase	Total
National Project	5/10	0/4	0/1	5/15 33%
Local Project	2/2	1/4	5/7	8/13 61%
Total	7/12 58%	1/8 12%	5/8 62%	<b>13/28</b> <b>46%</b>

*(More details about the research results can be found in the appendix)*

*(Twenty-eight PPPs responded within seven weeks, three PPPs didn't respond at all.)*

The main reason for non-disclosure was the confidentiality of the requested information. This meant that the information was agreed to be confidential in character between the public and private partners or that the information could harm the financial position of the public/private party and therefore is an exception on the 'Wet Openbaarheid van Bestuur'. The governments, for example the 'Department of Verkeer en Waterstaat' answered that they called in these grounds of 'commercial confidentiality' to motivate non-disclosure. This exception ground was used in fifteen PPP projects.

If I look at the different stages of the PPPs in the negotiating phase the 'invitation to tender' document is always available and presented on the internet. Documents about the scope and outputs of a project weren't always released. Most compelling reason for this was that the project was still in the negotiation phase and those documents should stay confidential. Otherwise it might harm the financial position of the government. The scope and output specifications give the public information about the plans and how the public service will be

delivered. Disclosing this information shouldn't harm the negotiations, it's mostly basic information about the project. I think there isn't much reason to say that the release of the scoop and output specifications could harm the financial position of the state or a third party. At the end I did not get all the information from the projects in the first phase, although this differed among the projects. Compared to Gosling this is a bit strange, in his study he almost always received information about the scope and outputs of a project.

The second phase is the worst phase when we look at transparency in PPPs. After the financial close contracts and PSC are almost always kept away from the public. According to the public bodies this was agreed with the private parties and releasing the contract could harm the financial positions of the state and private partner. Only the local PPP 'Waterwijk Lelystad' wanted to give away information about the contract because they felt nothing about the project should be confidential. This result is very similar to Gosling's study. Except from NHS projects he didn't receive any information about contracts or PSC. However is the non-disclosure of these documents valid? As argued in the paper, Tim Gosling (2004) and the Institute for Public Policy (2001) agree with me that information about contracts and the PSC should be available in the second phase after financial close. The documents give important information to the public about value-for-money for instance. After financial close there isn't much reason for these documents to be sensitive. The contract is signed, so nothing can change. Opening up these documents give the public a good idea of the realization of a public service and how tax money is spend. The contracts can't be changed anymore, but public debate could improve future contract negotiations in PPP. After all the public should be informed properly about a PPP.

In the exploitation phase the Dutch PPPs score better compared to the second phase. There is however something I have to mention. In this last phase I requested mostly information from local projects while most national projects haven't proceeded this far. These local projects didn't always use the possibility to penalize the private partner. Deduction methods weren't agreed in the contract or the local government didn't have to punish the private partner. At the end local governments were very willing to give away any kind of performance material. They couldn't however give information about deductions because those deductions just weren't there. Of course some projects did use a deduction method and when this was the case these deductions were mostly kept confidential because it was negative publicity for the private partner. Talentgroep, de private consortium in PPP 'Montaigne 2005' for example,

was against making information about deductions public. An other example was the PPP 'A59'. The realization of this road was conducted in cooperation between the government and the private consortium 'Poort van Den Bosch B.V.'. The government stated that the penalty clauses in the contract had a positive effect and that there were small deductions made involving some safety issues (K. van Driel, April 2007). I requested documents about deductions and I received lots of material about costs, risks and an evaluation of the project. Specific information about the deductions wasn't disclosed though. Performance however is important information for citizens. Especially bad performance is likely to be kept secret but the public right to know outweighs the negative publicity that can affect the parties. So again the government doesn't have much ground to keep the documents confidential.

The results of the exploitation phase are also similar to the results of Gosling's study. In both studies this last phase scores better than the second one, but transparency is far from good while just around fifty percent of the documents were released. As the examples illustrate especially information about deductions is quickly kept away from the public.

