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**THE RIGHT TO ACCESS TO INFORMATION IN THE AMERICAS  
Inter-American Standards and Comparison of Legal Frameworks**

Office of the Special Rapporteur for Freedom of Expression  
Inter-American Commission on Human Rights

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**THE RIGHT TO ACCESS TO INFORMATION IN THE AMERICAS**  
**Inter-American Standards and Comparison of Legal Frameworks**

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## TABLE OF ACRONYMS AND REFERENCES

IACHR:	Inter-American Commission on Human Rights
American Convention:	American Convention on Human Rights
Inter-American Court:	Inter-American Court of Human rights
Declaration of Principles:	Declaration of Principles on Freedom of Expression
FOIA:	Freedom of Information Act
IFAI:	Federal Institute for Access to Public Information
LAIP:	Law on Access to Public Information
LFTAIPG:	Federal Transparency and Access to Governmental Public Information Act
OAS:	Organization of American States
UN:	United Nations
OSCE:	Organization for Security and Co-operation in Europe
Office of the Special Rapporteur:	Office of the Special Rapporteur for Freedom of Expression

## THE RIGHT TO ACCESS TO PUBLIC INFORMATION IN THE AMERICAS Inter-American Standards and Comparison of Legal Frameworks

### A. Introduction

1. Access to information is essential for building citizenship. Using this tool, in recent decades many societies in the hemisphere have consolidated democratic systems that are increasingly well-established and robust, thanks to their citizens' active participation in matters of public interest.

2. This citizen activism is precisely one of the ideals underlying the American Convention on Human Rights and the Inter-American Democratic Charter. Access to information is a tool that fits perfectly with what is expected of members of a democratic society. Having access to public information makes it possible to protect rights and prevent abuses by the State, and to struggle against such ills as corruption and authoritarianism.

3. Access to information is also a particularly useful tool for the informed exercise of other rights, such as political or social and economic rights. This is especially relevant when it comes to the protection of marginalized or excluded segments of society that do not always have systematic, reliable ways of acquiring information on the scope of their rights and how to exercise them.

4. An active citizenry that demands information must have the backing of a democratic government structure. Practices typical to authoritarian systems —such as keeping State information secret as a general rule and making public the information on individuals— go against the inter-American ideal of promoting and strengthening democratic societies and States, where the general rule is just the opposite: disclosure of State acts and privacy of information belonging to individuals.

5. Given the importance of the right of access to public information, the OAS General Assembly has addressed the subject a number of times. It has given the Office of the Special Rapporteur for Freedom of Expression a mandate to closely follow the issue and has urged the Member States to adopt the Office of the Special Rapporteur's recommendations. In 2003, in its Resolution 1932 (XXXIII-O/03)<sup>2</sup>—reiterated in 2004 in Resolution 2057 (XXXIV-O/04)<sup>3</sup> and in 2005 in Resolution 2121 (XXXV-O/05)<sup>4</sup>—the General Assembly urged the Office of the Special Rapporteur to continue preparing a chapter in its annual reports on the situation of access to public information in the region. In 2006,

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<sup>2</sup> OAS. General Assembly. AG/RES. 1932 (XXXIII-O/03). Access to Public Information: Strengthening Democracy. June 10, 2003. Available at: [http://www.oas.org/juridico/english/ga03/agres\\_1932.htm](http://www.oas.org/juridico/english/ga03/agres_1932.htm)

<sup>3</sup> OAS. General Assembly. AG/RES. 2057 (XXXIV-O/04). Access to Public Information: Strengthening Democracy. June 8, 2004. Available at: [http://www.oas.org/dil/AG-RES\\_2057\\_XXXIV-O-04\\_eng.pdf](http://www.oas.org/dil/AG-RES_2057_XXXIV-O-04_eng.pdf)

<sup>4</sup> OAS. General Assembly. AG/RES. 2121 (XXXV-O/05). Access to Public Information: Strengthening Democracy. June 7, 2005. Available at: [http://www.oas.org/dil/AG-RES\\_2121\\_XXXV-O-05\\_eng.pdf](http://www.oas.org/dil/AG-RES_2121_XXXV-O-05_eng.pdf)

through Resolution 2252 (XXXVI-O/06),<sup>5</sup> the Office of the Special Rapporteur was instructed, among other things, to advise the OAS Member States that request support in drafting legislation and mechanisms on access to information.<sup>6</sup>

6. In 2007, the General Assembly approved Resolution 2288 (XXXVII-O/07),<sup>7</sup> which underscored the importance of the right of access to public information, took note of the reports of the Office of the Special Rapporteur on the situation of the right of access to information in the region, encouraged the States to adjust their laws so as to guarantee this right, and instructed the Office of the Special Rapporteur to advise the Member States in this area.<sup>8</sup> In 2008, the OAS General Assembly approved Resolution 2418 (XXXVIII-O/08).<sup>9</sup> On the same subject and in 2009, Resolution 2514 (XXXIX-O/09)<sup>10</sup> of the OAS General Assembly reaffirmed the importance of the right of access to public information and instructed the Department of International Law to draft, in cooperation with the Office of

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<sup>5</sup> OAS. General Assembly. AG/RES. 2252 (XXXVI-O/06). Access to Public Information: Strengthening Democracy. June 6, 2006. *See also*, OAS. General Assembly. AG/RES. 2121 (XXXV-O/05). Access to Public Information: Strengthening Democracy. June 7, 2005. Available at: [http://www.oas.org/dil/AG-RES\\_2121\\_XXXV-O-05\\_eng.pdf](http://www.oas.org/dil/AG-RES_2121_XXXV-O-05_eng.pdf)

<sup>6</sup> The IACHR was also asked to do a study on the various ways to ensure that everyone has the right to seek, receive, and impart public information based on the right to freedom of expression. Following up on that resolution, in August of 2007 the Office of the Special Rapporteur published the "Special Study on the Right of Access to Information." IACHR. Special Study on the Right of Access to Information (2007). Available (only in Spanish) at: <http://www.cidh.oas.org/relatoria/section/Estudio%20Especial%20sobre%20el%20derecho%20de%20Acceso%20a%20la%20Informacion.pdf>

<sup>7</sup> OAS. General Assembly. AG/RES. 2288 (XXXVII-O/07). Access to Public Information: Strengthening Democracy. June 5, 2007. Available at: [http://www.oas.org/dil/AG-RES\\_2288\\_XXXVII-O-07\\_eng.pdf](http://www.oas.org/dil/AG-RES_2288_XXXVII-O-07_eng.pdf)

<sup>8</sup> The Resolution also asked various bodies within the OAS, including the Office of the Special Rapporteur, to prepare a basic document on best practices and the development of common approaches or guidelines for increasing access to public information. This document, prepared in conjunction with the Inter-American Juridical Committee, the Department of International Legal Affairs, and the Department for State Modernization and Good Governance, along with input from the delegations of the OAS Member States and civil society organizations, was approved in April 2008 by the Committee on Juridical and Political Affairs. OAS. Permanent Council and Committee on Juridical and Political Affairs. OEA/Ser.G. CP/CAJP-2599/08. Recommendations on Access to Information. April 21, 2008. Available at: [http://www.oas.org/dil/CP-CAJP\\_2599-08\\_eng.pdf](http://www.oas.org/dil/CP-CAJP_2599-08_eng.pdf)

<sup>9</sup> OAS. General Assembly. AG/RES. 2418 (XXXVIII-O/08). Access to Public Information: Strengthening Democracy. June 3, 2008. Available at: <http://www.oas.org/dil/AGRES.2418.doc>. This resolution emphasized the importance of the right of access to public information, encouraged the States to adjust their laws to the standards in this area, and instructed the Office of the Special Rapporteur to provide guidance to the States on the subject and to continue to include a chapter on the situation regarding access to public information in the region as part of its annual report.

<sup>10</sup> OAS. General Assembly. AG/RES. 2514 (XXXIX-O/09). Acceso a la Información Pública: Fortalecimiento de la Democracia. June 4, 2009. Available at: [http://www.oas.org/dil/AG-RES\\_2514-2009\\_eng.pdf](http://www.oas.org/dil/AG-RES_2514-2009_eng.pdf). This resolution recognized that full respect for freedom of information, access to public information, and the free dissemination of ideas strengthens democracy and contributes to a climate of tolerance of all views, a culture of peace and nonviolence, and stronger democratic governance. The General Assembly also instructed the Office of the Special Rapporteur to support the OAS Member States in designing, executing, and evaluating their regulations and policies on access to public information, and to continue to include in its annual report a chapter on the situation of access to public information in the region.



the Special Rapporteur, the Inter-American Juridical Committee, and the Department for State Modernization and Good Governance, and with the cooperation of the Member States and civil society, a model law on access to public information and a guide for its implementation, in keeping with international standards in this field. To carry out this mandate, a group of experts was formed, which included the Office of the Special Rapporteur. The group met three times over the course of a year to discuss, edit, and finalize the documents. The final versions of the two instruments were approved by the group of experts in March 2010 and presented to the Permanent Council's Committee on Juridical and Political Affairs in April 2010.<sup>11</sup> In May 2010, the Permanent Council presented a resolution and the text of the Model Law to the General Assembly, which in June 2010 issued Resolution AG/RES 2607 (XL-O/10).<sup>12</sup> That resolution approved the text of the Model Law<sup>13</sup> and reaffirmed the importance of the Office of the Special Rapporteur's annual reports. In June 2011, the General Assembly approved resolution 2661 (XLI-O/11)<sup>14</sup> which, among other matters, entrusts the IACHR Office of the Special Rapporteur for Freedom of Expression with continuing to include a report in the IACHR annual report on the situation or state of access to public information in the region and its effect on the exercise of the right to freedom of expression.

7. The aforementioned reports of the Office of the Special Rapporteur, which respond to General Assembly mandates, have focused on setting inter-American legal standards on access to information, systematizing Inter-American doctrine and jurisprudence in this area.<sup>15</sup>

8. In this follow-up report, the Office of the Special Rapporteur lays out the most important aspects of the laws in some of the Member States in which access laws have been approved or legal frameworks for access are reflected in administrative provisions of a general nature. Following these criteria, this report presents an overview of the normative framework surrounding the right to access to information provided by specialized laws on the subject in Antigua and Barbuda, Argentina, Canada, Chile, Colombia, Ecuador, El Salvador, the United States, Guatemala, Jamaica, Mexico, Nicaragua,

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<sup>11</sup> OAS. Permanent Council and Committee on Juridical and Political Affairs. OEA/Ser.G. CP/CAJP-2840/10 Corr.1. "Model Inter-American Law on Access to Information." April 29, 2010. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf)

<sup>12</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10). Model Inter-American Law on Access to Public Information. June 8, 2010. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf)

<sup>13</sup> The Model Law and its Implementation Guide are available at: [http://www.oas.org/DIL/access\\_to\\_information\\_model\\_law.htm](http://www.oas.org/DIL/access_to_information_model_law.htm)

<sup>14</sup> OAS. General Assembly. AG/RES. 2661 (XLI-O/11). Access to Public Information and Protection of Personal Data. June 7, 2011. Available at: [http://www.oas.org/dil/AG-RES\\_2661-XLI-O-11\\_eng.pdf](http://www.oas.org/dil/AG-RES_2661-XLI-O-11_eng.pdf)

<sup>15</sup> An updated summary of the inter-American legal framework as regards the right to access to public information was published recently by the Office of the Special Rapporteur. See, Office of the Special Rapporteur for Freedom of Expression. "The Inter-American Legal Framework regarding the Right to Access to Information." December 30, 2009. Document CIDH/RELE/INF. 1/09. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>

Panama, Peru, the Dominican Republic, Trinidad and Tobago, and Uruguay\*. To complete this report, the general normative frameworks regarding access to information were taken as reference, but not laws regarding other subjects, or more specific regulations. In the case of federal states such as Mexico, Argentina, the United States, and Canada, the report examines only the legal framework applicable at the federal level. In a second update report, the Office of the Special Rapporteur will include other States that have adopted structural reforms in this area more recently, and will follow up on the practical implementation of existing laws. Finally, the Special Rapporteurship notes that this report does not examine the General Law on Access to Public Information of Brazil, given that it was recently passed on November 18, 2011, by President Dilma Rousseff<sup>16</sup>. Nevertheless, reference to this law and its most important features has been included in Chapter II of the current 2011 Annual Report.

9. In this regard, it is important to clarify that this report is limited to describing the content of the laws in the aforementioned States. The Office of the Special Rapporteur recognizes that putting these laws into practice requires systematic implementation policies, and that in many cases some aspects of these laws are not implemented efficiently, properly, or adequately. In some cases, for example, the exceptions have been interpreted particularly broadly, or the administrative or judicial remedies do not operate as quickly as is needed to properly guarantee this right. However, before doing a study on appropriate implementation, it seems necessary to become familiar with each State's legal framework. In future reports, the Office of the Special Rapporteur will concentrate on implementation matters that require greater attention.

10. In some States such as Mexico and Chile, the active and critical work of enforcement agencies such as the Federal Institute for Access to Information and Data Protection (IFAI) or the Council for Transparency, respectively, have given vitality and meaning to the provisions of the respective laws, and have brought the practices of State agencies in line with the highest international standards. A study of these institutions' case law would provide an important way to learn about best practices in this area. This subject will certainly be included in the implementation reports the Office of the Special Rapporteur plans to do in the future.

11. The structure of this report has been organized so as to summarize the most important standards in the area of access to information and then briefly describe the legal framework in the various States that have been studied.

12. The Office of the Special Rapporteur hopes this report will help the States and civil society become familiar with the various rules and principles, recognize best legislative practices, and adjust the existing legal frameworks to meet the highest

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\*[Note regarding the version in English] The constitutional, legal, jurisprudential, and regulatory references presented in this report regarding Argentina, Canada, Chile, Colombia, Ecuador, El Salvador, Mexico, Nicaragua, Panama, Peru, the Dominican Republic, and Uruguay correspond to unofficial translations carried out by the Office of the Special Rapporteur.

<sup>16</sup> Republic of Brazil. Office of the President of the Republic. Law No. 12.527. November 18, 2011. *Ley General de Acceso a la Información Pública*. Available at: [http://www.planalto.gov.br/CCIVIL\\_03/ Ato2011-2014/2011/Lei/L12527.htm](http://www.planalto.gov.br/CCIVIL_03/ Ato2011-2014/2011/Lei/L12527.htm)

standards in this field. It also hopes the document will serve to advance the best laws in those States that have yet to approve legal frameworks to defend the right of access to information.

## **B. Guiding Principles of the Right of Access to Information**

### **1. Principle of Maximum Disclosure**

13. The principle of maximum disclosure has been recognized in the inter-American system as a guiding principle of the right to seek, receive, and impart information, contained in Article 13 of the American Convention. Along these lines, the Inter-American Court has established in its case law that “in a democratic society, it is essential that the State authorities are governed by the principle of maximum disclosure”<sup>17</sup>; accordingly, “any information in the State's control is presumed to be public and accessible, subject to a limited regime of exceptions.”<sup>18</sup> Along the same lines, the IACHR has explained that, based on Article 13 of the American Convention, the right of access to information must be guided by the principle of maximum disclosure.<sup>19</sup> In addition, operative paragraph 1 of the Inter-American Juridical Committee's Resolution CJI/RES.147 (LXXIII-O/08) (“Principles on the Right of Access to Information”) has established that “[i]n principle, all information is accessible. Access to information is a fundamental human right which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions.”<sup>20</sup>

14. The Model Inter-American Law on Access to Information adopted by the OAS General Assembly builds on this principle when it establishes “a broad right of access to information, in possession, custody or control of any public authority.”<sup>21</sup> Specifically, the law is based on “the principle of maximum disclosure, so that all information held by public bodies is complete, timely and accessible, subject to a clear and narrow regime of exceptions set out in law that are legitimate and strictly necessary in a democratic society.”<sup>22</sup>

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<sup>17</sup> I/A Court H.R. *Case of Claude-Reyes et al. Merits, Reparations, and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 92. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_151\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf)

<sup>18</sup> I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 230. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_219\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_ing.pdf)

<sup>19</sup> IACHR. Arguments before the Inter-American Court of Human Rights in the *Case of Claude-Reyes et al.* Transcribed in: I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 58(c).

<sup>20</sup> Inter-American Juridical Committee. Resolution 147 of the 73rd regular period of sessions. Principles on the Right of Access to Information. August 7, 2008. Principle 1. Available at: [https://www.oas.org/dil/CJI-RES\\_147\\_LXXIII-O-08\\_eng.pdf](https://www.oas.org/dil/CJI-RES_147_LXXIII-O-08_eng.pdf)

<sup>21</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Article 2. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf)

<sup>22</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Article 2. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf)

15. The principle of maximum disclosure calls for a legal regime in which transparency and the right of access to information are the general rule, subject only to strict and limited exceptions. The following consequences are derived from this principle: (a) the right of access to information must be subject to a limited regime of exceptions, and these exceptions must be interpreted restrictively, in such a way that favors the right of access to information; (b) grounds must be given for decisions to deny information, and the State has the burden to prove that the information being requested may not be released; and (c) in the event of a doubt or legal vacuum, the right of access to information must take priority.

16. As is explained below, most of the various legal frameworks that were studied in one way or another include the principle of maximum disclosure (*máxima divulgación*). The legal systems of Chile, Guatemala, Mexico, and El Salvador, in particular, specifically recognize this principle, which in some cases is called the principle of maximum transparency (*máxima publicidad*). Moreover, Chile's Law on Transparency of Public Functions and Access to State Administration Information incorporates the principle of maximum disclosure, by which "State Administration entities should provide information in the broadest terms possible, excluding only what is subject to constitutional or statutory exceptions."<sup>23</sup>

17. Likewise, Guatemala's Law on Access to Public Information (LAIP) provides that one of its principal objectives is to "establish as mandatory the principle of maximum disclosure and transparency in public administration and for those subject to this law."<sup>24</sup>

18. For its part, Mexico's Federal Transparency and Access to Governmental Public Information Act (LFTAIPG)<sup>25</sup> also establishes that the right of access to public information must be interpreted in accordance with the international treaties it has subscribed in this area, which ensures that the principle is in effect. Article 6 of the law states:

*The interpretation of this Act and the Regulations thereof, as well as the provisions of a general nature described in Article 61 hereof, shall privilege the principle of maximum dissemination and availability of the information in possession of the disclosing parties.*

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<sup>23</sup> Republic of Chile. Law No. 20.285 of 2008. Law on Transparency of Public Functions and Access to Information on State Administration. Article 11(d). Available at <http://www.leychile.cl/Navegar?idNorma=276363>. "[L]os órganos de la Administración del Estado deben proporcionar información en los términos más amplios posibles, excluyendo sólo aquello que esté sujeto a las excepciones constitucionales o legales".

<sup>24</sup> Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Article 1(4). Available at <http://www.scspr.gob.gt/docs/infpublic.pdf>. "[E]stablecer como obligatorio el principio de máxima publicidad y transparencia en la administración pública y para los sujetos obligados".

<sup>25</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act (Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental). June 11, 2002. The text of the law in effect in 2010 can be consulted at: <http://www.ifai.org.mx/English>. Official English version available at: <http://www.ifai.org.mx/English>

*The right to access public information shall be interpreted in terms of the Federal Constitution of the United Mexican States; the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the American Convention on Human Rights; the Convention on the Elimination of All Forms of Discrimination against Women, as well as any other international instruments subscribed and ratified by the Mexican State and the interpretation thereof by specialized international entities.*

19. For its part, El Salvador's Access to Public Information Law establishes, in Article 4 that among the principles that shall govern the interpretation and application of the law is that of maximum dissemination. In accordance with this principle, "the information held by the bodies subject to this law is public and its dissemination unrestricted, save for the exceptions expressly established by law."<sup>26</sup>

20. As will be explained below, in some of the countries studied, the principle of maximum disclosure is not reflected expressly but is included indirectly in some provisions.

**a. First corollary of the principle of maximum disclosure: The right of access to information is the rule and secrecy the exception**

21. The right of access to information is not an absolute right, but rather may be subject to limitations. However, as will be explained later on, such limitations must strictly comply with the requirements derived from Article 13.2 of the American Convention; that is, they must be of a truly exceptional nature, be established by law, have a legitimate purpose, be necessary, and be strictly proportionate.<sup>27</sup> The exceptions must not become the general rule, and it must be understood, for all effects, that access to information is the rule and secrecy the exception. Moreover, it should be clear in domestic law that information shall be classified as secret only as long as making it public could indeed jeopardize the benefits protected through secrecy. In this regard, secrecy must have a reasonable time limit, and once that has expired, the public has the right to know the information in question.

22. Specifically with regard to limitations, the Inter-American Court has underscored in its case law that the principle of maximum disclosure "establishes the

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<sup>26</sup> Republic of El Salvador. Law on Access to Public Information (Ley de Acceso a la Información Pública). This law was approved by Decree No. 534 of 2011 and entered into effect on May 8, 2011. The law grants a one-year period for bodies subject to it to be able to meet its requirements. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. "[L]a información en poder de los entes obligados es pública y su difusión irrestricta, salvo las excepciones establecidas por la ley".

<sup>27</sup> Along these same lines, Principle 4 of the Declaration of Principles on Freedom of Expression of the IACHR stipulates that "[a]ccess to information... allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies." Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=26&IID=2>

presumption that all information is accessible, subject to a limited system of exceptions,”<sup>28</sup> which “must have been established by law,”<sup>29</sup> respond to a purpose allowed by the American Convention,<sup>30</sup> and “be necessary in a democratic society; consequently, they must be intended to satisfy a compelling public interest.”<sup>31</sup>

23. Pursuant to this principle, the OAS General Assembly, in its Model Law on Access to Information, has recognized that “the right of access to information is based on the principle of maximum disclosure,” and thus that “exceptions to the right of access should be clearly and narrowly established by law.”<sup>32</sup>

24. The principle establishing that the right to access to information is the rule, and secrecy the exception, is contemplated in nearly all the countries in this study, through the principle of disclosure. Disclosure as the rule is stipulated in the legal systems of all the countries examined.

25. In Guatemala, the Constitution itself establishes the public nature of administrative acts. Its Article 30 establishes: “All administration acts are public. Interested parties have the right to obtain, at any time, any reports, copies, reproductions, and certifications they request, and the production of any files they wish to consult, except in the case of military or diplomatic matters of national security, or information provided by individuals under guarantee of confidentiality.”<sup>33</sup>

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<sup>28</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 92. Along the same lines, in their 2004 Joint Declaration, the UN, OAS, and OSCE rapporteurs for freedom of expression explained that this principle “[establishes] a presumption that all information is accessible subject only to a narrow system of exceptions.” Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=319&IID=2>

<sup>29</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 89.

<sup>30</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 90.

<sup>31</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 91. See also, I/A Court H.R. *Case of Palamara-Iribarne v. Chile.* Judgment of November 22, 2005. Series C No. 135. Para. 85; *Case of Ricardo Canese v. Paraguay.* Judgment of August 31, 2004. Series C No. 111. Para. 96; *Case of Herrera-Ulloa v. Costa Rica.* Judgment of July 2, 2004. Series C No. 107. Paras. 121 and 123; and I/A Court H.R. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights).* Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5. Para. 46. Similarly, Resolution CJI/RES.147 (LXXIII-O/08) of the Inter-American Juridical Committee on “Principles on the Right of Access to Information” establishes the following in Principle 1: “In principle, all information is accessible. Access to information is a fundamental human right which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions in keeping with a democratic society and proportionate to the interest that justifies them. States should ensure full respect for the right to access to information through adopting appropriate legislation and putting in place the necessary implementation measures.” Available at: [http://www.oas.org/cji/eng/CJI-RES\\_147\\_LXXIII-O-08\\_eng.pdf](http://www.oas.org/cji/eng/CJI-RES_147_LXXIII-O-08_eng.pdf)

<sup>32</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Paras 3-4. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf)

<sup>33</sup> Political Constitution of the Republic of Guatemala (1985) (Reformed by Legislative Accord No. 18-93, November 17, 1993). Available at: [http://www.oas.org/juridico/MLA/sp/gtm/sp\\_gtm-int-text-const.pdf](http://www.oas.org/juridico/MLA/sp/gtm/sp_gtm-int-text-const.pdf). “Todos los actos de la administración son públicos. Los interesados tienen derecho a obtener, en cualquier tiempo, informes, copias, reproducciones y certificaciones que soliciten y la exhibición de los expedientes que

26. Ecuador's Organic Law on Transparency and Access to Public Information, in Article 1, establishes as public any information held by "the institutions, bodies, and entities under public or private law that have State participation or are State contractors regarding the matter to which the information refers [...]."<sup>34</sup> Later, in Article 4 (c), it prescribes: "The exercise of public functions is subject to the principle of the openness and disclosure of its actions. This principle extends to those entities of private law that exercise State authority and manage public resources."

27. In Panama, Article 8 of the Law on Transparency in Public Management establishes the principle of disclosure and determines: "State institutions are obligated to provide, to anyone who so requests, information on the functions and activities they carry out, excepting only confidential information and that which has restricted access."<sup>35</sup>

28. In El Salvador, the Access to Public Information Law provides, in Article 3(a), that one of the purposes of the law is "To facilitate to all persons the right of access to public information through simple and expedited procedures."<sup>36</sup> In Article 4, referring to the principles that govern the interpretation and application of the law, it establishes the principles of availability, promptness, integrity, and accountability, in accordance with which, respectively, "public information shall be available to individuals"; "public information shall be provided promptly"; "public information shall be complete, reliable, and truthful"; and "those who carry out responsibilities in the State or administer public assets are obligated to be accountable to the public and the respective authority over the use and administration of the public assets for which they are in charge and over their management, in accordance with the law."

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deseen consultar, salvo que se trate de asuntos militares o diplomáticos de seguridad nacional, o de datos suministrados por particulares bajo garantía de confidencia".

<sup>34</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Law 24 of May 18, 2004. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. Art. 1: "[L]as instituciones, organismos y entidades, personas jurídicas de derecho público o privado que, para el tema materia de la información tengan participación del Estado o sean concesionarios de éste". Art. 4: "El ejercicio de la función pública, está sometido al principio de apertura y publicidad de sus actuaciones. Este principio se extiende a aquellas entidades de derecho privado que ejerzan la potestad estatal y manejen recursos públicos".

<sup>35</sup> Republic of Panama. Law on Transparency in Public Administration (Ley de Transparencia en la Gestión Pública). Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf). "Las instituciones del Estado están obligadas a brindar, a cualquier personal que lo requiera, información sobre el funcionamiento y las actividades que desarrollan, exceptuando únicamente las informaciones de carácter confidencial y de acceso restringido".

<sup>36</sup> Republic of El Salvador. Law on Access to Public Information. The Law was approved through decree 534 of 2011 and became effective on May 8, 2011. The Law concedes a deadline of one year for the obligated entity to adjust its requirements. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. Art. 3: "Son fines de esta ley: (a) Facilitar a toda persona el derecho de acceso a la información pública mediante procedimientos sencillos y expeditos". Art. 4: "En la interpretación y aplicación de esta ley deberán regir los principios siguientes: b. Disponibilidad: la información pública debe estar al alcance de los particulares; c. Promptitud: la información pública debe ser suministrada con presteza; d. Integridad: la información pública debe ser completa, fidedigna y veraz; [...] h. Rendición de cuentas. Quienes desempeñan responsabilidades en el Estado o administran bienes públicos están obligados a rendir cuentas ante el público y autoridad competente, por el uso y la administración de los bienes públicos a su cargo y sobre su gestión, de acuerdo a la ley".

29. Peru's Law on Transparency and Access to Public Information establishes the principle of disclosure in its Article 3.<sup>37</sup> Its first paragraph states: "All activities and provisions of the entities comprised in this Law are subject to the principle of disclosure." From this principle it is derived that consequently all information held by the State is presumed to be public (paragraph 1), that the State shall take basic steps to guarantee and promote transparency in public administration (paragraph 2), and that the State has the obligation to turn over information that individuals demand (paragraph 3).

30. In Uruguay, Article 2 of the Law on Access to Public Information (LAIP) contemplates the principle of disclosure and imposes the presumption of access to public information: "Public information is considered to be any information that is issued or in the possession of any public body, whether or not of the State, save for the exceptions or secrets established by law, as well as information that is privileged or confidential."<sup>38</sup>

31. For its part, Nicaragua's Law on Access to Public Information explicitly stipulates the principle of disclosure of public information, establishing that "...all existing information held by the indicated entities shall be of a public nature and shall be of free access to the public, save for the exceptions provided for in this Law."<sup>39</sup>

32. In Chile and Mexico, in addition to the principle of maximum disclosure and maximum dissemination, respectively, the principle of the public nature of public information is established. Thus, Article 8 of the Constitution of Chile provides that "the acts and resolutions of State bodies are public, as are their foundations and procedures."<sup>40</sup> The same country's Law on Transparency of Public Functions and Access to State Administration Information determines, in its Article 4, para. 2: "The principle of transparency of public functions consists of respecting and protecting the public nature of all acts, resolutions, procedures, and documents of the Administration, as well as of the bases thereof, and facilitating access by any person to this information, through the means and procedures that the law establishes to this effect."<sup>41</sup> Mexico's Federal Transparency

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<sup>37</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. August 2, 2002. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf). "Todas las actividades y disposiciones de las entidades comprendidas en la presente Ley están sometidas al principio de publicidad".

<sup>38</sup> Oriental Republic of Uruguay. Law on Access to Information. Law No. 18.381. October 7, 2008. Article 12. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. "Se considera información pública toda la que emane o esté en posesión de cualquier organismo público, sea o no estatal, salvo las excepciones o secretos establecidos por ley, así como las informaciones reservadas o confidenciales".

<sup>39</sup> Republic of Nicaragua. Law No. 621 of 2007, which issues the Law on Access to Public Information. Article 3. No. 2. Available at: [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). "[T]oda la información existente en posesión de las entidades señaladas tendrá carácter público y será de libre acceso a la población, salvo las excepciones previstas en la presente Ley".

<sup>40</sup> Political Constitution of Chile. Available at: [http://www.camara.cl/camara/media/docs/constitucion\\_politica\\_2009.pdf](http://www.camara.cl/camara/media/docs/constitucion_politica_2009.pdf). "[S]on públicos los actos y resoluciones de los órganos del Estado, así como sus fundamentos y los procedimientos que utilicen".

<sup>41</sup> Republic of Chile. Law on Transparency of Public Functions and Access to State Administration Information. Law No. 20.285 of August 11, 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>.



and Access to Governmental Public Information Act, in turn, establishes in Article 2 that: “All governmental information included by this Act is of a public nature and private entities are allowed to have access thereto in the terms consigned herein.”<sup>42</sup>

33. In Colombia, Article 74 of the Constitution establishes the right of every person “to access public documents except in cases established by Law.”<sup>43</sup> Similarly, the Code of Administrative Litigation, issued by means of Decree No. 01 of 1984, provides in Article 3 that one of the principles governing administrative action is disclosure.<sup>44</sup> The principle has also been underscored on various occasions in the case law of the Constitutional Court. By way of example, in Judgment C-491 of 2007, which examined the constitutionality of various articles of the Law on Discretionary Expenses, the Court affirmed:

*24. As was mentioned in detail, the Constitution expressly protects the fundamental right of access to public information (Art. 74 CN). Given the existence of a reinforced constitutional protection, the Court has established clear and rigorous prerequisites for a limitation to this right to be constitutionally admissible.*

*In this regard, the Court has recognized that the right of access to public information is not absolute. One of the reasons for which it may be limited is the protection of national security and public order in the face of grave threats that can be prevented only through restrictive measures. Nonetheless, the restrictive measure must in any case be contained in a law; be useful, necessary, and proportionate to the purpose being pursued; and be compatible with a democratic society, under the terms already examined and established prior to this decision.*<sup>45</sup>

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“El principio de transparencia de la función pública consiste en respetar y cautelar la publicidad de los actos, resoluciones, procedimientos y documentos de la Administración, así como la de sus fundamentos, y en facilitar el acceso de cualquier persona a esa información, a través de los medios y procedimientos que al efecto establezca la ley”.

<sup>42</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. June 11, 2002. Along these same lines, Article 12 of the law provides: “The disclosing parties must publish all information related to the amounts and recipients of public funds for whatever reason, as well as the reports rendered by said recipients on the use and destination of said resources.” Available at: <http://www.ifai.org.mx/English>. [Direct citations of Mexico’s law come from an official IFAI translation.]

<sup>43</sup> Political Constitution of Colombia. Available at: <http://web.presidencia.gov.co/constitucion/index.pdf>. “Todas las personas tienen derecho a acceder a los documentos públicos salvo los casos que establezca la ley”.

<sup>44</sup> Republic of Colombia. Contentious Administrative Code. Decree 01 de 1984. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/codigo/codigo\\_contencioso\\_administrativo.html](http://www.secretariassenado.gov.co/senado/basedoc/codigo/codigo_contencioso_administrativo.html). The Code was issued by the government based on the powers granted under Law No. 58 of 1982, which also provided, in Article 8, that “administrative acts are public, save for the specific exceptions established by the Constitution and the Law.” Likewise, Law No. 136 of 1994, which develops the guiding principles of municipal administration, establishes the principle of openness and transparency in its Article 5c: “c) Disclosure and transparency. Acts of the municipal administration are public, and it is the municipal administration’s obligation to facilitate citizens’ access to its knowledge and oversight function, in accordance with the law.” In addition, one of the principles that governs public contracting is disclosure. In that regard, Law No. 80 of 1993 establishes, in Article 24: “3. The acts of the authorities shall be public, and the records pertaining to them shall be open to the public, allowing, in the case of bidding, the exercise of the right addressed in Article 273 of the Constitution.”

<sup>45</sup> Republic of Colombia. Constitutional Court of Colombia. Judgment C-491/07. June 27, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/C-491-07.htm>. “Como fue mencionado

34. In the Dominican Republic, the General Law on Free Access to Public Information (LGLAIP), No. 200-04, dated July 28, 2004, expressly establishes the principle of disclosure in its Article 3.<sup>46</sup> Pursuant to that principle, “[a]ll acts and activities of the Public Administration, both centralized and decentralized, including administrative acts and activities and the legislative and judicial branches, as well as information that refers to its functioning, shall be subject to disclosure. Consequently, it shall be obligatory for the Dominican State and all its authorities and its autonomous, self-sufficient, centralized, and/or decentralized bodies, to offer an information service that is permanent and current...”

35. Jamaica's Access to Information Act, dated July 22, 2002,<sup>47</sup> in Section 2 adopts the principle of transparency in granting to the public a general right of access to official documents held by public authorities, subject only to exemptions established in the statute.

36. A similar provision is found in Antigua and Barbuda's Freedom of Information Act, Section 15(1), which establishes the right of every person to obtain, on request, access to information, subject only to the exceptions established in the same statute.<sup>48</sup>

37. In Canada, the Constitution does not explicitly recognize the right of access to information. However, case law has understood that the right to freedom of expression, recognized in Section 2(b) of the Canadian Charter of Rights and Freedoms, includes the right to receive and impart information. In that regard, the Supreme Court of Canada established in *Edmonton Journal v. Alberta (Attorney General)*, “[t]he members of the public, as 'listeners' or 'readers', have a right to receive information pertaining to public institutions, in particular the courts.”<sup>49</sup>

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detalladamente la Constitución protege de manera expresa el derecho fundamental de acceso a la información pública (Art. 74 CN). Dada la existencia de una protección constitucional reforzada, la Corte ha establecido claros y rigurosos requisitos para que una limitación a este derecho pueda resultar constitucionalmente admisible. En este sentido, la Corte ha reconocido que el derecho de acceso a la información pública no es absoluto. Una de las razones por las cuales puede limitarse es la protección de la seguridad nacional y el orden público frente a graves amenazas que sólo pueden ser conjuradas a través de medidas restrictivas. Ahora bien, en todo caso, la medida restrictiva debe encontrarse contenida en una ley, ser útil, necesaria y proporcionada a la finalidad que persigue y ser compatible con una sociedad democrática, en los términos estudiados en los fundamentos anteriores de esta providencia”.

<sup>46</sup> Dominican Republic. General Law on Access to Public Information (Ley General de Acceso a la Información Pública). Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGi6hrl%3d&tabid=69&mid=421>

<sup>47</sup> Jamaica. Access to Information Act. No. 21-2002. Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>48</sup> Antigua and Barbuda. The Freedom of Information Act. No. 19 of 2004. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>49</sup> Canada. *Edmonton Journal v. Alberta (Attorney General)*. [1989] 2 S.C.R. 1326. Available at: <http://scc.lexum.org/en/1989/1989scr2-1326/1989scr2-1326.html>

38. For its part, the 1983 Access to Information Act<sup>50</sup> establishes in Chapter A-1, Section 2(1), that its purpose is “to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.”

39. In the United States, the First Amendment of the Constitution protects freedom of expression in the following terms: “Congress shall make no law... abridging the freedom of speech, or of the press.”<sup>51</sup> The right of access to information was recognized and regulated in the 1966 Freedom of Information Act (FOIA).<sup>52</sup> While this law did not contain a specific provision explicitly stipulating the principle of maximum disclosure, the OPEN Government Act of 2007, which amends FOIA, establishes in its preamble that the country's system of government must be governed by a presumption of openness.<sup>53</sup>

40. For its part, the Supreme Court of the United States has adopted that principle in its case law, noting that the Freedom of Information Act establishes a “strong presumption in favor of disclosure” and that this presumption “remains with the agency when it seeks to justify the redaction of identifying information in a particular document, as well as when it seeks to withhold an entire document.”<sup>54</sup> The Court has also indicated that “disclosure, not secrecy, is the dominant legislative objective of the FOIA.”<sup>55</sup>

41. The principle of maximum disclosure has also been reaffirmed in administrative guidelines. The President's “Freedom of Information Act” Memorandum for the Heads of Executive Departments and Agencies, dated January 21, 2009, calls to mind that:

*The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. [...]*

*All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of*

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<sup>50</sup> Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>51</sup> United States of America. First Amendment of the Constitution. Available at: [http://www.archives.gov/exhibits/charters/bill\\_of\\_rights\\_transcript.html](http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html)

<sup>52</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552. Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>53</sup> United States of America. Public Law 110–175. Dec. 31, 2007. Openness Promotes Effectiveness in Our National Government Act Of 2007. Section 2(2). Available at: <http://www.gpo.gov/fdsys/pkg/PLAW-110publ175/pdf/PLAW-110publ175.pdf>

<sup>54</sup> United States Supreme Court. United States Department of State v. Ray et al. 502 U.S. 164, 173 (1991). Available at: <http://supreme.justia.com/us/502/164/case.html>.

<sup>55</sup> United States Supreme Court. Department of the Air Force v. Rose. 425 U.S. 352, 361 (1976). Available at: <http://supreme.justia.com/us/425/352/case.html>

*open Government. The presumption of disclosure should be applied to all decisions involving FOIA.*<sup>56</sup>

42. In Trinidad and Tobago, Act No. 26, the Freedom of Information Act of 1999,<sup>57</sup> establishes in its Section 3(1) that the object of the act is to “extend the right of members of the public to access to information in the possession of public authorities by (a) making available to the public information about the operations of public authorities and, in particular, ensuring that the authorizations, policies, rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those authorizations, policies, rules and practices.”

43. The same section provides that the object of the act is to create “a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by public authorities.” Pursuant to such, Section 3(2) establishes that the statute's provisions shall be interpreted so as to “further the object set out in subsection (1) and any discretion conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.”<sup>58</sup> Access is thus clearly established as the general rule and secrecy as the exception.

44. It is important to emphasize that while a statute on access to public information does not exist in Argentina, judges have developed the principle of disclosure in their case law. In that regard, the Supreme Court of Justice has stated that “the principle of the disclosure of government acts is inherent to the republican system established in the National Constitution, and thus its fulfillment is an imperative requirement for the public authorities... this makes it possible for citizens to have the right to access to information of the State in order to exercise control over the authorities (doctrine of Judgments 311:750), and facilitates transparency in management.”<sup>59</sup>

**b. Second corollary of the principle of maximum disclosure: The State bears the burden of proof to justify limits on the right of access to information**

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<sup>56</sup> United States of America. President Barack Obama. Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act. Available at: [http://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct/](http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/)

<sup>57</sup> Trinidad and Tobago. The Freedom of Information Act. Act No. 26 of 1999. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

<sup>58</sup> Trinidad and Tobago. The Freedom of Information Act. Act No. 26 of 1999. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

<sup>59</sup> Republic of Argentina. Supreme Court of Justice of the Nation. Agreement No. 1/2004. February 11, 2004. Available at: <http://www.dplf.org/uploads/1191953169.pdf>. “[E]l principio de la publicidad de los actos de gobierno es inherente al sistema republicano establecido en la Constitución Nacional, por lo que su cumplimiento es una exigencia ineludible por las autoridades públicas, [...] ello posibilita a los ciudadanos el derecho al acceso a la información del Estado a fin de ejercer control sobre las autoridades (doctrina de Fallos: 311:750) y facilita la transparencia de la gestión”.

45. Inter-American case law has established that the State has the burden to prove that any restrictions on access to information are compatible with inter-American norms on freedom of expression.<sup>60</sup> The Inter-American Juridical Committee also affirmed this in its resolution on “Principles on the Right of Access to Information,” establishing that “the burden of proof in justifying any denial of access to information lies with the body from which the information was requested.”<sup>61</sup> The foregoing allows for legal certainty in the exercise of the right of access to information, inasmuch as when information is in the State's control, every effort must be made to ensure that the State does not engage in discretionary and arbitrary conduct in establishing restrictions to this right.<sup>62</sup>

46. This principle has also been adopted by the OAS General Assembly in its Model Inter-American Law on Access to Information, in which it is expressly established that “the burden of proof shall lie with the public authority to establish that the information requested is subject to one of the exceptions contained [in the Law].” Faced with that task, the authority must establish “that the exception is legitimate and strictly necessary in a democratic society” and that “disclosure will cause substantial harm to an interest protected by [the] Law.”<sup>63</sup>

47. Only some of the legal systems studied establish expressly and directly that the State is responsible for proving the legitimacy and applicability of any limitations on access to information.

48. Under Jamaica's Access to Information Act, in cases in which access to information is refused or deferred, the onus of proof falls to the official authority. Section 7(5) of that law establishes that “[t]he response of the public authority shall state its decision on the application, and where the authority or body decides to refuse or defer access or to extend the period of thirty days, it shall state the reasons therefor, and the options available to an aggrieved applicant.”<sup>64</sup>

49. In Panama, Article 16 of the Transparency Law establishes that “State institutions that refuse to grant information on grounds that it is of a confidential nature or

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<sup>60</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 93.

<sup>61</sup> Inter-American Juridical Committee. Resolution 147 of the 73rd regular period of sessions. Principles on the Right of Access to Information. August 7, 2008. Principle 7. Available at: [https://www.oas.org/dil/CJ-RES\\_147\\_LXXIII-O-08\\_eng.pdf](https://www.oas.org/dil/CJ-RES_147_LXXIII-O-08_eng.pdf)

<sup>62</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 98.

<sup>63</sup> OAS General Assembly. AG/RES. 2607 (XL-O/10), adopting a Model Inter-American Law on Access to Information. June 8, 2010. Article 53. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf)

<sup>64</sup> Jamaica. Access to Information Act. No. 21-2002. Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

subject to restricted access shall do so by means of a reasoned decision establishing the grounds on which the denial is based and which are supported by this Law.”<sup>65</sup>

50. It is important to note that, through a *habeas data* ruling on January 15, 2004, that country's Supreme Court of Justice emphasized the applicability of the aforementioned provision by affirming:

*Finally, and by way of illustration, the Plenum of this Court believes it is appropriate to indicate that, under Article 16 of Law No. 6 of January 22, 2002, State institutions that refuse to grant information on grounds that it is of a confidential nature or subject to restricted access shall do so by means of a reasoned decision establishing the reasons on which the denial is based and which are supported by this Law.*<sup>66</sup>

51. In Mexico, for its part, Article 45 of the Federal Transparency and Access to Governmental Public Information Act provides that in the event access to information is denied, the reasons for classification of the information shall be grounded in law and the applicant shall be informed of the remedy may be filed before the Institute. Moreover, Article 46 establishes that the applicant must be notified if the information requested is not in the agency's possession.<sup>67</sup>

52. In El Salvador, Article 65 of the Access Law determines that the decisions by the bodies subject to the law “shall be given to the petitioner in writing and shall be explained, with a brief but sufficient mention of the grounds, specifying the reasons of fact and of law that determined or induced the entity to adopt its decision.” Along the same lines, Article 72 prescribes that when the information officer of an entity subject to the law decides to deny access to a document, he or she “must provide a basis and grounds for the denial of the information and indicate to the petitioner any appeal that may be filed with the Institute [for Access to Public Information].”<sup>68</sup>

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<sup>65</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf). “Las instituciones del Estado que nieguen el otorgamiento de una información por considerarla de carácter confidencial o de acceso restringido, deberán hacerlo a través de resolución motivada, estableciendo las razones en que se fundamenta la negación y que se sustenten en esta Ley”.

<sup>66</sup> Supreme Court of Justice, Panama. Plenary. Docket No. 1116-03. January 15, 2004. Available for consultation at: <http://bd.organojudicial.gob.pa/registro.html>. “Finalmente y de manera ilustrativa, el Pleno de esta Corporación de Justicia, estima oportuno indicar que de acuerdo al artículo 16 de la Ley 6 de 22 de enero de 2002, las instituciones del Estado que nieguen el otorgamiento de una información por considerarla de carácter confidencial o de acceso restringido, deberán hacerlo a través de resolución motivada, estableciendo las razones en que fundamentan la negación y que se sustenten en esta Ley”.

<sup>67</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

<sup>68</sup> Republic of El Salvador. Law on Access to Public Information. The Law was approved through decree 534 of 2011 and became effective on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. Art. 65: “Todas las decisiones de los entes obligados deberán entregarse por escrito al solicitante y serán motivadas, con mención breve pero suficiente de sus fundamentos, precisándose las razones de hecho y de Derecho que determinaron e indujeron a la entidad a adoptar su decisión”. Art. 72: “En caso de ser negativa la resolución, [el Oficial de Información] siempre deberá fundar y motivar las razones de la denegatoria de la información e indicar al solicitante el recurso que podrá interponer ante el Instituto”.

53. Along the same lines, Article 18 of Uruguay's Law on Access to Information establishes that “[t]he agency receiving the request may refuse to release the requested information only by means of a reasoned decision from the head of the agency that indicates the privileged or confidential nature of the information and indicates the legal provisions on which the decision is based.”<sup>69</sup>

54. This provision has made it possible to analyze in case law not only formal compliance with a response, but also its content. Thus, in Judgment 308 dated June 27, 2005, the Court of Administrative Litigation ruled on a nullity action lodged by the Commercial Defense League against the Central Bank of Uruguay's Administrative Act D/762/2002, which had invalidated various resolutions authorizing the release of information from the Registry of Check Offenders, a reference to checking accounts that had been suspended for check-related infractions.<sup>70</sup> The administrative decision had not included the grounds on which it was based, and in its answer to the complaint the Bank had affirmed that, in the exercise of its discretion, it “had the authority to assess or appreciate the advisability of access to the Registry, that is to whom access could be given and on which data they could be given information.”<sup>71</sup>

55. The Court determined that the Central Bank could not deny access to information based solely on its discretion. Moreover, it affirmed: “The defendant does not mention a single concrete regulatory provision that would provide for the secrecy of the suspended accounts. Nor is it inferred from Article 66 of D.L. No. 14.412 that the powers granted to the Central Bank of Uruguay through that regulation include that of conferring secrecy.”<sup>72</sup> Consequently, the ruling found that the Bank had no grounds on which to justify a general use of the principle of discretion to supposedly protect due process and professional secrecy. According to the Court, such secrecy is valid only on an exceptional basis, when the information is of an expressly secret nature.<sup>73</sup>

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<sup>69</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. October 7, 2008. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

<sup>70</sup> Oriental Republic of Uruguay. Contentious Administrative Court (Tribunal de lo Contencioso Administrativo). Judgment No. 308 of July 27, 2005. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-308-2005.pdf>

<sup>71</sup> Oriental Republic of Uruguay. Contentious Administrative Court (Tribunal de lo Contencioso Administrativo). Judgment No. 308 of July 27, 2005. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-308-2005.pdf>. “el Banco Central está facultado para valorar o apreciar la conveniencia del acceso al Registro, es decir a quiénes se les puede dar acceso a dicho registro, y sobre qué datos se les podrá dar información”.

<sup>72</sup> Oriental Republic of Uruguay. Contentious Administrative Court (Tribunal de lo Contencioso Administrativo). Judgment No. 308 of July 27, 2005. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-308-2005.pdf>. “La demandada no menciona ninguna disposición normativa en concreto, que disponga el secreto de las cuentas suspendidas. Ni tampoco se infiere del artículo 66 del D.L. N° 14.412, que entre las facultades que se le otorgan al Banco Central del Uruguay por dicha norma esté la de otorgarle carácter secreto”.

