

Cordell Perspectives **How Transparency is Disinfecting South Korea**

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On May 6, I only received a single “emergency alert” on my cellphone regarding COVID-19. It was to notify me that South Korea was relaxing its social distancing measures that had been in place for the past forty-five days. In fact, my cellphone that had once been busily alerting me several times a day about new COVID-19 cases in my neighborhood had been relatively quiet for the past two weeks. For seven days, South Korea had kept its number of new COVID-19 cases to a single digit, and even those cases were mostly, if not all, from abroad. And, on May 5, Korean professional baseball started its new season to the envy of other countries, albeit without any live audiences.¹ Schools reopened in phases throughout the months of May and June, and public facilities such as museums and libraries are scheduled to reopen as well. This is an achievement for South Korea which, on February 29, had over 900 new COVID-19 cases and once had the largest number of confirmed cases outside of China.

What is remarkable is that South Korea has managed to control COVID-19 without imposing a widescale shutdown or entry restrictions. With the exception of schools and certain public facilities, the country has largely remained open both internally and to the rest of the world. Living in Seoul, I have been able to visit my hairdresser (of course while wearing a mask and after getting my temperature checked). Restaurants, bars, and art galleries have remained open as well. Even Daegu, the city that was once the epicenter of South Korea’s COVID-19 infections centered around a controversial religious group, was never under lockdown. Instead, South Korea’s COVID-19 control strategy consists of highly organized massive testing and contact-tracing leading to effective isolation of people who have been infected as well as those who have been in contact with the infected.²

A key feature of the South Korean model is aggressive contact tracing by making anonymized information about a patient’s movement prior to diagnosis public via official government websites. This information helps those who have crossed paths with the infected person to self-identify and seek testing and other protective measures. While South Korea has one of the most protective privacy laws, Article 58(1)3 of the “Personal Information Protection Act” states the exception that personal information can be processed when “it is urgently necessary for . . . public health.”³ And, the “Infectious Disease Control and Prevention Act” Article 34-2 requires disclosure of information such as “movement paths, transportation means, medical treatment institutions, and contacts of patients of the infectious disease” in order to prevent spreading of the disease during infectious disease emergency.⁴ While such disclosure of information has

¹ Tyler Kepner, *Baseball From Korea: A Filling Breakfast for Bereft Fans*, N.Y. TIMES (May 7, 2020), <https://www.nytimes.com/2020/05/07/sports/coronavirus-korea-baseball-opening.html>.

² Max Fisher and Choe Sang-Hun, *How South Korea Flattened the Curve*, N.Y. TIMES (Apr. 10, 2020), <https://www.nytimes.com/2020/03/23/world/asia/coronavirus-south-korea-flatten-curve.html>.

³ Personal Information Protection Act, Art. 58(1)3 (2011).

⁴ Infectious Disease Control and Prevention Act, Art. 34-2 (1954).

raised privacy concerns,⁵ it appears that South Korea has learned the importance of transparency in public health crises from its failure to control the 2015 Middle East Respiratory Syndrome (MERS) outbreak.

On May 15, 2015, a sixty-eight-year-old South Korean businessman who had recently traveled to the Arabian Peninsula was admitted to the hospital with pneumonia. He was later diagnosed with Middle Eastern Respiratory Syndrome, or MERS, meaning that he had been infected with the MERS virus, another type of coronavirus – leading to an outbreak of 186 infections and 38 deaths. This was the largest MERS outbreak outside Saudi Arabia. Among the reasons behind the failure to control the spread of MERS in South Korea was the lack of transparency. The central government withheld most of the information regarding MERS patients, leaving the hospitals and local governments scrambling to identify the patients and potential contacts. Lack of information exacerbated public fear and also led to ineffective contact tracing. Therefore, following the MERS outbreak, the aforementioned Infectious Disease Control and Prevention Act was amended to include Article 34-2, and the South Korean public appears to appreciate the value of information transparency during public health emergencies.

Transparency, however, carries inherent tension between openness and necessary protection in that there is a risk that too much disclosure can cause harm to privacy. In fact, on March 9, South Korea's National Human Rights Commission, the country's human rights watchdog agency, released a statement voicing concerns over privacy violation of COVID-19 patients and recommended that any potential identifying information not be made public.⁶ More recently, a new spike since May 6 in infections has centered around Itaewon, a popular nightlife neighborhood in Seoul. This has raised concerns about social stigmatization as several clubs in the neighborhood cater to the LGBTQ community. In response, the Korea Centers for Disease Prevention and Prevention (KCDC) has been continuously updating its guideline and practices regarding the release of COVID-19 patient information to better protect privacy and has initiated anonymized testing in response to the controversy regarding the Itaewon cluster.

Such measures demonstrate the importance of transparency not only in information disclosure but also in the process of decision-making. From its earliest responses, the South Korean government has been careful to acknowledge the gravity and uncertainty of the COVID-19 pandemic. Experts such as the Director of KCDC, not politicians, have been delivering information and recommendations, and the government's decision-making process regarding COVID-19 responses has been transparent and consistent. This has led the public to trust the government's COVID-19 strategy and also to trust and respect other fellow citizens throughout the process.

Of course, the COVID-19 situation in Korea, as it is in other parts of the world, is not over yet. While there have only been 11 COVID-19-related fatalities during the month of June, Korea is

⁵ Liza Lin and Timothy W. Martin, *How Coronavirus is Eroding Privacy*, WALL STREET JOURNAL (Apr. 15, 2020), <https://www.wsj.com/articles/coronavirus-paves-way-for-new-age-of-digital-surveillance-11586963028>.

⁶ *NHRCK Chairperson's Statement on Excessive Disclosure of Private Information of COVID-19 Patients*, NATIONAL HUMAN RIGHTS COMMISSION (Mar. 9, 2020), <https://www.humanrights.go.kr/site/program/board/basicboard/view?boardtypeid=24&boardid=7605121&menuid=01004002001>.

still experiencing a small but unwavering number of daily infections that have required the government to be agile with new policy measures while embracing the value of transparency during these uncertain times. One notable measure is the new QR code system where visitors to high-risk facilities such as nightclubs, karaoke bars, and gyms are required to generate a one-time, personalized QR code on their cellphone and scan upon entering the facility.⁷ To relieve privacy concerns, the government has been clear from the beginning that personal information will be kept by the Social Security Information Services for only 4 weeks to enable contact-tracking if necessary and then automatically deleted. In practice, the trust that has been built over the past 4 months has led to the smooth implementation of this system. Additionally, when a false positive test of a high school student who visited one of the country's largest amusement park became an issue, the KCDC was completely transparent about how and why the false positive result might have occurred and experts on medical diagnostics have been at the forefront to educate the public rather than dumbing down or hiding mistakes.

Former Supreme Court Justice Louis Brandeis once wrote that “[s]unlight is . . . the best of disinfectants.”⁸ Acknowledging the uncertainty inherent in infectious disease crises, South Korea has chosen to embrace transparency as its core value and strategy. And it appears to be working.

⁷ Daewoung Kim and Soohyun Mah, South Korea mandates QR codes to log customers after nightclub coronavirus outbreak, REUTERS (June 2, 2020), <https://www.reuters.com/article/us-health-coronavirus-southkorea-qr-code/south-korea-mandates-qr-codes-to-log-customers-after-nightclub-coronavirus-outbreak-idUSKBN23907E>

⁸ Louis D. Brandeis, *What Publicity can Do*, 10, HARPER'S WEEKLY (Dec. 20, 1916).