Comparing the national and local governments is a bit difficult while national projects were especially in the first and second phase and local projects mostly in the last two phases. Both keep information about contracts and PSC's mostly confidential, but as we look at the total numbers local government is more transparent than national government. In Gosling's study this is confirmed. A reason for this could be that some public bodies (in this case national government), as Gosling suggests (Gosling, 2004;p.21), are more risk averse and therefore disclose less information just to do no harm to third parties. Commercial confidentiality is, as argued before, arbitrary and different public bodies contain different arbiters. In the Netherlands there are no specific guidelines that make clear which information should be disclosed, so the responsible people for deciding whether information is released have some decision freedom. Further are, for example, the 'Department of Verkeer en Waterstaat' and the 'Rijksgebouwendienst' responsible for thirteen national PPPs. When they have decided not to release the PSC or the contracts this counts for all these projects. This is just speculation though; more research could make this difference between national and local projects more clear.

***Other research results***

An interesting finding in my research is the working of the Dutch Freedom of Information Law ‘Wet Openbaarheid van Bestuur’(WOB). According to the Dutch government an information request doesn’t have to be motivated and it shouldn’t matter who’s requesting what information. It’s even so that you don’t have to mention the WOB when you make an information request, any information request to a public body is applicable to the WOB (Department of Binnenlandse Zaken en Koninkrijksrelaties, May 2007).

In practice I’ve got many phone calls from public bodies with questions about my requests. They prefer to settle the request in an informal way while a WOB request means a lot of formal procedures. This was for instance the case with PPP project ‘Detentie Rotterdam’ of the ‘Rijksgebouwendienst’. They called for some questions about my request and after I had told I needed the information for a study assignment I was able to access the information. The information was confidential in character but I received it anyway, without a formal WOB procedure by the way. In other cases (for example the project ‘renovatie ministerie van financiën’) I was told the information was confidential and a WOB request wouldn’t be useful. I accepted this answer and had a quick result. With thirteen PPPs the request was settled in an informal way. This is not a bad thing though, it doesn’t really matter how your information request is handled as long as you receive an answer. Formal procedures means bureaucracy and this is prolonging the waiting time for an answer as I argue in the next paragraph.

Thus other part of the WOB is the reaction time of the governments. They have two weeks to react and can with proper motivation add another two weeks. This delay for another two weeks was almost always the case. Reasons that were given; holidays, sickness and more of that kind of motivations. At the end most of the answers were given within four to six weeks. A small delay was about half of the time the case so I can conclude that you mustn’t count on the two weeks that a public body originally has to answer your Wob request. I received seven answers within two weeks and this was mostly because the public body contacted me and the request was settled in a less formal way. Only the PPPs ‘A59’ and ‘A2 Maastricht’ answered without any delay. So contacting a public body informal might speed up the reaction time.

The public bodies were most of the time very helpful with my requests. They send your letters/mails through to the right person or contact you to tell whom you should contact. Sometimes it’s argued that the complexity of PPPs can inhibit transparency because it’s not

clear whom to contact for information. In my study this wasn't the case at all, the requests made easily their way to the responsible body/person.<sup>i</sup>

Final comment is about the use of the internet for disclosing information to the public. As I mentioned before almost all large projects have a website and even some local projects have to. The information on these websites is mostly basic information about the project. Very helpful when you just want to know something about a certain project but real important information is mostly absent. When a student wants to do a study on such projects he needs more information to conduct a proper research, or when a journalist wants to write an important article about a PPP the information on the websites just isn't enough. The websites are there, but the information to hold public bodies to account is missing.<sup>2</sup>

## Conclusions and Recommendations

### *Conclusion*

After conducting my research I can conclude from the data that the Dutch PPP projects do have a transparency problem. Important information is often hidden from the public because of commercial confidentiality. This means my hypothesis that PPPs can threaten democratic accountability by a lack of transparency is correct.

Transparency is a critical tool for accountability but it's also an end in itself, the openness of governments is a really established collective value. This means that the government has to be subject to regular review and questioning. A transparent public organization grants access to the public, the press, interest groups, researchers, and other parties interested in the organization's activities (Koppell, 2005;p.96).

Openness should create trust between the government and the public, but when lots of material is confidential this raises questions. Why can't the public access this information? Is the government trying to hide something? Such actions could undermine trust and is dangerous for democratic accountability.

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<sup>2</sup> <sup>1</sup>It doesn't really matter whether you contact the public body by letter or mail. When you send a letter you get mostly an official confirmation it has been received. With mails you get this confirmation less, but reactions can sometimes be faster. But at the end the differences between letters and mail are small and it probably just depends on other things how fast you get an answer.