<sup>73</sup> Oriental Republic of Uruguay. Contentious Administrative Court (Tribunal de lo Contencioso Administrativo). Judgment No. 308 of July 27, 2005. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-308-2005.pdf>. Along

56. On another point, it is worth noting that Guatemala and Nicaragua expressly establish that the State has the burden to prove the legal basis for its denial of a request for information, and that it must establish the “proof of harm” that would result from turning over the information. This introduces into the respective laws a greater demand on the burden of proof that is needed to justify restrictions to access to information.

57. Thus, Article 26 of Guatemala's Law on Access to Public Information establishes: “Proof of harm. In cases in which the authority provides grounds for classifying the information as secret or confidential, the information must thoroughly establish that the following three requirements have been met: 1. That the information legitimately falls under one of the exceptional cases provided for in this law; 2. That the release of the information in question could effectively threaten the interest protected by the law; and 3. That the damage or harm that could occur with the release of the information is greater than the public interest of knowing the information in question.”<sup>74</sup>

58. In Nicaragua, paragraph 7 of Article 3 of the law states: “Principle of Proof of Harm: This guarantees that the authority, in classifying certain information as being of restricted access, provides grounds based on the following factors: a. The information falls under one of the possible exceptions established in the law itself. b. The release of the information could effectively threaten the public interest protected by the law; and c. The harm that could result from releasing the information is greater than the public interest in knowing the information in question.”<sup>75</sup>

59. In Antigua and Barbuda, the Freedom of Information Act of 2004 establishes in Section 19 that any refusal to grant complete or partial access to the information requested shall be made in writing and shall state whether the record exists and the reasons for denying access to it. The response shall also explain to the applicant his or her right of appeal to the Commissioner or to a judicial review. Section 42(3), which refers to the process of handling complaints made to the Commissioner, and Section 45(2), having to do with the judicial review procedure, also contemplate that in any review of a

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the same lines, see: Court of Administrative Litigation. Judgment No. 379 of June 28, 2004. Available at: <http://informacionpublica.gub.uy/sitio/jurisprudencia.html>

<sup>74</sup> Republic of Guatemala. Law on Access to Public Information. Decree No. 57/2008. September 23, 2008. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “Prueba de daño. En caso que la autoridad fundamente la clasificación de reservada o confidencial, la información deberá demostrar cabalmente el cumplimiento de los siguientes tres requisitos: 1. Que la información encuadre legítimamente en alguno de los casos de excepción previstas en esta ley; 2. Que la liberación de la información de referencia pueda amenazar efectivamente el interés protegido por la ley; y, 3. Que el perjuicio o daño que pueda producirse con la liberación de la información es mayor que el interés público de conocer la información de referencia”.

<sup>75</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(SAI\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/(SAI)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “Principio de Prueba del Daño: Garantiza que, la autoridad al catalogar determinada información como de acceso restringido, fundamente y motive los siguientes elementos: a. La información se encuentra prevista en alguno de los supuestos de excepción previstos en la propia Ley; b. La liberación de la información puede amenazar efectivamente el interés público protegido por la Ley; y c. El daño que puede producirse con la liberación de la información es mayor que el interés público de conocer la información de relevancia”.



denial of access to information, “the burden of proof shall be on the public body to show that it acted in accordance with its obligations under Part III” of the Act.<sup>76</sup>

60. For their part, Uruguay, Guatemala, Mexico, and Colombia appropriately construe administrative silence as affirmative, meaning that if a request does not receive a response within the legal time period, the applicant is authorized to access the information. Thus, the second paragraph of Article 18 of Uruguay's Law on Access to Public Information provides: “Upon expiration of the time period of twenty business days from the submission of the request, there being no extension or the time period having expired without a specific decision having been communicated to the interested party, the party shall be able to access the respective information, and it shall be considered a serious offense for any official to refuse to provide it, in accordance with the provisions of Law No. 17.060, dated December 23, 1998, and Article 31 of this law.”<sup>77</sup>

61. In Judgment 48 of September 11, 2009, a court in of Mercedes, Uruguay (*Juzgado Letrado de Segundo Turno*), ruled in an *amparo* action brought against the Departmental Assembly of Soriano. The action was initiated after the Assembly President, acting on his own behalf, allegedly denied a request for access to information about official advertising expenditures incurred by the entity, as he believed that information to be privileged. The Court affirmed that the request should have received a response from the Assembly as a collective, not from its President. It added that the response had not been consulted with the Assembly, as required under the rules of procedure in effect, and that only the Assembly could classify information as privileged. The Court thus indicated that administrative silence applied in this particular case, since the interested party had not obtained a response from the entity within the legally established time period:

*Pursuant to the regulatory provisions stated above, it would be the Assembly by agreement that should deny the information and classify it as confidential. Thus, the plaintiff is correct in maintaining that the hypothesis of “affirmative silence” holds, since there was no response from the collective Departmental Assembly. In this regard, Article 18 of the aforementioned Law establishes that the body receiving the request may deny the release of the requested information only through a reasoned decision from the leader of that body stating that the information is privileged or confidential and indicating the legal provisions on which that is based.*<sup>78</sup>

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<sup>76</sup> Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>77</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. “Vencido el plazo de veinte días hábiles desde la presentación de la solicitud, si no ha mediado prórroga o vencida la misma sin que exista resolución expresa notificada al interesado, éste podrá acceder a la información respectiva, considerándose falta grave la negativa de cualquier funcionario a proveérsela, de conformidad con las previsiones de la Ley N° 17.060, de 23 de diciembre de 1998, y del artículo 31 de la presente ley”.

<sup>78</sup> Oriental Republic of Uruguay. Juzgado Letrado de Segundo Turno de Mercedes. Judgment 48 of September 11, 2009. Available at: <http://informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-juzgado-letrado-de-2do-turno-de-mercedes.pdf>. “De acuerdo a la normativa referida *ut-supra*, sería la Junta en acuerdo la que debería negar y catalogar de confidencial la información. Por lo tanto, le asiste razón al actor cuando sostiene que ha configurado una hipótesis de “silencio positivo”, ya que no hubo respuesta

62. The Court also found for the plaintiff on the point that the requested information was not privileged, so that that the Assembly had to provide the information to the plaintiff:

*The cost of government advertising is not information given to the Assembly, but rather produced by the Assembly, and it is public information from the time it is budgeted in the aforementioned body's five-year budget.*<sup>79</sup>

63. Similarly, in Guatemala, Article 44 of the Law on Access to Public Information establishes an affirmative decision by default, which means that “when the entity subject to this law provides no response within the period and in the form that is required, that entity shall be required to grant [the information] to the interested party no later than ten days after the expiration of the time period for a response, at no cost and with no need for a request from the interested party. Failing to comply with the provisions of this article shall be grounds for criminal liability.”<sup>80</sup>

64. Mexico's Federal Transparency and Access to Governmental Public Information Act also provides for this concept when the entity does not respond to a request for access to information within the legal time period. Article 53 establishes: “The failure to answer a request for access to information within the term provided by Article 44 hereof shall be construed as an affirmative answer and the department or agency shall be required to allow the access to the information within a term not to exceed 10 business days after payment of the costs derived from the reproduction of the material, unless the Institute shall determine that the documents in question contain privileged or confidential information.”<sup>81</sup>

65. In Colombia, affirmative administrative silence operates with regard to requests to consult or copy documents held in public offices. Article 25 of Law No. 57 of 1985<sup>82</sup> establishes that these requests should be resolved within a maximum period of ten

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del ente colectivo Junta Departamental. En tal sentido el artículo 18 de la referida Ley, establece que el organismo requerido solamente podrá negar la expedición de la información solicitada mediante resolución motivada del jerarca del organismo que señale su carácter de reservado o confidencial, indicando las disposiciones legales en que se funde”.

<sup>79</sup> Oriental Republic of Uruguay. Juzgado Letrado de Segundo Turno de Mercedes. Judgment 48 of September 11, 2009. Available at: <http://informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-juzgado-letrado-de-2do-turno-de-mercedes.pdf>. “El gasto de publicidad oficial no es una información entregada a la Junta, sino producida por la Junta y es una información pública desde el momento en que está presupuestado en el presupuesto quinquenal del referido organismo”.

<sup>80</sup> Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “Cuando el sujeto obligado no diere respuesta alguna en el plazo y forma que está obligado, éste quedará obligado a otorgarla al interesado en un periodo no mayor de diez días posteriores al vencimiento del plazo para la respuesta, sin costo alguno y sin que medie solicitud de parte interesada. El incumplimiento de lo previsto en este artículo será causal de responsabilidad penal”.

<sup>81</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. June 11, 2002. Available at: <http://www.ifai.org.mx/English>

<sup>82</sup> Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: [http://www.cntv.org.co/cntv\\_bop/basedoc/ley/1985/ley\\_0057\\_1985.html](http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html). “[S]e entenderá, para

days, and that if the petitioner is not given a response in that time frame, “it shall be understood, for all legal effects, that the request in question has been accepted. Consequently, the respective document shall be turned over within the three (3) days immediately following.”

66. This point should be emphasized, because if negative administrative silence were to apply, officials responsible for responding to requests for information could be induced to refrain from responding. In this regard, Article 13 of Peru's Law on Transparency and Access to Public Information provides that “[t]he denial of access to the information requested must be duly based on the exceptions established in Article 15 of this Law, with the reasons that these exceptions apply and the time period in which this impediment will last being expressly laid out in writing.” However, if the administration does not respond to the request for information, the request is considered to be denied, as provided in Article 11(d), which establishes: “If there is no response within the time periods established in subparagraph (b), the applicant can consider the application to have been denied.”<sup>83</sup>

67. In the countries of the region that do not have provisions in this area, administrative and judicial mechanisms generally have been established to dispute denials of access. However, it would be of utmost importance to incorporate the standard discussed into all laws in force, since failing to do so imposes disproportionate obstacles and burdens on those who are entitled to that right.

68. It is worth noting that in the case of Canada, Chile and the United States, laws and regulations, as well as case law, have recognized and reaffirmed the aforementioned principles.

69. In Canada, Section 48 of the Access to Information Act establishes that in any judicial proceeding arising from a denial of access to information, “the burden of establishing that the head of a government institution is authorized to refuse to disclose a record requested under this Act or a part thereof shall be on the government institution concerned.”<sup>84</sup> Canadian case law reaffirmed that principle in *Dagg v. Canada (Minister of Finance)*. In that case, the Supreme Court held that Section 48 of the Access to Information Act “places the onus on the government to show that it is authorized to refuse to disclose a record”.<sup>85</sup> Similarly, in its decision in *Attaran v. Canada (Foreign Affairs)*, the Court stated:

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todos los efectos legales, que la respectiva solicitud ha sido aceptada. En consecuencia, el correspondiente documento será entregado dentro de los tres (3) días inmediatamente siguientes”.

<sup>83</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. July 13, 2002. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf). Art. 13: “La denegatoria al acceso a la información solicitada debe ser debidamente fundamentada en las excepciones del artículo 15 de esta Ley, señalándose expresamente y por escrito las razones por las que se aplican esas excepciones y el plazo por el que se prolongará dicho impedimento.” Art. 11(d): “De no mediar respuesta en los plazos previstos en el inciso b), el solicitante puede considerar denegado su pedido.”

<sup>84</sup> Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>85</sup> Canada. Supreme Court of Canada. *Dagg V. Canada (Minister of Finance)* [1997] 2 S.C.R. 403. Para.90. Available at: <http://csc.lexum.org/en/1997/1997scr2-403/1997scr2-403.pdf>

“The general principle of the access to information law is that there is a presumption that the government information must be disclosed. If there is an exemption from disclosure, it must be narrowly construed. When an applicant seeks disclosure, there is a reverse onus (section 48 of ATIA) on the government to show that the documents are exempt and should not be disclosed.”<sup>86</sup>

70. In Chile, the Council for Transparency<sup>87</sup> has imposed that obligation on administrative entities.<sup>88</sup> Thus in decision A39-09 of July 19, 2009, the Council found that the burden of proof falls to the party claiming the exception, namely, the public official or entity claiming to have a duty to classify the information requested as privileged or secret.<sup>89</sup>

71. In the United States, the FOIA stipulates<sup>90</sup> that in cases before district courts, government agencies have the burden of proving the legitimacy of withholding access to records. *GC Micro Corp. v. Defense Logistics Agency* established that “[a]n agency seeking to withhold information under an exemption to FOIA has the burden of proving that the information falls under the claimed exemption.”<sup>91</sup>

**c. Third corollary of the principle of maximum disclosure: Supremacy of the right of access to information in the event of conflicting statutes or lack of regulation**

72. As has been widely recognized by the rapporteurs for freedom of expression, in the event of any inconsistency in laws, the access to information law should prevail over other legislation,<sup>92</sup> inasmuch as the right of access to information has been

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<sup>86</sup> Canada. Supreme Court of Canada. *Attaran v. Canada (Foreign Affairs)* 2009 FC 339. Available at: <http://www.canlii.org/en/ca/ct/doc/2009/2009fc339/2009fc339.html>

<sup>87</sup> Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State (Ley de Transparencia de la Función Pública y de Acceso a la Información de la Administración del Estado). Law 20.285 de 2009. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. The Council for Transparency is an autonomous body created under Title V of the Law on Transparency of Public Functions and Access to State Administration Information. Its purpose is to promote transparency in public functions, oversee compliance with the law on this subject, and guarantee the right of access to information. One of its functions is to resolve complaints over denials of access to information.

<sup>88</sup> See also, Council for Transparency. Decision A-19-09 of July 7, 2009. Available at: [http://www.consejotransparencia.cl/data\\_casos/ftp\\_casos/A19-09/A19-09\\_decision\\_web.pdf](http://www.consejotransparencia.cl/data_casos/ftp_casos/A19-09/A19-09_decision_web.pdf)

<sup>89</sup> Republic of Chile. Council for Transparency. Decision A39-09. June 19, 2009. Available at: [http://www.consejotransparencia.cl/data\\_casos/ftp\\_casos/A39-09/A39-09\\_decision\\_web.pdf](http://www.consejotransparencia.cl/data_casos/ftp_casos/A39-09/A39-09_decision_web.pdf)

<sup>90</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(4)(B). Available at: <http://www.iustice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>91</sup> Cf. United States Court of Appeals. Ninth Circuit. *Gc Micro Corporation v. Defense Logistics Agency*. 33 F.3d 1109. 39 Cont.Cas.Fed. (CCH) P 76,701. (1994). [20] Available at: <http://openjurist.org/33/f3d/1109/gc-micro-corporation-v-defense-logistics-agency>. [30] See also United States Court of Appeals. Ninth Circuit. *Lewis v. IRS*. 823 F.2d 375, 378 (9th Cir.1987). Available at: [http://scholar.google.com/scholar\\_case?case=8299082618244122596&q=Lewis+v.+IRS&hl=en&as\\_sdt=2,9&as\\_vis=1](http://scholar.google.com/scholar_case?case=8299082618244122596&q=Lewis+v.+IRS&hl=en&as_sdt=2,9&as_vis=1)

<sup>92</sup> Joint Declaration of the UN, OAS, and OSCE rapporteurs for freedom of expression (2004). Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=319&IID=1>

recognized as an essential requisite for the very functioning of democracy.<sup>93</sup> This requirement helps to ensure that States comply effectively with the obligation to establish an access to public information law and that the law is interpreted so as to favor the right of access.<sup>94</sup> Thus the OAS General Assembly has recommended, in the aforementioned Model Law, that “[t]o the extent of any inconsistency, this Law shall prevail over any other statute.”<sup>95</sup>

73. In Antigua and Barbuda, Ecuador, Guatemala, and Mexico, it is expressly recognized that the interpretation of access to information laws should be done in such a way that maximizes the exercise of that right.

74. In this regard, Article 6 of Mexico's Federal Transparency and Access to Governmental Public Information Act establishes: “The interpretation of this Act and the Regulations thereof, as well as the provisions of a general nature described in Article 61 hereof, shall privilege the principle of maximum dissemination and availability of the information in possession of the disclosing parties.”<sup>96</sup>

75. Also, Article 4(d) of Ecuador's Organic Law on Transparency establishes: “The appropriate authorities and judges must apply the provisions of this Organic Law in such a way that most favors the effective exercise of the rights guaranteed herein.”<sup>97</sup>

76. In El Salvador, Article 4 of the Access to Information Law provides that the law's interpretation and application shall be governed by a series of principles, including that of maximum disclosure. In accordance with this principle, “the information held by the bodies subject to this law is public and its dissemination unrestricted, save for the exceptions expressly established by law.” Further, Article 5, entitled “Prevailing standard of maximum disclosure,” orders that when the Institute for Access to Public Information hears a case that raises doubts over whether the information being requested

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<sup>93</sup> OAS General Assembly. Resolution 1932 (XXXIII-O/03), “Access to Public Information: Strengthening Democracy.” June 10, 2003; Resolution 2057 (XXXIV-O/04), “Access to Public Information: Strengthening Democracy.” June 8, 2004; Resolution 2121 (XXXV-O/05), “Access to Public Information: Strengthening Democracy.” June 7, 2005; and Resolution 2252 (XXXVI-O/06), “Access to Public Information: Strengthening Democracy.” June 6, 2006. Available for consultation at: [http://www.oas.org/DIL/access\\_to\\_information\\_background.htm](http://www.oas.org/DIL/access_to_information_background.htm)

<sup>94</sup> IACHR. Arguments before the Inter-American Court in the *Case of Claude-Reyes et al.* Transcribed in: I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 58(d).

<sup>95</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Article 4. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf)

<sup>96</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

<sup>97</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. “Las autoridades y jueces competentes deberán aplicar las normas de esta Ley Orgánica de la manera que más favorezca al efectivo ejercicio de los derechos aquí garantizados”.

is public or is covered by one of the exceptions, “it shall ensure that the standard of disclosure prevails.”<sup>98</sup>

77. In Guatemala, Article 8 of the Law on Access to Public Information provides the following with regard to the interpretation of the law: “Interpretation. The interpretation of this law shall be done with strict adherence to the provisions established in the Constitution of the Republic of Guatemala, the Law of the Judiciary, and the international treaties and covenants ratified by the State of Guatemala, with the principle of maximum disclosure prevailing at all times. The provisions of this Law shall be interpreted in such a way as to obtain proper protection of the rights recognized therein and the effective functioning of its guarantees and defenses.”<sup>99</sup>

78. In Antigua and Barbuda, Section 6(2) of the law establishes that “(t)his Act applies to the exclusion of the provisions of any other law that prohibits or restricts the disclosure of a record by a public authority to the extent that such provision is inconsistent with this Act.” It also establishes, in Section 6(3) that nothing in the act shall be construed as limiting the disclosure of information “pursuant to any other law, policy, or practice.”<sup>100</sup>

79. In the Dominican Republic, the LGLAIP does not make specific reference to this principle; nevertheless, its rules of procedure, adopted through Decree No. 130-05 by the executive branch, establish in Article 5 that “based on the principle of disclosure, any existing or future provision, general or special, that directly or indirectly regulates the right of access to information or its exceptions and limitations, should always be interpreted in a way that is consistent with the principles laid down in the LGLAIP and in these rules of procedure, and always in the way that is most favorable to access to information.”<sup>101</sup>

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<sup>98</sup> Republic of El Salvador. Law on Access to Public Information. The Law was approved through decree 534 of 2011 and entered into effect on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. Art. 4(a): “Máxima publicidad: la información en poder de los entes obligados es pública y su difusión irrestricta, salvo las excepciones expresamente establecidas por la ley.” Article 5: “El Instituto en caso de duda sobre si una información es de carácter público o está sujeta a una de las excepciones, deberá hacer prevalecer el criterio de publicidad”.

<sup>99</sup> Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “Interpretación. La interpretación de la presente ley se hará con estricto apego a lo previsto en la Constitución Política de la República de Guatemala, la Ley del Organismo Judicial, los tratados y convenios internacionales ratificados por el Estado de Guatemala, prevaleciendo en todo momento el principio de máxima publicidad. Las disposiciones de esta Ley se interpretarán de manera de procurar la adecuada protección de los derechos en ella reconocidos y el funcionamiento eficaz de sus garantías y defensas”.

<sup>100</sup> Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>101</sup> Dominican Republic. Decree No. 130-05 approving the Regulations to the General Law on Access to Public Information. Available at: <http://onapi.gob.do/pdf/marco-legal/traspacidad/decreto-130-05.pdf>. “En virtud del principio de publicidad, cualquier norma preexistente o futura, general o especial, que directa o indirectamente regule el derecho de acceso a la información o sus excepciones y limitaciones, deberá siempre interpretarse de manera consistente con los principios sentados en la LGLAIP y este reglamento, y siempre del modo más favorable al acceso a la información”.

80. In this section it is important to emphasize the case of Nicaragua. Article 50 of the Law provides that this is a law in the “public interest, and thus it shall prevail over other laws that may conflict with it.”<sup>102</sup> Along the same lines, Mexico's Federal Transparency and Access to Governmental Public Information Act also contemplates, in Article 1, that “[t]his Act is public in nature. It was designed to issue the required provisions to guarantee access by every person to the information in possession of the [federal government], autonomous constitutional instrumentalities or those having legal autonomy as well as any other federal entity.”<sup>103</sup>

81. In Chile, however, transitory Article 1 of the Law on Transparency<sup>104</sup> establishes that all secrecy classifications implemented before the law took effect are presumed to be legitimate, without verifying whether they meet with the legitimate aims established by the law itself or by Article 13 of the American Convention on Human Rights.

82. In the remaining countries, it is noted that there are no major regulatory developments in this respect. And while a broad interpretation of the presumption of disclosure may engender an assurance that the right of access to information will prevail,<sup>105</sup> everything indicates that for this right to be guaranteed unequivocally, the law must contemplate an explicit provision to that effect.

## 2. Principle of Good Faith

83. To guarantee the effective exercise of the right of access to information, it is essential that those bound by this right act in good faith—that they interpret the law in such a way that it serves to meet the objectives pursued by the right of access and that they ensure strict enforcement of this right, provide applicants with any means of assistance needed, promote a culture of transparency, help to make public administration more transparent, and act diligently, professionally, and with institutional loyalty. That is,

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<sup>102</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

<sup>103</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. June 11, 2002. Available at: <http://www.ifai.org.mx/English>

<sup>104</sup> Republic of Chile. Law on Transparency of Public Functions and Access to Information on State Administration. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. Title VII. “Article 1. Pursuant to the fourth transitory provision of the Constitution, it shall be understood that those legal precepts currently in force and issued prior to the promulgation of Law No. 20.050 that establish secrecy or privilege with respect to certain acts or documents, on the grounds indicated by Article 8 of the Constitution, shall be understood to meet the qualified quorum requirements” (De conformidad a la disposición cuarta transitoria de la Constitución Política, se entenderá que cumplen con la exigencia de quórum calificado, los preceptos legales actualmente vigentes y dictados con anterioridad a la promulgación de la ley N° 20.050, que establecen secreto o reserva respecto de determinados actos o documentos, por las causales que señala el artículo 8° de la Constitución Política”).

<sup>105</sup> This is the case in countries such as Peru and Uruguay. The systematic interpretation of their legal framework indicates that the right of access to information is the rule and secrecy is the exception. However, it is not established that in the event of a statutory inconsistency or vacuum this law prevails over other provisions.

they should take the necessary steps to ensure that their actions satisfy the general interest and do not betray people's trust in public management.<sup>106</sup>

84. Along these lines, the Inter-American Court, in the previously cited *Case of Gomes-Lund et al. (Guerrilha do Araguaia)*, held that “to guarantee the full and effective exercise of this right, it is necessary for the laws and management of the State to be governed by the principles of good faith and maximum disclosure.”<sup>107</sup> The principle of good faith, in turn, is a development of the provisions established in Article 30 of the American Convention on the purpose of restrictions to the rights and freedoms recognized by the American Convention.

85. Based on the principle of good faith, the Model Law adopted by the OAS General Assembly recommends that legislation establish expressly that “everyone tasked with interpreting this Law, or any other legislation or regulatory instrument that may affect the right to information, must adopt any reasonable interpretation of the provision that best gives effect to the right to information.”<sup>108</sup>

86. Some of the legal systems that were studied have provisions designed to guarantee several of the aspects embodied in the principle of good faith.

87. Along these lines, Article 83 of the Constitution of Colombia establishes that the actions of individuals and public authorities must conform to the postulates of good faith.<sup>109</sup> This provision is reiterated in Law No. 962 of 2005, which provides in Article 1 that the purpose of the statute is “to facilitate relations between private individuals with the Public Administration in such a way that any dealings with the Administration for the exercise of activities or rights or the fulfillment of obligations be carried out in accordance with the principles established in Articles 83, 84, 209, and 333 of the Political Charter.”<sup>110</sup>

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<sup>106</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. “The Inter-American Legal Framework regarding the Right to Access to Information.” Document CIDH/RELE/INF. 1/09. December 30, 2009. Para. 15. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>

<sup>107</sup> I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 230.

<sup>108</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Article 8. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf)

<sup>109</sup> Political Constitution of Colombia. Available at: <http://web.presidencia.gov.co/constitucion/index.pdf>

<sup>110</sup> This law, known as an “anti-red tape” (*antitrámites*) law, issues provisions on streamlining the administrative processes and procedures of State bodies and entities and of private entities that exercise public functions or provide public services. Republic of Colombia. Law 962 of 2005. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/ley/2005/ley\\_0962\\_2005.html](http://www.secretariassenado.gov.co/senado/basedoc/ley/2005/ley_0962_2005.html). “facilitar las relaciones de los particulares con la Administración Pública, de tal forma que las actuaciones que deban surtirse ante ella para el ejercicio de actividades, derechos o cumplimiento de obligaciones se desarrollen de conformidad con los principios establecidos en los artículos 83, 84, 209 y 333 de la Carta Política”.



88. Laws in Mexico, Nicaragua, Guatemala, and El Salvador, for their part, prescribe that each entity subject to the law create an administrative unit to provide guidance to individuals in their requests for access to information. Thus in Mexico, Article 28 of the Federal Transparency and Access to Governmental Public Information Act provides that each entity subject to the law must designate a “liaison unit,” whose functions shall include receiving and processing the requests; providing assistance and guidance to individuals in completing their requests; and handling the necessary internal procedures to deliver the information.<sup>111</sup>

89. In Nicaragua, the Law on Access to Public Information establishes that public entities subject to the Law shall have an office of access to public information. It likewise establishes that the directors of these offices and the qualified personnel under their responsibility “shall make their best effort to facilitate and enable citizens to find and obtain access to the information requested. They shall also facilitate the printing of the document for immediate consultation, or the copying or photocopying at the applicant's expense, and make it available for sale to the public at a price that may not exceed the cost of publication.”<sup>112</sup>

90. Something similar occurs in Guatemala, where Article 19 of the Law on Access to Public Information establishes that “[t]he head of each entity subject to this law must designate a public servant, employee, or internal body to function as an information unit, which should have a liaison in every office or branch the entity may have around the country.” Article 20, in turn, contemplates that these public information units have such obligations as giving guidance to interested parties in how to formulate requests for access to information, providing the information requested or providing grounds for a negative response when the request is inadmissible.<sup>113</sup>

91. Finally, in El Salvador as well, Article 48 of the Access to Public Information Law orders that “public sector bodies subject to this law shall have public information access units” and that the entities' directors shall appoint the information

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<sup>111</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

<sup>112</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 11. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(SAI\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/(SAI)/675A94FF2EBFEE9106257331007476F2?OpenDocument). Art. 11: “Tanto el servidor público que se encuentre a cargo de la Oficina de Acceso a la Información Pública, como el personal calificado a su cargo, brindarán sus mejores esfuerzos para facilitar y hacer posible a los ciudadanos la localización y el acceso a la información solicitada. También facilitarán la impresión del documento para su inmediata consulta, o copia o fotocopia a costa del solicitante; igualmente, dispondrán la venta al público por un precio que no podrá superar el costo de edición.” According to Article 4 n, this is “an office directly subordinated to the highest authority of each public entity which has been assigned the functions inherent to the application of this Law within the agency to which it belongs, particularly as regards enabling access to the information referred to in this Law” (“dependencia subordinada directamente a la máxima autoridad de cada entidad pública a la que le han sido asignadas las funciones inherentes a la aplicación de la presente Ley dentro del organismo a que pertenece, particularmente en lo relativo a posibilitar el acceso a la información a que se alude en la presente Ley”).

<sup>113</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “El titular de cada sujeto obligado debe designar al servidor público, empleado u órgano interno que fungirá como Unidad de Información, debiendo tener un enlace en todas las oficinas o dependencias que el sujeto obligado tenga ubicadas a nivel nacional.”

official in charge of this unit. The official's functions include helping individuals prepare their requests and giving them guidance regarding the offices that can provide them with the information they are seeking (Art. 50(c)). In addition, Article 68 establishes that interested parties have the right to “assistance in accessing information and help in preparing requests.”<sup>114</sup>

92. In Panama, Article 7 of the Transparency Law provides that employees of the entities subject to the law must assist and guide those who request information.<sup>115</sup> In that country, it is the Supreme Court that has taken it upon itself to apply in practice the principle of good faith. In 2007, the Court granted a *habeas data* action that alleged that a party subject to the law had acted in bad faith, since although he had indicated that a piece of information had already been published, he did not provide the necessary references to be able to access it. In view of these circumstances, the Court found the following:

*The Ministry of Public Works considers that simply by making it known that the information is available in a digitalized system, which can be accessed via the Internet, the principle of disclosure has been met, while the plaintiff maintains that this reference, which does not specify the number and exact date from the Official Gazette where the information is found, disregards the legal commitment established in Law No. 6 of January 22, 2002... This legal circumstance highlights the fact that the general recommendation made to the applicant by the Ministry*

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<sup>114</sup> Republic of El Salvador. Law on Access to Public Information. The law was approved by Decree 534 of 2011 and entered into force on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>115</sup> Republic of Panama. Law on Transparency in Public Administration (Ley de Transparencia en la Gestión Pública). Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf). Article 7 of the Law on Transparency of Public Functions provides: “The official receiving the request shall have thirty calendar days from the date the request is presented to provide a response in writing. If the institution does not have the document(s) or records requested, the person making the request shall be notified to that effect. If the official has knowledge that another institution has or could have the documents or similar documents in its possession, he/she has the obligation to inform the petitioner. In the event of a complex or extensive request, the official shall inform the petitioner in writing, during the abovementioned thirty-day period, of the need to extend the deadline for gathering the requested information. In no case shall this period exceed an additional thirty calendar days. A clear and simple mechanism shall be provided to verify that the information has in fact been turned over to the petitioner; this may also be done via electronic mail when such a facility is available and in all cases when the request was submitted by that means. // In the event that the information the person requests is already available to the public in written form, such as in books, compendiums, leaflets, or public administration archives, or in electronic formats available on the Internet or by any other means, the petitioner shall be notified by reliable means of the source, place, and form by which he/she can gain access to the previously published information” (“El funcionario receptor tendrá treinta días calendario a partir de la fecha de la presentación de la solicitud, para contestarla por escrito, y, en caso de que ésta no posea el o los documentos o registros solicitados, así lo informará. Si el funcionario tiene conocimiento que otra institución tiene o pueda tener en su poder dichos documentos o documentos similares, estará obligado a indicárselo al solicitante. De tratarse de una solicitud compleja o extensa, el funcionario informará por escrito, dentro de los treinta días calendario antes señalados, la necesidad de extender el término para recopilar la información solicitada. En ningún caso, dicho término podrá exceder de treinta días calendarios adicionales. Se deberá prever un mecanismo claro y simple de constancia de la entrega efectiva de la información al solicitante, que puede hacerse también a través de correo electrónico cuando se disponga de tal facilidad y, en todo caso, cuando la solicitud hubiere sido presentada por esa vía.// En caso de que la información solicitada por la persona ya esté disponible al público en medios impresos tales como libros, compendios, trípticos, archivos públicos de la administración, así como también en formatos electrónicos disponibles en Internet o en cualquier otro medio, se le hará saber la fuente, el lugar y la forma en que puede tener acceso a dicha información previamente publicada”).

*of Public Works, that he should look for the rest of the information requested in the digitalized system of Official Gazettes, is not sufficient to guarantee that the principle of disclosure has been met. In this case, the Ministry of Public Works shirked... its duty to specify to the applicant the source, place, and manner in which to access the information available on the Internet, which in the case of the systematized Official Gazettes means identifying the address or route of electronic access, the mechanism for making a connection or link, and the date and number of the Official Gazette with the information... For the reasons laid out here, the Plenum of the Supreme Court, administering justice on behalf of the Republic and under authority of the law, grants the habeas data action filed.<sup>116</sup>*

93. In the Dominican Republic, both the General Law on Free Access to Public Information, as well as its regulatory decree, provide for assistance to the person requesting information. Thus, where necessary, the Party Responsible for Access to Information must assist the person in formulating the petition. Similarly, Chapter VII of the regulatory decree regulations establishes measures to promote a culture of transparency, prescribing plans for training and outreach as well as study programs at all educational levels.<sup>117</sup>

94. In Trinidad and Tobago, Section 14 of the Freedom of Information Act establishes that “[a] public authority shall take reasonable steps to assist any person” who has made a request that does not comply with the requirements. The same article stipulates that “[w]here a request in writing is made to a public authority for access to an official document, the public authority shall not refuse to comply with the request on the ground that the request does not comply with section 13(2), without first giving the applicant a reasonable opportunity of consultation with the public authority with a view to the making of a request in a form that does comply with that section.” Section 14 also

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<sup>116</sup> Republic of Panama. Supreme Court of Justice - Plenum. Habeas Data Action. First Instance. Case No. 842-06. March 2, 2007. Opinion by Judge Esmeralda Arosemena de Troitiño. Pag. 144. Available at: <http://www.organojudicial.gob.pa/wp-content/blogs.dir/8/files/2009/libros/rj2007-03.pdf>. See also, the sentence of the Supreme Court of Justice – Plenum. Habeas Data Action. May 3, 2002. “[E]l Ministerio de Obras Públicas estima que con sólo dar a conocer que los datos se encuentran disponibles en un sistema digitalizado, al que se puede acceder vía Internet, se da cumplimiento al principio de publicidad, mientras que el activador judicial sostiene que esa referencia, que no da cuenta del número y fecha exacta de la Gaceta Oficial donde se encuentra la información, desatiende el compromiso legal que establece la Ley 6 de 22 de enero de 2002. [...] Este escenario legal, pone de relieve que la recomendación general que le efectuó el Ministerio de Obras Públicas al peticionario, de consultar el resto de la información solicitada en el sistema digitalizado de Gacetas Oficiales, no posee la suficiencia para acreditar el cumplimiento del principio de publicidad. En este caso el Ministerio de Obras Públicas soslayó [...] (el deber) de precisarle al peticionario, la fuente, el lugar y la forma de acceder a la información disponible en Internet, lo que, tratándose de Gacetas Oficiales sistematizadas, equivale a identificar la dirección o ruta de acceso electrónico, el mecanismo de conexión o de enlace y la fecha y número de Gaceta Oficial donde reposa la información [...] Por las consideraciones que se dejan expuestas, el Pleno de la Corte Suprema, administrando justicia en nombre de la República y por autoridad de la ley, concede, la acción de Hábeas Data presentada.”

<sup>117</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Article 7. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hr1%3d&tabid=69&mid=421>; Decree No. 130-05 approving the Regulations of the General Law on Access to Public Information. Articles 42-43. Available at: <http://onapi.gob.do/pdf/marco-legal/trasparencia/decreto-130-05.pdf>

states that the public authority “shall take reasonable steps to assist any person in the exercise of any other right under this Act.”<sup>118</sup>

95. Antigua and Barbuda's statute contains similar provisions that develop the principle of good faith. Section 17 creates an obligation of public officials to provide assistance to petitioners who may need it, especially persons who are illiterate, and establishes that the procedures and formats for requesting information shall not unreasonably delay the processing of requests or place an undue burden on those making requests.<sup>119</sup>

96. In Canada, Section 4(2.1) of the Access to Information Act stipulates that “[t]he head of a government institution shall, without regard to the identity of a person making a request for access to a record under the control of the institution, make every reasonable effort to assist the person in connection with the request, respond to the request accurately and completely and, subject to the regulations, provide timely access to the record in the format requested.”<sup>120</sup>

97. Finally, while the U.S. FOIA does not expressly refer to the principle of good faith, Executive Order 13392 on “Improving Agency Disclosure of Information,” issued in 2005, establishes in Section 1(b) that “FOIA requesters are seeking a service from the Federal Government and should be treated as such. Accordingly, in responding to a FOIA request, agencies shall respond courteously and appropriately. Moreover, agencies shall provide FOIA requesters, and the public in general, with citizen-centered ways to learn about the FOIA process, about agency records that are publicly available (e.g., on the agency’s website), and about the status of a person’s FOIA request and appropriate information about the agency’s response.”<sup>121</sup>

### **C. Content and Scope of the Right of Access to Information**

98. The right of access to information contemplates a series of normative conditions for it to be adequately implemented and guaranteed. Indeed, as the Inter-American Court and the IACHR have established, for it to be understood that this right is truly guaranteed, it is necessary, among other things: for laws regulating it to ensure that a) this right applies to all persons, without discrimination and without the need to prove any direct interest; b) for all State agencies in all branches and levels of government, as well as anyone who executes public resources or provides essential public services to the community, to be bound by this right; and finally, c) the object of this right must be regulated in such a way that there will be no arbitrary or disproportionate exclusions. The

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<sup>118</sup> Trinidad and Tobago. The Freedom of Information Act. Act No. 26 of 1999. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

<sup>119</sup> Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>120</sup> Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>121</sup> United States of America. Executive Order 13392—Improving Agency Disclosure of Information. December 19, 2005. Available at: <http://edocket.access.gpo.gov/2005/pdf/05-24255.pdf>

next section of this report indicates how these matters are regulated in the various legal systems that were studied.

### 1. Every Person Has the Right of Access to Information

99. The right of access to information is a universal human right. Accordingly, everyone, regardless of location, has the right to request access to information, as established in Article 13 of the American Convention.<sup>122</sup>

100. In this regard, the Inter-American Court has specified that it is not necessary to prove a direct interest or personal stake in order to obtain State-held information, except in cases in which a legitimate restriction permitted by the Convention is applied, under the terms explained below.<sup>123</sup>

101. The Model Law adopted by the General Assembly is governed by the principle of universal access to this right and, based on that principle, it prescribes that “[a]ny person making a request for information to any public authority” shall have the right “to make an anonymous request for information” and “to make a request without providing justifications for why the information is requested.”<sup>124</sup>

102. Moreover, anyone who gains access to State-held information has, in turn, the right to disseminate the information so that it circulates in society, so that society can become familiar with it, have access to it, and evaluate it. In this way, the right of access to information shares the individual and social dimensions of the right to freedom of expression, both of which must be guaranteed simultaneously by the State.<sup>125</sup>

103. Most of the legal systems studied establish that all persons are entitled to the right of access to information. In some countries, this definition does not include more detail about this right, while in others the definition is accompanied by specifics regarding its exercise.

104. Thus in Colombia, Article 12 of Law No. 57 of 1985 provides that “[e]veryone has the right to consult the documents kept in public offices and to be issued copies of them, as long as the documents are not of a privileged nature pursuant to the

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<sup>122</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. “The Inter-American Legal Framework regarding the Right to Access to Information.” Document CIDH/RELE/INF. 1/09. December 30, 2009. Para. 16. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>

<sup>123</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 77.

<sup>124</sup> OAS General Assembly, Resolution AG/RES. 2607 (XL-O/10), which adopts a Model Inter-American Law on Access to Information. June 8, 2010. Article 5. Available at: [http://www.oas.org/dil/AG-RES\\_2607-2010\\_eng.pdf](http://www.oas.org/dil/AG-RES_2607-2010_eng.pdf)

<sup>125</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 77.

Constitution or the law, or do not have to do with defense or national security.”<sup>126</sup> Nevertheless, where the Code of Administrative Litigation establishes, in Article 5, that “[a]ny person may respectfully petition the authorities, verbally or in writing, through any means,” it specifies “the reasons on which [the petition] is based” as a requirement of the written petitions, by which the universality of the right is restricted.<sup>127</sup>

105. The General Law on Free Access to Public Information of the Dominican Republic establishes, in its first article, that “[e]veryone has the right to request and receive information that is complete, truthful, appropriate, and timely, from any agency of the Dominican State, and from all corporations, stock companies, or publicly traded companies with State participation.” However, the procedure for exercising the right of information and access to information requires, under Article 7 of the law, that the requests for access identify “the justification of the reasons for which the data or information is requested.” Nonetheless, the law’s rules of procedure, adopted under Decree No. 130-05, indicate in Article 15 that “the description of the purpose of the reasons why the information required is requested, in terms of Article 7(d) of the Law, in no way and in no case shall impede the applicant’s broadest access to that information, nor should it grant the official the ability to reject the request. In this sense, it is sufficient that the applicant invoke any simple interest related to the information that is sought”.<sup>128</sup>

106. For its part, Article 1 of Ecuador’s Organic Law establishes that “access to public information is a right of persons which is guaranteed by the State.”<sup>129</sup>

107. In Jamaica, the Access to Information Act establishes a universal dimension to that right, without any need to prove a direct interest. Thus, in addition to the provisions establishing a general right of access, pursuant to Section 6(1) of the law,

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<sup>126</sup> Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: [http://www.cntv.org.co/cntv\\_bop/basedoc/ley/1985/ley\\_0057\\_1985.html](http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html). “Toda persona tiene derecho a consultar los documentos que reposen en las oficinas públicas y a que se le expida copia de los mismos, siempre que dichos documentos no tengan carácter reservado conforme a la Constitución o la Ley, o no hagan relación a la defensa o seguridad nacional.”

<sup>127</sup> Republic of Colombia. Contentious Administrative Code. Decree 01 of 1984. Available at: [http://www.secretariasenado.gov.co/senado/basedoc/codigo/codigo\\_contencioso\\_administrativo.html](http://www.secretariasenado.gov.co/senado/basedoc/codigo/codigo_contencioso_administrativo.html). “Toda persona podrá hacer peticiones respetuosas a las autoridades, verbalmente o por escrito, a través de cualquier medio.”

<sup>128</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hrl%3d&tabid=69&mid=421>; Decree No. 130-05 approving the Regulations to the General Law on Access to Public Information. Available at: <http://onapi.gob.do/pdf/marco-legal/transparencia/decreto-130-05.pdf>. Art. 1: “Toda persona tiene derecho a solicitar y a recibir información completa, veraz, adecuada y oportuna, de cualquier órgano del Estado Dominicano, y de todas las sociedades anónimas, compañías anónimas o compañías por acciones con participación estatal.” Art. 15 reads: “[l]a descripción de la motivación de las razones por las cuales se requiere la información solicitada, en los términos del Artículo 7 inciso d de la LGLAIP, en modo alguno y en ningún caso puede impedir el más amplio acceso del requirente a la misma ni otorga al funcionario la facultad de rechazar la solicitud. En este sentido, al solicitante le basta con invocar cualquier simple interés relacionado con la información buscada”.

<sup>129</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Law 24 of May 18, 2004. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. “[E]l acceso a la información pública es un derecho de las personas que garantiza el Estado.”

“every person” has that right. Under Section 6(3), an applicant for access to public information “shall not be required to give any reason for his or her request.”<sup>130</sup>

108. In Antigua and Barbuda, Section 15(1) establishes the right of every person to obtain access to information. Section 17(4), meanwhile, clarifies that “(t)he reason for a request for information made to a public authority is irrelevant for the purpose of deciding whether the information should be provided.”<sup>131</sup>

109. In the United States, the FOIA recognizes the universal right to public information by establishing the right of any person to request information from the government. Section 552(a) (3) (A) stipulates that agencies “shall make the records promptly available to any person.” The law does not establish restrictions based on citizenship or residency.<sup>132</sup>

110. Along similar lines, this principle is recognized in the legislation of Trinidad and Tobago. According to Section 4 of the country’s Freedom of Information Act, “applicant” means a person who has made a request in accordance with section 13. Moreover, Section 11(1) establishes: “Notwithstanding any law to the contrary and subject to the provisions of this act, it shall be the right of every person to obtain access to an official document.”<sup>133</sup>

111. In El Salvador, Article 18 of the Constitution provides that every person is entitled to petition any entity of the State.<sup>134</sup> In harmony with this principle, Article 2 of the 2011 Access Law provides that “every person has the right to request and receive information that is generated, administered, or held by public institutions and other bodies subject to the law in a timely and truthful manner, without having to prove any direct interest or reason whatsoever.”<sup>135</sup>

112. In Guatemala and Chile, laws on access to public information provide that all natural or legal persons are entitled to request and have access to public information. Moreover, these laws add that this right may be exercised without discrimination. Thus in

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<sup>130</sup> Jamaica. Access to Information Act. Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>131</sup> Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>132</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(3)(A). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>133</sup> Trinidad and Tobago. The Freedom of Information Act. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

<sup>134</sup> Political Constitution of El Salvador. Available at: <http://www.csi.gob.sv/leyes.nsf/305364d9d949871586256d48006fa206/7c9c3e6418fb38fa06256d02005a3dcc?OpenDocument>

<sup>135</sup> Republic of El Salvador. Law on Access to Public Information. The Law was approved through decree 534 of 2011 and entered into effect on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. “Toda persona tiene derecho a solicitar y recibir información generada, administrada o en poder de las instituciones públicas y demás entes obligados de manera oportuna y veraz, sin sustentar interés o motivación alguna.”

Guatemala, the Law on Access to Information provides that its purpose is to “guarantee to any interested person, without any discrimination whatsoever, the right to request and have access to public information held by the authorities and those subject to this law,” and establishes as active parties under this right “all individual or legal persons, public or private, who have the right to request, have access to, and obtain the public information they have requested as established in this law”<sup>136</sup> (underscore added).

113. In Chile, the principle of universal access and non-discrimination is also provided. Article 11(g) of the Law on Access to Public Information establishes that “the agencies of the Administration of the State must turn over information to anyone who so requests, under equal conditions, without making arbitrary distinctions and without requiring a statement of cause or justification for the request” (underscore added).<sup>137</sup>

114. In Nicaragua, in addition to the principle of non-discrimination, the principle of multi-ethnicity is recognized. In practical terms this means that the information requested by persons of different ethnicities must be provided in their native language so as to guarantee that its content is understood.<sup>138</sup> A similar provision is found in Mexico, where Article 1 of the Federal Transparency and Access to Governmental Public Information Act provides that the purpose of the act is to guarantee access by every person to the information held by the government.<sup>139</sup>

115. In other countries, the determination that all persons have the right to access information is accompanied by explicit mention of the fact that those requesting information do not have to prove a direct interest in the request. Thus in Peru, Article 7 of the Law on Access to Public Information provides that “every person has the right to request and receive information from any entity of the Public Administration. In no case shall a statement of cause be required to exercise this right.”<sup>140</sup> Similarly, Panama's

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<sup>136</sup> Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. See Articles 1, No. 1, and 5. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. Art. 1(1): “Garantizar a toda persona interesada, sin discriminación alguna, el derecho a solicitar y a tener acceso a la información pública en posesión de las autoridades y sujetos obligados por la presente ley.” Art. 5: “Es toda persona individual o jurídica, pública o privada, que tiene derecho a solicitar, tener acceso y obtener la información pública que hubiere solicitado conforme lo establecido en esta ley”.

<sup>137</sup> Republic of Chile. Law on Transparency of Public Functions and Access to Information on State Administration. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “los órganos de la Administración del Estado deberán entregar información a todas las personas que lo soliciten, en igualdad de condiciones, sin hacer distinciones arbitrarias y sin exigir expresión de causa o motivo para la solicitud”.

<sup>138</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$AII\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($AII)/675A94FF2EBFEE9106257331007476F2?OpenDocument). Article 3, No. 3, establishes the principle of multi-ethnicity and provides: “The Nicaraguan people are multi-ethnic by nature, and thus public information must also be provided in the different languages that exist along the Atlantic Coast of the country.”

<sup>139</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

<sup>140</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf). “toda persona tiene derecho a solicitar y recibir información de cualquier entidad de la Administración Pública. En ningún caso se exige expresión de causa para el ejercicio de este derecho.” In addition, Article 13 states that the administrative entity may not refuse information based on the applicant's identity.



Transparency Law also establishes that everyone “has the right to request, without having to provide any justification or motivation, information of public access in the possession of or known to the institutions indicated in this Law.”<sup>141</sup> Along these same lines, in Uruguay it is established that “[a]ccess to public information is a right of all persons, without discrimination for reasons of nationality or the character of the applicant, and it is exercised without the need to justify the reasons for requesting the information.”<sup>142</sup>

116. In Argentina, Article 6 of the General Regulations on Access to Public Information of the Federal Executive Branch—approved, along with other regulations, through Decree No. 1172 of 2003—establishes: “Any natural or juridical person, public or private, has the right to request, obtain access to, and receive information, it not being necessary to prove a subjective right or legitimate interest or to have a professional lawyer.”<sup>143</sup> This principle of active legitimacy has been developed in case law. In the *Case of Jorge A. Vago v. Ediciones La Urraca S.A. et al*, the Supreme Court recognized the following:

*[T]he National Constitution, in Articles 14 and 32, and the Pact of San José, Costa Rica, approved by Law No. 23.054, contemplate the right of all persons to freedom of thought and expression and freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice (Art. 13, para. 1 of the aforementioned Pact). The right of information, which is of an individual nature, acquires a connection of meaning with the right to information, which is of a social nature, by guaranteeing all persons the right to have knowledge of and participate in everything related to political, governmental, and administrative processes, cultural resources, and manifestations of the spirit as an essential human right.*<sup>144</sup>

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<sup>141</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Art. 2. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf). “derecho a solicitar, sin necesidad de sustentar justificación o motivación alguna, la información de acceso público en poder o en conocimiento de las instituciones indicadas en la presente Ley”.