The overuse of commercial confidentiality leads to poor transparency of PPPs and poor transparency threatens accountability. The study made clear that lots of information remains confidential although there isn't much reason for its confidentiality. After financial close contracts and information about the PSC is almost never disclosed. These documents can be very relevant for the public while they give important information about the projects realization and its value-for-money. Important information is not accessible and without enough information it's very difficult for citizens to hold the government accountable for their actions. After all transparency is at the core of accountability.

### *Recommendations*

How should transparency in PPPs be settled then? Can we answer the transparency question of what information when should be disclosed? How should we deal with the problem of an overuse of commercial confidentiality? Commercial confidentiality is a problem but not an insurmountable obstacle while the answer seems to be in specific guidelines for the disclosure of information in PPPs. Dutch PPP experts confirm that there are no special guidelines for Dutch PPPs about how to disclose information towards the citizens. For PPP projects count the same rules as for traditional procured projects (Interview PPP experts; 2007). Of course in the Netherlands we are just beginning with PPPs, but Gosling's survey made clear that in the U.K. official guidelines can have a positive effect on transparency in PPPs. In Gosling's research it's established that projects of the National Health Service (NHS) are an example of 'good' transparency. The use of the NHS guideline gives an answer to the question of what information should be disclosed when and thereby also deals with the problem of an overuse of commercial confidentiality in PPPs. The NHS guidance points out which information should be available for the public and this way it eliminates the problem of the arbitrariness of commercial confidentiality. There is no room for overusing commercial confidentiality to hide important information from the public anymore.

It seems to me while the NHS guideline is seen as the standard of 'good' transparency, it would be wise for Dutch PPP projects to use this or a very similar guideline to eliminate the transparency problem. This means that central and local government should use a binding guidance that mandates which documents should be disclosed when. Its preferred information is released proactive. It should be placed on the internet as often as possible so the information is easily accessible for the public. The public bodies should try not to agree with the private partner to keep certain information as contracts and PSC's confidential. As PPPs



are becoming more widespread it's important that the actual performances of the projects can be monitored. Information about performance should be available for the public so it's clear which projects succeed and what action is taken to correct failing PPPs. A good guidance for information disclosure can establish this.

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## Appendix 1: Detailed Research Results

**Table 1: Detailed Research Results National PPPs**

National PPP	Phase	How Requested	Information Requested	Information Received	Reacted on Time	Reason no release
Kromhoutkazerne	1	Mail	OBC+ITN	OBC+ITN	Yes	
Belasting Doetinchem	1	Mail	OBC+ITN	ITN	Yes	OBC Confidential
Detentie Rotterdam	1	Mail	OBC+ITN	OBC+ITN	Yes	
IB-Groep Groningen	1	Mail	OBC+ITN	ITN	Yes	OBC Confidential
2° Maasvlakte	1	Letter	OBC+ITN	ITN	Yes	OBC Confidential
2° Coentunnel	1	Letter	OBC+ITN	ITN	After 6 weeks	OBC Confidential
Corridor PMZ	1	Letter	OBC+ITN	ITN	After 6 weeks	OBC Confidential
Zuidas Amsterdam	1	Letter	OBC+ITN	OBC+ITN	After 6 Weeks	
Zuiderzeelijn	1	Letter	OBC+ITN	OBC+ITN	After 6 weeks	
A15 Maasvlakte	1	Letter	OBC+ITN	ITN	After 6 weeks	OBC Confidential
N31	2	Letter	PSC+Contract	Nothing	After 6 weeks	OBC Confidential
HSL-Zuid Vervoer	2	Letter	PSC+Contract	Nothing	After 6 weeks	Confidential
HSL-Zuid Bouw	2	Letter	PSC+Contract	Nothing	After 6 weeks	Confidential
Renovatie Min. Financien	2	Mail	PSC+Contract	Nothing	Yes	Confidential
A59 Noord Brabant	3	Letter	Deductions	Figures, but nothing about deductions	Yes	No reason given

**Table 2: Detailed Research Results Local PPPs**

Local PPP	Phase	How Requested	Information Requested	Information Received	Supplied on Time	Reason no release
Meerstad Groningen	1	Letter	OBC+ITN	OBC+ITN	Yes	Confidential
A2 Maastricht	1	Letter	OBC+ITN	OBC+ITN	Yes	
Waterwijk Lelystad	2	Mail	Contract	Contract	Yes	
Nesselande Rotterdam	2	Mail	Contract	Nothing	Yes	Confidential
Delft Spoorzone	2	Letter	Contract	Nothing	After 5 weeks	Confidential
Marienburg Nijmegen	3	Mail	Deductions+ Figures	Figures, no deductions made	Yes	
Montaigne Lyceum	3	Mail	Deductions	Nothing	After follow up	Confidential
Vathorst Amersfoort	3	Mail	Figures	Figures	After follow up	
IJburg Amsterdam	3	Letter	Deductions+ Figures	Figures, no deductions made	After 5 weeks	
Wateringse Veld	3	Mail	Figures	Figures	Yes	
RW Den Helder	3	Mail	Deduction+ Figures	Nothing	After follow up	Confidential
Stadshart Amstelveen	3	Letter	Figures	Contract+ Figures	After follow up	
Sittard Revisited	3	Letter	Deductions+ Figures	Nothing	No	No Response
Afvalwater Den Haag	2	Mail	PSC+Contract	Nothing	No	No Response
Breda Spoorzone	2	Mail	PSC+Contract	Nothing	After 7 weeks	Confidential
Fortuna Sittard	2	Mail	PSC+Contract	Nothing	No	No Response

*OBC: Outline Business Case; Scope & Output Specifications*

*ITN: Invitation to Negotiate*

## Appendix 2: Letters for information requests

### *Letter Phase 1*

Sjoerd Swinkels  
Fazantstraat 238  
7523 EE Enschede

Tel: 06 41760187  
E-mail: [s.swinkels@student.utwente.nl](mailto:s.swinkels@student.utwente.nl)

Adres Overheidsinstantie...

Geachte heer/mevrouw,

Hierbij verzoek ik om inzage in informatie omtrent het Publiek-Private Samenwerkingsproject (PPS) .....

Ik zou graag minimaal informatie over de volgende zaken van deze bestuurlijke aangelegenheid ontvangen;

- Document met de scope en outputspecificaties van het project.
- De publicatie van de invitatie tot aanbesteding aan private partijen (invitatie voor onderhandelingen).

Meer informatie over het project is uiteraard ook welkom en voor zover nodig beroep ik mij op de Wet Openbaarheid van Bestuur.

U kunt de informatie naar bovenstaand adres sturen of mailen.  
Alvast bedankt!

Met vriendelijke groet,

Sjoerd Swinkels

## **Letter Phase 2**

Sjoerd Swinkels  
Fazantstraat 238  
7523 EE Enschede

Tel: 06 41760187  
E-mail: [s.swinkels@student.utwente.nl](mailto:s.swinkels@student.utwente.nl)

Adres Overheidsinstantie

Geachte heer/mevrouw,

Hierbij verzoek ik om inzage in informatie omtrent het Publiek-Private Samenwerkingsproject (PPS) .....

Ik zou graag minimaal informatie over de volgende zaken van deze bestuurlijke aangelegenheid ontvangen;

- Document met de volledige Public Sector Comparator (PSC).
- Minimaal basisinformatie over de kosten van het project, de betalingen aan de gecontracteerde, informatie over boetes, de lengte van het contract en informatie over de allocatie van de risico's. U kunt een kopie van het (deel/volledig) contract met de private partij sturen.

Meer informatie over het project is uiteraard ook welkom en voor zover nodig beroep ik mij op de Wet Openbaarheid van Bestuur.

U kunt de informatie naar bovenstaand adres sturen of mailen.  
Alvast bedankt!

Met vriendelijke groet,

Sjoerd Swinkels

### **Letter Phase 3**

Sjoerd Swinkels  
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E-mail: [s.swinkels@student.utwente.nl](mailto:s.swinkels@student.utwente.nl)

Adres Overheidsinstantie

Geachte heer/mevrouw,

Hierbij verzoek ik om inzage in informatie omtrent het Publiek-Private Samenwerkingsproject (PPS) .....

Ik zou graag minimaal informatie over de volgende zaken van deze bestuurlijke aangelegenheid ontvangen;

- Documentatie met informatie over de prestaties van het project (bijvoorbeeld cijfermateriaal), inclusief, maar niet gelimiteerd tot boetes die zijn opgelegd aan de private partij voor slechte prestaties.
- Waar en hoe kunnen burgers hun klachten kenbaar maken over het project aan de overheid?
- Alle informatie omtrent heronderhandelingen van het PPS contract tijdens de exploitatie fase.

Meer informatie over het project is uiteraard ook welkom en voor zover nodig beroep ik mij op de Wet Openbaarheid van Bestuur.