<sup>142</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Article 3°. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. “El acceso a la información pública es un derecho de todas las personas, sin discriminación por razón de nacionalidad o carácter del solicitante, y que se ejerce sin necesidad de justificar las razones por las que se solicita la información”.

<sup>143</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf). “Toda persona física o jurídica, pública o privada, tiene derecho a solicitar, acceder y recibir información, no siendo necesario acreditar derecho subjetivo, interés legítimo ni contar con patrocinio letrado”.

<sup>144</sup> Republic of Argentina. Supreme Court of Justice of the Nation. *Case of Jorge A. Vago v. Ediciones La Urraca S.A. et al*. Judgment of November 19, 1991. Whereas paragraph 5. Available at: <http://www.csjn.gov.ar/jurisp/jsp/fallos.do?usecase=mostrarHjFallos&falloid=62115>. “la Constitución Nacional en sus arts. 14 y 32 y el Pacto de San José de Costa Rica aprobado por la ley 23.054 contemplan el derecho de toda persona a pensar y expresar su pensamiento y a buscar, recibir y difundir información e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística o por cualquier otro procedimiento de su elección (Art. 13, inc. 1° del Pacto cit.). El derecho de información, de naturaleza individual, adquiere conexión de sentido con el derecho a la información, de naturaleza social, al garantizar a toda persona el conocimiento y la participación en todo cuanto se relaciona con los procesos políticos, gubernamentales y administrativos, los recursos de la cultura y las manifestaciones del espíritu como un derecho humano esencial”.

117. Canada's statute establishes certain direct restrictions to the universality of the right of access to information. In fact, its Access to Information Act, in Section 4(1), restricts the exercise of this right to Canadian citizens and permanent residents within the meaning of section 2(1) of the *Immigration and Refugee Protection Act*.<sup>145</sup> This provision poses a problem, as it unjustifiably restricts the exercise of this right, contrary to the principle of universality established by Inter-American standards. Canada's Information Commissioner has made statements along these lines, and his office is promoting debate about amending the provision.<sup>146</sup>

118. On another point, none of the countries studied prohibits individuals from disseminating public information, which would be a step backward with regard to protection of the collective scope of the right to access to information. Judicial precedents have also been developed in this regard, such as the decision in which Peru's Constitutional Court recognized that the right of access to information has a collective dimension that allows public functions to be monitored.<sup>147</sup>

## 2. Subjects with Obligations under the Right of Access to Information

119. The right of access to information creates obligations for all public authorities of all branches of government and autonomous agencies, at all levels of government. This right is also binding on those who carry out public functions, provide public services, or execute public resources on behalf of the State. With respect to the latter, the right of access establishes the obligation to provide information exclusively with respect to managing public resources, carrying out the services under their purview, and fulfilling the aforementioned public functions.<sup>148</sup>

120. In this regard, reaffirming existing case law, the Inter-American Juridical Committee's resolution on "Principles on the Right of Access to Information" specifies, in its second principle, that "[t]he right of access applies to all public bodies, including the executive, legislative and judicial branches at all levels of government, constitutional and statutory bodies, bodies which are owned or controlled by government, and organizations which operate with public funds or which perform public functions."<sup>149</sup>

<sup>145</sup> Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>146</sup> See Department of Justice. "Strengthening the *Access to Information Act*. A Discussion of Ideas Intrinsic to the Reform of the Access to Information Act." April 11, 2006. Available at: <http://www.justice.gc.ca/eng/dept-min/pub/atia-lai/atia-lai.pdf>

<sup>147</sup> Republic of Peru. Judgment of the Constitutional Court. Docket No. 04912-2008-PHD/TC. Available at: <http://www.tc.gob.pe/jurisprudencia/2009/04912-2008-HD.html>

<sup>148</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. "The Inter-American Legal Framework regarding the Right to Access to Information." Document CIDH/RELE/INF. 1/09. December 30, 2009. Para. 19. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>

<sup>149</sup> Inter-American Juridical Committee. Resolution 147 of the 73rd regular period of sessions. Principles on the Right of Access to Information. August 7, 2008. Principle 2. Available at: [https://www.oas.org/dil/CJI-RES\\_147\\_LXXIII-O-08\\_eng.pdf](https://www.oas.org/dil/CJI-RES_147_LXXIII-O-08_eng.pdf)

121. Similarly, the Model Law on Access to Information adopted by the OAS General Assembly recommends to the States that the law be applied “to all public authorities, including the executive, legislative and judicial branches at all levels of government, constitutional and statutory authorities, non-state bodies which are owned or controlled by government, and private organizations which operate with substantial public funds or benefits (directly or indirectly) or which perform public functions and services insofar as it applies to those funds or to the public services or functions they undertake. [...]”<sup>150</sup>

122. As is explained below, in some States the access obligation applies directly to parties that are not of a public nature but carry out public functions or execute public services—as in the case of Antigua and Barbuda, Ecuador, Guatemala, Nicaragua, the Dominican Republic, Panama, and Peru—while some refer to other parties that are indirectly subject to the law—as in the case of Mexico—or have been omitted from it. On this point, it is worth mentioning that while the States should recognize as subject to the law not only State institutions but also private persons that carry out public functions or receive contributions from the State, in these cases the duty to provide information refers exclusively to the public activities they perform or those they carry out with State contributions, so that the right to the confidentiality of private information is simultaneously protected.

123. In Guatemala, Article 2 of the Law on Access to Public Information establishes that those bound by the principle of disclosure are “State agencies, municipalities, autonomous and decentralized institutions, and private entities that receive, invest, or manage public funds, including trusts constituted with public funds and public works or services subject to concession or management.”<sup>151</sup>

124. Likewise, Article 6 states that those subject to the statute shall be understood to mean “any individual or legal person, public or private, national or international, of any type; institution or entity of the State; agency, organization, entity, office, institution, or any other body that manages, administers or executes public resources, State assets, or acts of the public administration in general that is required to provide public information to anyone who requests it.”<sup>152</sup>

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<sup>150</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Article 3. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf)

<sup>151</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “La presente ley es de orden público, de interés nacional y utilidad social; establece las normas y los procedimientos para garantizar a toda persona, natural o jurídica, el acceso a la información o actos de la administración pública que se encuentre en los archivos, fichas, registros, base, banco o cualquier otra forma de almacenamiento de datos que se encuentren en los organismos del Estado, municipalidades, instituciones autónomas y descentralizadas y las entidades privadas que perciban, inviertan o administren fondos públicos, incluyendo fideicomisos constituidos con fondos públicos, obras o servicios públicos sujetos a concesión o administración”.

<sup>152</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. Art. 6: “Sujetos obligados. Es toda persona individual o jurídica, pública o privada, nacional o internacional de cualquier naturaleza, institución o entidad del Estado, organismo,

125. Panama's Transparency Law establishes, in subparagraph 8 of Article 1, that institutions subject to the provisions of the law are understood to mean “[a]ny agencies or offices of the State, including those belonging to the Executive, Legislative, and Judicial branch; the Public Prosecutor's Office; decentralized, autonomous, and semiautonomous entities; the Panama Canal Authority; municipalities, local governments, and community governing boards; mixed-capital enterprises, cooperatives, foundations, trusteeships, and nongovernmental organizations that have received or receive funds, capital, or assets from the State.”<sup>153</sup>

126. Along the same lines, Nicaragua's Law on Access to Public Information establishes, in its Article 1, that those subject to the disclosure of information are “public entities or institutions, mixed and State-subsidized corporations, as well as private entities that administer, manage, or receive public resources, tax benefits or other benefits, concessions, or advantages.”<sup>154</sup> Article 4 (d) also includes under those subject to the law “all mixed or private enterprises that are concession holders for public services; and those persons under public or private law who, in the exercise of their activities, act in support of the aforementioned entities or receive resources from the General Budget of the Republic subject to accountability.”<sup>155</sup>

127. For its part, Article 1 of the General Law on Free Access to Public Information of the Dominican Republic establishes that all persons are entitled to receive information and imposes an obligation on any agency of the Dominican State, as well as all

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órgano, entidad, dependencia, institución y cualquier otro que maneje, administre o ejecute recursos públicos, bienes del Estado, o actos de la administración pública en general, que está obligado a proporcionar la información pública que se le solicite.” Article 6 of the law establishes an extensive list of public and private entities subject to norms on access to information. These include any NGOs, foundations, and associations that receive, administer, or execute public funds.

<sup>153</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf). “Toda agencia o dependencia del Estado, incluyendo las pertenecientes a los Órganos Ejecutivo, Legislativo y Judicial, el Ministerio Público, las entidades descentralizadas, autónomas y semiautónomas, la Autoridad del Canal de Panamá, los municipios, los gobiernos locales, las juntas comunales, las empresas de capital mixto, las cooperativas, las fundaciones, los patronatos y los organismos no gubernamentales que hayan recibido o reciban fondos, capital o bienes del Estado”.

<sup>154</sup> Republic of Nicaragua. Law No. 621 of 2007, which issues the Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). Art. 1: “entidades o instituciones públicas, las sociedades mixtas y las subvencionadas por el Estado, así como las entidades privadas que administren, manejen o reciban recursos públicos, beneficios fiscales u otros beneficios, concesiones o ventajas.” Paragraph (c) of Article 4 explains the definition of public entities and institutions: “The branches of the State (Legislative, Executive, Judicial, and Electoral) with their offices, attached or independent agencies, Autonomous and Governmental Bodies, including their enterprises; Municipal Governments and the Autonomous Regional Governments of the Atlantic Coast with their corresponding offices and enterprises; and autonomous entities established in the Constitution of Nicaragua.”

<sup>155</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). Art. 4: “toda entidad mixta o privada que sea concesionaria de servicios públicos; y las personas de derecho público o privado, cuando en el ejercicio de sus actividades actúen en apoyo de las entidades antes citadas o reciban recursos provenientes del Presupuesto General de la República sujetos a la rendición de cuentas.”

corporations, stock companies, or publicly trade companies with State participation. These categories include: agencies and entities of the centralized government; autonomous and/or decentralized State agencies and entities, including the National District and municipal agencies; self-sufficient and/or decentralized State agencies and entities; commercial enterprises and corporations belonging to the State; bodies and institutions under private law that receive resources from the national budget to achieve their purposes; the legislative branch, in terms of its administrative activities; and the judicial branch, in terms of its administrative activities.<sup>156</sup>

128. In El Salvador, Article 7 of the Access Law provides that those bound by this law are “State bodies, their offices, autonomous institutions, municipalities, or any other entity or institution that administers public resources or State assets, or carries out governmental actions in general.” The law explains that public resources shall also be understood to mean “those funds stemming from any agreement or treaty that the State may enter into with other States or international institutions...” In addition, this article establishes that the law's standards also apply to “semi-public enterprises and natural and legal persons who manage resources or public information or carry out governmental functions, national or local, such as public contracting, public works concessions, or public services.” In these latter cases, the obligation is restricted to “allowing access to information concerning the administration of the funds or public information granted and the public functions conferred, as the case may be.”<sup>157</sup>

129. Article 8 of Peru's Law on Transparency and Access to Public Information establishes that public administration entities are subject to the law.<sup>158</sup> According to Article 1 of Law No. 27444, the Law on General Administrative Procedures, these include private legal persons that provide public services or exercise administrative functions by virtue of a concession, delegation, or authorization from the State.<sup>159</sup> In addition, Article 9 of the

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<sup>156</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGi6hrl%3d&tabid=69&mid=421>

<sup>157</sup> Republic of El Salvador. Law on Access to Public Information. The Law was approved through decree 534 of 2011 and entered into effect on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. Art. 7: “Están obligados al cumplimiento de esta ley los órganos del Estado, sus dependencias, las instituciones autónomas, las municipalidades o cualquier otra entidad u organismo que administre recursos públicos, bienes del Estado o ejecute actos de la administración pública en general. Se incluye dentro de los recursos públicos aquellos fondos provenientes de Convenios o Tratados que celebre el Estado con otros Estados o con Organismos Internacionales, a menos que el Convenio o Tratado determine otro régimen de acceso a la información. / También están obligadas por esta ley las sociedades de economía mixta y las personas naturales o jurídicas que manejen recursos o información pública o ejecuten actos de la función estatal, nacional o local tales como las contrataciones públicas, concesiones de obras o servicios públicos. El ámbito de la obligación de estos entes se limita a permitir el acceso a la información concerniente a la administración de los fondos o información pública otorgados y a la función pública conferida, en su caso”.

<sup>158</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

<sup>159</sup> Article 1 of Law No. 27444 establishes: “For the purposes of this Law, a Public Administration “entity” or “entities” shall be understood to mean: 1. The Executive Branch, including Ministries and Decentralized Public Bodies; 2. The Legislative Branch; 3. The Judiciary; 4. Regional Governments; 5. Local Governments; 6. The Bodies on which the Political Constitution of Peru and the laws confer autonomy; 7. The remaining entities and bodies, projects and programs of the State whose activities are carried out by virtue of administrative powers and

Transparency Law provides that private legal persons that provide public services are obligated to provide information only about the characteristics of the public services they provide, their rates, and the administrative functions they perform.<sup>160</sup>

130. Chile, Jamaica, and Colombia establish as entities subject to the law only legal persons that have a State participation equal to or above 50% of shares.

131. In Chile, Article 2 of the Transparency Law provides that parties obligated by the right to access to public information, under the terms of the law, are “ministries, intendancies, governorates, regional governments, municipalities, the armed forces, public and security forces, and public agencies and services created to carry out administrative functions.” Other parties subject to the law are public enterprises created by law, State enterprises, and corporations in which the State has a stock participation greater than 50% or a majority on the board of directors. Also, the Comptroller General of the Republic and the Central Bank shall adjust to comply with the provisions of the Law, in the cases it expressly states.<sup>161</sup>

132. In Jamaica, the Access to Information Act applies to all public authorities, including those companies in which the State holds more than 50% of shares or is in a position to influence policy (Section 3(d)), and any other entity that provides services of a public nature which are essential to the welfare of society, subject to an affirmative resolution by the Minister responsible for the document and the approval of Parliament (Section 5(3)(b)). However, Section 5(6) establishes that the act shall not apply to the Governor-General, in the exercise of the powers conferred on him by the Constitution of Jamaica or under any other law; the judicial functions of (i) a court or (ii) the holder of a judicial office or other office connected with a court; the security or intelligence services in

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thus are considered subject to the common norms of public law, except when an express mandate of law refers them to another regime; and 8. Private legal persons that provide public services or exercise administrative functions by virtue of concession, delegation, or authorization by the State, in accordance with the rules governing this matter.” (“Para los fines de la presente Ley, se entenderá por “entidad” o “entidades” de la Administración Pública: 1. El Poder Ejecutivo, incluyendo Ministerios y Organismos Públicos Descentralizados; 2. El Poder Legislativo; 3. El Poder Judicial; 4. Los Gobiernos Regionales; 5. Los Gobiernos Locales; 6. Los Organismos a los que la Constitución Política del Perú y las leyes confieren autonomía. 7. Las demás entidades y organismos, proyectos y programas del Estado, cuyas actividades se realizan en virtud de potestades administrativas y, por tanto se consideran sujetas a las normas comunes de derecho público, salvo mandato expreso de ley que las refiera a otro régimen; y 8. Las personas jurídicas bajo el régimen privado que prestan servicios públicos o ejercen función administrativa, en virtud de concesión, delegación o autorización del Estado, conforme a la normativa de la material.”) Available at:

[http://www.pcm.gob.pe/InformacionGral/sgp/2005/Ley\\_27444\\_Procedimiento\\_Administrativo.pdf](http://www.pcm.gob.pe/InformacionGral/sgp/2005/Ley_27444_Procedimiento_Administrativo.pdf)

<sup>160</sup> The Constitutional Court of Peru has addressed the issue of disclosure of information by companies that provide public services. In a lawsuit filed against American Airlines over the refusal to provide access to information requested regarding its provision of services, the Court ruled that airline transportation is by nature a public service. Thus it concluded that information related to that service must be provided to any citizen who requests it. See, Judgment of the Constitutional Court. Docket No. 02636-2009-PHD/TC. Available at: <http://www.tc.gob.pe/jurisprudencia/2009/02636-2009-HD.html>

<sup>161</sup> Republic of Chile. Law on Transparency of Public Functions and Access to Information on State Administration. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “los ministerios, las intendencias, las gobernaciones, los gobiernos regionales, las municipalidades, las Fuerzas Armadas, de Orden y Seguridad Pública, y los órganos y servicios públicos creados para el cumplimiento de la función administrativa”.

relation to their strategic or operational intelligence-gathering activities; and any entity as the Minister may specify by order subject to affirmative resolution, which is approved by Parliament.<sup>162</sup>

133. For its part, Article 14 of Colombia's Law No. 57 of 1985 provides that public offices—therefore entities subject to this law—are those of “the Office of the Attorney General of the Nation, the Office of the Comptroller General of the Republic, the Ministries, Administrative Departments, the oversight agencies, and Special Administrative Units; the Governorates, Intendancies, Police Districts, Mayoralties, and those offices' Secretariats; and those of other administrative offices that are created by the Departmental Assemblies, Intendancy Councils or Police District Councils, and the Municipal Councils, or that function with authorization from these same Bodies; and the offices of Public Establishments, State Industrial or Commercial Enterprises, and Mixed-Economy Corporations in which official participation is greater than fifty percent (50%) of its equity, whether they be national, departmental, or municipal entities; and all others over which the Office of the Comptroller General of the Republic exercises fiscal control.”<sup>163</sup>

134. In Mexico, Article 3 (XIV), of the Federal Transparency and Access to Governmental Public Information Act establishes that the “disclosing parties” are the Federal Executive, the Federal Public Administration, and the Attorney General's Office; the Federal Legislative Branch; the Judicial Branch and the Federal Council of the Judiciary; autonomous constitutional entities<sup>164</sup>; the federal administrative courts; and any other federal entity. The law's Title Two regulates access to information held by the executive branch. Title Three has to do with access to information held by “other disclosing parties.” It establishes, in Article 61, that federal government bodies outside the executive branch that are subject to the Federal Transparency Act “shall establish, by means of regulations or resolutions of a general character, the bodies, criteria and institutional procedures enabling the access by private parties to information in terms of the principles and terms consigned herein.”<sup>165</sup>

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<sup>162</sup> Jamaica. Access to Information Act. Available at: [http://www.jis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.jis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>163</sup> Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: [http://www.cntv.org.co/cntv\\_bop/basedoc/ley/1985/ley\\_0057\\_1985.html](http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html). “la Procuraduría General de la Nación, la Contraloría General de la República, los Ministerios, los Departamentos Administrativos, las Superintendencias y las Unidades Administrativas Especiales; las de las Gobernaciones, Intendencias, Comisarías, Alcaldías y Secretarías de estos Despachos, así como las de las demás dependencias administrativas que creen las Asambleas Departamentales, los Consejos Intendenciales o Comisariales y los Concejos Municipales o que se funden con autorización de estas mismas Corporaciones; y las de los Establecimientos Públicos, las Empresas Industriales o Comerciales del Estado y las Sociedades de Economía Mixta en las cuales la participación oficial sea superior al cincuenta por ciento (50%) de su capital social, ya se trate de entidades nacionales, departamentales o municipales y todas las demás respecto de las cuales la Contraloría General de la República ejerce el control fiscal”.

<sup>164</sup> Pursuant to Article 3 (IX), autonomous constitutional entities are the Federal Electoral Institute, the National Human Rights Commission, the Central Bank, universities, and other higher education institutions that have been conferred autonomy by the law, and any other entity consigned in the Federal Constitution of the United Mexican States.

<sup>165</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>. The same Article 61 mentions as “other disclosing parties” the

135. There is an additional category known as “other disclosing parties.” According to Article 11 of the Federal Transparency and Access to Governmental Public Information Act: “The reports submitted by national political parties and political associations to the Federal Electoral Institute and the audits and reviews ordered by the Public Funds Auditing Commission of the Political Parties and Associations must be publicized upon completion of the respective auditing procedure.” Under Article 12 of the law, the disclosing parties must “publish all information related to the amounts and recipients of public funds for whatever reason, as well as the reports rendered by said recipients on the use and destination of said resources.”<sup>166</sup>

136. With regard to Uruguay, the law on various occasions mentions the obligations of those subject to the law and sets forth a broad definition of who they are but does not identify them specifically. In this respect, Article 2 of the law establishes that “any public body, whether of the State or not,” is subject to the law.<sup>167</sup>

137. In Argentina, Canada, the United States, and Trinidad and Tobago, there are official authorities who are exempt from the obligation to grant access to the right. Argentina is unique in that it does not have a statute on access to public information. The national executive branch issued Decree No. 1172 of 2003, which contains the General Regulations on Access to Public Information of the Federal Executive Branch. These regulations require entities of the federal executive branch to publish and disclose information they produce or hold. The regulations also apply to private organizations that have received contributions from the national public sector and to private enterprises that provide a public service or make use of an asset in the public domain.<sup>168</sup> However, the

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Federal Legislative Branch, through the Senate, the House of Representatives, the Permanent Commission, and the Federal Auditor's Office; the Federal Judicial Branch, through the Supreme Court of Justice, the Federal Council of the Judiciary, and the Administrative Commission of the Federal Electoral Institute; and the constitutional autonomous bodies and administrative-law courts within the sphere of their competence.”

<sup>166</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

<sup>167</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

<sup>168</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf). Article 2 of the decree establishes: “Sphere of application. These General Regulations apply in the sphere of the agencies, entities, enterprises, corporations, offices, and all other bodies that operate under the jurisdiction of the national executive branch.//The provisions of these regulations are also applicable to private organizations that have been granted subsidies or contributions from the national public sector, as well as to institutions or trusts whose management, supervision, or preservation is the responsibility of the National State through its jurisdictions or entities and the private enterprises that have been authorized, through permit, license, concession, or any other contractual means, to provide a public service or to make use of an asset in the public domain” (“Ámbito de aplicación. El presente Reglamento General es de aplicación en el ámbito de los organismos, entidades, empresas, sociedades, dependencias y todo otro ente que funcione bajo la jurisdicción del Poder Ejecutivo Nacional.// Las disposiciones del presente son aplicables asimismo a las organizaciones privadas a las que se hayan otorgado subsidios o aportes provenientes del sector público nacional, así como a las instituciones o fondos cuya administración, guarda o conservación esté a cargo del Estado Nacional a través de sus jurisdicciones o entidades y a las empresas



regulations' provisions do not apply to the other branches or other levels of government, and they can be modified at any time by decision of the executive branch. Despite these limitations, the Supreme Court of Justice has issued some decisions in which it orders the national legislative branch to allow access to the information in its possession.

138. This occurred in the *Case of the Center for Implementation of Public Policies E. and C. (CIPPEC) v. the Senate*, regarding the Senate's failure to publish its parliamentary and administrative decrees. The Senate had argued that this omission did not violate the right to information established in Article 42 of the Constitution, among other things, because the information being requested did not involve government acts but internal institutional acts having to do exclusively with the Senate's institutional administrative management, an administrative activity that falls under its sphere of confidentiality.<sup>169</sup>

139. On that point, the Court indicated that in the absence of an explicit legal exception, the principle of disclosure prevails, as in this case in which the Senate “has not established [...] that there has been any prior statute—or even an order—classifying the type of tactical, financial, and regulatory information being requested as secret or privileged in any way.”<sup>170</sup>

140. In Trinidad and Tobago, Section 4 of the Freedom of Information Act specifies what it means by “public authority” with an exhaustive list of the entities subject to the definition. These include: Parliament; the Court of Appeal, the High Court, the Industrial Court, the Tax Appeal Board or a court of summary jurisdiction; the Cabinet as constituted under the Constitution; a Ministry or a department or division of a Ministry; the Tobago House of Assembly, the Executive Council of the Tobago House of Assembly or any of its divisions; a municipal corporation; a regional health authority; a statutory body, responsibility for which is assigned to a Minister of Government; a company incorporated under the laws of the Republic of Trinidad and Tobago which is owned or controlled by the State; and a Service Commission established under the Constitution or other written law.<sup>171</sup>

141. The law also includes, in the same Section 4, “a body corporate or unincorporated entity,” which includes any such entity that exercises any function on behalf of the State; is established by virtue of the President's prerogative, by a Minister of Government in his capacity as such or by another public authority; and is supported,

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privadas a quienes se les hayan otorgado mediante permiso, licencia, concesión o cualquier otra forma contractual, la prestación de un servicio público o la explotación de un bien del dominio público”).

<sup>169</sup> Republic of Argentina. National Chamber of Appeals for Federal Administrative Litigation. Division III. *Case of Centro de Implementación de Políticas Públicas E. y C. y otro contra la Honorable Cámara de Senadores del Congreso Nacional s/ Amparo Ley 16.986*. Judgment of May 27, 2005. Para X, 2-3. The judgment is available at: <http://www.accesolibre.org/descargas/pdf/1158331282.pdf>

<sup>170</sup> Republic of Argentina. National Chamber of Appeals for Federal Administrative Litigation. Division III. *Case of Centro de Implementación de Políticas Públicas E. y C. y otro contra la Honorable Cámara de Senadores del Congreso Nacional s/ Amparo Ley 16.986*. Judgment of May 27, 2005. Para X. The judgment is available at: <http://www.accesolibre.org/descargas/pdf/1158331282.pdf>

<sup>171</sup> Trinidad and Tobago. The Freedom of Information Act. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

directly or indirectly, by Government funds and over which Government is in a position to exercise control.<sup>172</sup>

142. However, Section 5(1) indicates that the Freedom of Information Act does not apply to the President; “a commission of inquiry issued by the President”; or “[s]uch public authority or function of a public authority as the President may, by order subject to negative resolution of Parliament, determine.”

143. In the United States, the FOIA applies only to agencies and departments of the executive branch, not to the legislative or judicial branches or to state and local governments. Section 5 U.S.C. § 552(f) (1) stipulates that “agency” includes “any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.”<sup>173</sup>

144. In the case of Canada, the Access to Information Act, in Section 3(a), defines a “government institution” as “(a) any department or ministry of state of the Government of Canada, or any body or office, listed in Schedule I, and (b) any parent Crown corporation, and any wholly-owned subsidiary of such a corporation, within the meaning of section 83 of the *Financial Administration Act*.”<sup>174</sup>

145. It is relevant to note that the Federal Court has interpreted this provision restrictively. In 2008, the Information Commissioner of Canada filed applications for judicial review with respect to four cases (2008 FC 766): between the Information Commissioner of Canada and the Minister of National Defense (Docket T-210-05); the Information Commissioner and the Prime Minister (Docket T-1209-05); the Information Commissioner and the Minister of Transport (Docket T-1211-05); and the Information Commissioner and the Commissioner of the Royal Canadian Mounted Police (Docket T-1210-05).<sup>175</sup> Among the issues to be considered was whether the Prime Minister's Office, the Office of the Minister of Transport, and the Office of the Minister of National Defence were “government institutions” under Subsection 4(1) and Schedule I of the Access Act.<sup>176</sup>

146. The Court concluded that the offices of the ministers and the Prime Minister's Office are separate from the departments over which the ministers and the Prime Minister preside and therefore are not “government institutions” as defined in the Access Act.

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<sup>172</sup> Trinidad and Tobago. The Freedom of Information Act. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

<sup>173</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552. Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>174</sup> Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>175</sup> *Canada (Information Commissioner) v. Canada (Minister of National Defence)* (F.C.), 2008 FC 766, [2009] 2 F.C.R. 86. Available on the Federal Court site, at: <http://decisions.fct-cf.gc.ca/en/2008/2008fc766/2008fc766.html>

<sup>176</sup> Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

147. In its judgment, the court noted that the Department of National Defence, the Department of Transport, and the Privy Council Office are among the “government institutions” expressly listed in Schedule I but, by contrast, the Offices of the Ministers of National Defence and Transport and the Prime Minister's Office are not. While the court recognized that the ministers and the Prime Minister are the heads of their respective departments, it concluded that neither they nor their offices are “part of” these institutions.<sup>177</sup>

148. Finally, in Antigua and Barbuda the law applies both to public authorities and to some private bodies. In terms of the public authorities to whom the law applies, Section 3 of the law establishes its application to: the Government; a Ministry of the Government and its offices; the Barbuda Council; and a body that is: (i) established by or under the Constitution or any other law; (ii) owned, controlled or substantially financed from public funds; and (iii) carrying out a function conferred by law or by the Government. It also includes any other body carrying out a public function as the Minister may designate.<sup>178</sup>

### 3. Object or Scope of the Right

149. The right of access to information covers information that is in the State's custody, administration, or possession; information the State produces or is legally obligated to produce; information in the control of those who perform or administer public functions, services or funds, solely with respect to those services, functions and funds; and information that the State collects and is required to collect in the fulfillment of its functions.<sup>179</sup>

150. Along these lines, the Inter-American Juridical Committee's resolution on “Principles on the Right of Access to Information” indicates that the “right to access applies to all significant information, defined broadly to include everything which is held or recorded in any format or medium.”<sup>180</sup>

151. For its part, the OAS General Assembly, in its Model Inter-American Law on Access to Information, has recognized that the “right of access to information applies

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<sup>177</sup> *Canada (Information Commissioner) v. Canada (Minister of National Defence)* (F.C.), 2008 FC 766, [2009] 2 F.C.R. 86. [56]. Available on the Federal Court site, at: <http://decisions.fct-cf.gc.ca/en/2008/2008fc766/2008fc766.html>

<sup>178</sup> Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>179</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Freedom of Expression*. OEA/Ser.L/V/II CIDH/RELE/INF. 1/09. December 30, 2009. Para. 21. Available at: <http://www.cidh.org/pdf%20files/RELEacceso.pdf>

<sup>180</sup> Inter-American Juridical Committee. Resolution 147 of the 73rd regular period of sessions. Principles on the Right of Access to Information. August 7, 2008. Principle 3. Available at: [https://www.oas.org/dil/CJI-RES\\_147\\_LXXIII-O-08\\_eng.pdf](https://www.oas.org/dil/CJI-RES_147_LXXIII-O-08_eng.pdf)

broadly to all information in possession of public authorities, including all information which is held or recorded in any format or medium.”<sup>181</sup>

152. In Chile, the Constitution establishes that the acts and resolutions of State bodies shall be public, as is the material on which they are based and any procedures used.<sup>182</sup> The Law on Transparency<sup>183</sup> broadens this by declaring that disclosure also extends to all records, files, contracts and agreements, and in general any information produced with public funding, regardless of the medium or format in which it is stored.<sup>184</sup>

153. Article 5 of Ecuador's Organic Law on Transparency provides that public information means “all documents, in any format, in the control of the public institutions and legal persons to whom this Law refers, contained, created or obtained by them, which fall under their responsibility or have been produced with State resources.”<sup>185</sup>

154. Likewise, Guatemala's Law on Access to Public Information, in Article 9, paragraph 6, defines public information as “information in possession of those subject to the law, contained in the files, reports, studies, records, resolutions, official communications, correspondence, agreements, directives, guidelines, circulars, contracts, accords, instructions, notes, memorandums, statistics, or in fact any other record documenting the exercise of the faculties or activities of the entities subject to the law and their public servants, regardless of their source or the date on which they were produced. The documents may be in any medium, whether written, printed, audio, visual, electronic,

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<sup>181</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Preamble. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf)

<sup>182</sup> Political Constitution of Chile. Article 8. Available at: [http://www.camara.cl/camara/media/docs/constitucion\\_politica\\_2009.pdf](http://www.camara.cl/camara/media/docs/constitucion_politica_2009.pdf)

<sup>183</sup> Republic of Chile. Law on Transparency of Public Functions and Access to Information on State Administration. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. Article 10, para. 2: “Access to information comprises the right to access the information contained in acts, resolutions, records, files, contracts, and agreements, as well as any information prepared with public funding, contained in any format or medium, save for the legal exceptions” (“El acceso a la información comprende el derecho de acceder a las informaciones contenidas en actos, resoluciones, actas, expedientes, contratos y acuerdos, así como a toda información elaborada con presupuesto público, cualquiera sea el formato o soporte en que se contenga, salvo las excepciones legales”).

<sup>184</sup> Article 11 of the law also establishes three principles for interpreting the object of the right of access to information. They are: the principle of relevance, which presumes that all State information held by public entities is important, independent of its date of creation, origin, classification, or handling; the principle of openness or transparency, by which all information in the possession of State bodies is presumed to be public, unless it is expressly classified as secret; and the principle of divisibility, by which the fact that some parts of an administrative act may be classified does not mean that the entire document is classified, and therefore access should be provided to the information that may be known.

<sup>185</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. “Se considera información pública, todo documento en cualquier formato, que se encuentre en poder de las instituciones públicas y de las personas jurídicas a las que se refiere esta Ley, contenidos, creados u obtenidos por ellas, que se encuentren bajo su responsabilidad o se hayan producido con recursos del Estado”.

on computer, or holographic, as long as they are not confidential or classified as temporarily secret.”<sup>186</sup>

155. In the Dominican Republic, the LGLAIP prescribes that persons have the right to access the information contained in acts and records of the public administration, as well as to be informed periodically, when necessary, of the activities carried out by entities and individuals that fulfill public functions (Art. 2). This right “also encompasses the freedom to seek, request, receive, and disseminate information belonging to the administration of the State, and to ask questions of the entities and individuals that carry out public functions, having the right to obtain a copy of documents that compile information on the exercise of the activities that fall under their purview, with the sole limitations, restrictions, and conditions established in the instant law”. In addition for purposes of applying the law, records and files are understood to mean “all documents kept or recorded in written, optical, acoustic, or any other form that fulfill aims or purposes of a public nature.”<sup>187</sup>

156. Along the same lines, Article 3, paragraph V, of Mexico's Federal Transparency and Access to Governmental Public Information Act defines information as “the documents issued, obtained, acquired, transformed or kept by the Disclosing parties under any title.” In addition, paragraph III clarifies that “documents” means “[t]he files, reports, studies, certificates, resolutions, official communications, correspondence, directives, circulars, contracts, agreements, notes, memoranda, statistics or any other record evidencing the exercise of the authority or activity of the disclosing parties and their government officials, regardless of their source or date of issuance. Documents may be kept in any recording means, whether written, printed, sonic, visual, electronic or holographic.”<sup>188</sup>

157. In the case of Mexico, it is interesting to note that Article 11 of the Act provides that the reports that political parties submit to the Federal Electoral Institute are

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<sup>186</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “Es la información en poder de los sujetos obligados contenida en los expedientes, reportes, estudios, actas, resoluciones, oficios, correspondencia, acuerdos, directivas, directrices, circulares, contratos, convenios, instructivos, notas, memorandos, estadísticas o bien, cualquier otro registro que documente el ejercicio de las facultades o la actividad de los sujetos obligados y sus servidores públicos, sin importar su fuente o fecha de elaboración. Los documentos podrán estar en cualquier medio sea escrito, impreso, sonoro, visual, electrónico, informático u holográfico y que no sea confidencial ni estar clasificado como temporalmente reservado”.

<sup>187</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGi6hr!%3d&tabid=69&mid=421>. “Este derecho [...] también comprende la libertad de buscar, solicitar, recibir y difundir informaciones pertenecientes a la administración del Estado y de formular consultas a las entidades y personas que cumplen funciones públicas, teniendo derecho a obtener copia de los documentos que recopilen información sobre el ejercicio de las actividades de su competencia, con las únicas limitaciones, restricciones y condiciones establecidas en la presente ley. / Para los efectos de esta ley se entenderá por actas y expedientes a todos aquellos documentos conservados o grabados de manera escrita, óptica, acústica o de cualquier otra forma, que cumplan fines u objetivos de carácter público. No se considerarán actas o expedientes aquellos borradores o proyectos que no constituyen documentos definitivos y que por tanto no forman parte de un procedimiento administrativo.”

<sup>188</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

also public, as are the audits and reviews ordered by the Public Funds Auditing Commission of the Political Parties and Associations. The same article indicates that any citizen may ask the Electoral Institute to provide information on the use of public funds allocated to political parties.<sup>189</sup>

158. In Nicaragua, Article 4, subparagraph (k), of the Law on Access to Information establishes that public information means “information that the public administration produces, obtains, classifies, and stores in the exercise of its attributions and functions, as well as any information in possession of private entities that relates to public resources, tax benefits or other benefits, concessions, or advantages.”<sup>190</sup> Along the same lines, Article 10 of Peru's law provides that the law applies to information contained in written documents, photographs, recordings, magnetic or digital support, or in any other format, as long as it has been created or obtained by the public administration or is in its possession or under its control. The article also determines that “any type of documentation funded by the public budget that serves as a basis for an administrative decision, as well as the minutes of official meetings, shall be considered public information.”<sup>191</sup>

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<sup>189</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

<sup>190</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$AII\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($AII)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “La información que produce, obtiene, clasifica y almacena la administración pública en el ejercicio de sus atribuciones y funciones, así como aquella que esté en posesión de entidades privadas en lo que se refiere a los recursos públicos, beneficios fiscales u otros beneficios, concesiones o ventajas.” The same Article 4 of the law contains a series of definitions that are essential for interpreting the object of the right: “...e. Document: Medium or instrument of any kind, including electronic, designed to record or store information for its preservation and representation. // f. Archive: Organized collection of documents derived from and related to the administrative management of entities or organizations, in whatever medium these documents are stored, including electronic documents, and independently of the method that may be used to recover them. // g. Books: Printed medium used to systematically record a specific part of the administrative or financial activities or information of the entity in question. // h. Database: Organized collection of data with a common feature, implemented through an electronic medium. i. Register: Inclusion of data in a document or in documents in an archive. // j. Administrative File: This is a collection of documents that have been duly identified and numbered, or registered in any way, including the reports and resolutions in which administrative procedures are laid out chronologically” (“e. Documento: Medio o instrumento de cualquier naturaleza, incluyendo electrónica, destinado a registrar o almacenar información, para su perennización y representación. // f. Archivo: Conjunto organizado de documentos derivados y relacionados a las gestiones administrativas de las entidades u organizaciones, cualquiera que sea el soporte en que estén almacenados, incluyendo documentos electrónicos, y con independencia del método que sea necesario emplear para obtener su recuperación. // g. Libros: Medio impreso utilizado para registrar de manera sistemática una parte específica de las actividades o datos administrativos o financieros de la entidad que lo utiliza. // h. Base de datos: Conjunto organizado de datos, con una caracterización común, instrumentados en soporte electrónico. // i. Registro: Inclusión de datos en un documento, o de documentos en un archivo. // j. Expediente Administrativo: Es el conjunto de documentos debidamente identificados y foliados, o registrados de cualquier naturaleza, con inclusión de los informes y resoluciones en que se materializa el procedimiento administrativo de manera cronológica”).

<sup>191</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf). “[S]e considera como información pública cualquier tipo de documentación financiada por el presupuesto público que sirva de base a una decisión de naturaleza administrativa, así como las actas de reuniones oficiales.”

159. In El Salvador, subparagraph c) of Article 6 defines as public information any information that is “held by those bodies bound by the law, contained in documents, archives, data, databases, communications, and any type of records that document the exercise of their powers or activities, recorded in any medium, whether printed, optical, or electronic, independent of their source or date of preparation, and that is not confidential. Such information may have been created, obtained, transformed, or kept by these bodies for any reason.”<sup>192</sup>

160. For its part, Jamaica's Access to Information Act applies to any official document in the State's possession, subject to the exceptions established in the same act. Section 6(1) establishes that subject to the provisions of this act, every person shall have a right to obtain access to an official document, other than an exempt document. Section 3 of the same law, for its part, defines an official document as one held by a public authority in connection with its functions as such, whether or not it was created by that authority or before January 5, 2004, when the law went into effect.<sup>193</sup>

161. In Trinidad and Tobago, Section 4 of the Freedom of Information Act defines “document” as “information recorded in any form, whether printed or on tape or film or by electronic means or otherwise and includes any map, diagram, photograph, film, microfilm, video-tape, sound recording, or machine-readable record or any record which is capable of being produced from a machine-readable record by means of equipment or a programme (or a combination of both) which is used for that purpose by the public authority which holds the record.”<sup>194</sup>

162. It is worth noting that the Trinidad and Tobago law includes a provision in Section 21(1) that allows a public authority to refuse to grant access to documents in accordance with requests “if the public authority is satisfied that the work involved in processing the request would substantially and unreasonably divert the resources of the public authority from its other operations and if before refusing to provide information on these grounds the authority has taken reasonable steps to assist the applicant to reformulate the application so as to avoid causing such interference.”<sup>195</sup>

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<sup>192</sup> Republic of El Salvador. Law on Access to Public Information. The Law was approved through decree 534 of 2011 and entered into effect on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. “Información pública: Es aquella en poder de los entes obligados contenida en documentos, archivos, datos, bases de datos, comunicaciones y todo tipo de registros que documenten el ejercicio de sus facultades o actividades, que consten en cualquier medio, ya sea impreso, óptico o electrónico, independientemente de su fuente, fecha de elaboración, y que no sea confidencial. Dicha información podrá haber sido generada, obtenida, transformada o conservada por éstos a cualquier título.”

<sup>193</sup> Jamaica. Access to Information Act. Available at: <http://www.moi.gov.jm/laws/statutes/The%20Access%20to%20Information%20Act.pdf>

<sup>194</sup> Trinidad and Tobago. The Freedom of Information Act. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

<sup>195</sup> Trinidad and Tobago. The Freedom of Information Act. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

163. Similarly, Antigua and Barbuda's legislation, in Section 4(1), defines a "record" as "any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the public authority that holds it and whether or not it is classified." Section 23(1) determines that a public authority is not required to comply with a request for information "which is vexatious or unreasonable or where [the institution] has recently complied with a substantially similar request from the same person."<sup>196</sup>

164. In the United States, the law has a broad definition of what is considered a document to which access may be obtained. FOIA Section 552(f) (2) establishes as a document or "record" any information that would be an agency record subject to the requirements [of the Law] when maintained by an agency in any format, including an electronic format"; and "any information [...] maintained for an agency by an entity under Government contract, for the purposes of records management."<sup>197</sup> The law also determines that in responding to a request for records, an agency "shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system."<sup>198</sup>

165. Other countries have less comprehensive definitions of what is subject to the right of access to information. Thus, Article 10 of Panama's Law on Access to Public Information establishes the following as subject to the right: information about institutions' operations, decisions made, and programs being managed; budget structure and execution, statistics, and any other information related to the institutional budget; and programs carried out by the institution and public acts related to the public contracts carried out by the institution. The law also establishes that the Ministry of Economy and Finance and the Office of the Comptroller General of the Republic shall present and publish, on a quarterly basis, a report on the execution of the State budget, which will provide information at least on the development of the Gross Domestic Product by sector and the performance of the most relevant activities per sector.<sup>199</sup>

166. Uruguay's Law on Access to Information defines the scope of the right to access to information in Article 2, which establishes: "Public information is considered to be any information that comes from or is in possession of any public agency, whether or not it is of the State, save for the exceptions or secrets established by law, as well as information that is secret or confidential."<sup>200</sup>

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<sup>196</sup> Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>197</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(f)(2) and (a)(3)(C). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>198</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(3)(C). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>199</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf)

<sup>200</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la->



167. In Colombia, Article 12 of Law No. 57 of 1985 establishes that documents covered by this right are those held in the offices of the entities subject to the law.<sup>201</sup> In one of its first decisions, Judgment T-473/92, the Constitutional Court established that the provision should not be interpreted to mean that the only documents that are accessible are those issued by the State, but rather that the right to access refers to any document that the State manages or archives, with the exception of those withheld by express provision under the law. In this regard, the Court stated:

*Given that, under the terms of Article 74 of the Constitution, the notion of a public document is clearly not confined to any restricted concept that may be established by different laws, and thus the nature of the subject or entity that produces it or the way it is produced is not as important as the objective fact that it does not contain information that is considered expressly secret under the law, the notion covers, for example, records, reports, studies, accounts, statistics, directives, instructions, circulars, notes, and responses from public entities regarding the interpretation of the right or a description of administrative procedures, views or opinions, provisions or decisions in writing, audio or visual records, non-personal databanks, etc.*

*Added to the foregoing is the access to other documents whose public nature is determined by the conduct of those who hold them, or determined by custom, regardless of whether the presence or involvement of the public administration is an essential requisite—assuming, of course, that it does not go against the law or a right of others.*

*It is therefore clear that in the aforementioned situation there could be documents that arise from relations between private entities whose owners have decided, either formally or implicitly, to allow them to be accessed by the public.<sup>202</sup>*

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[informacion-publica.pdf](#). “Se considera información pública toda la que emane o esté en posesión de cualquier organismo público, sea o no estatal, salvo las excepciones o secretos establecidos por ley, así como las informaciones reservadas o confidenciales”.

<sup>201</sup> Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: [http://www.cntv.org.co/cntv\\_bop/basedoc/ley/1985/ley\\_0057\\_1985.html](http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html). Article 12 of Law. No. 57 of 1985 establishes that “[a]ll persons have the right to consult the documents kept in public offices and the right to be issued a copy of them, as long as said documents are not of a privileged nature pursuant to the Constitution or the law, or are not related to defense or national security.”

<sup>202</sup> Republic of Colombia. Constitutional Court. Judgment T-473/92. July 14, 1992. Available at: <http://www.corteconstitucional.gov.co/relatoria/1992/T-473-92.htm>. “Puesto que en los términos del artículo 74 de la Carta la noción de documento público no se circunscribe, como se ve, al concepto restringido que consagra cualquiera de las ramas del ordenamiento y, de consiguiente, no cuenta tanto el carácter del sujeto o entidad que lo produce o la forma misma de su producción sino el hecho objetivo de que no contenga datos que por expresa disposición de la ley deban ser mantenidos en reserva, la noción cobija, por ejemplo, expedientes, informes, estudios, cuentas, estadísticas, directivas, instrucciones, circulares, notas y respuestas provenientes de entidades públicas acerca de la interpretación del derecho o descripción de procedimientos administrativos, pareceres u opiniones, previsiones y decisiones que revistan forma escrita, registros sonoros o visuales, bancos de datos no personales, etc. / A lo anterior, se agrega el acceso a otros documentos cuyo carácter de públicos está determinado por la conducta manifiesta de sus titulares o por la costumbre, sin que sea requisito indispensable la presencia o concernimiento de la administración pública. Siempre, eso sí, que no sea contra la ley o derecho ajeno./ “Es claro, por tanto, que en la anterior situación bien pueden encontrarse documentos surgidos de relaciones entre particulares cuyos titulares hayan decidido, formalmente o por conducta concluyente, permitir su acceso al público”.

168. In Argentina, Article 5 of the General Regulations on Access to Public Information of the Federal Executive Branch establishes that “for these effects, information is considered to be any record of written or photographic documents, recordings, magnetic or digital medium, or any other format that has been created or obtained by the parties mentioned in Article 2 or that is in their power or under its control, or whose production has been completely or partially funded by the public treasury, or that provides a basis for a decision of an administrative nature, including the minutes of official meetings.”<sup>203</sup> As has already been indicated, the Regulations apply only to the executive branch, and thus, in principle, the definition does not apply to information in the custody, management, or possession of other entities.

169. It is important to mention, however, that Law No. 25.152 of 2009, regulating the management of public resources (better known as the fiscal solvency law), provides in Article 1 that the statute applies to all branches of the national government. In the aforementioned judgment in the *Case of CIPPEC v. the Honorable Senate Chamber*, the National Chamber of Appeals for Federal Administrative Litigation affirmed that the legislative branch is included among those for whom the law is intended:

*Law No. 25.152 on fiscal solvency provides, in its Art. 1, that it applies to all branches of the national State; thus the legislative branch falls within its scope. And Art. 8 of the aforementioned Law No. 25.152 allows access to one piece of information expressly characterized as "public" at the will of the legislative authority: the execution of the budget related to expenditures and resources to the highest level of disaggregation (Art. 8, para. a).*

*Moreover, Art. 8, para. (m) prescribes that also considered "public" is any other relevant information necessary to fulfill not only the regulations of the national financial administration system—in reference to the regime of Law 24.156, from which the defendant is excluded—but also those "established in this law." As "this law" No. 25.152, applicable to the defendant, provides that budget information may be accessed "up to its most disaggregated form," it is clear that the information, broken down to its most disaggregated form, must be sent to the plaintiff.<sup>204</sup>*

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<sup>203</sup> Republic of Argentina. Decreto 1172/2003. Anexo VII. Reglamento General del Acceso a la Información Pública para el Poder Ejecutivo Nacional. Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf). “Se considera información a los efectos del presente, toda constancia en documentos escritos, fotográficos, grabaciones, soporte magnético, digital o en cualquier otro formato y que haya sido creada u obtenida por los sujetos mencionados en el artículo 2º o que obre en su poder o bajo su control, o cuya producción haya sido financiada total o parcialmente por el erario público, o que sirva de base para una decisión de naturaleza administrativa, incluyendo las actas de las reuniones oficiales”.