U kunt de informatie naar bovenstaand adres sturen of mailen.  
Alvast bedankt!

Met vriendelijke groet,

Sjoerd Swinkels

### **Appendix 3: Dutch Summary**

Voor mijn bacheloropdracht heb ik een zelfstandig (onder supervisie van een begeleider) onderzoek gedaan naar het gevaar dat Publiek-Private Samenwerking (PPS) projecten kunnen hebben voor democratische verantwoordelijkheid. Mijn begeleider (David Regézi) is Canadees van geboorte en daarom is de opdracht in het Engels geschreven. Vandaar deze korte Nederlandse samenvatting van de opdracht.

In PPS projecten werken publieke en private partijen met elkaar samen om een publieke service te realiseren. Dit betekent dat een overheidsinstantie een contract afsluit met een private onderneming om binnen bepaalde criteria een project te realiseren. Binnen dit project krijgt de private onderneming meer verantwoordelijkheden en worden de kosten en risico's verdeeld tussen de betrokken partijen. Dit betekent dat er een verandering ontstaat ten opzichte van de traditionele manier van werken. Omdat het gaat om grote financiële belangen moeten de burgers goed geïnformeerd worden over PPS projecten. Zij moeten de overheid verantwoordelijk kunnen houden voor wat er met belasting geld gedaan wordt.

Eén van de componenten van democratische verantwoordelijkheid is transparantie. Burgers moeten voldoende informatie kunnen krijgen over overheidshandelen, want zonder informatie is het onmogelijk om iemand verantwoordelijk te kunnen stellen voor zijn daden.

PPS projecten moeten dus voldoende informatie aan burgers verschaffen om transparant te zijn. Dit kan gedaan worden via internet of de informatie kan worden geleverd indien daar om gevraagd wordt.

Het gevaar binnen PPS dat voldoende transparantie kan verhinderen is vertrouwelijke informatie. Deze informatie blijft vertrouwelijk omdat het commerciële belangen van betrokken partijen kan schaden. Dit is vooral in de private sector een belangrijk gegeven, omdat hier commerciële belangen vaak prefereren aan andere zaken. De grotere verantwoordelijkheid die de private partijen hebben in PPS betekent ook dat er meer ruimte is voor informatie om vertrouwelijk te zijn. Het werkelijke probleem is dat deze 'ruimte' teveel wordt gebruikt, dus wordt misbruikt. Informatie blijft vertrouwelijk terwijl hier eigenlijk geen reden voor is omdat het gevaar dreigt dat het misschien iemand zou kunnen schaden. De reden waardoor dit misbruik mogelijk wordt gemaakt is de onduidelijkheid over welke



informatie nu werkelijk vertrouwelijk moet zijn. Dit is in Nederland nergens concreet vastgelegd, er zijn geen speciale richtlijnen bijvoorbeeld. Voor elk document wordt opnieuw beslist of het vrijgegeven kan worden en deze beleidsvrijheid geeft ruimte om vertrouwelijke informatie te misbruiken.

Natuurlijk is het logisch dat sommige informatie vertrouwelijk is. De burgers hoeven niet alle documenten in te zien om de overheid verantwoordelijk te kunnen houden voor zijn daden. In de onderhandelingsfase is informatie bijvoorbeeld erg gevoelig omdat nog niets vast ligt. Na deze fase zou echter de meeste informatie wel vrijgegeven moeten worden. Ex-post informatie is niet meer zo gevoelig en na de onderhandelingsfase zou informatie over de contracten en de Public Sector Comparator (PSC) vrijgegeven moeten worden. Deze documenten geven duidelijk weer wat met het project bereikt kan worden en hoe 'value-for-money' gerealiseerd wordt. Ook informatie over de prestaties van een project zijn belangrijk voor burgers. Ze kunnen dan zien of een project goed draait of dat er misschien fouten zijn gemaakt en er verbeteringen nodig zijn. Prestaties en 'value-for-money' calculaties zijn een belangrijke indicator voor burgers om de overheid verantwoordelijk te houden. Dit wordt ook door Tim Gosling (2004) en de IPPS (2001) beweerd.