<sup>204</sup> Republic of Argentina. National Chamber of Appeals in Federal Administrative Litigation. Chamber III. *Caso Centro de Implementación de Políticas Públicas E. y C. y otro contra la Honorable Cámara de Senadores del Congreso Nacional s/ Amparo Ley 16.986*. Judgment of May 27, 2005. Para. X. Available at: [http://www.accesolibre.org/fallos\\_view.php?id=37](http://www.accesolibre.org/fallos_view.php?id=37) “[L]a ley 25.152 de solvencia fiscal, prevé, en su Art. 1º, que la misma es aplicable a todos los poderes del Estado nacional -por lo que el Legislativo se halla comprendido en sus efectos-. Y el Art. 8º de dicha ley 25.152 permite acceder a una información expresamente calificada como ‘pública’ por voluntad de Legislador: la ejecución presupuestaria en lo relativo a gastos y recursos hasta su último nivel de desagregación (Art. 8º. inc. a))./ Además, el Art. 8º, inc. m) prescribe que será también ‘pública’ toda otra información relevante necesaria para que pueda ser controlado el cumplimiento, no solo de las normas del sistema nacional de administración financiera -en alusión al régimen de la ley 24.156, del cual la demandada se

170. In Canada, the Access to Information Act, section 3 defines “record” as “any documentary material, regardless of medium or form.” However, this provision has been interpreted restrictively in case law.<sup>205</sup> In the aforementioned case, *Information Commissioner v. Minister of National Defence et al.*,<sup>206</sup> the office of the Commissioner argued that all documents created or obtained by the ministers (or on their behalf), related to the fulfillment of their duties and functions with respect to the administration of the departments they head, were subject to the Access to Information Act. The Federal Court disagreed with the Commissioner. According to the Court, control is not a defined term, as the Parliament did not restrict the notion of control to the power to dispose of the documents in question. Therefore, in reaching a finding of whether the records are under the control of a government institution, the court may consider ultimate control as well as immediate control, and *de jure* as well as *de facto* control. Accordingly, the contents of the records and the circumstances in which they came into being are relevant to determine whether they are under the control of a government institution for the purposes of disclosure under the Access to Information Act.<sup>207</sup>

#### **4. Obligations Imposed on the State by the Right of Access to Information**

171. The right of access to public information creates different obligations for the State. This section explains some of the most important obligations and lays out how these are regulated in the different legal systems that were studied.

##### **a. Obligation to respond to requests in a timely, complete, and accessible manner**

172. The State has the obligation to provide a substantive response to requests for information. Indeed, Article 13 of the American Convention, by protecting the right of all persons to access State-held information, establishes a positive obligation for the State to provide the requested information in a timely, complete, and accessible manner. Otherwise, the State must offer, within a reasonable time period, its legitimate

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halla excluida- sino también de ‘las establecidas en la presente ley’. Como ‘la presente ley’ 25.152, aplicable al demandado, prevé que se podrá acceder a la información presupuestaria “hasta su último nivel de desagregación”, es claro que la información desagregada hasta su máximo nivel es la que debe ser transmitida a la fundación actora”.

<sup>205</sup> Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>206</sup> *Canada (Information Commissioner) v. Canada (Minister of National Defence)* (F.C.) 2008 FC 766, [2009] 2 F.C.R. 86. Available on the Federal Court site, at <http://decisions.fct-cf.gc.ca/en/2008/2008fc766/2008fc766.html>

<sup>207</sup> Based on this reasoning, the Court found in the instant case that some specific documents did not fall under the jurisdiction of the Access to Information Act. It should be noted that these cases are not yet settled law. The Information Commissioner has appealed the court’s decision in the cases involving the Minister of National Defence, the Prime Minister, and the Minister of Transport. The Attorney General, meanwhile, has cross-appealed the case involving the former Prime Minister and appealed the Royal Canadian Mounted Police case. In the interim, the records at issue in these cases may not be disclosed pending the determination of the appeals and cross-appeal. See Office of the Information Commissioner of Canada, Court Cases. Available at: [http://www.oic-ci.gc.ca/eng/lc-cj\\_cc\\_2008-2009\\_1.aspx](http://www.oic-ci.gc.ca/eng/lc-cj_cc_2008-2009_1.aspx)

reasons for impeding access.<sup>208</sup> In this regard, inter-American doctrine has specified that any exceptions “must have been established by law to ensure that they are not at the discretion of public authorities.”<sup>209</sup>

173. As discussed below, States should ensure the full satisfaction of the right to access to information through the creation of a simple remedy that is readily accessible to all persons and which, *inter alia*, is either free or sufficiently low in cost so as not to discourage requests for information.<sup>210</sup> To this effect, the aforementioned Model Law on Access to Information, of the General Assembly, prescribes that “the process of requesting information should be regulated by clear, fair and non-discriminatory rules which set clear and reasonable timelines, provide for assistance to those requesting information, assure that access is free or limited to the cost of reproduction of records and require specific grounds for the refusal of access.”<sup>211</sup>

174. The legal systems of all the countries studied provide the obligation to respond to requests for information presented by individuals. They establish a time limit for the parties subject to the law to be able to respond to requests for information, a period that varies between 7 days (as in the case of Peru) to 30 calendar days (as in Panama). In the majority of cases, it is stipulated that the time period may be extended, provided there is a reason to justify an extension. Several legal systems also provide that if the information has already been published in any medium, the response of the entity subject to the law may be limited to providing the information the applicant needs to identify the publication.

175. As was mentioned earlier, the majority of the countries studied have the concept of negative administrative silence, which means that when the government does not respond within the indicated period, it is understood that access to the information requested has been denied.

176. As has already been indicated in the section related to the State's burden of proof, in cases in which limitations to the right of access to information have been established, Uruguay, Guatemala, Mexico, and Colombia provide that when no response has been provided to a request within the legally provided periods, affirmative

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<sup>208</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 77; IACHR. Arguments before the Inter-American Court of Human Rights in the *Case of Claude-Reyes et al.* Transcribed in: I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 58 (a)-(b).

<sup>209</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 89.

<sup>210</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. “The Inter-American Legal Framework regarding the Right to Access to Information.” Document CIDH/RELE/INF. 1/09. December 30, 2009. Para. 26. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>

<sup>211</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Preamble. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf)

administrative silence prevails, which means that the party subject to the law must turn over the information that has been requested.

177. In Uruguay, the Law on Access to Information requires that a response to the request be given within 20 business days after it has been submitted, if it is not possible to provide the information immediately. This term may be extended for another 20 days, but the entity must provide the petitioner with a written justification as to why the extension is needed (Article 15). Article 18 of that law provides that if the time limit expires—or the limits, in the case of an extension—without the interested party having received a response, the interested party may obtain access to the information in question.<sup>212</sup>

178. Mexico's Federal Transparency and Access to Governmental Public Information Act also provides for this concept when the entity fails to respond to the request for access to information within the legal time limit. Article 44 of the law establishes that the interested party must be notified of the response to the request for information within a period not to exceed 20 business days. This may be extended by up to an equivalent period by means of a decision justifying the extension, provided the applicant is notified.<sup>213</sup> Article 53 then establishes that if no response has been received to the request for access to information within the established time periods, the matter shall be construed as having been resolved affirmatively.<sup>214</sup>

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<sup>212</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. The second paragraph of Article 18 of the Law on Access to Public Information states: "(Affirmative Silence). Upon expiration of the time period of twenty business days from the submission of the request, there being no extension or the time period having expired without a specific decision having been communicated to the interested party, the applicant shall be able to access the respective information, and it shall be considered a serious offense for any official to refuse to provide it, in accordance with the provisions of Law No. 17.060, dated December 23, 1998, and Article 31 of this law" ("Silencio positivo). Vencido el plazo de veinte días hábiles desde la presentación de la solicitud, si no ha mediado prórroga o vencida la misma sin que exista resolución expresa notificada al interesado, éste podrá acceder a la información respectiva, considerándose falta grave la negativa de cualquier funcionario a proveérsela, de conformidad con las previsiones de la Ley Nº 17.060, de 23 de diciembre de 1998, y del artículo 31 de la presente ley").

<sup>213</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>. Article 44 of the act establishes: "The reply to a request shall be notified to the interested party as soon as possible, but never in excess of twenty business days from the date on which the request is made. In addition, the cost and method for delivery of the information will be stated and the requests shall be taken care of to the greatest extent possible. Exceptionally this term may be extended up to an equivalent period if there shall be a reason justifying said extension of the term, provided the applicant is notified accordingly. The information shall be released within ten business days from the date on which the liaison unit notifies the availability of said information, provided that the applicant presents evidence of the respective payment of dues. The Regulations contain the method and terms of the internal processing of access to information requests."

<sup>214</sup> Article 53 prescribes: "The failure to answer a request for access to information within the term provided by Article 44 hereof shall be construed as an affirmative answer and the department or agency shall be required to allow the access to the information within a term not to exceed 10 business days after payment of the costs derived from the reproduction of the material, unless the Institute shall determine that the documents in question contain privileged or confidential information."

179. Guatemala has a very similar provision. Article 42 of the Law on Access to Public Information establishes that the information unit to which the request was made must respond within the following 10 days, and later on, Article 43 determines that this time period may be extended for 10 additional days, if the volume and extent of the response so requires.<sup>215</sup> Subsequently, Article 44 creates the concept of the default affirmative response, in which if the entity subject to the law does not respond within the period in question, that party will have the obligation to turn over the information to the petitioner within 10 days of the expiration of the time period.<sup>216</sup>

180. In Colombia, affirmative administrative silence operates in relation to requests to view or copy documents held in public offices. Article 25 of Law No. 57 of 1985—which modified Article 22 of the Code of Administrative Litigation—provides that these requests must be resolved in a maximum period of 10 days and if the petitioner has not been given a response within that period, “it shall be understood, for all legal effects, that the request in question has been accepted. Accordingly, the document in question shall be turned over within the three (3) days immediately following.”<sup>217</sup>

181. However, the Colombian legal framework is not so demanding when it comes to simple requests for information. To be sure, Article 6 of the Code of Administrative Litigation establishes that requests for information must be resolved within a period of 15 days. But in those cases in which it is not possible to resolve the petition within that period, the administration is authorized to inform the interested party of that fact, “stating the reasons for the delay and also indicating the date on which it will be resolved or a response will be given.” That gives the government broad discretion to extend the legal period for responding to requests for information, since it is not even established what reasons would justify the extension, nor is a maximum time period established for the extension.<sup>218</sup>

182. El Salvador's Access to Information Law has a unique feature in this respect. Article 71 provides that an access request must be answered in a period not to

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<sup>215</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. The content of Articles 42 and 43 is as follows: “Article 42: Once a request has been presented and admitted, the Information Unit where it was presented must issue a decision within the next ten days, along one of the lines stated as follows...” “Article 43: When the volume and extent of the response so justifies, the response period to which this law refers may be extended up to ten additional days, with the interested party notified within two days before the end of the time period indicated in this law.”

<sup>216</sup> The aforementioned article states: “Default affirmation. When the entity subject to the law provides no response within the period and in the form that is required, the entity shall be required to grant [the information] to the interested party no later than ten days after the expiration of the time period for a response, at no cost and with no need for a request from the interested party. Failing to comply with the provisions of this article shall be grounds for criminal liability.”

<sup>217</sup> Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: [http://www.cntv.org.co/cntv\\_bop/basedoc/ley/1985/ley\\_0057\\_1985.html](http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html). “[S]e entenderá, para todos los efectos legales, que la respectiva solicitud ha sido aceptada. En consecuencia, el correspondiente documento será entregado dentro de los tres (3) días inmediatamente siguientes”.

<sup>218</sup> Republic of Colombia. Contentious Administrative Code. Decree 01 de 1984. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/codigo/codigo\\_contencioso\\_administrativo.html](http://www.secretariassenado.gov.co/senado/basedoc/codigo/codigo_contencioso_administrativo.html). “expresando los motivos para la demora y señalando a la vez la fecha en que se resolverá o dará respuesta”.

exceed ten business days, provided the information has been generated within the prior five years. In cases in which the information is older, the time period may be extended for up to another ten business days. And in especially complex cases, the time period may be extended, by means of a reasoned decision, for up to five additional business days. Meanwhile, Article 82 provides that the petitioner may turn to the Institute for Access to Public Information to appeal decisions in which the entity subject to the law is denying access to particular information or denying that such information exists, or in situations in which the petitioner does not agree with the delay that has occurred, the costs being required, or the form in which the information is being turned over. The processing of the appeal is regulated by Articles 85 *et seq.* and Article 99, which states that “if the Institute has not resolved the access-to-information appeal in the established time frame, the decision that was appealed shall be understood to be revoked by operation of law.”<sup>219</sup>

183. As has already been stated, while the other countries do not prescribe an affirmative administrative silence, they do establish the obligation to respond to requests for information within a period that, in general, may be extended, with an administrative act that explains the reasons.

184. Thus, paragraph (b) of Article 11 of Peru's Law on Access to Public Information prescribes that, once a request for information has been submitted, the public official must respond to the request within 7 business days, with the possibility of an extension for 5 additional business days. In this case, it is important to note that paragraph (e) of the same Article 11 establishes that if the interested party has not received a response within the time periods provided, the request for information shall be considered to have been denied and the administrative avenue exhausted unless an appeal is filed.<sup>220</sup>

185. In 2003, the Constitutional Court of Peru ruled on a *habeas data* action in which the plaintiff affirmed that he had requested information on the expenses incurred by former President Alberto Fujimori and his delegation during the 120 trips made overseas in the course of his presidency, and that the information that had been turned over to her was incomplete, imprecise, and inexact. The Court affirmed that the right of access to information was affected not only when the requested information was denied, but also when the information provided was imprecise, false, untimely, or incorrect:

*In the Court's opinion, the right of access to information is impaired not only when its provision is denied, without constitutionally legitimate reasons for doing so, but also when the information provided is fragmentary, outdated, incomplete, imprecise, false, untimely, or incorrect. Thus, while the right of access to information imposes on public administration bodies the affirmative duty to*

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<sup>219</sup> Republic of El Salvador. Law on Access to Public Information. The Law was approved through decree 534 of 2011 and entered into effect on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. “si el Instituto no hubiere resuelto el recurso de acceso a la información en el plazo establecido, la resolución que se recurrió se entenderá revocada por ministerio de la ley”.

<sup>220</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

*inform, it also establishes a negative requirement that the information provided not be false, incomplete, fragmentary, circumstantial, or confusing.*<sup>221</sup>

186. The Court concluded that, as the plaintiff had argued, the information that had been given to him was not complete, updated, and exact. Thus, it declared the *habeas data* action to be admissible and ordered that the information be turned over under the terms established in the considerations of the ruling.

187. In Panama, Article 7 of the Law on Transparency in Public Management establishes that an official who receives a request should respond to it within the following 30 calendar days, a time period that may be extended for a similar period when the request has to do with a complex subject or the response is extensive. The response may be offered in electronic form, and in the case of information that is already accessible to the public in printed or electronic form, the petitioner shall be told “the source, place, and form in which he or she can have access to the previously published information.”<sup>222</sup>

188. In 2004, the Plenum of the Supreme Court of Justice of Panama ruled on a *habeas data* action brought by the Ombudsman against the Ministry of Commerce and Industry. The Ombudsman indicated that several months before he had sent the Ministry a request for information related to contracts for professional services granted by that institution in 2002 and 2003. However, he had not received a response to his request, and thus he was asking that the Ministry be given a final deadline to respond. For its part, the Ministry stated that the information requested was published on the Internet and so it was unnecessary to respond to the request.<sup>223</sup>

189. The Court considered that even if the requested information had already been published, it fell to the entity subject to the law to resolve the request during the period of 30 calendar days, indicating the reasons it was not providing the information and the necessary facts for the petitioner to be able to access the information. On that point, the Court said:

*In the instant matter, the Plenum cannot ignore the fact that the Minister of Commerce and Industry did not meet his obligation to respond, within the time*

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<sup>221</sup> Republic of Peru. Constitutional Court of Peru, First Chamber, January 29, 2003. Docket No. 1797-2002-HD/TC. Available at: <http://www.tc.gob.pe/jurisprudencia/2003/01797-2002-HD.html>. “A criterio del Tribunal, no sólo se afecta el derecho de acceso a la información cuando se niega el suministro, sin existir razones constitucionalmente legítimas para ello, sino también cuando la información que se proporciona es fragmentaria, desactualizada, incompleta, imprecisa, falsa, no oportuna o errada. De ahí que si en su faz positiva el derecho al acceso a la información impone a los órganos de la Administración pública el deber de informar, en su faz negativa, exige que la información que se proporcione no sea falsa, incompleta, fragmentaria, indiciaria o confusa”.

<sup>222</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf). “En caso de que la información solicitada por la persona ya esté disponible al público en medios impresos [...] se le hará saber la fuente, el lugar y la forma en que puede tener acceso a dicha información previamente publicada”.

<sup>223</sup> Republic of Panama. Judgment of the Supreme Court of Justice, Plenary Chamber, of July 7, 2004. Opinion by Winston Spadafora Franco. Docket No. 516-04. Available for consultation at: <http://bd.organojudicial.gob.pa/registro.html>



*frame of thirty calendar days, to the petition from the Ombudsman, whether by providing the information requested or indicating where it could be obtained, as required under Article 7 of Law No. 6 of 2002; thus it has been necessary for the Ombudsman to make use of a habeas data action to obtain a pronouncement from the official to whom the request was made.*<sup>224</sup>

190. In addition, the judgment clarified that the information requested by the Ombudsman was not on the aforementioned Internet portal; only the Ministry of Commerce's regular employee list appeared, but not the contracts for professional services issued by the Ministry of Commerce and Industry in 2002 and 2003:

*However, after inspection of the aforementioned websites, the Plenum observes that although the sites show the List of Employees or List of Personnel of the Ministry of Commerce and Industry, which includes the name of the employee, his or her status (regular or contract official), and the amount of the contract, that information is insufficient and does not satisfy the requirement of the honorable Ombudsman, who specifically requested information concerning the contracts for professional services issued by the Ministry of Commerce and Industry for 2002 and 2003, with additional details such as the identification of the person contracted, the service contracted, and the time period covered by each contract.*<sup>225</sup>

191. Consequently, the Court ordered the Ministry of Commerce and Industry to provide the information requested within the 10 days following notification of the decision.

192. In Chile, Article 14 of the Law on Access to Public Information establishes a deadline of 20 business days to respond to requests for information. This period may be extended for 10 additional business days, when there are difficulties getting the requested information together. The next line, Article 15, clarifies that when the information requested is published in print or electronic form, "the applicant shall be informed of the source, the place, and the form in which he or she can have access to that information,

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<sup>224</sup> Republic of Panama. Judgment of the Supreme Court of Justice, Plenary Chamber, of July 7, 2004. Opinion by Winston Spadafora Franco. Docket No. 516-04. Available for consultation at: <http://bd.organojudicial.gob.pa/registro.html>. "En el negocio sub-júdice, el Pleno no puede soslayar, que el Ministro de Comercio e Industrias no cumplió con su obligación de contestar, dentro del término de treinta días calendario, la petición del Defensor del Pueblo, ya sea suministrando la información requerida, o indicando dónde ésta podía obtenerse, tal como lo exige el artículo 7 de la Ley 6 de 2002, por lo que ha sido necesario que el Defensor del Pueblo utilice la acción de habeas data, para obtener un pronunciamiento del funcionario requerido".

<sup>225</sup> Republic of Panama. Judgment of the Supreme Court of Justice, Plenary Chamber, of July 7, 2004. Opinion by Winston Spadafora Franco. Docket No. 516-04. Available for consultation at: <http://bd.organojudicial.gob.pa/registro.html>. "Sin embargo, luego de la verificación a los sitios Web antes mencionados, el Pleno advierte que aunque en éstos aparece publicada la Planilla de Empleados o Planilla de Personal del Ministerio de Comercio e Industrias, en la cual se incluye el nombre del funcionario, su status (funcionario regular o de contrato), y el monto del contrato, dicha información es insuficiente y no satisface el requerimiento del señor Defensor del Pueblo, quien solicitó concretamente la información concerniente a los contratos por servicios profesionales extendidos por el Ministerio de Comercio e Industrias para los años 2002 y 2003, con detalles adicionales como la identificación de la persona contratada, el servicio contratado, y el tiempo que cubrió cada contrato".

with which the Administration shall be understood to have complied with its obligation to inform.”<sup>226</sup>

193. In Ecuador, as well, the second paragraph of Article 9 of the Organic Law on Transparency and Access to Public Information establishes that the party subject to the law shall have a maximum period of 10 days to respond to requests for information, a period that may be expanded for 5 additional days by means of a reasoned decision which must be notified to the petitioner.<sup>227</sup>

194. In Nicaragua, meanwhile, Article 28 of the Law on Access to Public Information establishes a maximum period of 15 business days to respond to requests for information. Pursuant to Article 29, this period may be extended for 10 additional business days with a written communication based on one of the following four circumstances: “a. The pieces of information requested are, in total or in part, in another State division or are located far from the office where the information was requested; b. The request requires prior consultation with other administrative bodies; c. The information requested is voluminous and more time is needed to gather it; d. The information requested requires prior analysis because it is believed to fall under one of the exceptions established by this law.”<sup>228</sup>

195. In the case of Nicaragua, it is also important to highlight that, as was stated previously, paragraph 3 of the law's Article 3 provides that, in accordance with the principle of multi-ethnicity, “public information must also be provided in the different languages that exist along our country's Atlantic Coast.”<sup>229</sup>

196. In Jamaica, Section 7(3) of the Access to Information Act establishes that the public authority shall, “upon request, assist the applicant in identifying the documents to which an application relates”; “acknowledge receipt of the application in the prescribed manner”; and grant access to the document specified if it is not an exempt document. Section 7(4) of the Act states that an authority shall respond to an application as soon as practicable, but not later than 30 days after the date of receipt of the application. This

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<sup>226</sup> Republic of Chile. Law on Transparency of Public Functions and Access to Information on State Administration. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “[S]e comunicará al solicitante la fuente, el lugar y la forma en que puede tener acceso a dicha información, con lo cual se entenderá que la Administración ha cumplido con su obligación de informar”.

<sup>227</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

<sup>228</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “a. Que los elementos de información requeridos se encuentran en todo o en parte, en otra dependencia del Estado o se encuentre alejada de la oficina donde se solicitó; b. Que la solicitud, requiera de alguna consulta previa con otros órganos administrativos; c. Que la información requerida sea voluminosa y necesite más tiempo para reunirse; d. Que la información solicitada necesite de un análisis previo por considerarse que está comprendida en las excepciones establecidas de esta ley.”

<sup>229</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “[L]a información pública deberá proveérsele también en las distintas lenguas existentes en la Costa Atlántica de nuestro país.”

period may be extended for a further period of up to 30 days, provided there is reasonable cause to do so. Section 7(5) of the Act establishes that the authority's response “must state its decision on the application, and where the authority decides to refuse, defer access, or extend the [response] period for up to 30 days, it must state the reasons therefore and the options available to an aggrieved applicant.”<sup>230</sup>

197. In Antigua and Barbuda, Section 18 prescribes that a party subject to the law must respond to a request for information as soon as practicable and in any event within 20 business days. The same section authorizes an extension of up to another 20 days in exceptional cases. Subparagraph 2 of Section 18 establishes that when information is directly related to safeguarding the life or liberty of a person, the response must be provided within 48 hours.<sup>231</sup>

198. In the Dominican Republic, Article 8 of the LGLAIP establishes that “[a]ny application for information requested under the terms of this law must be satisfied within a period of no more than fifteen (15) business days. The period may be extended on an exceptional basis for another ten (10) business days in cases involving circumstances that make it difficult to gather the information requested. In this case, the agency to which the request has been made shall, by written notice signed by the responsible authority before the period of fifteen (15) days has expired, communicate the reasons for making use of the exceptional extension.”<sup>232</sup>

199. In Canada, Section 7 of the Access to Information Act imposes the obligation to notify the person who made the request if access to the requested record or a part thereof is refused, or to give the person access to the record, within 30 days. Section 8(1) prescribes that if the institution that receives a request considers that another government institution has a greater interest in the record requested, the head of the institution may, within 15 days, transfer the request and shall give notice of the transfer to the person who made the request.<sup>233</sup>

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<sup>230</sup> Jamaica. Access to Information Act. Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>231</sup> Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>232</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGi6hr!%3d&tabid=69&mid=421>. “Toda solicitud de información requerida en los términos de la presente ley debe ser satisfecha en un plazo no mayor de quince (15) días hábiles. El plazo se podrá prorrogar en forma excepcional por otros diez (10) días hábiles en los casos que medien circunstancias que hagan difícil reunir la información solicitada. En este caso, el órgano requerido deberá, mediante comunicación firmada por la autoridad responsable, antes del vencimiento del plazo de quince (15) días, comunicar las razones por las cuales hará uso de la prórroga excepcional”.

<sup>233</sup> Canada. Access to Information Act. Available at <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>. This standard has also been addressed in Canadian case law. See, e.g., Federal Court. *Statham v. The President of the Canadian Broadcasting Corporation and the Information Commissioner of Canada*. T-782-08 of 2009. Office of the Information Commissioner of Canada. Available at: [http://www.oic-ci.gc.ca/eng/rp-pr\\_ar-ra\\_2008-2009\\_19.aspx](http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra_2008-2009_19.aspx)

200. In the United States, FOIA Section 552(a)(3)(A) establishes that each agency, upon receiving a request, must “promptly” make the records available to any person.<sup>234</sup> Under FOIA, government agencies have 20 business days in which to respond to requests for information by granting or denying access.<sup>235</sup> The law prescribes “unusual circumstances” in which the time limits may be extended. Such “unusual circumstances” are defined as the need to collect the requested records from field facilities; the need to search for, collect, and examine a voluminous amount of separate and distinct records; or the need for consultation with another agency having a substantial interest in the determination.<sup>236</sup>

201. In some circumstances—when the person requesting the records demonstrates a compelling need and in other cases determined by the agency—the law provides for expedited processing of requests for records, in which a determination must be made within 10 days. Administrative appeals in these cases must also be expeditious. “Compelling need” means that “a failure to obtain the information on an expedited basis may pose an imminent threat to the life or physical safety of an individual” or, “with respect to a request made by a person primarily engaged in disseminating information, that there is urgency to inform the public” concerning activity by the federal government.<sup>237</sup>

202. Public agencies must assign an individualized tracking number for each request received that will take longer than 10 days to process and provide that tracking number to the person making the request. They must also establish a telephone line or Internet service that provides information about the status of a request, using the assigned tracking number, including the date on which the agency originally received the request and an estimated date on which the agency will complete action on the request.<sup>238</sup>

203. In Trinidad and Tobago, the Freedom of Information Act establishes that a public authority shall notify the applicant of the approval or refusal of his request as soon as practicable but in any case not later than 30 days after the day on which the request is duly made.<sup>239</sup> It further stipulates, in Section 16(1), that where “(a) a request is duly made by an applicant to a public authority for access to an official document; (b) the request is approved by the public authority, and (c) any fee prescribed under section 17 that is required to be paid before access is granted has been paid, the public authority shall

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<sup>234</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(3)(A). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>235</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(A)(i). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>236</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(B)(i) and (a)(6)(B)(iii)(I),(II) y (III), respectively. Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>237</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(E). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>238</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(7)(A)-(B). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>239</sup> Trinidad and Tobago. The Freedom of Information Act. Section 15. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

forthwith give the applicant access to the official document.” Section 8(3) provides an obligation to provide access to corresponding public versions of documents in cases involving documents that have already been deemed to be exempt and for which it is practicable to delete the exempt portions.<sup>240</sup>

204. In, Argentina, Article 12 of the General Regulations on Access to Public Information of the Federal Executive Branch establishes that the responsible party must respond to a request for information within a period of no more than 10 days, which may be extended by a like period, as long as a reasoned decision is provided.<sup>241</sup>

**b. Obligation to provide an administrative remedy that satisfies the right of access to information**

205. The full satisfaction of the right of access to information requires States to include in their legal systems an effective and adequate legal recourse that all individuals can use to request the information they need. To guarantee that the right to access is truly universal, this recourse must include several characteristics: (a) it must be a simple recourse that is easy for everyone to access and only demands basic requirements, such as a reasonable method of identifying the requested information and the details required for the administration to turn over the information to the interested party; (b) it must be free of charge or have a cost low enough so as not to discourage requests for information; (c) it must establish strict but reasonable deadlines for the authorities to turn over the information requested; (d) it must allow requests to be made orally in the event that they cannot be made in writing—for example, if the person does not know the language or does not know how to write, or in cases of extreme urgency; (e) it must establish an obligation for administrators to advise the petitioner on how to make a request, including advising the petitioner on the authority competent to respond to the request, up to and including filing the request for the petitioner and keeping him or her informed of its progress; and (f) it must establish the obligation to the effect that in the event a request is denied, the decision must be reasoned and there must be a possibility of appealing the denial before a higher or autonomous body, as well as later challenging the denial in court.<sup>242</sup>

206. With regard to the obligation of creating a special mechanism to make the right to access enforceable, the Inter-American Court has held that the State must guarantee “the effectiveness of an appropriate administrative procedure for processing

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<sup>240</sup> Trinidad and Tobago. The Freedom of Information Act. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

<sup>241</sup> Republic of Argentina. General Rules regarding Access to Public Information for the National Executive Branch. Decree No. 1172/2003. Annex VII. Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf)

<sup>242</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *The Inter-American Legal Framework Regarding the Right to Freedom of Expression*. OEA/Ser.L/V/II CIDH/RELE/INF. 1/09. December 30, 2009. Para. 26. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>

and deciding requests for information, which establishes time limits for taking a decision, and providing information, and which is administered by duly trained officials.”<sup>243</sup>

207. As the UN, OAS, and OSCE rapporteurs for freedom of expression stated in their 2004 Joint Declaration, “[a]ccess to information is a citizens’ right. As a result, the procedures for accessing information should be simple, rapid and free or low-cost.”<sup>244</sup> As the Inter-American Juridical Committee stated, in its Principles on the Right of Access to Information, “[c]lear, fair, non-discriminatory and simple rules should be put in place regarding the processing of requests for information. These should include clear and reasonable timelines, provision for assistance to be given to those requesting information, free or low-cost access, and does not exceed the cost of copying and sending the information, and a requirement that where access is refused reasons, including specific grounds for the refusal, be provided in a timely fashion.”<sup>245</sup>

208. All the countries studied have established rules for the administrative procedures used to obtain access to information. This includes creating an administrative remedy and determining the requirements the applications must meet and how applications are processed within the administration. As will be explained below, States such as Mexico and Chile also have an autonomous, specialized body tasked with reviewing the administration’s denials of requests and making a final decision. The experience and practice of these two institutions has been enormously important in strengthening the effective guarantee of the right to access, and shows the importance of these types of specialized authorities in the various legal systems.

209. In establishing rules for the administrative remedies and procedures to obtain access to information, most of the countries establish a simple and easily accessible remedy that does not require anyone to hire an attorney in order to request access to information. The majority also meet the requirements that the request be free of charge—apart from any costs that issuing copies could entail and that in some cases may become a barrier that impedes access to information—and that tight deadlines be established to respond to requests for access to information. Likewise, the parties subject to the law are required to provide justifications when requests for access to information are denied. Nevertheless, as has already been indicated, in some places the remedies have not operated as prescribed by the law because appropriate implementation policies have not been adopted. However, this subject will be left for future studies, since this report is basically geared toward an analysis of the various legal frameworks.

210. In terms of the other requirements mentioned above, some countries contemplate the possibility of presenting verbal requests for access to information

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<sup>243</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 163.

<sup>244</sup> Joint Declaration of the UN, OAS, and OSCE rapporteurs for freedom of expression (2004). Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=319&IID=1>

<sup>245</sup> Inter-American Juridical Committee. Resolution 147 of the 73rd regular period of sessions. Principles on the Right of Access to Information. August 7, 2008. Principle 5. Available at: [https://www.oas.org/dil/CJI-RES\\_147\\_LXXIII-O-08\\_eng.pdf](https://www.oas.org/dil/CJI-RES_147_LXXIII-O-08_eng.pdf)

(Guatemala, Nicaragua, Uruguay, Colombia, and El Salvador), or requests by telephone or other electronic means (such as in Jamaica), but in the majority of cases the petition must be written, whether on paper or electronically. It can also be seen that some countries establish the duty of public servants to advise interested parties in how to formulate a request for information (Antigua and Barbuda, Guatemala, Nicaragua, Mexico, Jamaica), although not all countries have adequate policies in place for proper implementation. In nearly all the legal systems, the petitioner is required to identify him or herself, but in Colombia and the Dominican Republic the petitioner must also state his or her direct interest in the information being requested. As will be seen below, some of these requirements have been clarified in case law, in an attempt to adapt national legal frameworks to meet international standards.

211. Article 18 of Guatemala's Law on Access to Public Information provides that "access to public information shall be free of charge, for the effects of study and consultation in the offices of the party subject to the law."<sup>246</sup> The law then establishes that the petition may be presented in writing, verbally or electronically, and that the person who receives the request may not argue lack of jurisdiction to resolve it, because if such is the case, the request must be forwarded immediately to the appropriate party. The simplicity of the remedy lies in the flexibility of the format for filing a request, because while ideally the request will be filled out completely, this has not been established as a prerequisite for its being able to proceed. The law requires petitioners to identify themselves, but it does not require that they demonstrate a direct interest in the information being requested.<sup>247</sup> The deadline in which to respond to the request is 10 days.

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<sup>246</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. "[E]l acceso a la información pública será gratuito, para efectos de análisis y consulta en las oficinas del sujeto obligado".

<sup>247</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. "Agotado el procedimiento de revisión se tendrá por concluida la fase administrativa pudiendo el interesado interponer la acción de amparo respectiva a efecto de hacer prevalecer su derecho constitucional, sin perjuicio de las acciones legales de otra índole." Articles 38 and 41 of the Law establish the following: "Article 38. Procedures for access to public information. The procedures for access to public information begin with a request presented verbally, in writing, or electronically by the interested party to the entity subject to the law, through its Information Unit. The form for requesting information shall have the purpose of facilitating access to public information, but it shall not constitute a prerequisite for being able to access the right to public information. The person at the Information Unit who receives the request may not argue lack of jurisdiction or lack of authorization to receive it, and is obligated, as part of his/her responsibility, to immediately forward the request to the appropriate party" ("Procedimiento de acceso a la información pública. El procedimiento para el acceso a la información pública se inicia mediante solicitud verbal, escrita o vía electrónica que deberá formular el interesado al sujeto obligado, a través de la Unidad de Información. El modelo de solicitud de información tendrá el propósito de facilitar el acceso a la información pública, pero no constituirá un requisito de procedencia para ejercer el derecho de acceso a la información pública. La persona de la Unidad de Información que reciba la solicitud no podrá alegar incompetencia o falta de autorización para recibirla, debiendo obligadamente, bajo su responsabilidad, remitirla inmediatamente a quien corresponda").

"Article 41. Request for information. All access to public information shall be carried out by petition of the interested party, in which the following details shall be included: 1. Identification of the entity subject to the law to whom the petition is addressed; 2. Identification of the applicant; 3. Clear and precise identification of the information being requested. The request for information shall not be subject to any other formality, nor may it be required that the person express a reason or specific interest for the request" (Solicitud de información. Todo acceso a la información pública se realizará a petición del interesado, en la que se consignarán los siguientes datos: 1. Identificación del sujeto obligado a quien se dirija; 2. Identificación del solicitante; y, 3. Identificación

Title IV of the law establishes rules for an appeal before the highest authority of the entity subject to the law; this can be lodged by petitioners who have been denied information or who are unsatisfied with the information provided to them. Pursuant to the second paragraph of Article 60, once “[t]he review process has been exhausted, the administrative phase is concluded, and the interested party may file the respective *amparo* appeal in order to have his or her constitutional right prevail, without prejudice to any other type of legal actions.”<sup>248</sup>

212. In Nicaragua, Article 26 of the Law on Access to Public Information establishes that a request for access to information may be made “verbally, in writing, or by electronic means,” and that “the entity shall record the particulars of the request on a form and provide a copy of the form to the interested party, with the information required under this Law.”<sup>249</sup> In addition, Article 6 prescribes that those subject to the law have the obligation to provide guidance to petitioners who have different capacities or special language needs, and then the last paragraph of Article 27 establishes the obligation to provide guidance to the petitioner when his/her written request is not clear and understandable, or does not contain the necessary information, or when the petitioner has filed it with an office that does not have jurisdiction.<sup>250</sup> The law also provides that access to information is free of charge,<sup>251</sup> and that it is not necessary to demonstrate a direct interest in the information being requested.<sup>252</sup> Article 27 requires that the applicant identify him or herself and provide a clear, precise description of the information being requested. The next line, Article 28, determines that it is the obligation of the respective authorities to respond to the requests that are presented, immediately or within a period of no more

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clara y precisa de la información que se solicita. La solicitud de información no estará sujeta a ninguna otra formalidad, ni podrá exigirse la manifestación de una razón o interés específico como requisito de la misma”).

<sup>248</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>249</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$AII\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($AII)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “Los interesados ejercerán su derecho de solicitud de acceso a la información pública, ante la entidad que la posea de forma verbal, escrita o por medio electrónico, cuando las entidades correspondientes dispongan de la misma electrónicamente; la entidad registrará en un formulario las características de la solicitud y entregará una copia del mismo al interesado, con los datos que exige la presente Ley”.

<sup>250</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$AII\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($AII)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

<sup>251</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$AII\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($AII)/675A94FF2EBFEE9106257331007476F2?OpenDocument). Article 31: “A request for and access to public information by persons shall be free of charge. In accordance with the provisions of Article 7 of this Law, the public entity shall be authorized to charge a reasonable amount to recover reproduction costs, not to exceed: a. The cost of the materials used to reproduce the information. b. The cost of delivery (if necessary)” (“La consulta y el acceso a la información pública que realicen las personas será gratuito. De conformidad con lo establecido en el artículo 7 de la presente Ley, la reproducción de la información habilitará a la entidad pública a realizar el cobro de un monto de recuperación razonable que no podrá ser superior a: a. El costo de los materiales utilizados en la reproducción de la información. b. El costo de envío (si fuese el caso)”.

<sup>252</sup> Article 28 of the Law on Access to Public Information of Nicaragua indicates: “In no case shall the delivery of information be conditional on providing reasons or justification for its use, nor shall it be required to demonstrate any specific interest” (“En ningún caso la entrega de información estará condicionada a que se motive o justifique su utilización, ni se requerirá demostrar interés alguno”).



than 15 business days from the date on which the request was made. Article 37 of the law determines that the administration's responses may be appealed with the respective office for the coordination of access to public information.<sup>253</sup>

213. Colombia also provides that requests for information, via the right to petition, are free and may be made either in writing or orally. The requests may be made without the assistance of a lawyer and, in general, there are no particular formats, which makes the remedy simple.<sup>254</sup> In the case of written requests, Article 5 of the Code of Administrative Litigation establishes certain additional requirements, such as the full identification of the petitioner, the object of the petition, the reasons on which the petition is based, and the designation of the authority to whom the petition is addressed. Law No. 57 of 1985 explicitly establishes a preference for processing requests for information made by journalists.<sup>255</sup> The response must be issued within a period not to exceed 15 business days.<sup>256</sup> Pursuant to Articles 11 and 12 of the Code, in the case of petitions individuals make based on their own personal interest, the administration must tell the petitioner if his/her application is incomplete and indicate which information or documents are missing.<sup>257</sup> The administration's responses may be challenged through ordinary administrative remedies and subsequently through the judicial remedies explained below.

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<sup>253</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(SAII\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/(SAII)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

<sup>254</sup> Republic of Colombia. Contentious Administrative Code. Decree 01 de 1984. Available at: [http://www.secretariasenado.gov.co/senado/basedoc/codigo/codigo\\_contencioso\\_administrativo.html](http://www.secretariasenado.gov.co/senado/basedoc/codigo/codigo_contencioso_administrativo.html). The Code of Administrative Litigation establishes regulations regarding the submission of oral and written petitions to the administration. Article 5: "Any person may respectfully petition the authorities, verbally or in writing, through any means." Yet the same article establishes that "the authorities may require that certain petitions generally be submitted in writing" and that "in some cases, forms may be created in which the interested parties can fill out the parts that are applicable and add any pertinent information or clarification." For its part, Article 25 of Decree No. 2150 of 1995, in accordance with amendments made to it by Law No. 962 of 2005, establishes that petitions may also be submitted via certified mail or electronic mail ("Toda persona podrá hacer peticiones respetuosas a las autoridades, verbalmente o por escrito, a través de cualquier medio". Empero, el mismo artículo establece que "las autoridades podrán exigir, en forma general, que ciertas peticiones se presenten en forma escrita" y que "en algunos de estos casos podrán elaborar formularios para que los diligencien los interesados, en todo lo que les sea aplicable, y añadan las informaciones o aclaraciones pertinentes". A su vez, el artículo 25 del Decreto 2150 de 1995, de acuerdo con la reforma que le fuera introducida por la Ley 962 de 2005, establece que las peticiones también pueden ser presentadas a través del correo certificado y el correo electrónico").

<sup>255</sup> Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: [http://www.cntv.org.co/cntv\\_bop/basedoc/ley/1985/ley\\_0057\\_1985.html](http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html). Article 23 establishes: "If the request for the copying or photocopying of documents is made by a journalist accredited at that time it shall be handled on a preferential basis."

<sup>256</sup> Republic of Colombia. Contentious Administrative Code. Decree 01 de 1984. Available at: [http://www.secretariasenado.gov.co/senado/basedoc/codigo/codigo\\_contencioso\\_administrativo.html](http://www.secretariasenado.gov.co/senado/basedoc/codigo/codigo_contencioso_administrativo.html). Article 6: "Petitions shall be resolved or answered within fifteen (15) days following the date they are received. Where it is not possible to resolve or respond to the petition in that period, the interested party shall be informed to that effect and be given the reasons for the delay and the date on which the request will be resolved or answered" ("Las peticiones se resolverán o contestarán dentro de los quince (15) días siguientes a la fecha de su recibo. Cuando no fuere posible resolver o contestar la petición en dicho plazo, se deberá informar así al interesado, expresando los motivos de la demora y señalando a la vez la fecha en que se resolverá o dará respuesta").

<sup>257</sup> Republic of Colombia. Contentious Administrative Code. Decree 01 de 1984. Available at: [http://www.secretariasenado.gov.co/senado/basedoc/codigo/codigo\\_contencioso\\_administrativo.html](http://www.secretariasenado.gov.co/senado/basedoc/codigo/codigo_contencioso_administrativo.html)

214. In El Salvador, Article 66 of the law provides that any person may present “to the Information Officer a request, in written, verbal, or electronic form or by any other suitable means, in free form or using the forms approved by the Institute.”<sup>258</sup> The law explains that in those cases in which the request is verbal, a form should be filled out. The petitioner should identify him or herself and provide the necessary information for the entity subject to the law to be able to send the information. However, “in no case shall the release of the information be on condition that grounds or justification be given for its use, nor shall the person be required to prove any direct interest.”<sup>259</sup> Access to information is governed by the cost-free principle.<sup>260</sup> The cost of reproducing or sending documents may not be greater than the cost of the materials used or the cost of sending them.<sup>261</sup> The petitioners have the right to be assisted in preparing their applications.<sup>262</sup> If the information being requested is available to the public in printed form, in electronic formats available on the Internet, or in any other medium, the petitioner shall be informed in writing of the source, place, and form in which it may be consulted, reproduced, or acquired.<sup>263</sup> Responses or omissions on the part of those subject to the law may be appealed to the Institute for Access to Public Information and subsequently to the Court of Administrative Litigation of the Supreme Court of Justice.<sup>264</sup>

215. In the Dominican Republic, the General Law on Free Access to Information, in Chapter II of the Procedure for the Exercise of the Right to Information and Access to Information, indicates in Article 7 that access requests should be made in writing and should contain at least: the “[c]omplete name and information about the person making the request”; a “[c]lear, exact identification of the data and information being requested”; “[i]dentification of the public authority that holds the information”; and “the justification for why the data and information are being requested.”<sup>265</sup> Nevertheless, the

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<sup>258</sup> Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. “una solicitud, en forma escrita, verbal, electrónica o por cualquier otro medio idóneo, de forma libre o en los formularios que apruebe el Instituto”.

<sup>259</sup> Republic of El Salvador. Law on Access to Public Information. Art. 66. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>260</sup> Republic of El Salvador. Law on Access to Public Information. Art. 61. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>261</sup> Republic of El Salvador. Law on Access to Public Information. Art. 61. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>262</sup> Republic of El Salvador. Law on Access to Public Information. Art. 68. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>263</sup> Republic of El Salvador. Law on Access to Public Information. Art. 62. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>264</sup> Republic of El Salvador. Law on Access to Public Information. Articles 82 *et seq*; 101. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>265</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGi6hrl%3d&tabid=69&mid=421>. “La solicitud de acceso a la información debe ser planteada en forma escrita y deberá contener por lo menos los siguientes requisitos para su tramitación: a) Nombre completo y calidades de la persona que realiza la gestión; b) Identificación clara y precisa de los datos e informaciones que require; c) Identificación de la autoridad pública que posee la información...”

regulatory decree of this law indicates that it is enough for the petitioner merely to invoke a simple interest in the information being sought.<sup>266</sup>

216. In terms of other requirements, public access to information is free as long as it does not have to be reproduced. When reproduction is necessary, “the rates charged by the institutions must be reasonable and be calculated based on the cost of supplying the information.”<sup>267</sup> According to article 11, “the information requested may be turned over in person, by telephone, fax, regular mail, certified mail, or e-mail, or by means of Internet formats that the administration has prepared for that purpose.”<sup>268</sup> Article 13 of the law establishes that, “If the information being requested is already available to the public in written form, such as in books, compendiums, leaflets, or public administration archives, or in electronic formats available on the Internet or by any other means, the petitioner shall be notified by reliable means of the source, place, and form by which he or she can gain access to the previously published information.”<sup>269</sup>

217. In Chile, Article 12 of the Law on Access to Public Information requires that the request be presented in writing. If the entity has the necessary infrastructure, it is possible to present the request electronically. But the right to file a request verbally is not established, which makes access to information difficult for those who do not know how to write or who speak another language. Otherwise, the remedy is free and simple. Article 12 of the Law on Access to Public Information requires petitioners to identify themselves, but it does not require them to provide reasons for requesting the information. Likewise, the law contemplates the principle of facilitation, which requires eliminating any demands that could impede the exercise of this right.<sup>270</sup> It also indicates that if the entity that receives the

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<sup>266</sup> Dominican Republic. Decree No. 130-05 approving the Regulations of the Ley General de Libre Acceso a la Información Pública. Available at: <http://onapi.gob.do/pdf/marco-legal/traspacidad/decreto-130-05.pdf>. Article 15 of the regulations states: “ARTICLE 15.- The description of the reasons given to justify the request for information, under the terms of Article 7, paragraph d, of the LGLAIP, shall in no way and in no case impede the applicant's broadest access to the information, nor shall it grant the official the authority to reject the application. In this regard, the applicant need only state a simple interest in the information he or she is seeking, said applicant being responsible for the use and purpose for any information that may be obtained.”

<sup>267</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Art. 14. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hrl%3d&tabid=69&mid=421>. “las tarifas cobradas por las instituciones deberán ser razonables y calculadas, tomando como base el costo del suministro de la información”.

<sup>268</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Art. 11. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hrl%3d&tabid=69&mid=421>. “La información solicitada podrá ser entregada en forma personal, por medio de teléfono, facsímil, correo ordinario, certificado o también correo electrónico, o por medio de formatos disponibles en la página de Internet que al efecto haya preparado la administración”.

<sup>269</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Art. 13. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hrl%3d&tabid=69&mid=421>. “En caso de que la información solicitada ya esté disponible al público en medios impresos, tales como libros, compendios, trípticos, archivos públicos de la administración, así como también en formatos electrónicos disponibles en Internet o en cualquier otro medio, se le hará saber por medio fehaciente, la fuente, el lugar y la forma en que puede tener acceso a dicha información previamente publicada”.

<sup>270</sup> Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 11(f)-(g). Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

petition does not have jurisdiction, it should send the request to the authority that can act on it.<sup>271</sup> Finally, Article 15 of the law provides that if the requested information already exists in a printed or electronic document, the party subject to the law is understood to comply with the duty to respond by indicating to the petitioner “the source, the place, and the form in which to obtain access to said information.”<sup>272</sup> The responsible parties' responses—or lack of response—may be appealed to the Council for Transparency<sup>273</sup>.

218. Panama's Law on Transparency establishes that requests for information must be made in writing, whether on paper or electronically. Making a request does not require a lawyer, and although it is not necessary to demonstrate a direct interest in the information being requested, the petitioner must identify him or herself.<sup>274</sup> Article 4 of the law provides that access to information is free of charge, except for the cost of the copies. Lastly, it establishes a 30-day deadline for responding to requests, one of the longest such periods found in this study.<sup>275</sup> Articles 17 and 18 of the law provide that responses—or lack of same—from the administration may be challenged by filing a *habeas data* action.<sup>276</sup>

219. Uruguay's Law on the Right of Access to Public Information also provides, in its Article 13, that a request for access to information must be presented in writing. The

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<sup>271</sup> Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 13. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “[L]a fuente, el lugar y la forma en que puede tener acceso a dicha información”.

<sup>272</sup> Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 15. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

<sup>273</sup> Detailed information on avenues of access for this procedure are on the website of Chile's Council for Transparency. For more information about this remedy in particular, see: <http://www.consejotransparencia.cl/que-pasa-cuando-presento-un-reclamo-ante-el-consejo/consejo/2010-02-09/132654.html>

<sup>274</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf). Article 5 of the Law on Transparency of Public Functions: “The petition shall be made in writing on regular paper or by electronic mail, when the institution in question has the same mechanism available to respond, and shall require no formalities or legal representation. The petition should detail to the extent possible the information being requested, and should be presented at the office designated by each institution to receive correspondence. Once the petition has been received, it shall be brought to the immediate attention of the official to whom it is addressed.” (“La petición se hará por escrito en papel simple o por medio de correo electrónico, cuando la institución correspondiente disponga del mismo mecanismo para responderlo, sin formalidad alguna, ni necesidad de apoderado legal, detallando en la medida de lo posible la información que se requiere, y se presentará en la oficina asignada por cada institución para el recibo de correspondencia. Recibida la petición, deberá llevarse de inmediato al conocimiento del funcionario a quien se dirige”).

<sup>275</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf). Article 7 of the Law on Transparency: “The official receiving the request shall have thirty calendar days from the date the request is presented to provide a response in writing. If the institution does not have the document(s) or records requested, the person making the request shall be notified to that effect.” (“El funcionario receptor tendrá treinta días calendario a partir de la fecha de la presentación de la solicitud, para contestarla por escrito, y, en caso de que ésta no posea el o los documentos o registros solicitados, así lo informará”).

<sup>276</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Articles 17-18. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf)

same law establishes very few prerequisites for the application; these include the petitioner's obligation to identify him or herself. However, Article 3 establishes that it is not necessary to "justify the reasons for which the information is being requested." The party subject to the law has up to 20 business days to respond to the request,<sup>277</sup> and the access to the information must always be free of charge, although the applicant must assume copying costs.<sup>278</sup> The administration's actions with regard to the request may be challenged by means of a legal action on access to public information, which is regulated in Chapter V of the law.<sup>279</sup>

220. In Canada, a request for information must be made in writing to the government institution that has the record, and it must provide sufficient detail to enable an "experienced employee of the institution with a reasonable effort to identify the record."<sup>280</sup> Likewise, where a request for access has been transferred, pursuant to Section 8, the request shall be deemed to have been made to the government institution to which it was transferred on the day on which the request was originally made. The law also defines under which conditions a government institution has a greater interest in a record: if the record was originally produced in or for the institution; or, in the case of a record not originally produced in or for a government institution, the institution was the first government institution to receive the record or a copy thereof.<sup>281</sup>

221. As previously indicated, Section 7 of the Access to Information Act of Canada establishes the obligation for the governmental institution to notify the applicant, within a deadline of 30 days, whether access to the requested record has been denied, or access to the information has been approved. Also, Section 8(1) establishes that if the

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<sup>277</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Art. 15. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. Art. 3: "El acceso a la información pública es un derecho de todas las personas [...] que se ejerce sin necesidad de justificar las razones por las que se solicita la información". Article 15 of the Law on Transparency establishes that: "Any physical or legal person may formulate a petition of access to information that is in the possession of entities subject to the law. When an institution receives a petition from the interested party, it is required to allow access or, if possible, respond to the request at the time it is made. Otherwise, it shall have a maximum period of twenty business days in which to allow or deny access or to respond to the request. The time period may be extended, with well-founded reasons given in writing, by another twenty business days if exceptional circumstances are involved." ("Cualquier persona física o jurídica podrá formular la petición de acceso a la información en poder de los sujetos obligados. Ante la petición formulada por el interesado, el organismo requerido está obligado a permitir el acceso o, si es posible, contestar la consulta en el momento en que sea solicitado. En caso contrario tendrá un plazo máximo de veinte días hábiles para permitir o negar el acceso o contestar la consulta. El plazo podrá prorrogarse, con razones fundadas y por escrito, por otros veinte días hábiles si median circunstancias excepcionales").

<sup>278</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Article 17. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

<sup>279</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

<sup>280</sup> Canada. Access to Information Act. Sec. 6. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>.

<sup>281</sup> Canada. Access to Information Act. Section 8(2)-(3). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

institution that receives the request considers that another government institution is responsible for the requested record, the head of the institution may, within fifteen days, transfer the request and notify the person making the request of the transfer in writing.<sup>282</sup> Also, the Access to Information Act establishes the position of the Information Commissioner, whose duties include, among others, receiving complaints (a) from persons who have been refused access to a record requested or a part thereof; (b) from persons who have been required to pay an amount they consider unreasonable; (c) when persons consider that an extension on the time limit for providing the information is unreasonable; and (d) from persons who have not been given access to a record or a part thereof in the official language requested by the person, or have not been given access in that language within a period of time that they consider appropriate, or have not been given access in the format they requested. The Information Commissioner shall also handle complaints on any other matter relating to requesting or obtaining access to records under the Access to Information Act.<sup>283</sup>

222. In the United States, an agency must determine within 20 business days whether to comply with a request and shall immediately notify the person making the request of such determination and the reasons for it. The notification must also inform the person of the right to appeal to the head of the agency any adverse determination. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making the request of the FOIA provisions for judicial review.<sup>284</sup>

223. The FOIA establishes an administrative remedy to appeal in the event that a request for access to information has been denied or a response delayed, the agency has failed to conduct an adequate search for the information, prohibitive fees have been imposed, or based on other matters that may interfere with access to the documents. The remedy is administered in a decentralized manner, under the responsibility of each government agency or entity.<sup>285</sup>

224. In Ecuador, Article 19 of the Organic Law on Transparency establishes that requests for information must be made in writing, and must include the clear identification of the applicant and the location of the information or subject of the search. As subparagraph (b) of Article 4 provides, this carries no cost, unless the entity that turns over the information has incurred expenses, in which case the applicant must pay them before being given the information. As provided in Article 21 and Title Five of the law, the response—or lack of response—by the entity subject to the law may be challenged via

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<sup>282</sup> Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>. Canadian case law has also decided regarding this standard. See also, Federal Court. *Statham vs. President of the Canadian Broadcasting Corporation, CBC and Information Commissioner of Canada*. T-782-08 of 2009. Office of the Information Commissioner of Canada. Available at: <http://reports.fia.gc.ca/eng/2010/2009fc1028.html>

<sup>283</sup> Canada. Access to Information Act. Section 30.1-31. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>284</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(A)(i). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>285</sup> See United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(E)(ii). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

administrative remedies, the judicial remedy of access to information, or an *amparo* action.<sup>286</sup>

225. Peru's Law on Transparency does not specify how a request for information must be made to the administration. However, Article 10 of the law's regulations, adopted through Supreme Decree No. 072-2003, establishes that the request shall be presented in writing, whether in person at the entity's unit for receiving such requests, or through the entity's transparency portal. A format was designed for the requests, although the petition may be submitted by other written means. Article 11 of the law establishes that the request should be made to the official in each entity designated to handle petitions for information or, if this function has not yet been assigned, to the official who has the information or the immediate supervisor.<sup>287</sup> The petitioner must identify him or herself, but Article 7 of the law establishes that the person is not required to provide reasons for the petition.<sup>288</sup> According to paragraph (b) of Article 11, the entity has seven days in which to respond to the request, which may be extended by another five days. The law provides that when the agency to which a request has been made does not have the requested information but knows where it is and what has become of it, the agency must make this known to the petitioner.<sup>289</sup> Article 11 of the regulations provides that when the petition does not meet the necessary requirements, the entity must ask the interested party to rectify the petition within the following 48 hours under penalty of its being closed.<sup>290</sup> Article 17 of the law establishes that access to information is free of charge, except for the costs of reproducing the requested information.<sup>291</sup> Paragraph d) of Article 11 prescribes that if the request is not answered within the established time limits, it shall be deemed to have been denied.<sup>292</sup> Both in this case and in the case of an outright denial, the petitioner must file an appeal, if a higher body exists, in order to exhaust administrative remedies. If the decision is unfavorable or if there has been no response within a period of 10 days, the interested party may initiate an administrative litigation proceeding or opt for a constitutional *habeas data* proceeding.<sup>293</sup>

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<sup>286</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

<sup>287</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

<sup>288</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

<sup>289</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

<sup>290</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

<sup>291</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

<sup>292</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

<sup>293</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

226. In 2007, Peru's Constitutional Court issued a decision in a *habeas data* case in which it ruled on the *gratis* nature of information. The action had been brought against the District Municipality of Alto Nanay, due to the plaintiff's not having been given information having to do with the 2004-2005 budget and the providers that supplied services to the municipality during that period. The defendant entity responded that it did not have a list of providers and that the request had been answered, explaining that the petitioner was first required to pay an amount for "processing."<sup>294</sup>

227. In its ruling, the Court underscored the municipality's obligation of active transparency in such matters, but not before emphasizing the principle of disclosure and the exceptional nature of secrecy. In this regard, it stated:

*It should also be noted that a social and democratic State of Law is based on the principle of disclosure (Article 39 and 40 of the Constitution), under which the acts of the public authorities and the information in their possession are subject to being known by all citizens. Access to such information may be restricted as an exception, as long as other constitutional rights are protected, but that must be done in line with the criteria of reasonableness and proportionality.*

*[...] [I]t is worth noting that Article 5, paragraph 3, of the text of Law No. 27806, Law on Transparency and Access to Public Information, indicates that 'Public Administration entities shall establish progressively, in accordance with their budget, the dissemination via the Internet of the following information: 3. The purchases they make of goods and services. The publication shall include the detail of the amounts committed, the providers, the quantity and quality of the goods and services acquired.' Along these lines, as has already been indicated above, the defendant must turn over the information requested on this point by the petitioner. (Boldface and underscore original)*<sup>295</sup>

228. The Court therefore ordered that the information be turned over to the petitioner and established that he was not obligated to pay any sum of money since, as had been established by the law, charging any amount other than what it would cost to reproduce the information was prohibited.

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<sup>294</sup> Judgment of the Constitutional Court of Peru. Second Chamber. April 18, 2007. Docket No. 5812-2006-HD/TC. Para. 7. Available at: <http://www.tc.gob.pe/jurisprudencia/2007/05812-2006-HD.html>

<sup>295</sup> Judgment of the Constitutional Court of Peru. Second Chamber. April 18, 2007. Docket No. 5812-2006-HD/TC. Paras. 4-5. Available at: <http://www.tc.gob.pe/jurisprudencia/2007/05812-2006-HD.html>. "Asimismo es de señalar que un Estado social y democrático de Derecho se basa en el principio de publicidad (artículo 39º y 40º de la Constitución), según el cual los actos de los poderes públicos y la información que se halla bajo su custodia son susceptibles de ser conocidos por todos los ciudadanos. Excepcionalmente el acceso a dicha información puede ser restringido siempre que se trate de tutelar otros bienes constitucionales, pero ello debe ser realizado con criterios de razonabilidad y proporcionalidad. // [...] [E]s del caso señalar que el artículo 5º inciso 3 del Texto Único Ordenado de la Ley N.º 27806, Ley de Transparencia y Acceso a la Información Pública, señala que '[I]as entidades de la Administración Pública establecerán progresivamente, de acuerdo a su presupuesto, la difusión a través de Internet de la siguiente información: 3. Las adquisiciones de bienes y servicios que realicen. La publicación incluirá el detalle de los montos comprometidos, los proveedores, la cantidad y calidad de bienes y servicios adquiridos'. En ese sentido, como ya se señaló supra, la demandada debe entregar la información solicitada en este extremo por el recurrente".



*With regard to the payment sought by the Municipality, it is not possible for the Municipality to charge any amount for processing, as Article 20 of the TUO of Law No. 25806 prohibits charging for anything other than the costs of reproduction.*<sup>296</sup>

229. In Mexico, Article 40 of the Federal Transparency and Access to Public Governmental Information Act establishes that a request for information must be presented in writing, whether in free form or using the forms approved by the Federal Institute for Access to Information and Data Protection. The requests are filed with the respective agency's "liaison unit" and in all cases must contain the applicant's identification, the description of the documents requested, and optionally, the means by which the applicant would like to receive the response. The applicant is not required to justify or provide grounds for the request, nor prove any interest in the information.<sup>297</sup> Article 27 establishes that the cost of obtaining the information may not exceed the value of making and mailing copies, if necessary.<sup>298</sup>

230. The same Article 40 establishes that the liaison units should assist individuals in formulating their requests for information, especially when the applicant is illiterate. In cases in which the information requested does not fall under the agency's purview, the liaison unit must advise the individual as to the competent agency or department. Likewise, the liaison unit must inform the interested party within 10 business days after the request is filed if the application lacks the necessary elements for the information to be identified or if it includes incorrect data.<sup>299</sup>

231. Article 47 prescribes that requests for information, as well as the responses to such requests and the information released, are public.<sup>300</sup> Subsequently, Article 48 provides that the liaison units have no obligation to respond to "offensive" requests or to applications involving content identical to information that has already been released in reply to a request by the same person. In this case, or when the information requested has already been made public, it is sufficient to inform the applicant where the information can be found.<sup>301</sup>

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<sup>296</sup> Judgment of the Constitutional Court of Peru. Second Chamber. April 18, 2007. Docket No. 5812-2006-HD/TC. Available at: <http://www.tc.gob.pe/jurisprudencia/2007/05812-2006-HD.html>. "En relación al pago solicitado por la Municipalidad no resulta posible a ésta cobrar monto alguno por concepto de movilidad, toda vez que el artículo 20º del TUO de la Ley Nº 25806 prohíbe el cobro de cualquier concepto distinto a los costos de reproducción".

<sup>297</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

<sup>298</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

<sup>299</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 40. Available at: <http://www.ifai.org.mx/English>

<sup>300</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

<sup>301</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

232. The administration's actions in response to a request for information may be contested before the Federal Institute for Access to Information and Data Protection (IFAI) through a writ of review, under a procedure established in Chapter IV of the law.<sup>302</sup>

233. In Jamaica, the Access to Information Act establishes an obligation to assist the applicant and delineates specific response times. Negative responses must state the reasons for refusal and indicate the options available to the applicant.<sup>303</sup> Section 7(2) also establishes that applications for access to information may be made in writing or transmitted by telephone or other electronic means.<sup>304</sup> For its part, Section 30(1) of the law prescribes the possibility that applicants may apply for an administrative review of those decisions by the public authority to "(a) refuse to grant access to the document; (b) grant access only to some of the documents specified in an application; (c) defer the grant of access to the document; or (d) charge a fee for action taken or as to the amount of the fee."<sup>305</sup> The decision in this review shall be taken by the responsible Minister, in relation to some documents, or by the Permanent Secretary in the relevant Ministry or the principal officer of the public authority whose decision is subject to review,<sup>306</sup> and the request for review must be made within a 30-day period from the time the applicant is notified of the relevant decision.<sup>307</sup> Likewise, the authority who undertakes the review has 30 days to respond to it.<sup>308</sup> Section 32 of the Access to Information Act, together with its Second Schedule, establishes the possibility of an appeal remedy before a specialized court, both for decisions that have been subject to internal review and for any other type of decisions granted under the law.<sup>309</sup>

234. In Antigua and Barbuda, Section 17(1) of the law provides that applications must be made in writing. A person who is illiterate may receive assistance from an official, who shall receive the oral request and fill out the necessary forms.<sup>310</sup>

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<sup>302</sup> See United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Arts. 49-60. Available at: <http://www.ifai.org.mx/English>. Detailed information on avenues of access for this procedure are on the website of the Federal Institute for Access to Public Information (IFAI). To review the petition procedure, see: <http://www.ifai.org.mx/SolicitudInfo/SolicitudInfoPublica> (in Spanish).

<sup>303</sup> Jamaica. Access to Information Act, 2002. Section 7(3)-(5). Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>304</sup> Jamaica. Access to Information Act, 2002. Section 7(2)-(5). Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>305</sup> Jamaica. Access to Information Act, 2002. Section 30(1). Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>306</sup> Jamaica. Access to Information Act, 2002. Section 31(2). Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>307</sup> Jamaica. Access to Information Act, 2002. Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>308</sup> Jamaica. Access to Information Act, 2002. Section 31(3)(b). Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>309</sup> Jamaica. Access to Information Act, 2002. Section 32 and Second Schedule. Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>310</sup> Antigua and Barbuda. The Freedom of Information Act. Section 17(2). Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

According to Section 19, responses to applications must be made in writing and must state the form in which access to the information requested will be provided, the applicable fee, if any, and the right of appeal to the Commissioner or to a judicial review available to the applicant. If the application is refused, the response must indicate adequate reasons for the refusal. A person whose application is denied in full or in part, who has not received a response, or who considers that the fee requested to cover the cost of the search is excessive may lodge a complaint with the Information Commissioner, an independent post created to guarantee that the law is implemented correctly.<sup>311</sup> The Commissioner is invested with the power to conduct an investigation, including the issuing of orders requiring the production of evidence and compelling witnesses to testify.<sup>312</sup>

235. In Trinidad and Tobago, Section 13 of the Freedom of Information Act provides that a request for access to a document shall be made, in the form set out in the schedule of the law, to the relevant public authority, and shall identify the official document or provide sufficient information to enable it to be identified. The request may specify in which of the forms described in section 18 the applicant wishes to be given access, and it should be addressed to the responsible Minister.<sup>313</sup>

236. Where the public authority decides that the applicant is not entitled to access to the document, that provision of access to the document be deferred, or that no such document exists, the public authority shall cause the applicant to be given notice in writing of the decision. The notice shall “state the findings on any material question of fact, referring to the material on which those findings were based, and the reasons for the decision.”<sup>314</sup> Section 38(1) establishes the right to lodge a complaint with the Ombudsman; this must be made in writing within 21 days of receiving notice of the refusal. The Ombudsman shall, after examining the document if it exists, make such recommendations with respect to the granting of access to the document as he thinks fit.<sup>315</sup>

237. Finally, in Argentina, as has been noted, there is no law on access to information, but the executive branch issued the General Regulations on Access to Public Information of the Federal Executive Branch, which among other things, regulates the procedures to satisfy the right of access to information. Article 9 of the regulations establishes that access to information is free of charge, but that copying costs must be

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<sup>311</sup> Antigua and Barbuda. The Freedom of Information Act. Section 19. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>312</sup> Antigua and Barbuda. The Freedom of Information Act. Section 44(1). Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>313</sup> Trinidad and Tobago. The Freedom of Information Act. Available at [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

<sup>314</sup> Trinidad and Tobago. The Freedom of Information Act. Section 23(1)(a). Available at [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

<sup>315</sup> Trinidad and Tobago. The Freedom of Information Act. Sec. 38A(1). Available at [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

covered by the petitioner.<sup>316</sup> Article 10 then establishes that the information shall be provided with no other requirements than those contemplated in the regulations.<sup>317</sup> These are established in Article 11, which provides that the request shall be presented in writing and in all cases the applicant must identify him or herself. However, the same article clarifies that the applicant may not be obligated to state his or her interest in the information.<sup>318</sup> In addition, the Decree establishes that the entity to which the request is made has up to 10 days to resolve the request. The regulation does not establish the administration's obligation to advise the applicant in preparing the petition.<sup>319</sup> For cases in which the response is unfavorable or imprecise, incomplete, or untimely, Article 18 of the regulations establishes that the petitioner may go before the Regulations Enforcement Authority, which is the Office of the Deputy Secretary for Institutional Reform and the Strengthening of Democracy, at the Central Office of the Cabinet of Ministers, which has the task of verifying and requiring compliance with the obligations established in the regulations. However, the decisions of the compliance authority constitute mere recommendations; that is, they are not binding. The applicant may also make use of the *amparo por mora de la Administración* legal action, regulated in the Law on Administrative Procedures.<sup>320</sup>

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<sup>316</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf)

<sup>317</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf)

<sup>318</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf)

<sup>319</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf)

<sup>320</sup> Republic of Argentina. Law No. 19.549 of 1972, with its later amendments, regulates administrative procedures. Its Article 28, substituted by Article 1 of Law No. 21.686 of 1977, regulates the *amparo por mora* [appeal due to delay] as follows: "Article 28. A party to an administrative proceeding may go to court to request that the case be handled on an expedited basis. Such an order shall be applicable in the event that the administrative authority had allowed the established time period to expire, or, if there are no established time periods, in the event that an unreasonable amount of time has passed without a decision or resolution on processing or on the merits of what the interested party is requesting. Once the petition is filed, the judge shall rule on whether it can proceed, taking into account the circumstances of the case. The judge may, if it is deemed pertinent, order the intervening administrative authority to report, within a time period set by the judge, on the reasons for the delay being alleged. The judge's decision is non-appealable. Once the judge's order has met with a response or the time period has expired without it being carried out, the judge shall rule with respect to the *mora* action, ordering, if pertinent, that the responsible administrative authority carry out the procedure within a reasonable period that is established based on the nature and complexity of the order or the processing steps that are pending." ("El que fuere parte en un expediente administrativo podrá solicitar judicialmente se libre orden de pronto despacho. Dicha orden será procedente cuando la autoridad administrativa hubiere dejado vencer los plazos fijados y en caso de no existir éstos, si hubiere transcurrido un plazo que excediere de lo razonable sin emitir el dictamen o la resolución de mero trámite o de fondo que requiera el interesado. Presentado el petitorio, el juez se expedirá sobre su procedencia, teniendo en cuenta las circunstancias del caso, y si lo estimare pertinente requerirá a la autoridad administrativa interviniente que, en el plazo que le fije, informe sobre las causas de la demora aducida. La decisión del juez será inapelable. Contestado el requerimiento o vencido el plazo sin que se lo hubiere evacuado, se resolverá lo pertinente acerca de la mora, librando la orden si correspondiere para que la autoridad administrativa responsable despache las actuaciones en el plazo prudencial que se

**c. Obligation to provide an appropriate, effective judicial remedy for reviewing denials of requests for information**

238. The States should enshrine the right to a judicial review of any administrative decision denying access to information through a recourse that is simple, effective, quick, and not burdensome, and that allows the challenging of decisions of public officials that deny the right of access to specific information or simply neglect to answer the request.<sup>321</sup> Such a remedy should: (a) review the merits of the controversy to determine whether the right to access was violated; and (b) if that was the case, order the corresponding government body to turn over the information. In these cases, the recourses should be simple and quick, since the expeditious delivery of the information is indispensable for the fulfillment of the functions this right presupposes.<sup>322</sup>

239. The Inter-American Court has established that a judicial remedy is compatible with the requirements of the American Convention as long as it is adequate and effective.<sup>323</sup> That is, it must be adequate to protect the right that has been infringed upon<sup>324</sup> and be able to produce the desired result.<sup>325</sup> The absence of an effective remedy will be considered a transgression of the American Convention.<sup>326</sup>

240. The Inter-American Court has also established that the guarantee of an effective judicial remedy against violations of fundamental rights “is one of the basic mainstays, not only of the American Convention, but also of the rule of law in a democratic society in the sense set forth in the Convention.”<sup>327</sup>

241. The countries studied have different types of judicial remedies for contesting the administration's responses or failures to respond to requests for access to

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establezca según la naturaleza y complejidad del dictamen o trámites pendientes”). Available at: <http://www.enre.gov.ar/web/bibliotd.nsf/042563ae0068864b04256385005ad0be/820b1dac79d15b4603256e740055aa2f?OpenDocument>

<sup>321</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Paras. 137.

<sup>322</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Paras. 116-139.

<sup>323</sup> I/A Court H.R. *Case of the Serrano-Cruz Sisters v. El Salvador*. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118. Para. 134.

<sup>324</sup> I/A Court H.R. *Case of Velásquez-Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4. Para. 64.

<sup>325</sup> I/A Court H.R. *Case of Velásquez-Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4. Para. 66.

<sup>326</sup> I/A Court H.R. *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and (8) American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9. Para. 24.

<sup>327</sup> I/A Court H.R. *Case of the Serrano-Cruz Sisters v. El Salvador*. Judgment of November 23, 2004. Series C No. 118. Para. 134; *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114. Para. 131; *Case of the 19 Tradesmen v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109. Para. 193.

public information. However, in practice, the remedy is not always truly effective in satisfying this right, because sometimes the matter is not resolved within a reasonable period that would be adequate to protect the right effectively. In some states, the remedy consists of a special mechanism for guaranteeing the right of access to information (such as in Uruguay, Jamaica, Chile, and Ecuador); a constitutional action (such as the protection remedies of *amparo* or *tutela* in Colombia); or administrative litigation, which tends to take the longest time to be resolved. In some legal systems, the interested party may choose which remedy to pursue among different ones that are available.

242. Uruguay's Law on Access to Public Information creates the legal action of access to public information,<sup>328</sup> allowing a denial of access to information or administrative silence toward requests that have been duly processed to be challenged in court. The procedure for this action is regulated in Chapter V of the law, which establishes that the action may be filed directly by the interested party or through an attorney and that the judge, on petition of one of the parties or *sua sponte*, "may rectify any procedural errors within the summary nature of the process, to preserve the adversarial process."<sup>329</sup> The law also establishes very short terms for scheduling a public hearing and for issuing a decision.<sup>330</sup> The judgment may be appealed and the decision of the court of second instance must be handed down within a very short period of time.<sup>331</sup>

243. Chile's Law on Access to Information provides that decisions by the Council for Transparency may be challenged by means of an illegality claim in the Court of Appeals in the area where plaintiff resides. If the Council had ordered that access to information be allowed, the measure is suspended until the Court rules on the merits. The terms for resolution are short, and there is no remedy against the decision of the Court of Appeals. If the judgment is in favor of allowing access to information, a maximum period

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<sup>328</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. Article 22 of the LAIP establishes: "Any person has the right to lodge an effective legal action that guarantees full access to the information of his or her interest." ("Toda persona tendrá derecho a entablar una acción judicial efectiva que garantice el pleno acceso a las informaciones de su interés").

<sup>329</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Articles 24, 30. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. "El tribunal, a petición de parte o de oficio, subsanará los vicios de procedimiento, asegurando, dentro de la naturaleza sumaria del proceso, la vigencia del principio de contradictorio".

<sup>330</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Article 26. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. "[T]he parties shall be called to a public hearing within a term of three days from the date of the filing of the suit. The judgment will be given at the hearing or at the latest within twenty-four hours of its conclusion. Only in exceptional cases may the hearing be extended for up to three days." ("[S]e convocará a las partes a una audiencia pública dentro del plazo de tres días de la fecha de la presentación de la demanda. La sentencia se dictará en la audiencia o a más tardar, dentro de las veinticuatro horas de su celebración. Sólo en casos excepcionales podrá prorrogarse la audiencia por hasta tres días").

<sup>331</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Article 29. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. "The court of appeals will decide in agreement, within four days following receipt of the files[...]" ("El tribunal de alzada resolverá en acuerdo, dentro de los cuatro días siguientes a la recepción de los autos [...]").

will be established in which that must take place, and a decision will be made as to whether it is necessary to open a disciplinary investigation.<sup>332</sup>

244. Ecuador's Organic Law on Transparency and Access to Public Information also created and regulated, in its Article 22,<sup>333</sup> the remedy of access to information.<sup>334</sup> The action may be filed before any civil judge or trial court in the district of the responsible entity that holds the information. The case may proceed if access to information has been denied, either tacitly or expressly—even if the denial is based on the privileged or confidential nature of the information being requested—and when the information provided is incomplete, altered, or false. The formalities of the remedy are minimal<sup>335</sup> and the time periods for a resolution are short.<sup>336</sup> The judge may hand down precautionary

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<sup>332</sup> Republic of Chile. Law on Transparency of Public Functions and Access to Information on State Administration. Law 20.285 of 2008. Articles 28-30. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

<sup>333</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Law 24 of May 18, 2004. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

<sup>334</sup> The 2008 Constitution assigned constitutional status to the action of access to public information. Article 91 states: “The action of access to public information shall be to guarantee access to information when it has been expressly or tacitly denied, or when the information provided is incomplete or inaccurate. The action may be brought even if the denial is based on the secret, reserved, or confidential nature of the information or any other classification of such. The confidential nature of the information must have been stated prior to the petition, by competent authority and in accordance with the law.” (“La acción de acceso a la información pública tendrá por objeto garantizar el acceso a ella cuando ha sido denegada expresa o tácitamente, o cuando la que se ha proporcionado no sea completa o fidedigna. Podrá ser interpuesta incluso si la negativa se sustenta en el carácter secreto, reservado, confidencial o cualquiera otra clasificación de la información. El carácter reservado de la información deberá ser declarado con anterioridad a la petición, por autoridad competente y de acuerdo con la ley”).

<sup>335</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. The law contemplates the following: a) Identification of the appellant; b) Bases of fact and law; c) Indication of the authority of the entity subject to the law who refused the information; and d) Legal claim.

<sup>336</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. Paragraph 5 *et seq* of Article 22 of the Organic Law on Transparency: “The judges or the tribunal shall decide to hear the case within a period of forty-eight hours, as long as there is no cause that would justify a recusal, other than the formalities required under this Law. // On the same day the Access to Information Remedy is lodged, the judge or tribunal shall convene the parties, on a one-time basis and by means of a written communication, to be heard in a public hearing to be held within the twenty-four hours immediately following. // The respective decision shall be handed down within a maximum period of two days from the date on which the hearing was held, even if the holder of the information did not attend. Once the remedy is in process, the representatives of the entities or natural persons against whom the action was brought shall, within a period of eight days, turn over to the judge all the information that has been requested. // In the event that the information is classified as secret or confidential, this must be established with documentation and reasons provided, with the legal and correct classification from the index list under the terms of this Law. If the classification of the information as secret or confidential is fully justified, the judge or tribunal shall confirm the denial of access to information.” (“Los jueces o el tribunal, avocarán conocimiento en el término de cuarenta y ocho horas, sin que exista causa alguna que justifique su inhibición, salvo la inobservancia de las solemnidades exigidas en esta Ley. // El juez o tribunal en el mismo día en que se plantee el Recurso de Acceso a la Información, convocará por una sola vez y mediante comunicación escrita, a las partes para ser oídas en audiencia pública a celebrarse dentro de las veinticuatro horas subsiguientes. // La respectiva resolución deberá dictarse en el término máximo de dos días, contado desde la fecha en que tuvo lugar la audiencia, aun si el poseedor de la información no asistiere a ella. Admitido a trámite el recurso, los representantes de las entidades o personas naturales accionadas, entregarán al juez dentro del plazo de ocho días, toda la información requerida. // En el caso de información reservada o confidencial, se deberá demostrar documentada y motivadamente, con el

measures, and upon concluding that the information being requested must be provided, he or she will order that it be turned over within a period not to exceed 24 hours. The administrative authority may challenge the decision in the Constitutional Court. It is important to emphasize that the access-to-information remedy does not limit the possibility of filing a constitutional *amparo* action, a characteristic that can also be found in other legal systems.

245. In the case of Jamaica, the Second Schedule of the Freedom of Information Act establishes the conditions for the creation of a specialized tribunal to hear appeals related to the law. That tribunal has been operating since 2004.<sup>337</sup> The remedy of appeal that may be lodged before the tribunal is prescribed in Section 32 and applies both to requests that have been submitted to internal review and to other types of decisions established by the law.<sup>338</sup> For those decisions subject to internal review, the law provides for the possibility of appeal against the decision or where no notification of a decision has been given within the period required by the act. The time period for lodging an appeal is within 60 days after the notification of the authority's decision or, where no notification has been given, 60 days after the expiration of the period required for a response. The 60-day period may be extended by the tribunal if the appellant's delay is justifiable. On the hearing of an appeal, the burden of proof shall lie on the public authority that made the decision. With respect to the tribunal's decision, it may issue any decision which could have been made on the original application, as long as it does not nullify a certificate classifying a document as exempt under Section 23 of the same act. The tribunal has the authority to inspect exempt documents, but must maintain their confidentiality.<sup>339</sup> However, the law does not establish a mandatory time period in which the tribunal must make the relevant decision.

246. In Canada, the Access to Information Act establishes, in Sections 41 to 53, the procedure for judicial review by the Federal Courts. Pursuant to Section 41, any person who has been refused access to a record or a part thereof may, if a complaint has been made to the Information Commissioner, apply to the Federal Court for a review of the matter within 45 days after results of an investigation of the complaint are reported to the complainant.<sup>340</sup>

247. In Colombia, Article 21 of Law. No. 57 of 1985 establishes that when the administration denies someone the right to view or receive the information requested, the interested party may lodge an appeal (*recurso de insistencia*). In such cases, upon the petitioner's filing of the appeal, the party subject to the law must send the documentation

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listado índice la legal y correcta clasificación en los términos de esta Ley. Si se justifica plenamente la clasificación de reservada o confidencial, el juez o tribunal, confirmará la negativa de acceso a la información”).

<sup>337</sup> Decisions of the Appeal Tribunal may be viewed at: <http://www.ati.gov.jm/tribunal-decisions.html>

<sup>338</sup> Jamaica. Access to Information Act, 2002. Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>339</sup> Jamaica. Access to Information Act, 2002. Section 32(7). Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>340</sup> Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>



to the Court of Administrative Litigation with jurisdiction in the place where the information being requested is located, which shall decide in sole instance, within a period not to exceed the following 10 business days.<sup>341</sup>

248. In Colombia, the administration's decision may also be challenged in the courts through a constitutional protective action (*tutela*), designed to safeguard fundamental rights. This type of action is expeditious, as a decision at first instance must be made within 10 days. It is also a free and informal process—an action may even be brought verbally before any judge in the defendant's district—and does not require a lawyer.<sup>342</sup> However, the Constitutional Court has stated in case law that when the government denies access to information on grounds that it is classified as secret under the law, the interested party must first exhaust the *recurso de insistencia* before bringing a *tutela* action. In those cases in which the government has denied access to information for different reasons (for example, invoking the Constitution) or has simply not responded to the petition for information or has delayed in responding, the interested party may have direct recourse to *tutela*.<sup>343</sup>

249. Article 17 of Panama's Transparency in Public Management Law provides that anyone may bring a constitutional action of *habeas data* when the information they requested was denied to them or was provided in an incomplete or inexact form. The action is filed in the higher courts that consider *amparo* actions, when the official who is the defendant has jurisdiction at the provincial or municipal level, or with the Plenum of the Supreme Court of Justice itself, when the official's jurisdiction extends over two or more provinces or across the country.<sup>344</sup> Pursuant to Article 19, it is a summary procedure, it does not require the presence of a lawyer, and it is governed in different aspects by the rules of *amparo* actions for constitutional guarantees.<sup>345</sup> Regarding the requirements for a *habeas data* action, the Supreme Court of Justice has stated the following:

*It is noted that a Habeas Data action, as a mechanism that guarantees the right of access to information, is not subject to rigorous technical formalities that condition whether or not it can proceed. Nevertheless, this does not mean that it should ignore basic requirements such as: 1) the provision of the original*

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<sup>341</sup> Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: [http://www.cntv.org.co/cntv\\_bop/basedoc/ley/1985/ley\\_0057\\_1985.html](http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html)

<sup>342</sup> See Art. 86. Constitution of Colombia. Available at: <http://web.presidencia.gov.co/constitucion/index.pdf>; Decree 2591 of 1991. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/decreto/1991/decreto\\_2591\\_1991.html](http://www.secretariassenado.gov.co/senado/basedoc/decreto/1991/decreto_2591_1991.html)

<sup>343</sup> See, in this regard, Constitutional Court of Colombia. Judgment T-881 of 2004. September 9, 2004. Available at: <http://www.corteconstitucional.gov.co/relatoria/2004/T-881-04.htm>; Constitutional Court of Colombia. Judgment T-534 of 2007, July 12, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-534-07.htm>; Constitutional Court of Colombia. Judgment T-1025 of 2007, December 3, 2007. Available at: <http://www.corteconstitucional.gov.co/relatoria/2007/T-1025-07.htm>

<sup>344</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Art. 18. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf)

<sup>345</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf)

*document in which the information is requested, with its respective seal indicating that it was received by the relevant authority; 2) the completion of the time period the authority has to respond to the request; and 3) that the information involved is subject to free and public access.*<sup>346</sup>

250. In Argentina, Article 14 of the Regulations of the Federal Executive Branch provide that when a request for access has not received a timely response from the administration, or the response was ambiguous, partial, or imprecise, the remedy is an *amparo por mora* [appeal due to delay], provided for in Article 28 of Law No. 19.459 and its amendments, or the Law on Administrative Procedure.<sup>347</sup> Nevertheless, in these cases, judges tend not to resolve the request on its merits, as they can only order that the case be handled on an expedited basis. Thus, the action used for protecting the right of access to information is mainly the constitutional action of *amparo*, which is admissible “against any act or omission by the public authority that, currently or imminently, injures, restricts, alters, or threatens, in an arbitrary or manifestly illegal manner, the rights or guarantees that are explicitly or implicitly recognized by the National Constitution, with the exception of the right to individual liberty protected by *habeas corpus*.”<sup>348</sup>

251. In Guatemala, Article 54 of the law establishes that decisions made by the entity subject to the law regarding requests for access to information may be challenged through an administrative appeal before the entity's highest authority. The second paragraph of Article 60 provides that when the appeal remedy has been exhausted, the governmental avenue comes to an end, after which the interested party is authorized “to file the respective *amparo* action in order to have his or her constitutional right prevail, without prejudice to legal actions of any other type.”<sup>349</sup> The *amparo* action is contemplated in the Constitution itself, which in Article 265 provides that *amparo* is intended “to protect persons against threats of violations of their rights or to restore their rights when a violation has occurred. There is no sphere in which *amparo* does not apply, and it can

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<sup>346</sup> Republic of Panama. Judgment Supreme Court of Justice – Plenum. Habeas Data Action. May 11, 2009. Opinion by Anibal Salas Céspedes. RJ 2009. P. 111. Available at: <http://www.organojudicial.gob.pa/wp-content/blogs.dir/8/files/2009/libros/rj2009-05.pdf>. “Se advierte que la acción de Hábeas Data, como mecanismo que garantiza el derecho de acceso de la información no está sujeto a formalidades técnicas rigurosas que condicionan su procedencia. No obstante, esto no significa que deba desatenderse requerimientos básicos como: 1) La aportación del documento original en que se solicita la información, con su respectivo sello de recibido por la autoridad correspondiente; 2) el cumplimiento del plazo que tiene la autoridad para atender la solicitud y 3) que se trate de una información de acceso libre o público”.

<sup>347</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf)

<sup>348</sup> Republic of Argentina. Article 1 of the Amparo Action Law. Law No. 16.986 of 1966. Available at: [http://www.mius.gba.gov.ar/legislacion/todos/normas\\_nacionales/leyes/ley16.986\\_amparo.pdf](http://www.mius.gba.gov.ar/legislacion/todos/normas_nacionales/leyes/ley16.986_amparo.pdf). “contra todo acto u omisión de autoridad pública que, en forma actual o inminente, lesione, restrinja, altere o amenace, con arbitrariedad o ilegalidad manifiesta, los derechos o garantías explícita o implícitamente reconocidas por la Constitución Nacional, con excepción de la libertad individual tutelada por el hábeas corpus”.

<sup>349</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “interponer la acción de amparo respectiva a efecto de hacer prevalecer su derecho constitucional, sin perjuicio de las acciones legales de otra índole”.

proceed as long as the authority's acts, resolutions, dispositions, or laws implicitly threaten, restrict, or violate the rights guaranteed by the Constitution and the laws."<sup>350</sup>

252. Peru's Law on Transparency provides, in subparagraph (g) of Article 11 that once the administrative avenue has been exhausted, an interested party who has not obtained the requested information may "opt for initiating administrative litigation proceedings, in accordance with the provisions of Law No. 27584, or opt for the constitutional process of *Habeas Data*, in accordance with the provisions of Law No. 26301."<sup>351</sup> The administrative litigation action may be filed by any person who has been denied access to information either expressly or tacitly.<sup>352</sup> Jurisdiction falls to the judge in the defendant's area of residence or in the place where the pertinent action took place, and the process has short time limits.<sup>353</sup>

253. For its part, Title IV of the Constitutional Procedural Code, prescribed in Law No. 28.237 of 2004, regulates the *habeas data* procedure.<sup>354</sup> There, Article 61

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<sup>350</sup> Political Constitution of the Republic of Guatemala. Available at: [http://www.tse.org.gt/descargas/Constitucion\\_Politica\\_de\\_la\\_Republica\\_de\\_Guatemala.pdf](http://www.tse.org.gt/descargas/Constitucion_Politica_de_la_Republica_de_Guatemala.pdf). "proteger a las personas contra las amenazas de violaciones a sus derechos o para restaurar el imperio de los mismos cuando la violación hubiere ocurrido. No hay ámbito que no sea susceptible de amparo, y procederá siempre que los actos, resoluciones, disposiciones o leyes de autoridad lleven implícitos una amenaza, restricción o violación a los derechos que la Constitución y las leyes garantizan". The constitutional action of *amparo* was regulated by means of the "Law of Amparo, Habeas Corpus, and Constitutionality." Decree No. 1-86 of the National Constituent Assembly.

<sup>351</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf). "optar por iniciar el proceso contencioso administrativo, de conformidad con lo señalado en la Ley Nº 27584 u optar por el proceso constitucional del Hábeas Data, de acuerdo a lo señalado por la Ley Nº 26301".

<sup>352</sup> Republic of Peru. Article 4 of Law No. 27584. "Law to Regulate the Administrative Litigation Proceeding" establishes what conduct may be challenged through an administrative litigation action. Available at: <http://www.congreso.gob.pe/comisiones/2001/justicia/ley27584.htm>

<sup>353</sup> Article 25.2, modified by Legislative Decree No. 1067 on June 28, 2008, provides that the maximum periods that may apply are: "a) Three days to challenge or oppose the evidence, from the time of notification of the decision admitting the evidence; b) Five days to file objections or arguments in defense, from the time of notification of the action; c) Ten days to respond to the action, from the notification of the decision admitting the action for processing; d) Fifteen days to issue a formal accusation or remand the case to the court, from the time it was received; e) Three days to request a verbal report, from the notification of the decision establishing that the matter is pending judgment; f) Fifteen days to issue a judgment, from the time the parties were notified of the formal accusation or from the time the oral report was made, depending on the case; g) Five days to appeal the judgment, from the time of notification." ("El artículo 25.2 de la Ley 27584, modificada por Decreto Legislativo No. 1067 de 28 de junio de 2008, dispone que los plazos máximos aplicables son: "a) Tres días para interponer tacha u oposiciones a los medios probatorios, contados desde la notificación de la resolución que los tiene por ofrecidos; b) Cinco días para interponer excepciones o defensas, contados desde la notificación de la demanda; c) Diez días para contestar la demanda, contados desde la notificación de la resolución que la admite a trámite; d) Quince días para emitir el dictamen fiscal o devolver el expediente al órgano jurisdiccional, contados desde su recepción; e) Tres días para solicitar informe oral, contados desde la notificación de la resolución que dispone que el expediente se encuentra en el estado de dictar sentencia; f) Quince días para emitir sentencia, contados desde la notificación del dictamen fiscal a las partes o desde la realización del informe oral, según sea el caso; g) Cinco días para apelar la sentencia, contados desde su notificación". República de Perú. Ley 27584. Ley que Regula el Proceso Contencioso Administrativo"). Available at: <http://www.pcm.gob.pe/InformacionGral/ogai/archivos/DL-1067.pdf>.

<sup>354</sup> Republic of Peru. Code of Constitutional Procedure. Law No. 28237. Arts. 61 *et seq.* Available at [www.tc.gob.pe/Codigo\\_Procesal.html](http://www.tc.gob.pe/Codigo_Procesal.html)

establishes that any person may use this procedure “to access information in the control of any public authority” or “to learn about, update, include, and suppress or rectify any information or data related to his or her person” that may be recorded in public entities or in private institutions that provide services or access to third parties. Pursuant to Article 65, the *habeas data* procedure is the same as that provided for the *amparo* process. Articles 53 and 58 of the law establish a summary process both at first and second instance.<sup>355</sup>

254. Nicaragua’s Law on Access to Public Information provides, in Article 37, that anyone who has been denied access to information or has not received a response within the established time periods may go before the administrative litigation jurisdiction. The action must meet the requisites and procedures established in the law on the subject.<sup>356</sup> In this regard, Law No. 350 of 2000 (Law on the Regulation of Jurisdiction in Administrative Litigation Matters) establishes a procedure that is not easy for ordinary citizens to satisfy; it requires seeking specialized counsel, as it establishes prerequisites in such a way that if the complainant does not meet them he or she could end up losing the right.<sup>357</sup> And since it is a regular administrative remedy, it is not resolved quickly.

255. In El Salvador, the Access to Information Law establishes only that “individuals may appeal denials of their requests to the Court of Administrative Litigation of the Supreme Court of Justice”.<sup>358</sup> The process is governed by the norms established in the 1979 Law on Administrative Litigation Jurisdiction.<sup>359</sup>

256. In Mexico, the *amparo* is the last resort for challenging any acts by authorities believed to infringe on fundamental rights, including decisions of the Federal Institute for Access to Information and Data Protection (IFAI) that deny the right of access to information. *Amparo* appeals are heard by the national judiciary.<sup>360</sup>

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<sup>355</sup> Republic of Peru. Code of Constitutional Procedure. Law No. 28237. Available at [www.tc.gob.pe/Codigo\\_Procesal.html](http://www.tc.gob.pe/Codigo_Procesal.html). Article 61 provides: “[T]oda persona puede acudir [al recurso de habeas data] para: 1) Acceder a información que obre en poder de cualquier entidad pública [...] 2) Conocer, actualizar, incluir y suprimir o rectificar la información o datos referidos a su persona que se encuentren almacenados o registrados en forma manual, mecánica o informática, en archivos, bancos de datos o registros de entidades públicas o de instituciones privadas que brinden servicio o acceso a terceros [...]”.

<sup>356</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(SAI\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/(SAI)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

<sup>357</sup> Republic of Nicaragua. Law No. 350 of 2000. Law to Regulate the Administrative Litigation Jurisdiction. Art. 14 *et seq.* Available at: <http://www.poderjudicial.gob.ni/arc-pdf/Ley%20350.pdf>

<sup>358</sup> Republic of El Salvador. Law on Access to Public Information. Art. 101. The Law was approved through decree 534 of 2011 and entered into effect on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. “[L]os particulares podrán impugnar las respuestas negativas a sus pretensiones ante la Sala de lo Contencioso Administrativo de la Corte Suprema de Justicia”.

<sup>359</sup> Republic of El Salvador. Law on Contentious Administrative Jurisdiction. Available at: [http://www.ute.gob.sv/uteweb/publicaciones/ley\\_jurisdccion\\_contencioso\\_administrativa.pdf](http://www.ute.gob.sv/uteweb/publicaciones/ley_jurisdccion_contencioso_administrativa.pdf)

<sup>360</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>. Article 59 of the Federal Access to Public Governmental Information Act states: “The resolutions issued by the Institute shall be final and conclusive for the departments and agencies. Private entities may appeal them before the Federal Judicial Power.”