Via de 'Wet Openbaarheid van Bestuur' (Wob) kunnen burgers informatie over overheidszaken als PPS opvragen. In beginsel is de overheid verplicht de informatie te verstrekken maar er zijn enkele uitzonderingsgronden. Informatie die de financiële belangen van de staat of derden in gevaar brengt hoeft niet te worden verstrekt. Vertrouwelijke informatie is dus een uitzonderingsgrond van de Wob. Ook hier geldt dat er niet concreet wordt gemeld welke documenten vertrouwelijk zijn, de Wob geeft dus ruimte voor de beleidsvrijheid die ik eerder aanhaalde.

In het buitenland zijn al enkele onderzoeken gedaan naar misbruik van vertrouwelijke informatie in PPS om documenten achter te houden voor het publiek.

Voor het onderzoek van Tim Gosling is zeer interessant. Hij bestudeerde de transparantie van PPS projecten in Engeland door middel van het opvragen van documenten die aan de burgers vrijgegeven zouden moeten worden. De projecten werden in drie fases verdeeld naar mate ze al verder gevorderd waren. De onderhandelingsfase, de fase na de contract ondertekening en de exploitatie fase. Slechts 50% van de opgevraagde documenten werden geleverd. Alleen de projecten van de National Health Service (NHS) leverde bijna alle

informatie en kan gezien worden als een voorbeeld voor ‘goede’ transparantie van een PPS. De reden voor dit zouden de specifieke richtlijnen voor het leveren van informatie zijn die binnen de NHS gehanteerd worden. Deze richtlijn is bindend en geeft precies aan wanneer een document vrijgegeven moet worden. Hierin is deze richtlijn superieur aan andere richtlijnen.

Onderzoek van onder andere Mohr, Roberts en Hood leverde soortgelijk materiaal op dat transparantie binnen PPS projecten nog te wensen over laat. Informatie wordt te snel als vertrouwelijk aangemerkt ook al is daar geen reden toe. Het wordt echter te makkelijk afgesproken tussen de partijen om informatie binnenskamers te houden zodat er zeker niemand nadeel van ondervindt.

Ik heb hierom zelf een onderzoek onder Nederlandse PPS projecten verricht om te zien of dit probleem zich ook in Nederland voordoet. Ik heb de methodologie van Tim Gosling's onderzoek zo goed mogelijk gekopieerd voor mijn eigen onderzoek. Voor het onderzoek heb ik dertig PPS projecten benaderd via brieven en email en ze gevraagd om bepaalde documenten aan mij te geven. De projecten zijn onderverdeeld in de drie eerder genoemde fasen. Verder zijn er nationale en lokale PPS projecten gebruikt.

De volgende documenten heb ik opgevraagd:

- Fase 1: Scoop en Output specificaties + Invitatie tot onderhandeling
- Fase 2: PSC + Belangrijkste elementen uit het contract
- Fase 3: Informatie over penalty's en cijfers over de prestaties

Ik kreeg de volgende resultaten:

PPS Project	Eerste Fase	Tweede Fase	Derde Fase	Totaal
Nationaal Project	5/10	0/4	0/1	5/15 33%
Lokaal Project	2/2	1/4	5/7	8/13 61%
<b>Totaal</b>	<b>7/12</b> 58%	<b>1/8</b> 12%	<b>5/8</b> 62%	<b>13/28</b> 46%

Ook in Nederland wordt dus ongeveer vijftig procent van de gevraagde informatie verstrekt. De transparantie van de PPS projecten in Nederland laat dus net als in andere landen duidelijk te wensen over. Informatie was in bijna alle gevallen vertrouwelijk indien die niet gegeven werd. Vooral de PSC en contracten worden zelden publiek gemaakt, ook niet na de onderhandelingsfase als de informatie zijn gevoeligheid grotendeels heeft verloren.

De resultaten van mijn onderzoek leveren het bewijs dat democratische verantwoordelijkheid kan worden aangetast door PPS vanwege een gebrek aan transparantie. Ik zou daarom de Nederlandse overheid willen aanraden om specifieke richtlijnen voor het uitgeven van belangrijke informatie te gaan gebruiken. De richtlijn van de NHS bijvoorbeeld of één die er veel op lijkt. Deze richtlijnen kunnen er voor zorgen dat duidelijk is welke informatie vertrouwelijk is en welke informatie toegankelijk moet zijn voor het publiek. Op deze manier wordt transparantie binnen PPS gewaarborgd en zijn er geen obstakels voor de burgers om de overheid verantwoordelijk te houden voor zijn daden.