257. In the United States, the FOIA establishes that if an agency confirms a denial upon appeal, or does not respond to the appeal within a period of 20 days, the petitioner has the right to seek judicial recourse by filing a complaint in District Court and the government has the obligation to notify the petitioner of his or her rights.<sup>361</sup>

258. Section 39 of Trinidad and Tobago's Freedom of Information Act establishes judicial review before the High Court of a decision denying access to information.<sup>362</sup> The application shall be heard and determined by a Judge in Chambers unless the Court, with the consent of the parties, directs otherwise. The judicial review is governed by the provisions of the Judicial Review Act.<sup>363</sup>

259. The General Law on Access to Public Information (LGLAIP) of the Dominican Republic establishes that if the person requesting information were not satisfied with the response received, he or she could appeal the decision to a "higher hierarchical body." The decision of the latter may be appealed judicially with the Court of Administrative Litigation. The citizen may also file a constitutional *amparo* remedy with the same Court of Administrative Litigation in all cases in which the agency or person from whom information has been requested has not satisfied the request in the time established for that purpose, or the body or higher hierarchical entity has not ruled on the appeal that was filed. Such an appeal must specify the steps taken and the harm that could be caused by the delay. Copies must also be provided of the documents by which the information was requested or the appeal was filed. If the Court decides to hear the appeal, it will require the relevant public administration agency to report on the cause of the delay and "will set a short, expedited time period" for the response. Once there has been a response to that request, or the time period in which to do so has expired, the court will hand down the relevant decision, in protection of the injured right, in which it will set a time period for the government agency to resolve the petition for information in question.<sup>364</sup>

260. Finally, in the case of Antigua and Barbuda, Section 45 of the Freedom of Information Act establishes that once a decision has been issued by the Information Commissioner, the complainant or the relevant public authority or private body may, within 28 days, apply to the High Court for a review of the decision. If no such application is made within that period, section 46 provides that the Information Commissioner's decision shall become binding, and the failure to carry it out shall be treated as a contempt of court.<sup>365</sup>

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<sup>361</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(A)(ii). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>362</sup> Trinidad and Tobago. The Freedom of Information Act. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

<sup>363</sup> Trinidad and Tobago. The Judicial Review Act. Act No. 60 of 2000. Available at: <http://www.ttparliament.org/legislations/a2000-60.pdf>

<sup>364</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Articles 27-29. Available at: <http://www.senado.gob.do/dnn/MarcoNormativo/LeyGeneraldeLibreAccesoalInformaci%C3%B3n.aspx>

<sup>365</sup> Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

**d. Obligation of active transparency**

261. The right of access to information imposes on the State the obligation to provide the public with the maximum amount of information proactively, at least in terms of: a) the State's structure, functions and operating and investment budget; b) information needed for the exercise of other rights—for example, information that affects social rights such as the rights to pension, health, or education; c) the availability of services, benefits, subsidies, or contracts of any kind; and d) the procedure for filing complaints or requests, if it exists. The information should be complete, understandable—written in language that is accessible—and up-to-date. Also, given that significant segments of the population do not have access to new technologies yet many of their rights can depend on their having information about how to realize them, the State must find effective ways to fulfill its obligation of active transparency in such circumstances.<sup>366</sup>

262. On the right to active transparency, the UN, OAS, and OSCE rapporteurs for freedom of expression stated, in their 2004 Joint Declaration, that “[p]ublic authorities should be required to publish pro-actively, even in the absence of a request, a range of information of public interest. Systems should be put in place to increase, over time, the amount of information subject to such routine disclosure.”<sup>367</sup>

263. The scope of this obligation is also explained in the Inter-American Juridical Committee's resolution on “Principles on the Right of Access to Information,” which establishes the following: “Public bodies should disseminate information about their functions and activities—including, but not limited to, their policies, opportunities for consultation, activities which affect members of the public, their budget, and subsidies, benefits and contracts—on a routine and proactive basis, even in the absence of a specific request, and in a manner which ensures that the information is accessible and understandable.”<sup>368</sup> Along these lines, this obligation includes the duty to refrain from interfering with the right of access to information of all kinds, which extends to the circulation of information that may or may not have the personal approval of those who represent the authority of the State at any given time.

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<sup>366</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. “The Inter-American Legal Framework regarding the Right to Access to Information.” Document OEA/Ser.L/V/II CIDH/RELE/INF. 1/09. December 30, 2009. Para. 30-32. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>

<sup>367</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. “The Inter-American Legal Framework regarding the Right to Access to Information.” Document OEA/Ser.L/V/II CIDH/RELE/INF. 1/09. December 30, 2009. Para. 33. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>; Joint Declaration by the Rapporteurs on Freedom of Expression from the UN, the OAS and the OSCE, December 6, 2004. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=319&IID=1>

<sup>368</sup> Inter-American Juridical Committee. Resolution 147 of the 73rd regular period of sessions. Principles on the Right of Access to Information. August 7, 2008. Principle 4. Available at: [https://www.oas.org/dil/CJ-RES\\_147\\_LXXIII-O-08\\_eng.pdf](https://www.oas.org/dil/CJ-RES_147_LXXIII-O-08_eng.pdf)

264. The OAS General Assembly, in its Resolution AG/RES. 2607 (XL-O/10), which adopts a “Model Inter-American Law on Access to Information,” clarified some of the State’s obligations in terms of active transparency. The resolution prescribes that “even in the absence of a specific request, public bodies should disseminate information about their functions on a routine and proactive basis and in a manner that assures that the information is accessible and understandable.” Article 9 of the Model Law establishes the obligation to “[make] information available proactively so as to minimize the need for individuals to make requests for information.” For its part, Article 12 of the Model Law lays out in detail the main classes of information subject to proactive disclosure by a public authority.<sup>369</sup>

265. The obligation of entities subject to the law to provide information to the public proactively is contemplated in the legal systems analyzed in this study, although to very different degrees.

266. Countries such as Chile, Uruguay, Nicaragua, Ecuador, and Mexico establish the obligation to publish an extensive catalog of information. For example, Article 7 of Chile’s Transparency Law, which establishes the active transparency obligation for State agencies, contains a catalog of information that should be posted permanently on the website, which must also be updated on a monthly basis. The information that must be disclosed includes each agency’s organizational structure, its functions and powers,

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<sup>369</sup> Under the Model Law, information that should be disclosed without waiting for a request to exist includes: a) a description of its organizational structure, functions, duties, locations of its departments and agencies, operating hours, and names its officials; b) the qualifications and salaries of senior officials; c) the internal and external oversight, reporting and monitoring mechanisms relevant to the public authority including its strategic plans, corporate governance codes and key performance indicators, including any audit reports; d) its budget and its expenditure plans for the current fiscal year, and past years, and any annual reports on the manner in which the budget is executed; e) its procurement procedures, guidelines and policies, contracts granted, and contract execution and performance monitoring data; f) the salary scales, including all components and sub-components of actual salary, relevant to all employee and consultant categories within the public authority (including all data related to current reclassification of posts); g) relevant details concerning any services it provides directly to members of the public, including customer service standards, charters and protocols; h) any direct request or complaints mechanisms available to members of the public regarding acts, or a failure to act, by that public authority; i) a description of the powers and duties of its senior officers, and the procedure they follow to make decisions; j) any statutes, policies, decisions, rules, guidelines, manuals or other records containing interpretations, practices or precedents regarding the discharge by that public authority of its functions, that affect the general public; k) any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that public authority; l) a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information and an internal appeal; m) its Disclosure Log, in accordance with Article 18, containing a list of requests received and records released under this Law, which shall be automatically available, and its Information Asset Register, in accordance with Article 17; n) a complete list of subsidies provided by the public authority; o) frequently requested information; and p) any additional information deemed appropriate by the public authority. OAS General Assembly, Resolution AG/RES. 2607 (XL-O/10), which adopts a Model Inter-American Law on Access to Information. OAS. Permanent Council and Committee on Juridical and Political Affairs. OEA/Ser.G. CP/CAJP-2840/10 Corr.1. “Model Inter-American Law on Access to Information.” April 29, 2010. Article 12. Key Classes of Information. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf); OAS. General Assembly. Resolution AG/RES. 2607 (XL-O/10), which adopts a “Model Inter-American Law on Access to Information.” June 8, 2010. Available at: [http://www.oas.org/dil/AG-RES\\_2607-2010\\_eng.pdf](http://www.oas.org/dil/AG-RES_2607-2010_eng.pdf)

mechanisms for citizen participation, and everything having to do with contracting procedures and the transfer of public funds.<sup>370</sup>

267. Uruguay's Law on Access to Public Information also provides, in its Article 5, the obligation for parties subject to the law to publish proactively, on their websites, a minimum amount of information on matters such as their organizational structure, functions, budgetary allocation and execution, contracting, and mechanisms for citizen participation, along with the address and unit to which requests to obtain information may be addressed. The article also provides that the information must be organized and systematized to ensure "broad and easy access to interested parties."<sup>371</sup>

268. In the previously mentioned Judgment 48 in Mercedes, Uruguay, the Court also referred to the obligation of active transparency. The Court affirmed that the information that had been requested—related to the Soriano Departmental Assembly's expenditures for official advertising—not only was not of a privileged nature, but that it was part of the information that the entity should disclose proactively:

*[N]ot only is the information that was requested not confidential, but Article 5 of the Law in question, when it establishes rules regarding the dissemination of public information, establishes that public bodies, whether or not they are of the State, must disclose on a permanent basis, at least the following information: '...D) Information on budget allocated and its execution, with the results of any relevant audits. E) Concessions, licensures, permits, or authorizations granted, specifying the holders or beneficiaries of each. F) Any statistical information of a general interest, in accordance with the purposes of each body.' It must be said,*

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<sup>370</sup> Republic of Chile. Law on Transparency in Public Administration and Access to Information in Administration of the State. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. Article 7 of the statute establishes that each entity subject to the law must publish on its website the following matters, which should be updated at least once a month: Its organizational structure; the authorities, functions, and attributions conferred on each of its internal units or bodies; the legal or regulatory framework that applies; permanent staff and contract and fee-based personnel, with their respective remunerations; contracting information, indicating those contracted and identifying the principal partners and shareholders of the provider corporations or companies, as the case may be; any transfers of public funds that are made; any acts and resolutions that affect third parties; the procedural steps and requirements an interested party must meet to obtain access to the services the respective public body provides; the design, allocated amounts, and criteria for accessing subsidy programs and other benefits provided by the body in question, as well as the lists of beneficiaries of the social programs being implemented; citizen participation mechanisms, if any; information on the budget allocated, as well as reports on its execution; and the results of audits.

<sup>371</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. October 7, 2008. Art. 5. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. Entities subject to the law are required to provide information, at a minimum, on the following subjects: organizational structure; the authority conferred on each administrative unit; salary scales, functions of posts, and compensation system; budget allocation and execution, along with the results of respective audits; concessions, bids, permits, or authorizations granted, specifying their holders and beneficiaries; all statistical information of a general interest, in accordance with the purposes of each entity; and mechanisms in place for citizen participation. Article 5 provides: "Los sujetos obligados deberán prever la adecuada organización, sistematización y disponibilidad de la información en su poder, asegurando un amplio y fácil acceso a los interesados".



*based on the foregoing, that the requested information not only is not confidential, but that it is public by its very essence.*<sup>372</sup>

269. In Nicaragua, Articles 20 and 21 of the Law on Access to Information establish the minimum information that public entities and private entities subject to the law, respectively, must publish proactively on their websites. Public entities must make public the organizational structure of the agency, its functions, its employees' salaries, the services it offers, the budget it manages, and information related to contracting processes, as well as any requirements and forms for accessing services and programs the agency offers.<sup>373</sup> With regard to private entities, Article 21 establishes that they must disclose any "concessions, contracts, grants, donations, advantages, licenses, or authorizations" they receive from the State; "any works or investments they are carrying out, have already completed, or are scheduled" as a result of the contracts or authorizations; the "types of services they provide, as well as their basic fees and method of calculating them"; procedures established for filing claims and remedies; and an annual report of activities.<sup>374</sup>

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<sup>372</sup> Oriental Republic of Uruguay. Judgment No. 48 of Juzgado Letrado de Segundo Turno de Mercedes. September 11, 2009. Available at: <http://informacionpublica.gub.uy/sitio/descargas/jurisprudencia-nacional/sentencia-juzgado-letrado-de-2do-turno-de-mercedes.pdf>. "No solo no es confidencial la información que se solicitó sino que en el artículo 5 de la Ley que nos ocupa, cuando regula sobre la difusión de la información pública, establece que los organismos públicos, sean o no estatales, deberán difundir en forma permanente, la siguiente información mínima: "...D) Información sobre presupuesto asignado, su ejecución, con los resultados de las auditorías que en cada caso corresponda. E) Concesiones, licitaciones, permisos o autorizaciones otorgadas especificando los titulares o beneficiarios de éstos, F) Toda información estadística de interés general, de acuerdo a los fines de cada organismo". Vale decir, que por lo que viene de señalarse, la información solicitada no solo no es confidencial, sino que es pública por esencia".

<sup>373</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 20. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). Article 21 provides: "Las entidades privadas sometidas a la presente Ley, tendrán el deber de publicar, al igual que las entidades del Estado, la siguiente información básica: a) Las concesiones, contratos, subvenciones, donaciones, exoneraciones u otros beneficios o ventajas; licencias, permisos o autorizaciones, que les fueron otorgadas por el Estado, sus bases y contenidos; b) Las obras e inversiones obligadas a realizar, las ya realizadas y las pendientes por realizar, en base a los compromisos adquiridos en el contrato de concesión, licencia, permiso o autorización ; c) Las clases de servicios que prestan, así como sus tarifas básicas, la forma de calcularlas, los demás cargos autorizados a cobrar; d) Procedimientos establecidos para la interposición de reclamos y recursos; e) Información anual de actividades que incluirá un resumen de la cantidad de reclamos recibidos y las resoluciones en cada caso; f) Toda aquella información que permita a los ciudadanos, comprobar el grado de cumplimiento de los objetivos públicos convenidos entre el Estado o sus entidades con el Ente Privado, así como el uso que hace de los bienes, recursos y beneficios fiscales u otros beneficios, concesiones o ventajas otorgados por el Estado". Article 20 prescribes that, at a minimum, the following information must be published on each entity's website: its organizational structure, the legal norms that govern it, and the services it provides; the number of its directors and public servants responsible for the Office for Access to Public Information and the Institutional Database; the monthly remuneration of all personnel, including temporary and contracted workers; any calls for quotes or bids; documents justifying the granting of permits, concessions, or licenses and the contracting of personnel, as well as the results of contracts, bids, and acquisition processes for goods or services; the results of audits; the recipients and authorized use of any public funds paid, whatever their purpose; the services and support programs offered, as well as any procedures, requirements, or forms for accessing them; general balance sheets and reports on results and financial status; annual information on activities, which "shall include a summary of the results of the applications for access to public information"; the results of oversight, evaluations, audits, and investigations to which the entity has been subject; the program for public works and acquisitions, and calls for competitions for the contracting of personnel; and any actions lodged against administrative acts of the entity and the decisions that have been handed down to resolve them.

<sup>374</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 21. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

In the case of Nicaragua the law also establishes that each public entity must present the information in a systematized way so as to facilitate access to it. In addition, the Nicaraguan law is the only one that provides that entities subject to the law “must, in a timely and complete manner, place at the disposal of indigenous peoples and communities of African descent, any information, evaluations, studies, prospects, or public information of any other nature, so as to contribute to the process of their development and socioeconomic well-being, based on the knowledge of their own reality”.<sup>375</sup>

270. In Ecuador, Article 7 of the Organic Law on Transparency and Access to Public Information contains a list of the minimum updated information that must be published on the websites of the entities subject to the law. The list coincides on various points with those that have already been mentioned in the countries studied, but it extends the obligation to information related to workers’ monthly remuneration, including all additional income.<sup>376</sup> The article also establishes the special obligation of the judiciary, the Constitutional Court, and the Court of Administrative Litigation to publish their judgments. In the last paragraph, the law prescribes that the information must be published in an organized, chronological manner, “without grouping together or generalizing, so that citizens may be informed accurately and without confusion.”

271. In the Dominican Republic, the General Law on Access to Public Information (LGLAIP) includes three ways of complying with the principle of active transparency. First, Article 3 of the law establishes that the authorities should maintain a permanent, updated service for information on certain matters of public relevance.<sup>377</sup> Second, Article 4 establishes, “on an obligatory basis,” that any information especially

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<sup>375</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information, Art. 25. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(SAI\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/(SAI)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

<sup>376</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 7. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. (“sin agrupar o generalizar, de tal manera que el ciudadano pueda ser informado correctamente y sin confusiones”). Among the matters included in Article 7 are: the functional operating structure and its legal underpinnings; a complete directory of the institution; the monthly remuneration for each post; the services offered and how to access them; the complete text of all collective contracts in effect in the institution; any application forms or formats that may be needed for procedures in its particular area of work; the annual budget managed by the institution and how it is spent; results of internal and government audits of budget implementation; complete and detailed information on procedures each agency carries out before and during contracts and in adjudications and payments; the list of companies and individuals who have failed to comply with contracts with the institution; the institution’s plans and programs underway; details about contracts related to external or internal credit; mechanisms for providing an accounting to citizens; the per diems and work reports of authorities, dignitaries, and public servants; and the name and address of the person responsible for handling public information.

<sup>377</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGi6hrl%3d&tabid=69&mid=421>. These include, under Article 3: “a) Budgets and calculations of resources and approved expenses, their evolution and status of execution; b) Programs and projects, with their budgets, time frames, execution, and oversight; c) Calls for bids, competitions, purchases, expenses, and results; d) Lists of officials, legislators, magistrates, employees, categories, functions, and remunerations, and the sworn statement of patrimony, when the person is required by law to submit it; e) List of beneficiaries of assistance programs, subsidies, scholarships, pensions, and retirement funds; f) Account status of public debt, its due dates and payments; g) Laws, decrees, resolutions, dispositions, regulatory frameworks, and any other type of norm; h) Indexes, statistics, and official values; i) Legal and contractual regulatory frameworks for providing public services; conditions, negotiations, fee schedules, controls, and sanctions; j) Any other information that must be made available to the public pursuant to special statutes.”

requested by interested parties must be made available and continually updated. To comply with these objectives, the highest-level authorities in each entity must establish systems that provide access to interested parties and must publish such information via any means available. Third, Article 5 creates the obligation of all branches and institutions of the State to set up their respective websites so as to make information available on their structure, members, operating regulations, projects, management reports, and databases, among other things.<sup>378</sup>

272. In Mexico, Article 7 of the Federal Transparency and Access to Public Governmental Information Law contemplates the obligation of active transparency on a whole range of issues, which include the entity's organizational structure, the functions and services it provides, its budget, and its contracting procedures.<sup>379</sup> The law also establishes that information "must be published in such a form that it may be easily handled and understood by the individuals, ensuring its quality, truthfulness, opportunity and reliability."

273. Guatemala's Law on Access to Public Information provides, in Article 10, that entities subject to the law must always keep updated information available, at a minimum, on a range of subjects, including the entity's organizational structure, functions, contracting processes, its budget and an inventory of its property, and "the honorariums, allowances, bonuses, and per diems" given to its employees.<sup>380</sup> The law also contemplates

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<sup>378</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrmpGi6hrl%3d&tabid=69&mid=421>

<sup>379</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>. Items contained in Art. 7 of the law include: the organizational chart; the authority conferred upon each administrative unit; the directory of government officials; monthly salary by position, including compensation systems, as prescribed in the respective provisions; the address of the liaison unit; the goals and objectives of each administrative unit; the services these units offer; procedures, requirements, and forms; information on the budget allocated and reports on its execution; results of budgetary audits; the design, execution, amounts allocated, and criteria to access subsidized programs, as well as the lists of beneficiaries of social programs; the concessions, permits, or authorizations granted and the names of the holders thereof; the contracts entered into; the legal framework applicable to each of the disclosing parties; the reports issued by the disclosing parties under the law; and mechanisms for citizen participation.

<sup>380</sup> Republic of Guatemala. Law on Access to Public Information, Decree No. 57-2008. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. ("honorarios, dietas, bonos y viáticos"). The information required to be published, under Article 10 of the LAIP, includes: the organizational structure and functions of each agency, including its normative framework; the address and telephone numbers of the entity and its departments; the directory of employees and public servants; the number and names of public officials, public servants, employees, and advisers who work at the entity subject to the law and all of its offices, including the salaries and any other financial remuneration applicable to each post; the institutions' mission and objectives and its annual operating plan, and results achieved in carrying these out; procedural manuals; budget allocations for each budget period and the programs it carries out; monthly reports on budget execution for each area and unit; deposits made up of public funds; information related to quotes and bids for the acquisition of goods; information on the contracting of all goods and services used by the entities subject to the law; the list of any publicly funded travel authorized by the entities; contracts for the maintenance of equipment, vehicles, buildings, facilities, and installations; the amounts allocated, access criteria, and lists of beneficiaries of subsidy programs, scholarships, or transfers granted with public funds; contracts, licenses, or concessions for the use or exploitation of State assets; the list of works in progress or completed that are funded wholly or in part with public funds; contracting as a result of processes to seek quotes or bids, and their respective contracts; the list of direct purchases made by the offices of the entities subject to the law; and the final reports of government or private audits the entities have undergone.

the particular obligations of the executive, legislative, and judicial branches<sup>381</sup> to publish information, and establishes special obligations for international public or private entities and for nongovernmental entities that manage public funds.<sup>382</sup> It is also interesting to note that Article 10, paragraph 28, requires State entities to maintain an updated report “on information related to the sociolinguistic background of those who use its services, so as to adjust these services accordingly.”<sup>383</sup>

274. In Colombia, Article 1 of Law No. 57 of 1985 establishes that “the Nation, the Departments, and the Municipalities shall include in their respective official Journals, Gazettes, or Bulletins all governmental and administrative acts of which public opinion should be aware so as to become informed about the management of public affairs and to exercise effective control over the conduct of the authorities, and any other acts that under the law must be published in order to produce legal effects.”<sup>384</sup> Then, Article 7 of Law No. 962 of 2005 provides that the administration must make available to the public, via electronic means, any laws, decrees, administrative acts, and other documents of public interest.<sup>385</sup> In line with Article 8, all public institutions must also inform the public, via printed or electronic means, about the different agencies' functions, regulations, procedures and processes, and location, work hours, and contact information.<sup>386</sup> In addition, Decree No. 1151 of 2008, which establishes general guidelines for e-government strategies, provides that the entities should set up an Internet portal to provide information online, along with basic search mechanisms. However, these provisions are limited to State entities and do not establish the minimum information that these portals must include.<sup>387</sup>

275. In El Salvador, the Access Law establishes, in Article 10, an extensive list of types of information that entities subject to the law must proactively disclose and update. Among the data that must be disclosed is the regulatory framework of every

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<sup>381</sup> Republic of Guatemala. Law on Access to Public Information. Articles 11-13. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>382</sup> Republic of Guatemala. Law on Access to Public Information. Articles 10(24)-(25). Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>383</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>384</sup> Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Art. 1. Available at: [http://www.unal.edu.co/secretaria/normas/ex/L0057\\_85.pdf](http://www.unal.edu.co/secretaria/normas/ex/L0057_85.pdf). “La Nación, los Departamentos y los Municipios incluirán en sus respectivos Diarios, Gacetas o Boletines oficiales todos los actos gubernamentales y administrativos que la opinión deba conocer para informarse sobre el manejo de los asuntos públicos y para ejercer eficaz control sobre la conducta de las autoridades, y los demás que según la ley deban publicarse para que produzcan efectos jurídicos”.

<sup>385</sup> This obligation exists “without prejudice to the legal obligation to publish in the Official Gazette.” Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Art. 7. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/ley/2005/ley\\_0962\\_2005.html#7](http://www.secretariassenado.gov.co/senado/basedoc/ley/2005/ley_0962_2005.html#7)

<sup>386</sup> Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Art. 8. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/ley/2005/ley\\_0962\\_2005.html#7](http://www.secretariassenado.gov.co/senado/basedoc/ley/2005/ley_0962_2005.html#7)

<sup>387</sup> Republic of Colombia. Decree No. 1151 of 2008. April 14, 2008. Available at: <http://programa.gobiernoenlinea.gov.co/apc-aa-files/5854534aee4eee4102f0bd5ca294791f/Decreto1151Abril14de2008.pdf>

agency that is bound by the law, as well as its structure and functions, its leadership and the qualifications of its officials, the budget assigned to it, a list of its advisors, the monthly salary of each budgeted employee, the record of its work, the services that it offers, the lists of any international trips taken with public funds, the address of the unit providing access to information and how to reach the official in charge, the accounting reports and all information related to its programs of subsidies and financial incentives, a list of works in progress, permissions granted, public contracts and acquisitions, mechanisms for citizen participation, and statistics regarding the institution's compliance with these norms.<sup>388</sup> The law establishes that in addition to related information in Article 10, the Legislative Body, the Presidency of the Republic and the Council of Ministers, the Judicial Body, the National Council of the Judiciary, the Supreme Electoral Court, the Court of Accounts, and the Municipal Councils must publish different information related to their specific work.<sup>389</sup> Article 18 provides that the information shall be made available to the public via any medium, but that the Institute for Access to Information will promote the use of information technologies.<sup>390</sup>

276. In Panama, the Transparency in Public Management Law provides that State institutions must have available in printed form and on their respective websites, and must periodically publish, information related to budgetary allocation and execution, their organizational structure, contracting procedures, and the rules of procedure to access public information.<sup>391</sup>

277. Argentina's Regulations on Access to Public Information of the Federal Executive Branch are limited to providing, in Article 10 that entities to which the regulations apply must publish "basic information" to guide the public in exercising its right

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<sup>388</sup> Republic of El Salvador. Law on Access to Public Information. Art. 101. The Law was approved through decree 534 of 2011 and entered into effect on May 8, 2011. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>389</sup> Republic of El Salvador. Law on Access to Public Information. Arts. 11-17. Available at: <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-acceso-a-la-informacion/?searchterm=None>

<sup>390</sup> Republic of El Salvador. Law on Access to Public Information. Art. 18. Available at: <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-acceso-a-la-informacion/?searchterm=None>

<sup>391</sup>. Article 9 establishes that entities subject to the law must periodically publish updated information with respect to the following subjects, documents, and policies: the institution's internal rules of procedure; its general policies; internal procedural manuals; its organizational structure; the location of documents by category, record, and archives and the official responsible for them; and descriptions of the institution's forms and rules of procedure for obtaining information and the place these can be found. Article 11, in turn, establishes that information considered to be of a public nature and of free access to interested parties includes information related to the contracting and appointment of officials, employee lists, representation costs, travel expenses, emoluments, per-diems, and other payments made to officials of any level and/or others who perform public functions. It is important to note that Article 8 of the law's regulations establishes that, for the effects of Article 11, an interested party is understood to mean someone who is "directly tied to the information being requested." This would seem to suggest that not everyone may request the information to which Article 11 refers. Republic of Panama. Ley de Transparencia en la Gestión Pública. Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf). The law's regulations are found at: [http://www.oas.org/juridico/spanish/pan\\_res34.pdf](http://www.oas.org/juridico/spanish/pan_res34.pdf)

to access to information.<sup>392</sup> But the Argentine State has many laws that establish the obligation of certain State entities or institutions to disclose specific information. Such is the case with the Senate and Chamber of Deputies, whose regulations provide for the disclosure of information on legislative activity,<sup>393</sup> and with the judiciary, whose regulations establish the obligation to proactively publish its complete payroll, acts related to bidding and public contracts, and the annual budget of the Court, along with its monthly implementation reports and biannual statistics.<sup>394</sup>

278. In Jamaica, Section 4 of the Access to Information Act establishes the obligation of the public authorities to publish information in accordance with the law's First Schedule, which establishes that the following must be published: (a) a description of the subject area of the public authority; (b) a list of the public authority's departments and agencies, specifying in each case the subjects they handle, their locations, and the hours they are open to the public; (c) the title and business address of the principal officer; (d) a declaration of the manuals or other documents containing the public authority's interpretations, rules, guidelines, practices, or precedents, as well as documents containing particulars of schemes administered by the authority with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled or subject.<sup>395</sup> The First Schedule also establishes the obligation to make the documents available for inspection and for purchase by the general public. The information in question must also be published in the Gazette and, after the publication of the statement under paragraph 1(d), updated at least once every 12 months. If a document contains information considered exempt under the parameters of the law, the authority shall, "unless impracticable or unreasonable to do so", prepare a public version of the document; that is, provide a document that has been altered only to the extent necessary to exclude the exempt matter.

279. The Canadian law contemplates the obligation of active transparency in the Access to Information Act. Under Article 5(1) of the law, the designated Minister must publish, on a periodic basis not less frequently than once each year, a publication containing "(a) a description of the organization and responsibilities of each government institution, including details on the programs and functions of each division or branch of each government institution; (b) a description of all classes of records under the control of

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<sup>392</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf)

<sup>393</sup> Republic of Argentina. Rules of the Senate of the Nation. Available at: <http://secgral.unsl.edu.ar/docs/Reglamento%20Senadores%202005.pdf>; Rules of the Honorable Chamber of Deputies of the Nation, ordered by Resolution 2019/96. Available at: <http://www.biblioteca.jus.gov.ar/reglamento-diputadosA.html>. By way of example, Article 104 of the Senate Rules of Procedure provide for the publication of minutes of the resolutions adopted and information about the sessions and the projects under discussion, while Articles 45 and 110 of the Chamber of Deputies Regulations establish the obligation of active transparency in matters related to legislative work.

<sup>394</sup> See Supreme Court of Justice. Acordado 1/2004. Docket 315/2004 - General Adm. Available at: <http://www.dplf.org/uploads/1191953169.pdf>

<sup>395</sup> Jamaica. Access to Information Act, 2002. First Schedule. Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

each government institution in sufficient detail to facilitate the exercise of the right of access under this Act; (c) a description of all manuals used by employees of each government institution in administering or carrying out any of the programs or activities of the government institution; and (d) the title and address of the appropriate officer for each government institution to whom requests for access to records under this Act should be sent.”<sup>396</sup>

280. In the United States, the system for access to information has placed significant emphasis on proactively providing useful information for users. The 1996 FOIA amendments introduced the use of electronic means to require public agencies to make significant volumes of information available to the public through “electronic reading rooms.”<sup>397</sup> Specifically, the FOIA contains provisions regarding the types of information that must be made generally available.<sup>398</sup> In addition, it imposes the obligation to disclose information related to the exercise of freedom of information itself. Every agency subject to FOIA must prepare a report that provides an accounting of the law’s implementation and the activities it produced, and actively make this information public.<sup>399</sup>

281. Along those lines, the FOIA establishes that each agency shall separately state and currently publish in the Federal Register for the guidance of the public: “(A) descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions; (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available; (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and (E) each amendment, revision, or repeal of the foregoing.”<sup>400</sup>

282. In Trinidad and Tobago, Section 7 of the Freedom of Information Act lays out all information that must be published proactively.<sup>401</sup> This includes: “the particulars of the organization and functions of the public authority, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are

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<sup>396</sup> Canada. Access to Information Act. Section 5(1). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>397</sup> United States of America. FOIA Update. Vol. XVII. No. 4. 1996. Available at: [http://www.justice.gov/oip/foia\\_updates/Vol\\_XVII\\_4/page1.htm](http://www.justice.gov/oip/foia_updates/Vol_XVII_4/page1.htm)

<sup>398</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552. Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>399</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552. Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>400</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(1). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>401</sup> Trinidad and Tobago. The Freedom of Information Act. Available at [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

involved in those functions and particulars of any arrangement that exists for consultation with, or representation by, members of the public in relation to the formulation of policy in, or the administration of, the public authority”; “the categories of documents that are maintained in the possession of the public authority”; “the material that has been prepared by the public authority under this part of the law for publication or inspection by members of the public, and the places at which a person may inspect or obtain that material”; “the literature available by way of subscription services”; the procedure to be followed by a person when a request for access to a document is made to a public authority; a statement specifying the officer responsible within each public authority for the initial receipt of, and action upon, requests for access to documents; and “all boards, councils, committees and other bodies constituted by two or more persons, that are part of, or that have been established for the purpose of advising, the public authority, and whose meetings are open to the public, or the minutes of whose meetings are available for public inspection,” among others.<sup>402</sup>

283. In Antigua and Barbuda, Section 10 of the Freedom of Information Act establishes the duty of every public authority to publish annually a description of its “structure, functions, and finances”; relevant details concerning “any services it provides; a record of any request or complaint mechanisms available to members of the public”; a guide containing information about its systems for keeping records and information; a description of the powers and duties of its senior officers, any regulations, rules, and management policies; the content of all decisions it has adopted which affect the public, along with the reasons for them; and any mechanisms or procedures by which members of the public may make representations.<sup>403</sup>

284. Lastly, Peru establishes the obligation of active transparency only with regard to two types of information. In fact, Peru’s Law on Access to Information provides that the entities subject to the law must publish their organizational structure and budget information.<sup>404</sup>

#### **e. Obligation to produce or gather information**

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<sup>402</sup> Trinidad and Tobago. The Freedom of Information Act. Sec. 7. Available at [http://www.caribis.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.caribis.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

<sup>403</sup> Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>404</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf). Article 5 of the Law on Access to Information establishes that government agencies shall progressively disseminate on the Internet, in accordance with their budget, a range of information such as: general information, primarily including the dispositions and communications that they have issued, their organizational structure, an organizational chart, procedures, the legal framework to which they are subject, and the Single Ordered Text on Administrative Procedures, which regulates this process. Budget information, with data on budgets executed, investment projects, and salary levels and benefits of senior officials and personnel in general, as well as their remuneration, their acquisition of goods and services, and the official activities that senior agency officials will carry out or have already carried out. In addition, Title IV establishes the entities’ obligations to make their finances public.



285. The State has the obligation to produce or gather the information it needs to fulfill its duties, pursuant to international, constitutional, or legal norms.<sup>405</sup>

286. In this regard, for example, the IACHR has already established in its report on “Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights,”<sup>406</sup> that “[t]he obligation of the State to take positive steps to safeguard the exercise of social rights raises important implications to do, for example, with the type of statistical information that it should produce. From this perspective, the generation of information suitably disaggregated to identify these disadvantaged sectors or groups deprived of the enjoyment of rights is not only a means to ensure the effectiveness of a public policy, but a core obligation that the State must perform in order to fulfill its duty to provide special and priority assistance to these sectors. For example, the disaggregation of data by sex, race or ethnicity is an essential tool for highlighting problems of inequality.”<sup>407</sup>

287. In the same document, the IACHR recalled that “[t]he Committee on Economic, Social and Cultural Rights has drawn attention to the state obligation to produce information bases with which to validate indicators and, in general, access to many of the guarantees covered by each social right. Accordingly, this obligation is essential for the enforceability of these rights.”<sup>408</sup> Finally, the IACHR has indicated that international law contains clear and explicit obligations to produce information on the exercise of rights by sectors that have traditionally suffered exclusion and discrimination.<sup>409</sup>

288. The Inter-American Court, for its part, recognized in the *Case of Gomes-Lund et al. (Guerrilha do Araguaia)* that the right of access to information is not fully satisfied with a response from the State indicating that the information requested does not exist. When the State has the obligation to preserve, produce, or gather certain information and nonetheless deems that the information does not exist, it must explain all

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<sup>405</sup> IACHR. Annual Report 2008. OEA/Ser.L/V/II. 134. Doc. 5. February 25, 2009. Vol. III: *Annual Report of the Special Rapporteur for Freedom of Expression*. Chap. III. Para. 162. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

<sup>406</sup> IACHR. Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights (2008). Para. 58. OAS/Ser.L/V/II.132. Doc. 14. July 19, 2008. Available at: <http://www.cidh.oas.org/pdf%20files/Guidelines%20final.pdf>

<sup>407</sup> IACHR. Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights (2008). Para. 58. OAS/Ser.L/V/II.132. Doc. 14. July 19, 2008. Available at: <http://www.cidh.oas.org/pdf%20files/Guidelines%20final.pdf>

<sup>408</sup> IACHR. Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights (2008). OAS/Ser.L/V/II.132. Doc. 14. July 19, 2008. Para. 78. Available at: <http://www.cidh.oas.org/pdf%20files/Guidelines%20final.pdf>

<sup>409</sup> IACHR. Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights (2008). OAS/Ser.L/V/II.132. Doc. 14. July 19, 2008. Para. 58. Available at: <http://www.cidh.oas.org/pdf%20files/Guidelines%20final.pdf>. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Pará) creates the obligation for the State to “ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes.” Available at: <http://www.oas.org/en/iachr/mandate/Basics/belemdopara.asp>

the steps it took to try to recover or reconstruct the information that was lost or illegally removed.<sup>410</sup>

289. Some of the legal systems that were studied do not refer to the State's duty to produce or gather information. However, some of them establish, appropriately, that the State must turn over any information it is required to produce or to gather, and that the parties subject to the law must compile or assemble data already in their possession to comply with the standards regarding the right of access to information.

290. Argentina's Regulations on Access to Public Information of the Federal Executive Branch contemplates the duty of the responsible parties to generate and update basic information, an undetermined concept that must be specified in each institution. Thus, Article 10 of the regulations states that "the subjects in whose control the information lies must... generate, update, and make known basic information, in sufficient detail for it to be singled out, in order to guide the public in exercising its right." And in terms of producing information to respond to requests, paragraph 2 of Article 5 is very clear in determining that while the party that is asked for information may be required to provide it, that does not imply "the obligation to create or produce information it does not have at the moment the request is made, unless the State is legally obligated to produce it, in which case it must produce it."<sup>411</sup>

291. In Chile, the second paragraph of Article 17 of the draft that would become the Law on Access to Public Information established that "the institutions of the State Administration are not obligated to produce information that is not in their possession to satisfy the request for access to information." However, that paragraph was eliminated as the legislation went through Congress.<sup>412</sup> But Article 21 of the law, which establishes the secrecy or confidentiality grounds that allow access to requested information to be completely or partially denied, provides in subparagraph c) of paragraph 1, that such a denial would be possible "[w]here there are requests of a generic nature that refer to a great number of administrative acts or background information, or for which a response would unduly divert officials from carrying out their regular job duties."<sup>413</sup>

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<sup>410</sup> I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 292. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_219\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_ing.pdf)

<sup>411</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf). Art. 10: "Los sujetos en cuyo poder obre la información deben [...] generar, actualizar y dar a conocer información básica, con el suficiente detalle para su individualización, a fin de orientar al público en el ejercicio de su derecho". Art. 5(2): "la obligación de crear o producir información con la que no cuente al momento de efectuarse el pedido, salvo que el Estado se encuentre legalmente obligado a producirla, en cuyo caso debe proveerla".

<sup>412</sup> Republic of Chile. See Decision A97-09. August 18, 2009. Council for Transparency. Para. 6(a). Available at: [http://www.consejotransparencia.cl/data\\_casos/ftp\\_casos/A97-09/A97-09\\_decision\\_web.pdf](http://www.consejotransparencia.cl/data_casos/ftp_casos/A97-09/A97-09_decision_web.pdf). "[L]os órganos de la Administración del Estado no están obligados a producir información que no exista en su poder para satisfacer la solicitud de acceso a la información".

<sup>413</sup> Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 de 2009. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. "tratándose de requerimientos de carácter genérico, referidos a un elevado número de actos administrativos o

292. The Council on Transparency of Chile has ruled on this point on several occasions. In a 2009 decision, it stated the following with respect to how to interpret the removal of the second paragraph of Article 17 from the original draft legislation:

*Thus, the removal of the provision establishing that institutions of the State Administration were not required to prepare information, and restricting their duty to providing only information that already existed, was not an involuntary omission on the part of the legislator. On the contrary, the legislator's intention was to eliminate this restriction so as to allow asking government agencies to prepare documents, as long as the information involved is in the administration's possession and there is a financial limit: not to cause excessive costs or unforeseen expenses in the institution's budget.<sup>414</sup>*

293. In its Decision No. A080 of 2009, the Council on Transparency of Chile ruled on a request for information made to the Civil Register and Identification Service, which had been denied on grounds that producing it “would involve unduly diverting officials from the fulfillment of their regular job duties.” In deciding on the case, the Council concluded that it was possible to require the entity subject to the law to collect, process, and systematize information in its possession, without that implying that a duty to create information was being imposed:

*That by virtue of what was previously indicated, it can be concluded that the Civil Register only includes part of the information that was requested, and that collecting, processing, and systematizing it along the lines requested, albeit with the limitations that have been noted, would not imply creating information. Neither does the collection, processing, and systematization of that information so that it be turned over as requested with the abovementioned restrictions imply, in this Council's judgment, unduly diverting officials from their regular duties, and so the grounds cited are inadmissible.<sup>415</sup>*

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sus antecedentes o cuya atención requiera distraer indebidamente a los funcionarios del cumplimiento regular de sus labores habituales”.

<sup>414</sup> Republic of Chile. [Decision A97-09, of August 18, 2009, of the Council for Transparency](http://www.consejotransparencia.cl/data_casos/ftp_casos/A97-09/A97-09_decision_web.pdf). Available at: [http://www.consejotransparencia.cl/data\\_casos/ftp\\_casos/A97-09/A97-09\\_decision\\_web.pdf](http://www.consejotransparencia.cl/data_casos/ftp_casos/A97-09/A97-09_decision_web.pdf). “Por lo tanto, la supresión de la norma que establecía que los órganos de la Administración del Estado no estaban obligados a elaborar información y restringía su obligación a entregar sólo información ya existente no fue una omisión involuntaria del legislador. Por el contrario, la intención del legislador fue eliminar esta restricción lo que permite solicitar a los órganos de la Administración elaborar documentos, en tanto la información que allí se vuelque obre en poder de la Administración y con un límite financiero: no irrogar al Servicio un costo excesivo o un gasto no previsto en el presupuesto institucional”.

<sup>415</sup> Republic of Chile. Decision A080 of 2009. Council for Transparency. Para. 8. Available at: [http://www.consejotransparencia.cl/data\\_casos/ftp\\_casos/A80-09/A80-09\\_decision\\_web.pdf](http://www.consejotransparencia.cl/data_casos/ftp_casos/A80-09/A80-09_decision_web.pdf). “Que en virtud de lo señalado precedentemente, puede concluirse que el Registro Civil sólo posee parte de la información requerida y su recolección, procesamiento y sistematización para entregarla en los términos solicitados, aunque con las limitaciones anotadas, no implicaría la creación de información. Por otra parte, cabe ultimar que la misma recolección, procesamiento y sistematización de dicha información, en orden a que se entregue del modo requerido con las restricciones referidas, tampoco implica, a juicio de este Consejo, una distracción indebida de sus funcionarios de sus labores habituales, de forma tal que resulta improcedente la causal invocada”.

294. In Mexico, Article 42 of the Federal Transparency and Access to Public Governmental Information Act establishes that “departments and agencies are only required to release the documents found in their archives.”<sup>416</sup> However, both the IFAI and the Supreme Court Committee on Access to Information have found that the right of access to information is only satisfied when the information requested is made available to the applicant, even if that means processing or assembling information that is dispersed across different administrative units. Along these same lines, entities subject to the law have taken the initiative to produce information without the need for a request. That is what happened with the Investigative Commission created by the Supreme Court of Justice in the case of the Guardería ABC (ABC Daycare Center),<sup>417</sup> in which the Court ruled that the Commission “shall establish whether these events involved a serious violation of individual guarantees, and shall analyze the overall performance of the system of public daycare centers that operate under the same or a similar arrangement, with the goal of preventing, or at least minimizing, the possibility that another case like the Guardería ABC could happen again.”<sup>418</sup>

295. For its part, Article 20 of Ecuador’s Organic Law on Transparency establishes that a request for access to information “does not imply that public administration entities and other bodies indicated in Article 1 of this Law have the obligation to create or produce information that they do not have or are not required to have at the time the request is made. In this case, the institution or entity shall communicate in writing that the request is being denied due to the nonexistence of data in its possession with respect to the requested information.”<sup>419</sup> (Emphasis not in original text) It also prescribes that “neither [does this Law] authorize petitioners to demand that the entities carry out evaluations or analyses of the information in their possession, except for those they must produce for their institutional purposes.”<sup>420</sup> The second paragraph of the

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<sup>416</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. June 11, 2002. Art. 42. Available at: <http://www.ifai.org.mx/English>

<sup>417</sup> On June 5, 2009, in the city of Hermosillo, Sonora, a fire broke out in the facilities of “Guardería ABC, Sociedad Civil.” As a result, 49 children lost their lives and another 75 were injured. The daycare center involved took care of children of beneficiaries of Mexican Social Security Institute under an arrangement known as “subrogation.”

<sup>418</sup> See Supreme Court of Justice of the Nation (Mexico). “Plenum of Ministers Approves Protocols for Commission Investigating the Events at Guardería ABC.” Available at: <http://www2.scjn.gob.mx/fi1-2009/Noticia.html>. “[La Comisión] establecerá si en esos acontecimientos hubo violación grave de las garantías individuales, y se analizará el desempeño global del sistema de guarderías públicas que funcionan bajo el mismo o similar esquema, con el propósito de evitar, o por lo menos minimizar, la posibilidad de que ocurra otro suceso similar al de la Guardería ABC”.

<sup>419</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 20. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf> [underscore not in original]. “no implica la obligación de las entidades de la administración pública y demás entes señalados en el artículo 1 de la presente Ley, a crear o producir información, con la que no dispongan o no tengan obligación de contar al momento de efectuarse el pedido. En este caso, la institución o entidad, comunicará por escrito que la denegación de la solicitud se debe a la inexistencia de datos en su poder, respecto de la información solicitada”.

<sup>420</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 20. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf> [underscore not in original]. “[La ley] tampoco faculta a los peticionarios a exigir a las entidades que efectúen evaluaciones o análisis de la información que posean, salvo aquellos que por sus objetivos institucionales deban producir”.

same article clarifies that “producing” information is not understood to mean “gathering or compiling information that may be dispersed in the various departments or areas of the institution, in order to provide summaries, statistics, or indexes requested by the petitioner.”<sup>421</sup>

296. A similar provision is found in Uruguay’s Law on Access to Information.<sup>422</sup> The same is the case with Peru’s Law on Access to Public Information, with the difference that the Peruvian law does not include the part indicating that producing information is not understood to mean gathering or compiling information that may be dispersed throughout the institution’s various offices.<sup>423</sup> For its part, El Salvador’s Access to Information Law provides that “bodies subject to the law must release only information in their possession.” The law adds that the obligation of access to public information shall be considered satisfied when the relevant copies are issued or the documents containing the information are made available to the applicant for direct consultation.<sup>424</sup>

<sup>421</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 20. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. “recopilación o compilación de información que estuviese dispersa en los diversos departamentos o áreas de la institución, para fines de proporcionar resúmenes, cifras estadísticas o índices solicitados por el peticionario”.

<sup>422</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. October 7, 2008. Art. 12. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. “Article 14. (Limits on access to public information) The request for access to information does not imply that entities subject to this Law have the obligation to create or produce information that they do not have or are not required to have at the time the request is made. In this case, the institution shall communicate in writing that the request is being denied due to the nonexistence of data in its possession with respect to the requested information. Neither [does this Law] authorize petitioners to demand that the entities carry out evaluations or analyses of the information in their possession, except for those they must produce for their institutional purposes. // The production of information is not understood to mean gathering or compiling information that may be dispersed in the various areas of the institution, in order to provide information to the petitioner.” (Emphasis not in original text) (“Límites del acceso a la información pública).- La solicitud de acceso a la información no implica la obligación de los sujetos obligados a crear o producir información que no dispongan o no tengan obligación de contar al momento de efectuarse el pedido. En este caso, el organismo comunicará por escrito que la denegación de la solicitud se debe a la inexistencia de datos en su poder, respecto de la información solicitada. Esta ley tampoco faculta a los peticionarios a exigir a los organismos que efectúen evaluaciones o análisis de la información que posean, salvo aquellos que por sus cometidos institucionales deban producir. // “No se entenderá producción de información, a la recopilación o compilación de información que estuviese dispersa en las diversas áreas del organismo, con el fin de proporcionar la información al peticionario”).

<sup>423</sup> Republic of Peru. Law on Transparency and Access to Public Information, Law No. 27806. August 2, 2002. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf). Article 13, para. 3, of the Law on Access to Public Information provides: “The request for information does not imply that entities of the Public Administration have the obligation to create or produce information that they do not have or are not required to have at the time the request is made. In this case, the entity of the Public Administration shall communicate in writing that the request is being denied due to the nonexistence of data in its possession with respect to the requested information. Neither [does this Law] authorize petitioners to demand that the entities carry out evaluations or analyses of the information in their possession.” (Emphasis not in original text) (“La solicitud de información no implica la obligación de las entidades de la Administración Pública de crear o producir información con la que no cuente o no tenga obligación de contar al momento de efectuarse el pedido. En este caso, la entidad de la Administración Pública deberá comunicar por escrito que la denegatoria de la solicitud se debe a la inexistencia de datos en su poder respecto de la información solicitada. Esta Ley tampoco permite que los solicitantes exijan a las entidades que efectúen evaluaciones o análisis de la información que posean”).

<sup>424</sup> Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. “Los entes obligados deberán entregar únicamente información que se encuentre en su poder”.

297. Nicaragua’s Law on Access to Information does not establish rules on this subject. However, its Article 6 creates offices for access to information in each entity subject to this law, in order to “facilitate access to information for those who demand it, creating a system for organizing information and archives, with a respective index for the information in its keeping.”<sup>425</sup> Paragraph 3 of Article 10 of the Regulations of the Access Law assigns to these offices the duty of disseminating and collecting the basic information that public entities must disseminate proactively—a duty established in Articles 20 and 21 of the law—and making sure the entities periodically update the information.<sup>426</sup>

298. The respective laws in Panama and in Guatemala are limited to establishing that if the information requested does not exist, the relevant official shall so state in the response. Thus, Article 7 of the Panamanian law prescribes that when an official who receives a request “does not possess the document(s) or record(s) requested, he or she shall so state,” within the time period provided to respond to the request.<sup>427</sup> And Article 42 of Guatemala’s law provides that once a request for information has been presented and admitted, the information unit must provide a response along one of four lines, with the last being to notify that the information does not exist.<sup>428</sup>

299. In the Dominican Republic, the LGLAIP does not expressly establish rules on this subject. However, as indicated previously, Article 4 of the law orders the public authorities to systematize information of public interest, “both to provide access to interested parties and to publish it via any means available.”<sup>429</sup>

300. In the United States<sup>430</sup> and in Trinidad and Tobago<sup>431</sup>, the respective freedom of information laws require the agencies subject to the law to produce annual information on the number of requests for information they receive, the approximate time it took to respond, and the number of employees dedicated to responding, among other relevant information, in order to evaluate how the mechanism is working.

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<sup>425</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 3 (2). Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$AII\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($AII)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “facilitar, a las personas que así lo demanden, el acceso a la información, creando un sistema de organización de la información y los archivos, con su respectivo índice de la información a su resguardo”.

<sup>426</sup> Republic of Nicaragua. Regulations to the Law on Access to Public Information, Decree No. 81-2007, Gazette No. 6. January 9, 2008. Available at: [http://oaip.cancilleria.gob.ni/documentos/alegal/reglamento\\_ley621.pdf](http://oaip.cancilleria.gob.ni/documentos/alegal/reglamento_ley621.pdf)

<sup>427</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/lev\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/lev_n6_2002.pdf)

<sup>428</sup> Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Art. 1 (4). Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>429</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGj6hrl%3d&tabid=69&mid=421>. “tanto para brindar acceso a las personas interesadas, como para su publicación a través de los medios disponibles”.

<sup>430</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(e)(1). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>431</sup> Trinidad and Tobago. The Freedom of Information Act. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

301. In Colombia, Canada, and Jamaica there is no provision or legal development along the lines of fulfilling this obligation.

**f. Obligation to create a culture of transparency**

302. The State has the obligation to promote, within a reasonable period of time, a true culture of transparency. This involves systematic campaigns to inform the general public about the existence of the right of access to information and ways of exercising that right. Along these lines, the Inter-American Juridical Committee's "Principles on the Right of Access to Information" indicates that "[m]easures should be taken to promote, to implement and to enforce the right to access to information including...implementing public awareness-raising programmes."<sup>432</sup>

303. With regard to this principle, the Model Law on Access to Information adopted by the General Assembly creates the State's obligation, through the post of Information Commissioner, "to promote awareness and understanding of the Law and its provisions among the public, including through publishing and disseminating a guide on the right of access to information."<sup>433</sup> The Model Law also delegates to the Ministry of Education or its equivalent the responsibility to "ensure that core education modules on the right to information are provided to students in each year of primary and secondary education."<sup>434</sup>

304. Some of the legal systems studied expressly establish the State's obligation to create a culture of transparency. Ecuador, Guatemala, the Dominican Republic, and Nicaragua, in addition to assigning an official responsible for developing and carrying out the training of public employees and citizens in general, provide for the development of educational programs in schools and educational institutions.

305. Hence, Article 8 of Ecuador's Organic Law on Transparency provides that "all entities that make up the public sector" must implement programs for outreach and training on the right of access to information, which must be geared toward public servants and civil society organizations. It also establishes that universities and other educational institutions should develop "programs for awareness, outreach, and promotion of these rights" and that all centers that make up the basic education system should include in their curriculum content related to "promotion of citizen rights to information and

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<sup>432</sup> Inter-American Juridical Committee. Principles on the Right of Access to Information. Resolution 147 OEA/Ser. Q, CJI/RES. 147 (LXXIII-O/08) of the 73rd regular period of sessions. August 7, 2008. Principle 10. Available at: [http://www.oas.org/cji/CJI-RES\\_147\\_LXXII-O-08\\_esp.pdf](http://www.oas.org/cji/CJI-RES_147_LXXII-O-08_esp.pdf)

<sup>433</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a "Model Inter-American Law on Access to Public Information." June 8, 2010. Article 62. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf)

<sup>434</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a "Model Inter-American Law on Access to Public Information." June 8, 2010. Article 70. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf)

communication, particularly related to access to public information, *habeas data*, and *amparo*.”<sup>435</sup>

306. In the Dominican Republic, Chapter VII of the Regulations to the General Law on Free Access to Public Information refers expressly to “Promoting a culture of transparency.” The regulations establish, in Article 42, that “the National Institute of Public Administration (INAP) shall design and implement a training and outreach plan designed to raise awareness, train, and update members of the OAI and public servants in general, on the importance of transparency and the right of access to information, as well as on the dissemination and application of the Access Law and its regulatory and related provisions.”<sup>436</sup> For its part, Article 43 orders the State Secretariat of Education to promote and include, in its study plans and programs at every educational level, “content related to transparency in the public administration and in society in general and to the exercise of the right of access to public information in a democratic society”.<sup>437</sup> Finally, Article 44 orders “all public and private educational institutes at the tertiary level” to include, in their “curricular and extracurricular activities, content that promotes awareness, dissemination, research, and debate on issues related to transparency and the right of access to public information.”<sup>438</sup>

307. In Guatemala, Article 50 of the Law on Access to Public Information, entitled “Culture of Transparency,” orders that the educational authorities include “the issue of the right to access to public information in the study curriculum at the primary, middle, and higher level.”<sup>439</sup>

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<sup>435</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 8. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. “Las universidades y demás instituciones del sistema educativo desarrollarán programas de actividades de conocimiento, difusión y promoción de estos derechos. Los centros de educación fiscal, municipal y en general todos los que conforman el sistema de educación básica, integrarán en sus currículos contenidos de promoción de los derechos ciudadanos a la información y comunicación, particularmente de los accesos a la información pública, *habeas data* y *amparo*”.

<sup>436</sup> Dominican Republic. Decree No. 130-05 approving the Regulations to the General Law on Access to Public Information. Art. 42. Available at: [onapi.gob.do/pdf/marco-legal/trasparencia/decreto-130-05.pdf](http://onapi.gob.do/pdf/marco-legal/trasparencia/decreto-130-05.pdf) “El Instituto Nacional de Administración Pública (INAP) diseñará e implementará un plan de capacitación y difusión destinado a concientizar, capacitar y actualizar, a los integrantes de las OAI y a los servidores públicos en general, en la importancia de la transparencia y en el derecho de acceso a la información, así como en la difusión y aplicación de la Ley de Acceso y sus normas reglamentarias y concordantes”.

<sup>437</sup> Dominican Republic. Decree No. 130-05 approving the Regulations to the General Law on Access to Public Information. Art. 43. Available at: [onapi.gob.do/pdf/marco-legal/trasparencia/decreto-130-05.pdf](http://onapi.gob.do/pdf/marco-legal/trasparencia/decreto-130-05.pdf). “de contenidos relacionados con la transparencia en la administración pública y en la sociedad en general y con el ejercicio del derecho de acceso a la información pública en una sociedad democrática”.

<sup>438</sup> Dominican Republic. Decree No. 130-05 approving the Regulations to the General Law on Access to Public Information. Art. 44. Available at: [onapi.gob.do/pdf/marco-legal/trasparencia/decreto-130-05.pdf](http://onapi.gob.do/pdf/marco-legal/trasparencia/decreto-130-05.pdf). “Todos los institutos educativos de nivel terciario, públicos y privados, incluirán en sus actividades curriculares y extracurriculares, contenidos que promuevan la concientización, difusión, investigación y el debate acerca de temas relacionados con la transparencia y el derecho de acceso a la información pública”.

<sup>439</sup> Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “el tema del derecho al acceso a la información pública en la currícula de los estudios de niveles primario, medio y superior”.



308. Nicaragua’s Law on Access to Public Information includes a chapter designed to “promote a culture of accessibility of public information.” Articles 44 and 45 provide that the Ministry of Education and public and private universities and technical institutes must guarantee that the educational plans and programs offered, both to students and professors, include content on the right to access to information and to *habeas data* in a democratic society.<sup>440</sup>

309. For its part, Article 33 of Chile’s Law on Access to Information establishes that the Council for Transparency is the entity responsible for providing training to public employees and the general public.<sup>441</sup> The same holds true in El Salvador, where the Access Law establishes that the Institute for Access to Information shall promote “a culture of transparency in society and among public servants,” and shall develop training courses for public servants on matters related to transparency, access to information, protection of personal information, and management of archives.<sup>442</sup> But the law further provides that each entity subject to the law should periodically train its employees in this subject area, and that the Ministry of Education shall include, at every level of study plans and programs in formal education, content on the important democratizing role of transparency, the right of access to public information, and the right to citizen participation in decision-making and oversight of public management.<sup>443</sup>

310. In Mexico, Article 37 of the Federal Transparency and Access to Governmental Public Information Act establishes the attributions of the Federal Institute for Access to Information and Data Protection. Paragraphs XII, XIII, and XIV establish the Institute’s obligations to promote—and in some cases carry out—the training of public servants in access to information, and to make them aware of the benefits of public handling of information and their responsibilities with regard to properly using and preserving information. The Institute also has the task of preparing and publishing studies to publicize and expand awareness of the law.<sup>444</sup>

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<sup>440</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Arts. 44, 45. Available at: <http://legislacion.asamblea.gob.ni/NormaWeb.nsf/{%All}/675A94FF2EBFEE9106257331007476F2?OpenDocument> (“promoción de la cultura de asequibilidad a la información pública”).

<sup>441</sup> Republic of Chile. Law on Transparency of Public Functions and Access to Information on State Administration. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. Article 33 of the law establishes the functions of the Council for Transparency, which include: “g) To implement, directly or through third parties, activities to train public officials in transparency and access to information. h) To implement activities related to outreach and information to the public regarding matters in its jurisdiction.” (“g) Realizar, directamente o a través de terceros, actividades de capacitación de funcionarios públicos en materias de transparencia y acceso a la información; h) Realizar actividades de difusión e información al público, sobre las materias de su competencia”).

<sup>442</sup> Republic of El Salvador. Law on Access to Public Information. Art. 58(c) y (m). Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. (“una cultura de la transparencia en la sociedad y entre los servidores públicos”).

<sup>443</sup> Republic of El Salvador. Law on Access to Public Information. Arts. 45-47. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>444</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 37. Available at: <http://www.ifai.org.mx/English>

311. In Antigua and Barbuda, Part II of the Freedom of Information Act is called “Measures to Promote Openness.” Among other measures, the act requires the Information Commissioner to compile a practical guide to facilitate the exercise of the right to freedom of information; directs public authorities to designate specialized information officers; establishes obligations for public authorities to publish information proactively; orders that records be maintained in a manner that facilitates access to information; and establishes that all public authorities must ensure the provision of appropriate training for their officials on the right to information and submit annual reports to the Information Commissioner on compliance with the obligations under the act.<sup>445</sup>

312. Finally, in Uruguay, the Law on Access to Information created the Unit for Access to Public Information as an agency for the control and promotion of compliance with its provisions. Paragraphs (e) and (h) of Article 21, which establishes the unit’s functions, provide that its tasks include providing training to officials of entities required to provide information, as well as promoting educational and publicity campaigns that focus on the right of access to information.<sup>446</sup>

**g. Obligation of adequate implementation**

313. The State has a duty to implement access laws adequately. This implies at least three actions. First, the State must design a plan that allows for the real and effective satisfaction of the right of access to information within a reasonable time period. This obligation implies a duty to budget the necessary funds to be able to progressively meet the demand that the right of access to information will generate.

314. Second, the State must adopt laws, policies, and practices to adequately preserve and manage information. Along those lines, the 2004 Joint Declaration by the UN, OAS, and OSCE rapporteurs for freedom of expression explains that “[p]ublic authorities should be required to meet minimum record management standards,” and that “[s]ystems should be put in place to promote higher standards over time.”<sup>447</sup>

315. Third, as already mentioned, the State should adopt a systematic policy for training the public officials who will be satisfying the right of access to information in all of its facets. This obligation also entails training public officials in the laws and policies on creating and maintaining archives related to information the State is obligated to safeguard, manage, and produce or gather. Along these lines, the Inter-American Court has referred to the State’s obligation to provide “training to public entities, authorities and

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<sup>445</sup> Antigua and Barbuda. Freedom of Information Act. No. 19 of 2004. November 5, 2004. Arts. 8- 14. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>446</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Art. 21 (e), (h). Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

<sup>447</sup> Joint Declaration of the UN, OAS, and OSCE rapporteurs for freedom of expression (2004). Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=319&IID=1>

agents responsible for responding to requests for access to State-held information on the laws and regulations governing this right.”<sup>448</sup>

316. As a measure to carry out these objectives, the aforementioned Model Law suggests the creation of a specialized entity it calls an “Information Commission,” which should be responsible for promoting the effective implementation of the law in question in each Member State. Among other specifications, the Model Law prescribes that this entity should have full legal personality and operative, budgetary, and decision-making autonomy.<sup>449</sup>

317. Generally, the legal systems studied do not refer to designing a strategic plan to ensure the effective application of the right of access to information. Some countries—such as Antigua and Barbuda, Mexico, Chile, Canada, Uruguay, and El Salvador—have created entities designed to ensure compliance with the provisions of the access to information law, while the others have simply established special units within each entity for the same purpose.

318. In Chile, the policy for document conservation consists of annually admitting into the National Archives any State agency documents that are at least five years old.<sup>450</sup> The destruction of any document requires a decree or resolution, for which an official record must be made indicating how the pertinent rules have been met.<sup>451</sup>

319. Article 32 of the Access to Public Information Act of Chile gives the Council for Transparency the general task of “promoting transparency of the public function, overseeing compliance with the rules governing transparency and dissemination of information of the State administration bodies, and guaranteeing the right of access to information.”<sup>452</sup> In addition, Article 33 provides that it falls to the Council to issue general instructions on compliance with the law, make recommendations to the State

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<sup>448</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 165. Available at: [http://corteidh.or.cr/docs/casos/articulos/seriec\\_151\\_ing.pdf](http://corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf)

<sup>449</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Information.” June 8, 2010. Article 55. Available at: [http://www.oas.org/dil/AG-RES\\_2607-2010\\_eng.pdf](http://www.oas.org/dil/AG-RES_2607-2010_eng.pdf)

<sup>450</sup> Republic of Chile. D.F.L N° 5.200 de 1929 of the Ministry of Public Education. Article 2. Available at: <http://www.leychile.cl/Navegar?idNorma=129136>

<sup>451</sup> Republic of Chile. Circular No. 28.704 of 1981 of the Office of the Comptroller General of the Republic. Reiterated in rulings 3.191/2001, 1.333/2009, 41.098/2009, 49.118/2009 of the Office of the Comptroller. Available at: [http://163.247.57.65/assets/files/documentos/circular\\_28704\\_contraloria\\_sobre Eliminacion\\_de\\_documentos.pdf](http://163.247.57.65/assets/files/documentos/circular_28704_contraloria_sobre Eliminacion_de_documentos.pdf)

<sup>452</sup> Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 32. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “[P]romover la transparencia de la función pública, fiscalizar el cumplimiento de las normas sobre transparencia y publicidad de la información de los órganos de la Administración del Estado, y garantizar el derecho de acceso a la información”.

administration bodies, and carry out, either directly or through third parties, training activities for public officials and outreach activities for the general public, etc.<sup>453</sup>

320. In Canada, the Office of the Information Commissioner was created to implement the Access to Information Act.<sup>454</sup> The Information Commissioner is appointed by the Governor in Council after consultation with the leader of every recognized party in the Senate and House of Commons;<sup>455</sup> the term is for seven years with the possibility of reappointment for an additional term.<sup>456</sup> Under the law, the Information Commissioner has the rank and powers of a deputy head of a department; must engage exclusively in the duties of the office of Information Commissioner under the law; and must not hold any other office at the same time.<sup>457</sup> The law also provides for the appointment of such officers and employees as are necessary to enable the Information Commissioner to perform his/her duties and functions.<sup>458</sup>

321. The Canadian law also establishes responsibilities within each government office for implementing the mechanisms of access to information. Under Section 70(1), the designated Minister shall "(a) cause to be kept under review the manner in which records under the control of government institutions are maintained and managed to ensure compliance with the provisions of this Act and the regulations relating to access to records; (b) prescribe such forms as may be required for the operation of this Act and the regulations; (c) cause to be prepared and distributed to government institutions directives and guidelines concerning the operation of this Act and the regulations; (c.1) cause statistics to be collected on an annual basis for the purpose of assessing the compliance of government institutions with the provisions of this Act and the regulations relating to access; and (d) prescribe the form of, and what information is to be included in, reports made to Parliament."<sup>459</sup>

322. As has been mentioned, Antigua and Barbuda's Freedom of Information Act creates in Part V the post of Information Commissioner as an independent, autonomous authority in charge of verifying proper compliance with the law. The Information Commissioner's functions include handling citizen complaints, designing guides

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<sup>453</sup> Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 33. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

<sup>454</sup> Canada. Access to Information Act. Section 54. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>455</sup> Canada. Access to Information Act. Section 54(1). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>456</sup> Canada. Access to Information Act. Section 54(2)-(3). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>457</sup> Canada. Access to Information Act. Section 55(1). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>458</sup> Canada. Access to Information Act. Section 58(1). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>459</sup> Canada. Access to Information Act. Section 70(1). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

and manuals on the implementation of the law and the implementation of access to information, and receiving reports from the public authorities on the implementation of the content of the law in each office.<sup>460</sup>

323. Peru's Law on Transparency and Access to Information establishes, in Article 6, that the entities responsible for creating the budget must, while allocating funds, take into account the obligations imposed by the law with regard to active transparency.<sup>461</sup> Moreover, the Law on the National Archives System (Law No. 25323) and the Law on Transparency lay out complementary rules on the preservation and safeguarding of information.<sup>462</sup> Thus, Article 18 of the Law on Transparency provides that the State has the responsibility of creating and maintaining public records, and that "[i]n no case shall the Public Administration entity be able to destroy the information in its possession"; rather, it must send the information to the National Archives, within the time periods stipulated by the relevant law. It also prescribes that "[t]he National Archives may destroy information that has no public use, once a reasonable time period has passed in which said information has not been needed and in accordance with the law governing the National Archives."<sup>463</sup>

324. In Nicaragua, Article 8 of the Access to Public Information Law establishes that "[t]he senior management of each of the [entities subject to the law] shall provide the necessary financial resources for the installation and operation of the access to public information office."<sup>464</sup> Article 53 of the Law on Access to Public Information contains a temporary provision ordering the Ministry of Finance and Public Credit to "include, in the relevant budgetary reforms, proposed adjustments to ensure that all entities included in the budget are able to meet the provisions established under the law." The law also establishes that "all non-budgeted, autonomous, unconsolidated, and decentralized entities" should adjust their budgets to be able to comply with the obligations derived from the right to access to information.<sup>465</sup>

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<sup>460</sup> Antigua and Barbuda. The Freedom of Information Act. Sections 35, 37. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>461</sup> Republic of Peru. Law 25323, Law on the National System of Archives. Available at: [http://www.agn.gob.pe/portal/pdf/legislacion/PPD/Ley\\_No\\_25323.pdf](http://www.agn.gob.pe/portal/pdf/legislacion/PPD/Ley_No_25323.pdf)

<sup>462</sup> Republic of Peru. Law on Transparency and Access to Public Information, Law No. 27806. Available at: [http://www.agn.gob.pe/portal/pdf/legislacion/PPD/Ley\\_No\\_25323.pdf](http://www.agn.gob.pe/portal/pdf/legislacion/PPD/Ley_No_25323.pdf)

<sup>463</sup> According to the information available, the Office of the Ombudsman is the entity responsible for developing plans or policies for the training of public officials, and it is the institution that conducts the training. NGOs have reportedly carried out an important role in this task as well. Republic of Peru. Law on Transparency and Access to Public Information, Law No. 27806. Art. 18. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf). "En ningún caso la entidad de la Administración Pública podrá destruir la información que posea. // La entidad de la Administración Pública deberá remitir al Archivo Nacional la información que obre en su poder, en los plazos estipulados por la Ley de la materia. El Archivo Nacional podrá destruir la información que no tenga utilidad pública, cuando haya transcurrido un plazo razonable durante el cual no se haya requerido dicha información y de acuerdo a la normatividad por la que se rige el Archivo Nacional".

<sup>464</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information, Art. 8. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$AII\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($AII)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

<sup>465</sup> Ley 621 de 2007, a través de la cual se expide la Ley de Acceso a la Información Pública de Nicaragua. Art. 53. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$AII\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($AII)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

325. Further, with regard to the preservation and management of archives, Article 9 of the Nicaraguan Law on Access to Public Information establishes that offices that handle access to public information must maintain a “record, number, and detailed description of the archives, books, and databases found therein.”<sup>466</sup> Article 12 then establishes that Access to Information Offices should create and maintain duly updated indexes that describe the content of the archives, books, and databases, as well as appropriate records of the administrative acts, regulations, and administrative files, so as to facilitate consultation by citizens.<sup>467</sup> Article 40 indicates the obligation of all public institutions to create a database of the information they produce, manage, or hold, and the database should be accessible to the public.<sup>468</sup>

326. Finally, Article 14 of the Nicaraguan Law on Access to Public Information creates the National Commission on Access to Information,<sup>469</sup> whose function is to “formulate proposals for public policies, promote the preparation and training of the human resources needed under this Law, promote the dissemination of and compliance with this Law in all entities subject to it, and subscribe technical cooperation agreements with bodies involved in access to information in other countries.”<sup>470</sup>

327. Guatemala’s Law on Access to Public Information, in its Article 70, indicates that entities subject to the law shall create information units, without that involving additional budgetary outlays, since these units “shall be made up of existing public officials except in cases that are duly justified...”<sup>471</sup> The same law contains different

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<sup>466</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 9. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(SAII\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/(SAII)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

<sup>467</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 12. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(SAII\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/(SAII)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

<sup>468</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 12. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(SAII\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/(SAII)/675A94FF2EBFEE9106257331007476F2?OpenDocument) Article 7 of the Regulations of the Law on Access to Information of Nicaragua also indicates that it is the responsibility of each entity's highest administrative authority to establish the specific guidelines and criteria to organize and preserve archives and documents. This task should be based on what has been established by the respective office for coordinating access to public information, the Joint Permanent Commission of the Nicaraguan Institute of Culture, and the National Institute of Information on Development. Art. 7. Regulations to the Law on Access to Public Information. Decree No. 81-2007. Gazette No. 6. Jan. 9, 2008. Available at: [http://oaip.cancilleria.gob.ni/documentos/alegal/reglamento\\_ley621.pdf](http://oaip.cancilleria.gob.ni/documentos/alegal/reglamento_ley621.pdf)

<sup>469</sup> Inter-institutional entity made up of the officials who coordinate access to public information in the branches of the State, the autonomous regional governments of the Atlantic Coast, and the municipal governments.

<sup>470</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 14. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(SAII\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/(SAII)/675A94FF2EBFEE9106257331007476F2?OpenDocument) . “Crease la Comisión Nacional de Acceso a la Información Pública, [...] cuyas funciones serán las de formular propuestas de políticas públicas, promover la formación y capacitación de los recursos humanos que demanda la presente Ley, promoverla divulgación y el cumplimiento de la presente Ley en todas las entidades sujetas a la misma, suscribir acuerdos de cooperación técnica con los órganos de acceso a la información pública de otros países”.

<sup>471</sup> Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Art. 70. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “[L]as unidades de información de los sujetos obligados no

provisions that require the proper management, preservation, and safeguarding of information. Specifically, the law’s Article 10 (26) establishes that “[t]hose responsible for the archives of each of the entities subject to the law shall publish, at least once a year, through the *Diario de Centro América*, a report on the operations and purpose of the archive, its systems for recording and categorizing information, its procedures, and the ease of access to the archive.”<sup>472</sup> In addition, Articles 36 and 37 establish rules regarding the safeguarding of documents and administrative archives.<sup>473</sup>

328. Moreover, Article 51 of the law establishes that each entity subject to the law shall offer ongoing programs to keep its public servants up to date on the right to access to public information and the right to the protection of individuals’ personal data,<sup>474</sup> without prejudice to the Human Rights Ombudsman’s obligation, contemplated in paragraph 5 of Article 49, to develop a training program for officials of the entities subject to the law.<sup>475</sup>

329. Panama’s Law on National Archives—Law No. 13 of 1957<sup>476</sup>—provides in its Article 9 that “no document that is archived may be destroyed, transferred, or in any way removed from the State’s control, without prior authorization from the National Board

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supondrá erogaciones adicionales en el Presupuesto General de Ingresos y Egresos del Estado, sino que deberán integrarse con los funcionarios públicos existentes, salvo casos debidamente justificados”.

<sup>472</sup> Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Art. 10(26). Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>473</sup> Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. The aforementioned articles establish: “Article 36. Safeguarding of documents. Public information that is located or may be located in administrative archives may not be destroyed, altered, modified, mutilated, or hidden by determination of the public servants who produce, process, manage, file, or safeguard the information, unless such actions were part of the exercise of public functions and were justified on legal grounds. //Failing to comply with this provision shall be sanctioned in accordance with this law and other applicable laws.” (“Salvaguarda de documentos. La información pública localizada y localizable en los archivos administrativos no podrá destruirse, alterarse, modificarse, mutilarse u ocultarse por determinación de los servidores públicos que la produzcan, procesen, administren, archiven y resguarden, salvo que los actos en ese sentido formaren parte del ejercicio de la función pública y estuvieren jurídicamente justificados. //El incumplimiento de esta norma será sancionado de conformidad con esta ley y demás leyes aplicables”).

“Article 37. Administrative archives. With regard to the information, documents, and files that are part of the administrative archives, in no case may they be destroyed, altered, or modified without justification. Public servants who do not comply with this article and the previous article of this law may be removed from their posts and subject to the provisions of Article 418—Abuse of Authority—and 419—Failing to Comply with Duties—under Criminal Code. If this involves individuals who, directly or indirectly, assist, provoke, or incite the destruction, alteration, or modification of historic archives, the crime of deprivation of national patrimony shall apply, as regulated in the Criminal Code.”

<sup>474</sup> Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Art. 51. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>475</sup> Republic of Guatemala. Law on Access to Public Information. Decree No. 57-2008. Art. 49(5). Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>476</sup> Republic of Panama. National Archives Law of Panama. Law 13 of 1957. Available at: [http://www.asamblea.gob.pa/legispan/PDF\\_NORMAS/1950/1957/1957\\_046\\_0967.pdf](http://www.asamblea.gob.pa/legispan/PDF_NORMAS/1950/1957/1957_046_0967.pdf)

of Documents and Archives.”<sup>477</sup> In principle, the Office of the Ombudsman is the entity in charge of complying with and implementing the Transparency Law.

330. Uruguay and Argentina have provisions related to the training of officials and the preservation of archives. In Argentina, Article 18 of the Regulations on Access to Public Information of the Federal Executive Branch establishes that the Office of the Deputy Secretary for Institutional Reform and the Strengthening of Democracy, which is under the Central Office of the Cabinet of Ministers, shall “verify and require compliance with the obligations established therein.”<sup>478</sup> Support for that task falls to those designated by each agency as responsible for access to public information. The training is limited to the federal executive branch.<sup>479</sup>

331. In terms of the custodianship of archives, Law No. 15.930 of 1961, on the General Archives of the Nation, establishes that the General Archives oversees all government administrative archives.<sup>480</sup> In addition, Decree Law No. 232 of 1979 refers to the preservation of the various archives of the public administration.<sup>481</sup> Article 1 provides that the State Ministries and Secretariats shall submit to the consideration of the General Secretariat of the Office of the President of the Nation—Office of the Deputy Secretary of Public Functions—any proposed measures “regarding their respective archives and related to the disposal, microfilming, preservation, and/or transfer of documents.”<sup>482</sup> Then, Article 2 determines that “the General Secretariat of the Office of the President of the Nation (Office of the Deputy Secretary of Public Functions) shall require, in each case, a ruling from the General Directorate of the General Archives of the Nation with respect to the projects to which the preceding article refers.”<sup>483</sup>

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<sup>477</sup> Republic of Panama. National Archives Law of Panama. Law 13 of 1957. Available at: [http://www.asamblea.gob.pa/legispan/PDF\\_NORMAS/1950/1957/1957\\_046\\_0967.pdf](http://www.asamblea.gob.pa/legispan/PDF_NORMAS/1950/1957/1957_046_0967.pdf). “Nadie puede destruir, enajenar o de cualquier modo sustraer del poder del Estado documento alguno que esté archivado, sin la autorización previa de la Junta Nacional de Documentación y Archivos”.

<sup>478</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Article 18. Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf). (“verificar y exigir el cumplimiento de las obligaciones establecidas en el mismo”).

<sup>479</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf)

<sup>480</sup> Republic of Argentina. Law No. 15.930. October 5, 1961. Available at: [http://www.jgm.gov.ar/archivos/AccessoInfoPub/Normativa/normativa\\_nacional/LEY\\_15930\\_ARCHIVOS.pdf](http://www.jgm.gov.ar/archivos/AccessoInfoPub/Normativa/normativa_nacional/LEY_15930_ARCHIVOS.pdf)

<sup>481</sup> Republic of Argentina. Decree No. 232/79. Official Bulletin from January 29, 1979. Available at: [http://www.memoriaabierta.org.ar/materiales/pdf/decreto\\_232\\_79.pdf](http://www.memoriaabierta.org.ar/materiales/pdf/decreto_232_79.pdf)

<sup>482</sup> Republic of Argentina. Decree No. 232/79. Official Bulletin from January 29, 1979. Art. 1. Available at: [http://www.memoriaabierta.org.ar/materiales/pdf/decreto\\_232\\_79.pdf](http://www.memoriaabierta.org.ar/materiales/pdf/decreto_232_79.pdf). “todo proyecto de medidas a proponer o dictar - según el caso - sobre sus respectivos archivos y que se relacionen con el descarte de documentos, su microfilmación, conservación y/o traslado”.

<sup>483</sup> Republic of Argentina. Decree No. 232/79. Official Bulletin from January 29, 1979. Art. 2. Available at: [http://www.memoriaabierta.org.ar/materiales/pdf/decreto\\_232\\_79.pdf](http://www.memoriaabierta.org.ar/materiales/pdf/decreto_232_79.pdf). “[L]a Secretaría General de la Presidencia de la Nación (Subsecretaría de la Función Pública) requerirá, en cada caso, el dictamen de la Dirección General del Archivo General de la Nación respecto de los proyectos a que se refiere el artículo precedente”.



332. In Uruguay, Law No. 18.220, creating the National System of Archives, was approved in January 2008. The law establishes the State's obligation to preserve and organize its documentary patrimony, ensuring that all archives have adequate equipment and infrastructure.<sup>484</sup>

333. Finally, Law No. 18.381 created the Unit for Access to Public Information as a decentralized body of the Agency for the Development of Electronic-Government Management and the Information and Knowledge Society (Agesic).<sup>485</sup> The unit is the entity that oversees enforcement of the law, and it is tasked with carrying out all necessary actions to ensure compliance with the law's objectives. Its functions, contemplated in Article 21, include training the officials that belong to the entities subject to the law and promoting educational and publicity campaigns to reaffirm the nature of the right of access to information as a fundamental right.<sup>486</sup>

334. In El Salvador, Article 51 of the Access Law created the Institute for Access to Public Information, which has legal personality and administrative and financial autonomy and is tasked with ensuring that the law is enforced. The law provides that the national general budget "shall establish the appropriate budgetary line item for the installation, configuration, and operation of the Institute."<sup>487</sup> In addition, the law regulates the management of archives by the entities subject to the law; to this end, it establishes that the Institute shall prepare and update technical guidelines for managing, cataloging, conserving, and protecting public information.<sup>488</sup>

335. In Colombia, while there are provisions related to the training of officials, none of them is designed to emphasize the importance of the right of access to information. In terms of the preservation and custodianship of archives, Colombia has a law on archives and various provisions that establish regulations on this matter.<sup>489</sup> Law No.

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<sup>484</sup> Oriental Republic of Uruguay. Law No. 18.200. National System of Archives, published in Official Gazette No. 27400. January 8, 2008. Available at: <http://informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-18220.pdf>

<sup>485</sup> See Oriental Republic of Uruguay. Law on Access to Information. Law No. 18.381. October 7, 2008. Article 19. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

<sup>486</sup> Oriental Republic of Uruguay. Law on Access to Information. Law No. 18.381. October 7, 2008. Article 21. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

<sup>487</sup> Republic of El Salvador. Law on Access to Public Information. Art. 108. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. "deberá establecer la partida presupuestaria correspondiente para la instalación, integración y funcionamiento del Instituto".

<sup>488</sup> Republic of El Salvador. Law on Access to Public Information. Art. 40. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>489</sup> In recent decades, various laws have been issued regarding archives. These include Law No. 80 of 1989, creating the General Archives of the Nation and issuing other measures; Law No. 136 of 1994, on provisions to modernize the organization and operations of municipalities; Law No. 190 of 1995, on offenses and crimes related to archives; Law. No. 200 of 1995, on punishable conduct of public servants with regard to archives; and

594 of 2000 creates the National System of Archives, which seeks to integrate all public national agencies whose purpose is to safeguard the documentary patrimony. It also establishes that the General Archives of the Nation is the entity responsible for coordinating and guiding the archival functions and policies regarding the preservation and proper use of the nation's documentary patrimony.<sup>490</sup>

336. In Ecuador, Article 11 of the Organic Law on Transparency provides that the Office of the Ombudsman is the entity responsible for the promotion, vigilance, and guarantees established in the law.<sup>491</sup> Article 8 prescribes that all entities subject to the law shall implement programs to disseminate and promote the right to access to information, which should be geared toward public servants and civil society organizations. It also indicates that the universities and centers that make up the educational system shall develop programs to promote the rights of access to public information, *habeas data*, and *amparo*.<sup>492</sup>

337. Rules on the custodianship, management, and preservation of information were established in the Law of the National Archives System, passed in 1982. Its Article 13 categorizes archives as active, intermediate or temporary, or permanent.<sup>493</sup> Articles 14 and 17 specify that archives that are used frequently and contain documents that are less than 15 years old are considered active; intermediate archives are those that temporarily process information that is more than 15 years old; and permanent archives are those "whose documentation, due to its specific characteristics and importance, constitutes a source of study and research in any field." In addition, Article 10 of the Law on Transparency and Access to Information addresses the subject of archives and establishes that all entities subject to the law have the obligation "to create and maintain public records in a professional manner so that the right to information may be exercised fully; thus in no case shall the lack of technical standards to manage and archive information and documents be used to justify impeding or hampering the exercise of access to public information, or worse still to destroy the information."<sup>494</sup>

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Law No. 594 of 2000, the General Law on Archives. This is available at: [http://www.secretariassenado.gov.co/senado/basedoc/ley/2000/ley\\_0594\\_2000.html](http://www.secretariassenado.gov.co/senado/basedoc/ley/2000/ley_0594_2000.html).

<sup>490</sup> Republic of Colombia. General Law of Archives. Law 594 of 2000. Official Gazette No. 44.093. July 20, 2000. Art. 18. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/ley/2000/ley\\_0594\\_2000.html](http://www.secretariassenado.gov.co/senado/basedoc/ley/2000/ley_0594_2000.html)

<sup>491</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 11. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

<sup>492</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 8. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

<sup>493</sup> Republic of Ecuador. Law on National System of Archives, published in Official Gazette No. 265, June 16, 1982. Art. 13. Available at: <http://www.sinar.gov.ec/contenidos.php?menu=15>. "Archivos permanentes son aquellos cuya documentación, por sus características específicas e importancia constituye fuente de estudio e investigación en cualquier rama".

<sup>494</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 8. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. "[C]rear y mantener registros públicos de manera profesional, para que el derecho a la información se pueda ejercer a plenitud, por lo que, en ningún caso se justificará la ausencia de normas técnicas en el manejo y archivo de la información y documentación para impedir u obstaculizar el ejercicio de acceso a la información pública, peor aún su destrucción".

338. In the Dominican Republic, Article 24 of the LGAIP establishes that “agencies or individuals that carry out public functions or manage State resources shall provide the necessary amounts in their budgets to publish, in mass media outlets of extensive national circulation, the proposed regulations and acts of a general nature” related to requirements or formalities that govern relations between individuals and the administration or that are required of individuals to be able to exercise their rights and activities.<sup>495</sup>

339. Meanwhile, the General Law on Archives of the Dominican Republic, Law No. 481-08,<sup>496</sup> creates the National System of Archives (SNA) and establishes the principles and regulations governing national archive-related activity and defines the functions and powers of the agencies that make up the system. One of the principles governing the archive function, prescribed in Article 11 of the aforementioned law, is that of free access, which is established as “the right of every citizen, except for the restrictions established by the law.”<sup>497</sup>

340. In the United States, the FOIA establishes a decentralized system for implementation, in which each agency is responsible for naming its own personnel responsible for serving the public and supervising compliance with the law, as well as preparing guidelines and manuals. The FOIA also stipulates that each agency should produce detailed information on the law’s implementation and send it to the Attorney General, who is responsible for oversight.<sup>498</sup>

341. In Trinidad and Tobago, the Freedom of Information Act stipulates, in Section 41(1) that the Minister of Government may prepare regulations to make the law effective and to order and/or authorize what is needed. In addition, every public authority shall maintain and preserve documents related to its functions, along with copies of any official documents it creates or holds in its possession, custody, or control.<sup>499</sup>

## **5. Limitations to the Right of Access to Information**

### **a. Legal establishment and regulation of exceptions**

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<sup>495</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGi6hrl%3d&tabid=69&mid=421>. “entidades o personas que cumplen funciones públicas o que administren recursos del Estado deberán prever en sus presupuestos las sumas necesarias para hacer publicaciones en los medios de comunicación colectiva, con amplia difusión nacional, de los proyectos de reglamentos y actos de carácter general”.

<sup>496</sup> Dominican Republic. General Law on Archives. Law No. 481-08. Available at: [http://dgcp.gob.do/transparencia/MARCO\\_LEGAL\\_TRANSPARENCIA/Ley\\_No.\\_481\\_08\\_de\\_Archivo.pdf](http://dgcp.gob.do/transparencia/MARCO_LEGAL_TRANSPARENCIA/Ley_No._481_08_de_Archivo.pdf)

<sup>497</sup> Dominican Republic. General Law on Archives. Law No. 481-08. Available at: [http://dgcp.gob.do/transparencia/MARCO\\_LEGAL\\_TRANSPARENCIA/Ley\\_No.\\_481\\_08\\_de\\_Archivo.pdf](http://dgcp.gob.do/transparencia/MARCO_LEGAL_TRANSPARENCIA/Ley_No._481_08_de_Archivo.pdf). “derecho de todo ciudadano, salvo las restricciones establecidas por la ley”.

<sup>498</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(i)-(l). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>499</sup> Trinidad and Tobago. The Freedom of Information Act. Act No. 26 of 1999. Section 42(1). Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

342. As an essential element of the freedom of expression protected by the American Convention, the right of access to information is not an absolute right, but may be subject to limitations. Nevertheless, such limitations must be in strict accordance with the requirements derived from Article 13.2 of the American Convention; that is, they must be truly exceptional, be established clearly in law, pursue legitimate objectives, and be necessary to accomplish the purpose being sought.<sup>500</sup>

343. As to legal establishment, this being a right established in Article 13 of the American Convention, limitations to the right to seek, receive, and impart information must be prescribed by law, expressly and in advance, to ensure that they are not left to the government's discretion. Their establishment must be sufficiently clear and specific so as not to grant an excessive degree of discretion to the public officials who decide whether or not to disclose the information.<sup>501</sup>

344. In the opinion of the Inter-American Court, such laws must have been enacted "for reasons of general interest," in keeping with the common good as an integral element of public order in a democratic state. The Inter-American Court's definition in Advisory Opinion OC-6/86 is applicable in this respect, according to which the word "laws" does not refer to just any legal norm, but rather to general normative acts passed by legislative bodies that are constitutionally established and democratically elected, according to procedures established in the Constitution, and tied to the general welfare.<sup>502</sup>

345. As to the principle of necessity, the State must demonstrate that in establishing restrictions on access to information under its control, it has met the requirements established in the American Convention. In that regard, the Inter-American Juridical Committee's resolution on "Principles on the Right of Access to Information" established that "the burden of proof in justifying any denial of access to information lies with the body from which the information was requested."<sup>503</sup>

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<sup>500</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. "The Inter-American Legal Framework regarding the Right to Access to Information." Document CIDH/RELE/INF. 1/09. December 30, 2009. Para. 45. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf>

<sup>501</sup> See IACHR. Arguments before the Inter-American Court of Human Rights in the *Case of Claude-Reyes et al.* Transcribed in: I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 58(f).

<sup>502</sup> I/A Court H.R. *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6. Available at: [http://corteidh.or.cr/docs/opiniones/seriea\\_06\\_esp.pdf](http://corteidh.or.cr/docs/opiniones/seriea_06_esp.pdf); See I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 89. Available at: [http://corteidh.or.cr/docs/casos/articulos/seriec\\_151\\_ing.pdf](http://corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf)

<sup>503</sup> Inter-American Juridical Committee. Resolution 147 of the 73rd regular period of sessions. Principles on the Right of Access to Information. August 7, 2008. Principle 7. Available at: [https://www.oas.org/dil/CJI-RES\\_147\\_LXXIII-O-08\\_eng.pdf](https://www.oas.org/dil/CJI-RES_147_LXXIII-O-08_eng.pdf)

346. When there are grounds allowed by the American Convention for a State to limit access to information in its possession, the person who requests the access must receive a reasoned response that provides the specific reasons for which access is denied.<sup>504</sup> As the IACHR has explained, if the State denies access to information, it must provide sufficient explanation of the legal standards and the reasons supporting such decision, demonstrating that the decision was not discretionary or arbitrary, so that individuals can determine whether the denial meets the requirements set forth in the American Convention.<sup>505</sup> Along the same lines, the Inter-American Court has specified that an unfounded failure to provide access to information, without a clear explanation of the reasons and rules on which the denial is based, also constitutes a violation of the right to due process protected by Article 8.1 of the American Convention, in that decisions adopted by the authorities that may affect human rights must be duly justified; otherwise, they would be arbitrary decisions.<sup>506</sup>

347. Limitations imposed upon the right of access to information—like any limitations imposed on any aspect of the right to freedom of thought and expression—must be necessary in a democratic society to satisfy a compelling public interest. Among several options for accomplishing this objective, the one that least restricts the protected right must be chosen. The restriction must (i) be conducive to attaining this objective, (ii) be proportionate to the interest that justifies it, and (iii) interfere to the least extent possible with the effective exercise of the right.<sup>507</sup>

348. Finally, the exceptions regime should set forth a reasonable time period, and once that period has expired, the information must be made available to the public. In this sense, material may be kept confidential only while there is a certain and objective risk that, were the information revealed, one of the interests that Article 13.2 of the American Convention orders protected would be disproportionately affected.<sup>508</sup>

349. In the opinion of the Inter-American Court, the establishment of restrictions to the right of access to State-held information by the practice of its

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<sup>504</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 77.

<sup>505</sup> IACHR. Arguments before the Inter-American Court of Human Rights in the *Case of Claude-Reyes et al.* Transcribed in: I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 58(c) and (d). Available at: [http://corteidh.or.cr/docs/casos/articulos/seriec\\_151\\_ing.pdf](http://corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf)

<sup>506</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 120. See also, I/A Court H.R. *Case of Palamara-Iribarne. Merits, Reparations and Costs.* Judgment of November 22, 2005. Series C No. 135. Para. 216. Available at: [http://corteidh.or.cr/docs/casos/articulos/seriec\\_135\\_ing.pdf](http://corteidh.or.cr/docs/casos/articulos/seriec_135_ing.pdf); *Case of YATAMA.* Judgment of June 23, 2005. Series C No. 127. Para. 152. Available at: [http://corteidh.or.cr/docs/casos/articulos/seriec\\_135\\_ing.pdf](http://corteidh.or.cr/docs/casos/articulos/seriec_135_ing.pdf)

<sup>507</sup> IACHR. 2009 Annual Report. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV (The Right to Access to Information). Para. 53.

<sup>508</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. “The Inter-American Legal Framework regarding the Right to Access to Information.” Document CIDH/RELE/INF. 1/09. December 30, 2009. Para. 54. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON.%20PORTADA.pdf>

authorities, without respecting the provisions of the American Convention, (a) “creates fertile ground for discretionary and arbitrary conduct by the State in classifying information as secret, reserved or confidential”, and (b) “gives rise to legal uncertainty concerning the exercise of this right and (c) the State’s powers to limit it.”<sup>509</sup>

350. The Inter-American Court ruled specifically on the issue of “confidential” or “secret” information in another area concerning public access to information, namely the provision of information on serious human rights violations to the judicial and administrative authorities in charge of investigating such cases and identifying those responsible. In the *Case of Myrna Mack-Chang v. Guatemala*,<sup>510</sup> the Inter-American Court established that the Ministry of National Defense had refused to provide certain documents related to the operation and structure of the Presidential General Staff, which were necessary to advance the investigation of an extrajudicial execution. The Attorney General's Office and federal judges had repeatedly requested the information, but the Ministry of National Defense refused to provide it, invoking State secrecy pursuant to Article 30 of the Guatemalan Constitution. In the opinion of the Court, “in cases of human rights violations, the State authorities cannot resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or proceeding.”<sup>511</sup> In this respect, the Inter-American Court adopted the considerations of the IACHR, which had argued before the Court that “[i]n the framework of a criminal proceeding, especially when it involves the investigation and prosecution of illegal actions attributable to the security forces of the State, there is a possible conflict of interests between the need to protect official secret, on the one hand, and the obligations of the State to protect individual persons from the illegal acts committed by their public agents and to investigate, try, and punish those responsible for said acts, on the other hand... [P]ublic authorities cannot shield themselves behind the protective cloak of official secret to avoid or obstruct the investigation of illegal acts ascribed to the members of its own bodies. In cases of human rights violations, when the judicial bodies are attempting to elucidate the facts and to try and to punish those responsible for said violations, resorting to official secret with respect to submission of the information required by the judiciary may be considered an attempt to privilege the ‘clandestinity of the Executive branch’ and to perpetuate impunity. Likewise, when a punishable fact is being investigated, the decision to define the information as secret and to refuse to submit it can never depend exclusively on a State body whose members are deemed responsible for committing the illegal act... Thus, what is incompatible with the Rule of Law and effective judicial protection ‘is not that there are secrets, but rather that these secrets are outside legal control, that is to say, that the authority has areas in which it is not responsible because they are not juridically regulated and are therefore outside

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<sup>509</sup> I/A Court H.R. *Case of Claude-Reyes et al.* Judgment of September 19, 2006. Series C No. 151. Para. 98. Available at: [http://corteidh.or.cr/docs/casos/articulos/seriec\\_151\\_ing.pdf](http://corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf)

<sup>510</sup> I/A Court H.R. *Case of Myrna Mack-Chang*. Judgment of November 25, 2003. Series C No. 101. Paras. 180-182. Available at: [http://corteidh.or.cr/docs/casos/articulos/seriec\\_101\\_ing.pdf](http://corteidh.or.cr/docs/casos/articulos/seriec_101_ing.pdf)

<sup>511</sup> I/A Court H.R. *Case of Myrna Mack-Chang*. Judgment of November 25, 2003. Series C No. 101. Para. 180.

any control system...”<sup>512</sup> In this context, the Inter-American Court considered that the refusal of the Ministry of National Defense to provide the documents requested by the judges and the Attorney General's Office, alleging State secrecy, amount to an obstruction of justice.<sup>513</sup>

351. The Court ruled along these same lines in the *Case of Gomes-Lund et al. (Guerrilha do Araguaia)*.<sup>514</sup> In that judgment, the Court found that the State had violated the right of access to information of the relatives of victims of military raids by failing to turn over, in a timely manner, any information that may have existed about the raids. In giving the grounds for its assertion, the Court began by clarifying the scope of the right of access to information of victims of serious human rights violations. The Court found that the victims have the right to obtain access, directly and in a timely manner, to information regarding human rights violations.<sup>515</sup> The Court indicated that the authority accused of violating human rights may not have the authority to establish whether or not it will turn over the requested information or to establish whether such information exists.<sup>516</sup> When the State has the obligation to preserve or gather information and nevertheless believes that the information does not exist, it must explain all the steps it took to try to recover or reconstruct the information that was lost or illegally removed;<sup>517</sup> otherwise, the right of access to information is violated.<sup>518</sup> Finally, the Court held that the right of access must be guaranteed through an appropriate and effective remedy that can be resolved within a reasonable time period.<sup>519</sup>

352. Likewise, the Model Law on Access to Information establishes a strict regime of exceptions, which must be legitimate and strictly necessary in a democratic society. Given their exceptional nature, the law contemplates a limited list of reasons for which access to this right may be restricted, which includes: some private interests; a clear,

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<sup>512</sup> I/A Court H.R. *Case of Myrna Mack-Chang*. Judgment of November 25, 2003. Series C No. 101. Para. 181.

<sup>513</sup> I/A Court H.R. *Case of Myrna Mack-Chang*. Judgment of November 25, 2003. Series C No. 101. Para. 182.

<sup>514</sup> I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Paras. 199 et seq. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_219\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_ing.pdf)

<sup>515</sup> I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 200.

<sup>516</sup> I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 202.

<sup>517</sup> I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 202.

<sup>518</sup> I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 211.