## **Appendix 4: Reflection**

When I started this bachelor assignment I set three main objectives for myself. Doing a scientific research, learn more about writing a good paper and improve my English.

So first I wanted to gain some experience in doing a scientific research on my own (with a tutor of course). This could be a case study, a survey or something similar, didn't really matter to me. During the assignment I started with a literature study to learn about the important concept that could be applicable for my assignment. As this reading literature continued my tutor had an important role in steering the assignment in the right direction.

I think this is really important because otherwise you easily end up in a web of theories and you want to use all of them. This is absolutely impossible so you've to tie up the assignment to the core issues you want to point out. Three months isn't much time.

I experienced the literature part as pleasant. Of course you spend a lot of time reading, but after you get a clear idea of what you want to research it's nice to feel you get to understand the concepts better.

After the literature part I rolled into doing a survey among Dutch PPPs. I send letters/mails to around thirty responsible public body. My tutor advised me to send some test letters. While I had a tight time-schedule I send all the letters out at once. This resulted in some phone calls from the governments with questions about them. I think a testing phase in a research is an important thing to do, you can adjust some things that aren't clear enough. The main problem about doing a survey within one and a half month is the time-schedule. When something goes wrong there isn't much time left to adjust things. I think main learning point about doing a study, except from testing, is to make sure there is enough time.

Of course all of it is related to the methodology of the research. This is one of the most important features of a research. In my case I replicated an existing study so my methodology was handed to me from someone else (Gosling 2004). This seemed to be good way to start a research but of course most studies have their differences and it's important to 'translate' the existing methodology into one that fits your own research. Again more time could improve things while you have more time to collect background information. For my research I had to search for PPP projects. Some PPPs I contacted for example appeared to be cancelled, more time to gain that kind of information in advance would improve the study I think. Another example is that not all PPPs used the same documents during the procurement. More

information in advance could have helped me with requesting documents from different projects.

At the end everything went rather well with my research. There were some phone calls with questions and a little delay but I received most of the results without much problems. I thought it was an interesting experience to conduct such study. You learn a lot from it. Contacting people for your research for example, conducting an interview, and in this case I got to know much more about how certain things work in the government. The ‘Wet Openbaarheid van Bestuur’ (Wob) for example. Also the difference between scientists and politicians made its way through. Scientists have definitely more criticism, and not all politicians like you interfering with their duties. The two just have different visions about concepts like transparency and accountability.

Second objective was writing a good paper. Of course during my study of ‘Bestuurskunde’ I’ve written papers. The big difference with this one is the process you go through. The bachelor assignment contains three months and your work is evaluating further and further as time continues. Your tutor gives a lot of comments along the way, so every time you write something there is kind of an evaluation. From these evaluations I learned a lot. It started with comments about my ideas to push me in the right direction. Later on I received more and more comments about structure and style. I experienced these comments as very useful. I never wrote a paper this large and structuring it good isn’t as easy as it seems. My tutor gave notes how to give your arguments a nice flow, how to start paragraphs, how to write a proper introduction, and so on. I really learned a lot of these comments. Of course meeting each other once in a while is helping all of this. You have the possibility to discuss things and that way it’s easier to understand certain comments and ask some questions. These meetings were really nice and a way to improve my English speaking skills.

This brings me to my third and last objective, improving my English. During my study I’ve read a lot of English literature so reading English material wasn’t going to be a problem. Main reason for me to do the bachelor assignment in English was to improve my English through writing in that language. I’ve never wrote work in English before so I didn’t really know what to expect. From the beginning I didn’t have much problems with it. It went really good, I even started to think in English when I was thinking about the assignment. My tutor stated he understood all of my work so there was no problem with my writing. Of course I made mistakes and I received certain specific comments to improve it. Main problem is the

restricted vocabulary. It's easy to use the same words over and over again because you know they're correct. This is though, not really pleasant when you have to read the paper. As the assignment continued this improved of course. Just being busy with the English helps a lot. It's difficult for me to know whether I really improved my English but I think I did. My tutor is the one who read all of the stuff so he will know more about my improvements.

After all I enjoyed doing the assignment. Doing a research on your own is real nice to do. You can work out the ideas you get and it's great to get into all the important concepts and getting to understand them. It really feels like YOUR assignment and it's just great when you feel you've made some real progress. Of course this is all under supervision of a tutor and without him it's almost impossible to conduct such an assignment successfully. So thank you David!

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