<sup>519</sup> I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 219-25.

probable, and specific risk of substantial harm to certain public interests; and confidential communications, “including legally privileged information.”<sup>520</sup>

353. Regulating exceptions to the right of access is one of the most complex and important subjects in each legal system. In some cases, the law itself presents some difficulties, and in others it is the interpretation and application of the law that has led to problems in implementation. In this monitoring report, the Office of the Special Rapporteur is confining itself to describing each legal system so that in future reports it can address best practices and challenges in this area.

354. In most of the countries studied, laws on access to information enshrine the principle of maximum transparency and the obligation to provide reasons for denying requests for access, and establish the grounds that authorize those subject to the law not to turn over information that has been requested. In addition, the laws of Nicaragua and Guatemala establish expressly that when the entity subject to the law believes it is necessary to classify certain information as privileged or confidential, it must conduct a proportionality test before taking such a decision.

355. In general, the grounds for withholding information refer to the confidentiality of personal data and the withholding of information that could affect other interests protected by the Convention, such as national security. In some exemplary cases such as Guatemala, Mexico, Peru, and Uruguay, the law establishes that information on human rights violations may not be classified. Likewise, in cases such as that of Mexico, entities subject to the law are required to develop public indexes of information considered secret. Mexico, Nicaragua, and Guatemala specify the grounds for secrecy classification more precisely than many other laws with broad or vague provisions on subjects such as the defense of national security.

356. Nevertheless, in studying the different legal systems, it is clear that in no small number of cases some of the exceptions are very broad, without there being a clear and precise conceptual definition of the terms used for the exceptions or legal criteria for limiting them. Consequently, the true scope is established through the process of implementation, a subject that will be addressed in future reports. Further, many legal systems have not established an obligation to prepare redacted public versions of documents that may have classified portions; thus, entities subject to the law may have the erroneous idea that if a portion of a document is confidential, the entire content may be withheld, which goes against the principle of maximum disclosure. Where this issue is not addressed within the legal framework, it should be resolved in the implementation of the relevant laws.

357. On another point, regarding the time frames for withholding information, Ecuador, Nicaragua, Panama, Uruguay, Peru, Chile, Mexico, the Dominican Republic, and Guatemala establish maximum initial periods for keeping information secret. All of them authorize an extension of the period, but only Nicaragua, Panama, Chile, and Guatemala

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<sup>520</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Article 41. Available at: [http://www.oas.org/dil/AG-RES\\_2607-2010\\_eng.pdf](http://www.oas.org/dil/AG-RES_2607-2010_eng.pdf)



contemplate a maximum period for extension.<sup>521</sup> Ecuador, Uruguay, Peru, and Mexico leave open the time frame for extending secrecy.<sup>522</sup> In Colombia, the law establishes only the maximum period for withholding information, which may vary between 20 and 30 years, depending on the material.<sup>523</sup> Argentina does not address this issue in its Regulations on Access to Information of the Federal Executive Branch. Finally, it is important to note that Chile has established that the period for classifying matters of national defense and foreign affairs is indefinite.<sup>524</sup>

358. The following section explains in more detail the content of the legal systems that were studied.

359. In Chile, limitations to the right of access to information are the exception, in that Article 21 of the Law on Access to Public Information establishes that “the only grounds for secrecy or confidentiality based on which access to information may be denied in whole or in part” are those contemplated in that law.<sup>525</sup> Further, Article 5 of the law prescribes that the exceptions must be contemplated in laws passed by a qualified quorum.<sup>526</sup> Nevertheless, the law establishes an exception by setting forth, in its transitory

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<sup>521</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Arts. 28, 29. Available at:

[http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument); Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Art. 7. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf); Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State (Ley de Transparencia de la Función Pública y de Acceso a la Información de la Administración del Estado). Law 20.285 de 2009. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>; Republic of Guatemala. Law on Access to Public Information. Art. 44. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>522</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 9(2). Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>; Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Art. 18. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>; Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Art. 11. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf); United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 44. Available at: <http://www.ifai.org.mx/English>

<sup>523</sup> See Republic of Colombia. Law 57 of 1985, Art. 13; Law 594 of 2000. Art. 28 (establishing that classifications regarding any legal document will end after 30 years from their issue); Law 1097 of 2006. Art. 5 (establishing a period of classification of 20 years for “classified expenses”).

<sup>524</sup> Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Art. 22. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

<sup>525</sup> Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “[L]as únicas causales de secreto o reserva en cuya virtud se podrá denegar total o parcialmente el acceso a la información”.

<sup>526</sup> Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

first article, that secrecy classifications legally established for acts and documents before the promulgation of Law No. 20.050 of 2005 are presumed to be legitimate.<sup>527</sup>

360. Article 21 of the law establishes that access to information may be denied, in whole or in part, only when the disclosure of the information could affect: the functioning of the agency to which the request is made; the rights of other persons; national security; public health; the country's international relations or economic interests; and, in line with the provisions established in Article 8 of the Constitution, in cases involving documents that have been declared privileged or secret through a qualified quorum law.<sup>528</sup> Nevertheless, as was already noted, it is problematic that the law's transitory first article establishes that secrecy classifications legally established for acts and documents before the promulgation of Law No. 20.050 of 2005, which amended the Constitution, are presumed to be legitimate—without an exhaustive analysis of these restrictions. Also problematic is subparagraph (c) of Article 21 (1), which establishes as grounds for the denial of information the fact that the request could affect the functioning of the respective agency, inasmuch as this involves “requests of a generic nature that refer to a great number of administrative acts or background information, or for which a response would unduly divert officials from carrying out their regular job duties.”<sup>529</sup> In this regard, however, the law itself establishes a guarantee that has operated adequately: the Council for Transparency, whose decisions, as already explained briefly, have applied constitutional and international guarantees to interpret these standards regarding open content.<sup>530</sup>

361. Chile's Law on Access to Public Information prescribes, in paragraph 3 of Article 16, that a denial of a request for information must include the reasons and indicate the relevant legal provision.<sup>531</sup> In the *Case of Banco de la Nación v. the Council for*

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<sup>527</sup> The transitory first article actually reproduces the fourth transitory provision of the Constitution, which provides that “those laws currently in force on matters that, pursuant to this Constitution, should be the object of organic constitutional laws, or approved through a qualified quorum, fulfill these requirements and shall continue to be applied to the extent that they are not contrary to the Constitution, as long as the relevant laws are not enacted.” Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>.

<sup>528</sup> Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 21. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

<sup>529</sup> Republic of Chile. Constitutional reform introducing various modifications to the Political Constitutional of the Republic. Law 20.050 of 2005. Art. 21(1)(c). Available at: <http://www.leychile.cl/Navegar?idLey=20050>; Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “requerimientos de carácter genérico, referidos a un elevado número de actos administrativos o sus antecedentes o cuya atención requiera distraer indebidamente a los funcionarios del cumplimiento regular de sus labores habituales”.

<sup>530</sup> Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Articles 31 *et seq.* Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

<sup>531</sup> Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 13. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

*Transparency*, of 2009, it was found that denying information based on the argument that the official in question was not considered to have jurisdiction did not constitute an acceptable justification. Consequently, it was ordered that the requested information must be turned over.<sup>532</sup>

362. Article 22 of the law establishes that acts or documents that have been classified as secret by a law keep that status until another qualified quorum law lifts the secrecy. It also provides that once five years have passed from the notification of an act classifying a document as secret, the body that made the notification may extend it for another five years, in whole or in part, on its own initiative or at the request of any person, after evaluating “the danger of harm that could be occasioned by its termination.”<sup>533</sup> Secrecy classifications of material related to national defense or foreign affairs constitute an exception to this rule, since these are classified indefinitely. The same article provides that the results of government-ordered surveys and opinion polls shall be confidential until the respective presidential term ends.<sup>534</sup> Finally, Article 23 provides that agencies of the State administration must maintain “an updated index of the acts and documents designated as secret or classified.”<sup>535</sup>

363. Ecuador's Organic Law for Transparency establishes in Article 17 that the right to obtain access to public information may be denied “exclusively” in the cases contemplated in that article or in those having to do with personal public information, which is defined as confidential in Article 6.<sup>536</sup> The law makes a distinction between two situations in which it is possible to classify information. On the one hand, Article 17 prescribes that secret information consists of information contained in the documents classified as such by the National Security Council, with justification provided and based on reasons of national defense. Alternatively, information shall be considered classified if it is characterized as such by laws that are in force.<sup>537</sup> This provision makes it impossible to determine whether secrecy classifications always meet the standards defined by the Convention. In any case, the Constitution of Ecuador establishes, in Article 91, that “the

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<sup>532</sup> Judgment A-69-09 of the Seventh Chamber of the Santiago Court of Appeals. October 23, 2009. Available at: [http://www.consejotransparencia.cl/data\\_casos/ftp\\_casos/A69-09/A69-09\\_decision\\_web.pdf](http://www.consejotransparencia.cl/data_casos/ftp_casos/A69-09/A69-09_decision_web.pdf)

<sup>533</sup> Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 22. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “el peligro de daño que pueda irrogar su terminación”.

<sup>534</sup> Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 22. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

<sup>535</sup> Republic of Chile. Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Article 23. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>. “Los órganos de la Administración del Estado deberán mantener un índice actualizado de los actos y documentos calificados como secretos o reservados de conformidad a esta ley”.

<sup>536</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Law 24 of May 18, 2004. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. Article 6 provides that confidential information is personal public information “derived from inalienable personal and fundamental rights.”

<sup>537</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 17. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

secret nature of the information shall have been declared prior to the petition, by an authority with standing and in keeping with the law.”<sup>538</sup> As to other matters, the concepts of security or national defense are not defined, a situation that allows for a broad interpretation of these terms and that, as a result, suggests important challenges when it comes to implementation.

364. In addition, Article 18 of Ecuador's Organic Law on Transparency determines that information classified as secret shall remain so for a period of 15 years, or a shorter period if the grounds for classifying it come to an end. It also establishes the possibility of extending the period if the grounds that gave rise to the classification continue, but the law does not specify the maximum period in this case. Finally, it establishes that public institutions must prepare, on a biannual basis, a public index of documents classified as secret.<sup>539</sup>

365. It is interesting to note that transitory Article 4 of the Organic Law on Transparency and Access to Public Information in Ecuador provided that, within six months following the law's entry into force, all entities subject to the law were to prepare an index listing all information in their custody classified as secret that was in line with the law's specifications.<sup>540</sup> The remaining information was to be made available to the public, within a maximum period of two months. The measure also prescribed that “any information classified as having restricted access, and which is more than fifteen years old, shall be declassified and opened freely to the public.”<sup>541</sup>

366. Limitations to the right to information are expressly established as exceptions in the case of Guatemala, whose Law on Access to Information establishes, in Article 1.5, that one of its purposes is to establish “as an exception and on a limiting basis” the assumptions by which the right of access to information is restricted.<sup>542</sup> The Law on Access to Information establishes that access may not be gained to confidential or secret information. In Article 21, the law establishes that limitations to the right apply only based on the grounds contemplated in the Constitution, in the law, or in international treaties or agreements.<sup>543</sup> Under Article 22, confidential information includes data on individuals

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<sup>538</sup> Constitution of the Republic of Ecuador. Art. 91. Available at: [http://www.asambleanacional.gov.ec/documentos/constitucion\\_de\\_bolsillo.pdf](http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf). “El carácter reservado de la información deberá ser declarado con anterioridad a la petición, por autoridad competente y de acuerdo con la ley”.

<sup>539</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 17. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

<sup>540</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

<sup>541</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. “[T]oda información clasificada como de acceso restringido, que tenga más de quince años, deberá ser desclasificada y abierta libremente al público”.

<sup>542</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>543</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

received by public agencies or officials under guarantee of confidence, sensitive personal data, information classified under professional secrecy, and any other classified as such by law.<sup>544</sup> Article 23 considers secret information to include, among other things, that which is related to classified military and diplomatic matters such as national security, unresolved legal cases, information related to industrial secrecy or intellectual property, and studies provided to the President of the Republic in order to guarantee national defense and security and public order.<sup>545</sup> Article 9(9) defines the concept of national security as “all such matters that are part of the policy of the State to preserve the physical integrity of the nation and its territory, in order to protect all elements that make up the State from any aggression produced by hostile foreign or national groups, and those matters that refer to the survival of the Nation-State in relation to other States.”<sup>546</sup>

367. It is important to mention that, significantly, Article 4 of the same law provides that “in no case may information related to investigations of violations of fundamental human rights or crimes against humanity be considered confidential or secret.”<sup>547</sup> This provision represents an important step forward in the region in the area of access to information, and it is in line with what the Inter-American Court has stated in the cases that have already been mentioned.<sup>548</sup>

368. In addition, Article 25 of the Guatemalan law establishes the procedure that must be carried out in order to declare particular information as secret. It requires that the decision be made through a resolution, which must indicate the source of the data, the reasons for classifying the information and the parts of the document considered secret, the period during which it will be classified, and the authority responsible for preservation. The same article establishes that classification resolutions that do not meet the aforementioned prerequisites shall be considered null and void, and that in any case, a resolution may be appealed.<sup>549</sup> Article 26, meanwhile, provides that the authority who classifies the information must demonstrate the harm that its disclosure could engender. The authority must prove that the information falls within the limitations to access

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<sup>544</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>545</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>546</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “[T]odos aquellos asuntos que son parte de la política del Estado para preservar la integridad física de la nación y de su territorio a fin de proteger todos los elementos que conforman el Estado de cualquier agresión producida por grupos extranjeros o nacionales beligerantes, y aquellos que se refieren a la sobrevivencia del Estado-Nación frente a otros Estados”.

<sup>547</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “En ningún caso podrá clasificarse como confidencial o reservada la información relativa a investigaciones de violaciones a los derechos humanos fundamentales o a delitos de lesa humanidad”.

<sup>548</sup> See, I/A Court H.R. *Case of Myrna Mack-Chang*. Judgment of November 25, 2003. Series C No. 101. Para. 274. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 202.

<sup>549</sup> Republic of Guatemala. Law on Access to Public Information. Art. 25. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

contemplated in the Law on Access, that the release of the information could jeopardize the interest protected by the same law, and that “the prejudice or damage that could be incurred through the release of the information is greater than the public interest in knowing the information in question.”<sup>550</sup>

369. Article 20 of the Law on Access to Information establishes that one of the obligations of the Public Information Units is to provide the information requested or provide reasoned grounds for refusal.<sup>551</sup> According to Article 42 of the same law, when the Public Information Units receive a request, they may turn over the information or refuse to provide it. The latter may occur when the person requesting the information did not clarify or correct the request in the given time period, when the information being requested is classified as secret, or when the information does not exist.<sup>552</sup>

370. Finally, Articles 27 and 28 of the access law establish that information may be classified as secret for a maximum period of seven years, which may be extended only for five more years if the grounds for its classification continue. The law provides that the review remedy applies to extensions. In addition, the secrecy classification may cease if the reasons that led to the classification no longer exist, or if it is so ordered by a judicial body or by the responsible authority.<sup>553</sup>

371. In Mexico, the exceptional nature of limitations to the right to access to information is derived from the principle of maximum disclosure of public information set forth in Article 6 of the Federal Transparency and Access to Public Governmental Information Act.<sup>554</sup> Moreover, Articles 13 and 14 specifically spell out the grounds for privilege and confidentiality. In principle, entities subject to the law must make available to the public any information it requests, except when it involves privileged or confidential information. Articles 13 and 14 provide that information may be classified as privileged if that information could: compromise the national security or national defense, or the public security; impair international relations or damage the country's financial or monetary situation; jeopardize the life, security, or health of any person; or seriously prejudice law enforcement activities, crime prevention or prosecution, the administration of justice, tax collection, migratory control operations, or procedural strategies in judicial or administrative actions.<sup>555</sup> The following information is also considered privileged: that

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<sup>550</sup> Republic of Guatemala. Law on Access to Public Information. Art. 26. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>. “[E]l perjuicio o daño que pueda producirse con la liberación de la información es mayor que el interés público de conocer la información de referencia”.

<sup>551</sup> Republic of Guatemala. Law on Access to Public Information. Art. 20. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>552</sup> Republic of Guatemala. Law on Access to Public Information. Art. 42(2). Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>553</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>554</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

<sup>555</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 13. Available at: <http://www.ifai.org.mx/English>

information which may be treated as confidential under a specific legal provision; commercial, industrial, fiscal, bank, or fiduciary secrets or any other information considered as such pursuant to a legal provision; criminal investigations; judicial or administrative-law cases prosecuted in the form of lawsuits, as long as they have not become final and conclusive; public officer liability proceedings, as long as no final and conclusive administrative-law or jurisdiction ruling has been issued; and information containing opinions, recommendations, or points of view that are part of the deliberation process of government officials, as long as a final decision has not been issued.<sup>556</sup>

372. This law contemplates several more specific definitions of the concepts employed in the clauses having to do with privilege. Thus, national security is considered grounds for privilege both in the Federal Transparency and Access to Public Governmental Information Act and in the National Security Act. In Article 3 (XII) of the Federal Transparency Act this is defined as “[a]ll actions designed to protect the integrity, stability, and preservation of the Mexican State, the democratic governability, the external defense and internal security of the Federation aimed at the general welfare of society allowing the pursuit of the purposes of the constitutional State.”<sup>557</sup> Article 6(5) of the National Security Act, for its part, establishes that confidential government information shall be understood to mean “the personal data given to an agency by public servants, as well as personal data provided to the Mexican State to determine or prevent a threat to national security”.<sup>558</sup> It is worth noting that in July 2010 the Mexican Federal Congress approved the Federal Law on the Protection of Personal Data Held by Private Entities. The law applies to private entities that are natural persons or entities of a private nature that handle personal data. It establishes that the Federal Institute for Access to Information and Data Protection [Instituto Federal de Acceso a la Información y Protección de Datos (IFAI)] shall be the guarantor institution for personal data.<sup>559</sup>

373. Significantly, Article 14(VI) of the Federal Transparency and Access to Public Governmental Information Act makes it clear that the privileged nature of information may not be invoked “during investigations of gross human rights violations or crimes against humanity.”<sup>560</sup> Further, in an extremely important provision, Article 17 establishes that the administrative units shall prepare on a semi-annual basis “a list of cases classified as privileged.” This list shall not be considered privileged information.<sup>561</sup>

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<sup>556</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 14. Available at: <http://www.ifai.org.mx/English>

<sup>557</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 3(XII). Available at: <http://www.ifai.org.mx/English>

<sup>558</sup> United States of Mexico. National Security Law. Art. 6(V). Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/LSegNac.pdf>

<sup>559</sup> United States of Mexico. Federal Law on the Protection of Personal Data Held by Private Entities (Ley Federal de Protección de Datos Personales en Posesión de los Particulares). Available at: [http://www.ifai.org.mx/pdf/pot/marco\\_normativo/LFPDPPP.pdf](http://www.ifai.org.mx/pdf/pot/marco_normativo/LFPDPPP.pdf)

<sup>560</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

<sup>561</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

However, as will be noted below, problems have arisen in applying this law, resulting from the interpretation of the restrictions to information involving open judicial cases.

374. In addition, the law's Article 18 provides that confidential information is information provided under those terms by private parties to the disclosing parties, as well as personal data whose dissemination is subject to the private party's consent.<sup>562</sup>

375. In terms of the procedure to verify the legitimacy of secrecy classifications, in Mexico Article 45 of the law establishes that when an administrative unit finds that information requested by an interested party has been classified, it must immediately inform the Information Committee of the situation so the Information Committee can decide whether to confirm, amend, or revoke the classification.<sup>563</sup> If the Information Committee decides to deny access to the information, it must inform the applicant, providing grounds for the decision and indicating what remedy may be filed before the Federal Institute for Access to Information and Data Protection (IFAI). In effect, as has been mentioned, in Mexico the law establishes an important guarantee to ensure that the interpretation of exceptions is in line with constitutional and international guarantees: It created IFAI as the body responsible for "promoting and disseminating the exercise of the right of access to information, resolving issues related to denials of requests for access to information, and protecting personal data held by public offices and entities".<sup>564</sup> The operation of this institute demonstrates the importance of having an autonomous, specialized body in this area. Its important case law will be studied in future reports.<sup>565</sup>

376. Recently, a reform to Article 16 of the Mexican Federal Code of Criminal Procedures<sup>566</sup> was approved, which seriously restricts access to files from preliminary

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<sup>562</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

<sup>563</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

<sup>564</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act, Art. 33. Available at: <http://www.ifai.org.mx/English>

<sup>565</sup> It is important to note that the IFAI oversees compliance with the Federal Transparency and Access to Governmental Public Information Act only within the federal public administration. The judicial and legislative branch and autonomous bodies do not have an independent oversight body. Also, the legal and institutional framework guaranteeing the effective exercise of the right of access to information before the federal executive does not always exist at the state and municipal level. In this regard, there are both regulatory and practical challenges for the effective exercise of the right of access to information at the level of the federated entities, or states.

<sup>566</sup> Article 16 of the Federal Code of Criminal Procedures establishes, in its relevant section, that, "For the effects of access to government public information, only a public version shall be provided of a decision not to bring criminal proceedings, on condition that a period equal to the statute of limitations for the offense has elapsed, pursuant to the Federal Criminal Code, as long as this period is not less than three years or longer than twelve years from the time the determination was made final." ("Para efectos de acceso a la información pública gubernamental, únicamente deberá proporcionarse una versión pública de la resolución de no ejercicio de la acción penal, siempre que haya transcurrido un plazo igual al de prescripción de los delitos de que se trate, de conformidad con lo dispuesto en el Código Penal Federal, sin que pueda ser menor de tres ni mayor de doce años, contado a partir de que dicha resolución haya quedado firme"). United States of Mexico. Federal Code of Criminal



investigations. At the time this study was being completed, the Office of the Special Rapporteur received information about an unconstitutionality action brought by the National Human Rights Commission (CNDH),<sup>567</sup> alleging that the aforementioned Article 16 is invalid. Along with the CNDH, the IFAI has deemed that the unjustified restrictions to access involving preliminary investigations that ended, or are completely inactive, violate the guarantees of access to public information contained in Article 6 of the Constitution.<sup>568</sup>

377. The Office of the Special Rapporteur recognizes the need to maintain the secrecy of ongoing preliminary investigations so as to not harm the investigation and to protect sensitive information. However, releasing a public version of information about investigations that have ended or have been inactive for years—after protecting sensitive data and other elements whose need to remain privileged has been demonstrated, as a means of protecting other legitimate interests—promotes the public nature of the process and serves as a guarantee for proper inter-institutional and social control over the justice system. That is precisely the purpose of the right of access to information.

378. Finally, the Transparency Act establishes, in Article 15, that the maximum period for treating information as privileged shall be 12 years, but that the information may be declassified before that time if the reasons that gave rise to the classification no longer exist. It also provides that, in exceptional cases, disclosing parties may request an extension of privilege if it can be proved that the grounds that led to it continue.<sup>569</sup>

379. Nicaragua's Law on Access to Public Information expressly states in Article 3(2) that all information in possession of the entities subject to the Law is public in nature and subject to free access by the public, save for the exceptions established in the Law.<sup>570</sup> In addition, Article 15 determines that public information shall be considered secret when it has been expressly classified as such by agreement of the head of each agency.<sup>571</sup> The law expressly establishes that the classification of information as privileged or secret must be made by the highest administrative authority of each entity, by means of an agreement which is duly reasoned and which states the legal grounds on which the decision is based. In Nicaragua, the maximum period for a secrecy classification is 10 years,

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Procedure, last reform published in Official Gazette of the Federation 10-24-2011. Art. 16. Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/7.pdf>

<sup>567</sup> Unconstitutionality action brought by the National Human Rights Commission (CNDH). AC 26/09. February 5, 2009. Document provided to the Office of the Special Rapporteur by the IFAI during the onsite visit.

<sup>568</sup> IFAI. Report on Unconstitutionality Action 26/2009. Document IFAI/ALI/069/09. March 25, 2009. Document provided to the Office of the Special Rapporteur by the IFAI during the onsite visit. *See also*, IACHR. Office of the Special Rapporteur for Freedom of Expression. August 25, 2010. Press Release 84/10. *IACHR and UN Rapporteurs for Freedom of Expression Publish Preliminary Report Regarding Visit to Mexico*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=813&IID=1>

<sup>569</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Available at: <http://www.ifai.org.mx/English>

<sup>570</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

<sup>571</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

which may be extended for an additional 5 years if the grounds for the classification are still in place. Moreover, the classification will cease once the reasons for classifying the information no longer exist.<sup>572</sup>

380. Article 15 of Nicaragua's Law on Access to Public Information establishes the following as information that shall be classified: information that could harm the security of the State's territorial integrity and/or the defense of national sovereignty; information "whose disclosure could hamper or frustrate activities to prevent or prosecute crime and organized crime"; information related to "bank secrecy or trade, industrial, scientific, or technical secrets that belong to third parties or to the State"; information that jeopardizes "international relations, litigation before international courts, or negotiation strategies for commercial agreements or integration accords"; and "draft judgments, resolutions, and agreements in process of being decided by a single authority or panel of authorities."<sup>573</sup>

381. It is important to emphasize that the law itself specifies that under the grounds related to the security of the territorial integrity of the State and/or the defense of national sovereignty, only certain information may be classified, such as "1. Planning and strategies related to military defense or internal communications that refer to military defense. 2. Plans, operations, and intelligence reports related to defense, military intelligence, and military counterintelligence. 3. Inventories, specifications, and locations of weapons, equipment, ammunition, and other means intended for national defense, as well as the locations of military units with restricted access. 4. Acquisition and destruction of weapons, equipment, ammunition, and replacement parts from the inventory of the Nicaraguan Army, without prejudice to that which has been established in laws and provisions on this subject. 5. Military exercises designed to raise the Nicaraguan Army's combat capabilities. 6. Names and general information about the members of the intelligence units related to defense, military intelligence, and military counterintelligence. 7. Plans, inventories, or other information considered to fall under regional secrecy in the regional treaties to which Nicaragua is a signatory."<sup>574</sup>

382. In the view of the Office of the Special Rapporteur, it is in keeping with the general principle of maximum disclosure to establish, as the aforementioned provision does, the criteria that serve to apply and interpret particularly ambiguous exceptions to the right of access to information, such as the exception related to defense of sovereignty or national security. In this regard, defining the content of these somewhat open-ended clauses helps to provide better guidelines to officials and greater security to those entitled to access.

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<sup>572</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Article 17. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

<sup>573</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

<sup>574</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 15(a). Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

383. Even so, some of the grounds for secrecy continue to be defined broadly and therefore will require legal and administrative implementation measures, such as the existence of public criteria regarding classified information and effective protection mechanisms.

384. One of these mechanisms can be found in a particularly important provision of the law: Article 3 (7), which establishes the principle of proof of harm.<sup>575</sup> Pursuant to this provision, the authority who categorizes certain information as being of restricted access must argue that the information falls under one of the grounds for exception established in the law, that the release of the information could jeopardize the public interest, and that “the harm that could be produced by the release of the information is greater than the public interest in knowing the information in question.”<sup>576</sup> Along the same lines, Article 35 of the law establishes that the refusal to grant a request for access to public information “must be reasoned, under penalty of nullity.”<sup>577</sup> In the next line, Article 36 that the decision must be notified to the person making the request no later than the third day after it is made, indicating the legal grounds on which the decision is based.<sup>578</sup> The law provides that the decision may be appealed through an administrative remedy, even when it is not necessary to exhaust the government avenue to have access to the jurisdiction of administrative litigation. Nevertheless, on this point it is important to caution that regular judicial remedies tend to have more extensive time periods than remedies designed especially for the protection of these type of rights, especially when they are filed with specialized autonomous bodies. That is what occurs in Mexico, thanks to the IFAI, or in Chile, thanks to the Council for Transparency.

385. Another country that has expressly established disclosure as the rule is Panama. Article 1 of its law contemplates a series of definitions, and its subparagraph 11 contemplates the principle of disclosure, under which any information that emanates from the public administration is of a public nature, save for the established exceptions, which relate to confidential information<sup>579</sup> and information subject to restricted access.<sup>580</sup> The law's fifth chapter establishes rules regarding the action of *habeas data* to guarantee the

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<sup>575</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

<sup>576</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Art. 7(c). Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “[E] daño que puede producirse con la liberación de la información es mayor que el interés público de conocer la información de relevancia”.

<sup>577</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “ Toda denegatoria de acceso a información pública deberá motivarse bajo pena de nulidad”.

<sup>578</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

<sup>579</sup> In accordance with the provisions of Article 1(5). Republic of Panama. Law on Transparency in Public Administration. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf)

<sup>580</sup> In accordance with the provisions of Article 1(7). Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf)

right of access to information to persons when public officials have not provided them with the information they requested or have done so imprecisely or incompletely.<sup>581</sup>

386. Pursuant to Article 1(5) of Panama's Law on Transparency in Public Administration, confidential information is any information in the possession of agents of the State, or of any public institution, that relates to individuals' private data, such as their medical and psychological data, information about their intimate life, their criminal and police history, their correspondence, and public officials' personnel files.<sup>582</sup> Article 1(7), in turn establishes that information with restricted access refers to data held by agents of the State, or by any public institution, disclosure of which has been limited only to the officials who should have knowledge of it.<sup>583</sup> Thus, Article 14 establishes that the following is considered to be of restricted access: "national security information handled by security forces; trade secrets or confidential commercial information obtained by the State through its regulation of economic activities; matters related to [disciplinary] proceedings or jurisdictional matters before the Public Prosecutor's Office and the judiciary that are accessible only to the parties of the case, until they have reached final judgment; information having to do with investigative proceedings carried out by the Public Prosecutor's Office, public law enforcement, the Judicial Technical Police, the General Customs Office, the National Council on Security and Defense, the Office of Patrimonial Liability of the Comptroller General's Office, the Financial Analysis Office for the Prevention of Money Laundering, the Commission on Free Competition and Consumer Affairs, and the Oversight Agency for Public Services; information regarding the existence of oil and mineral deposits; minutes, notes, correspondence, and documents related to any type of diplomatic, commercial or international negotiations; documents, files, and transcripts that friendly nations provide to the country in criminal, police, or other investigations; the minutes, notes, files, and other records or written evidence regarding discussions or activities of the Cabinet Council and the President or Vice President of the Republic, with the exception of those related to the approval of contracts"; and "the transcripts of meetings and information obtained by Legislative Assembly Commissions when they meet in the exercise of their oversight functions" to gather any of the information detailed above.<sup>584</sup>

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<sup>581</sup> Republic of Panama. Law No. 6. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Arts. 17-19. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf)

<sup>582</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf)

<sup>583</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf)

<sup>584</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Art. 14 (1-9). Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf). "Se considerará de acceso restringido, cuando así sea declarado por el funcionario competente, de acuerdo con la presente Ley: 1. La información relativa a la seguridad nacional, manejada por los estamentos de seguridad. 2. Los secretos comerciales o la información comercial de carácter confidencial, obtenidos por el Estado, producto de la regulación de actividades económicas. 3. Los asuntos relacionados con procesos o jurisdiccionales adelantados por el Ministerio Público y el Órgano Judicial, los cuales sólo son accesibles para las partes del proceso, hasta que queden ejecutoriados. 4. La información que versa sobre procesos investigativos realizados por el Ministerio Público, la Fuerza Pública, la Policía Técnica Judicial, la Dirección General de Aduanas, el Consejo Nacional de Seguridad y Defensa, la Dirección de Responsabilidad Patrimonial de la Contraloría General de la República, la Dirección de Análisis Financiero para la Prevención de Blanqueo de Capitales, la Comisión de Libre Competencia y

387. When a State institution of Panama denies access to information on grounds that is privileged, it must do so by means of a reasoned resolution that establishes the reasons for the refusal, based on the statute.<sup>585</sup> In a case decided by the Supreme Court on September 16, 2003, a *habeas data* action was granted against the administration, as it had denied access to information that was classified, but had done so without explaining the decision by means of a resolution.<sup>586</sup>

388. Pursuant to Article 14 of the statute, the maximum period the information may be withheld is 10 years, which may be extended for an additional 10 years if the executive, legislative or judicial organs believe there are still valid reasons for maintaining the secrecy. The period of secrecy may not exceed 20 years. If the grounds for secrecy cease to exist before the additional restriction period expires, the information should be published.<sup>587</sup>

389. In Peru, access to information has been established as the rule and limitations as an exception to the presumption of disclosure that falls to all public information. Article 15-C of the statute establishes the principle in the following terms: “The cases established in Articles 15, 15-A, and 15-B are the only ones in which the right of access to public information may be limited; hence they must be interpreted restrictively as they involve a limitation to a fundamental right. No exception to this Law may be established by a lesser-ranking norm.”<sup>588</sup>

390. Articles 15, 15-A, and 15-B, in turn, establish three categories for classifying limitations to access to information. Information is secret when it refers to military and intelligence matters; privileged when it has to do with police matters and matters of international relations and national security; and confidential when it has to do with individuals' personal data and intimate information, as well as with banking, tax,

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Asuntos del Consumidor y el Ente Regulador de los Servicios Públicos. 5. La información sobre existencia de yacimientos minerales y petrolíferos. 6. Las memorias, notas, correspondencia y los documentos relacionados con negociaciones diplomáticas, comerciales e internacionales de cualquier índole. 7. Los documentos, archivos y transcripciones que naciones amigas proporcionen al país en investigaciones penales, policivas o de otra naturaleza. 8. Las actas, notas, archivos y otros registros o constancias de las discusiones o actividades del Consejo de Gabinete, del Presidente o Vicepresidentes de la República, con excepción de aquellas correspondientes a discusiones o actividades relacionadas con las aprobaciones de los contratos. 9. La transcripción de las reuniones e información obtenida por las Comisiones de la Asamblea Legislativa, cuando se reúnan en el ejercicio de sus funciones fiscalizadoras para recabar información que podría estar incluida en los numerales anteriores”.

<sup>585</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. Article 16. January 22, 2002. Available at: [http://www.presidencia.gob.pa/lev\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/lev_n6_2002.pdf)

<sup>586</sup> Supreme Court of Justice of Panama (Plenum). Habeas Data Action. Opinion by Justice Virgilio Trujillo López. September 16, 2003. Available at: <http://www.organojudicial.gob.pa/wp-content/uploads/2011/03/rj2010-04.pdf>

<sup>587</sup> Republic of Panama. Law on Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/lev\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/lev_n6_2002.pdf)

<sup>588</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Art. 15-C. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

industrial, or commercial secrets.<sup>589</sup> It is very important to emphasize that, significantly, the last paragraph of Article 15-C establishes that “information related to the violation of human rights or of the 1949 Geneva Conventions, carried out under any circumstances, by any person, shall not be considered to be classified information.”<sup>590</sup> Nevertheless, as in other laws, some of the exceptions established by this statute contain broad and general formulations, and thus will require legal and administrative implementation measures, such as the existence of public indexes and criteria related to privileged information or specialized implementation bodies.

391. In terms of the procedure, Peru's law establishes, in Article 13, that a response denying access to information must always be explained, based on one of the exceptions established in the statute itself. The response must be made in writing and must expressly state the reasons the exception is being applied and the time period for which the requested information will be withheld. Article 13 further establishes that access may not be denied based on the identity of the person making the request.<sup>591</sup>

392. Finally, Article 15 of the law provides that the classification shall be for five years, but it establishes that if the responsible official deems it is necessary to extend it, the decision must be justified in writing, specifying the additional period during which the information shall remain classified. The classification may be extended again through the same procedure, and no maximum period is established for keeping the information classified, which presents the problems already noted at the beginning of this chapter.<sup>592</sup>

393. Uruguay establishes, in Article 4 of the Law on Transparency, that all information in possession of or under control of entities subject to the law “is presumed to be public.”<sup>593</sup> Likewise, Article 8 establishes that any exceptions to public information “shall be interpreted strictly and shall comprise those defined as secret by the law and those defined below as being of a classified and confidential nature.”<sup>594</sup> Article 9, for its part, establishes that classified information is that which refers to matters such as public security or national defense, international relations, and financial stability; that which could jeopardize the life, human dignity or health of persons; that which leaves scientific

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<sup>589</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

<sup>590</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

<sup>591</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

<sup>592</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

<sup>593</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

<sup>594</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. “Las excepciones a la información pública serán de interpretación estricta y comprenderán aquellas definidas como secretas por la ley y las que se definan seguidamente como de carácter reservado y confidencial”.

discoveries unprotected; or information that could be presumed to cause a loss of competitive advantages for the party subject to the law or damage that party's production process.<sup>595</sup> For its part, Article 10 provides that confidential information consists of personal data requiring informed prior consent, and data provided to entities subject to the law related to a person's patrimony, to facts of a financial, accounting, juridical or administrative nature that refer to a natural or legal person and which could be used by a competitor, and information protected by a contractual confidentiality clause.<sup>596</sup> Some of the clauses cited offer broad content with no concrete definition of criteria. In this regard, it is important for legal and administrative implementation measures to be introduced, such as public indexes and criteria dealing with classified information, or perhaps specialized bodies responsible for implementing the measures.

394. One of the grounds for withholding information refers to contractual confidentiality clauses, under which information may be considered privileged even if it does not necessarily pursue a legitimate purpose, as the law does not establish a limitation to this clause.<sup>597</sup> It will be up to the enforcement authority, then, to define the scope of this provision.

395. It is important to mention that Article 12 of the statute provides, significantly, that the restrictions mentioned are not applicable “when the information being requested refers to human rights violations or may be relevant in investigating, preventing, or averting violations of these rights.”<sup>598</sup>

396. Article 18 of the law establishes that access to information may be denied only by means of a reasoned decision that indicates the legal provisions on which it is based.<sup>599</sup>

397. Finally, Article 11 establishes that the information may be classified for a period of up to 15 years. This period may be extended when it is duly justified that the

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<sup>595</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

<sup>596</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

<sup>597</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Art. 10(I)(C). Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

<sup>598</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Art. 12. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>. “[C]uando la información solicitada se refiera a violaciones de derechos humanos o sea relevante para investigar, prevenir o evitar violaciones de los mismos”.

<sup>599</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

reasons that led to the classification remain.<sup>600</sup> No maximum period is established for the extension, which presents the problems already mentioned at the beginning of this chapter.

398. In the Dominican Republic, the principle of disclosure establishes access to information as the rule and secrecy as the exception. Article 3 of the General Law on Free Access to Public Information prescribes that “all acts and activities of the public administration [...] shall be subject to being public.”<sup>601</sup> Articles 17 and 18 establish the type of information that may be classified.<sup>602</sup> Article 23 of the regulations, in turn, indicates that the most senior executive authorities in each of the agencies mentioned in the law “shall be those responsible for classifying the information that is prepared, held, safeguarded, or managed by the body, institution, or entity for which he or she is responsible, as well as for denying access to the information.”<sup>603</sup>

399. The same statute establishes restrictions based on “compelling public interests” and “compelling private interests.”<sup>604</sup> Article 17 includes among the former: information linked to the defense or security of the State that has been classified as “secret”; information whose release could negatively affect the success of a measure of a public nature or the operation of the banking or financial system; information whose release could affect a legal strategy prepared by the administration in the processing of a judicial case; information classified as “secret” in the safeguarding of scientific, technological, communications, industrial, or financial strategies and projects; information that could harm the principle of equality among bidders for a State contract; information involving the advice, recommendations, or opinions produced as part of the deliberative and consultative process prior to the government’s taking a decision; information involving commercial, industrial, scientific, or technical secrets; information for which secrecy imposed by law or judicial or administrative decisions in particular cases may not be violated; and information whose disclosure could affect persons’ right to privacy, place their lives or security at risk, or jeopardize public security, the environment, or the public interest in general.<sup>605</sup> For its part, Article 18 considers “compelling private interests”

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<sup>600</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

<sup>601</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGi6hr%3d&tabid=69&mid=421>. “Todos los actos y actividades de la administración pública [...] estarán sometidos a publicidad”.

<sup>602</sup> Dominican Republic. General Law on Access to Public Information. Ley 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGi6hr%3d&tabid=69&mid=421>. “Las máximas autoridades ejecutivas de cada uno de los organismos, instituciones y entidades [...] serán las responsables de clasificar la información que elabore, posea, guarde o administre dicho organismo, institución o entidad a su cargo, así como de denegar el acceso a la información”.

<sup>603</sup> Dominican Republic. Decree No. 130-05 approving the Regulations for General Law on Access to Public Information. Available at: <http://onapi.gob.do/pdf/marco-legal/trasparencia/decreto-130-05.pdf>

<sup>604</sup> See Dominican Republic. General Law on Access to Public Information. Law 200-04. Arts. 17, 18, 22, 25. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGi6hr%3d&tabid=69&mid=421>

<sup>605</sup> See Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGi6hr%3d&tabid=69&mid=421>



justifying the denial of information those that have to do with personal data, the disclosure of which could mean an invasion of privacy, and intellectual property. As was already observed in examining similar provisions, some of the grounds that are stated are especially broad. Thus, as long as more precise legislative parameters are not established, it will be up to the enforcement authorities to make such grounds concrete through clear and precise regulations, and to adequately specify and justify how they will be implemented.

400. When an institution classifies a particular piece of information as secret based on the provisions established in Articles 17 and 18 of the statute, it must justify its decision and indicate the following, according to Article 29 of the law's regulations: "a) The name and position of the person classifying the information; b) The agency, institution, entity, and/or other source that produced the information; c) The dates or events established for public access, or the date on which the five-year period of classification will have expired; d) The reasons on which the classification is based; e) If applicable, the parts of the information that are classified as secret and those that are available for public access. The parts of the information that have not been classified as secret may be considered public information to which persons who so request may have access. f) The designation of the authority responsible for preserving the information."<sup>606</sup>

401. The law establishes a maximum classification period of five years, but leaves open the possibility for the period to be changed through special legislation. In fact, Article 21 of the law establishes that "[w]hen not provided otherwise in the specific laws regulating classified information, it shall be considered that the legal classification term is... five years. Once this period has expired, a citizen has the right to access this information, and the authority or entity in question has the obligation to provide the means to issue the pertinent copies."<sup>607</sup>

402. In El Salvador, the Access Law establishes the principle of maximum disclosure as one of the criteria governing its interpretation and application. According to this principle, "the information held by the bodies subject to this law is public and its dissemination unrestricted, save for the exceptions expressly established by law."<sup>608</sup> Article

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<sup>606</sup> Dominican Republic. Decree No. 130-05 approving the Regulations for General Law on Access to Public Information. Available at: <http://onapi.gob.do/pdf/marco-legal/trasparencia/decreto-130-05.pdf>. "a) El nombre y cargo de quien clasifica la información; b) El organismo, institución, entidad y/u otra fuente que produjo la información; c) Las fechas o eventos establecidos para el acceso público, o la fecha correspondiente a los 5 años de la clasificación original; d) Los fundamentos de la clasificación; e) En caso de corresponder, la partes de información que se clasifican como reservadas y aquellas que están disponibles para el acceso público. Las partes de la información que no hayan clasificado como reservadas serán consideradas como información pública a la que tendrán acceso las personas que así lo soliciten. f) La designación de la autoridad responsable de su conservación".

<sup>607</sup> See Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrxmpGi6hrl%3d&tabid=69&mid=421>. "Cuando no se disponga otra cosa en las leyes específicas de regulación en materias reservadas, se considerará que el término de reserva legal [...] es de cinco años. Vencido este plazo, el ciudadano tiene derecho a acceder a estas informaciones y la autoridad o instancia correspondientes estará en la obligación de proveer los medios para expedir las copias pertinentes".

<sup>608</sup> Republic of El Salvador. Law on Access to Public Information. Article 4(a). Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. "[L]a

19 of the law establishes the following information as privileged: military plans and secret political negotiations; information that could harm or jeopardize national defense and public security; information that could damage diplomatic relations; information that could clearly endanger the life, security, or health of any person; information relating to the deliberative process of public servants, as long as a final decision has not been made; information that could seriously prejudice the prevention, investigation, or prosecution of crimes or the administration of justice or the verification of compliance with the law; information that could compromise government strategies and operations in ongoing judicial or administrative procedures; and information that could create an undue advantage for one person to the detriment of a third party.<sup>609</sup>

403. For a piece of information to be classified as secret, according to the Law on Access to Public Information of El Salvador the entity subject to the law must issue a resolution justifying its decision. Article 21 establishes that this administrative act must lay out that the information meets the grounds for exceptions established in Article 19, that its disclosure could pose a threat to the legal interest protected by the secrecy provision, and that the damage that could result from releasing the information is greater than the public interest in making it known.<sup>610</sup> Further, pursuant to Article 22, the Access to Public Information Units of the various bodies subject to the law must prepare on a semiannual basis an index of the information that has been classified as secret.<sup>611</sup> The Institute for Access to Information shall maintain a centralized record of indexes of classified information, which may be consulted by the public.<sup>612</sup>

404. It is important to mention that the final paragraph of Article 19 provides that information may not be characterized as classified “when it has to do with the investigation of grave violations of fundamental rights or crimes of international significance.”<sup>613</sup> At the same time, it must be noted that Article 110 of the Access Law establishes that its provisions shall apply to all information in the hands of the bodies subject to the law; thus, any conflicting provisions in other laws are repealed.<sup>614</sup> However, the same article lays out an extensive list of provisions that continue to be in force, independent of their content.

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información en poder de los entes obligados es pública y su difusión irrestricta, salvo las excepciones expresamente establecidas por la ley”.

<sup>609</sup> Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>610</sup> Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>611</sup> Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>612</sup> Republic of El Salvador. Law on Access to Public Information. Article 23. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>613</sup> Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>614</sup> Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

405. Article 24 of the law regulates confidential information. Information is classified as such “when it concerns the right to personal and family privacy, honor, and self-image”, as well as medical records; information “that has been provided on a confidential basis to entities subject to the law”; personal information whose release requires individuals' consent; and “secrets of a professional, trade, industrial, fiscal, banking, fiduciary or any other nature, and which are considered to be such by virtue of a legal disposition.”<sup>615</sup>

406. Finally, Article 20 provides that the information classified as privileged pursuant to the provisions of Article 19 shall remain as such for a maximum period of seven years, although the information may be declassified before this period expires if the grounds for classifying it no longer apply.<sup>616</sup> The article also establishes that the Institute for Access to Information may extend the classification period for up to five additional years, provided the bodies subject to the law so request and if it can be justified that the reasons for classifying the information in the first place continue to apply.<sup>617</sup> In the case of secrecy grounds having to do with military plans and secret political negotiations, as well as with information that could jeopardize national defense and public security, additional extensions may be given, provided that the body subject to the law duly justifies the need to continue classifying the information.<sup>618</sup>

407. In Jamaica, the Access to Information Act recognizes the right of every person to obtain access to an official document, other than an exempt document, thus establishing access to information as the rule and secrecy as the exception. Part III of the act establishes the documents that are exempt from disclosure, which include: those documents whose disclosure would prejudice security, defense, or international relations (Section 14); documents created for the consideration of the Cabinet; documents relating to law enforcement if their disclosure could endanger any person's life or safety; documents that would be privileged on the ground of legal professional privilege; information that could have a substantial adverse effect on the national economy if disclosed prematurely; documents that reveal the government's deliberative process; information related to trade secrets; information that could result in the destruction of, damage to, or interference with, the conservation of any historical or archaeological sites;

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<sup>615</sup> Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. “Es información confidencial: a. La referente al derecho a la intimidad personal y familiar, al honor y a la propia imagen, así como archivos médicos cuya divulgación constituiría una invasión a la privacidad de la persona. b. La entregada con tal carácter por los particulares a los entes obligados, siempre que por la naturaleza de la información tengan el derecho a restringir su divulgación. c. Los datos personales que requieran el consentimiento de los individuos para su difusión. d. Los secretos profesional, comercial, industrial, fiscal, bancario, fiduciario u otro considerado como tal por una disposición legal”.

<sup>616</sup> Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>617</sup> Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>618</sup> Republic of El Salvador. Law on Access to Public Information. Art. 20. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

and documents that contain information that affects personal privacy.<sup>619</sup> As in other cases that have been discussed, some of these exceptions are phrased in broad and general terms, and thus without greater legislative precision, it falls to the enforcement authority to define the scope of the exceptions in accordance with the Constitution and international standards in this area.

408. In Jamaica, an authority that refuses access to information based on a belief that the information meets one of the grounds for considering the requested document as exempt from disclosure must issue a certificate to that effect, clarifying which documents or which parts of a document are exempt and specifying the basis for each exemption. Section 30 of the Access to Information Act establishes access to an internal review procedure for those cases in which access to a document is refused, only partial access is granted, access to a document is deferred, or a fee is charged for access.<sup>620</sup>

409. For its part, Section 6(2) of the act establishes a general time period for the exemption of documents, specifying that: “[t]he exemption of an official document or part thereof from disclosure shall not apply after the document has been in existence for twenty years,”<sup>621</sup> or such shorter or longer period as the Minister may specify by order, subject to approval of Parliament.<sup>622</sup>

410. In Antigua and Barbuda, the law establishes access to information as a general principle. It contemplates a limited list of exceptions, which are the only ones that may be used to refuse requests for information. In any case, Section 24 states that when these exceptions are invoked, a public authority must weigh the interest or the right that is protected in denying access to the information with the public interest in disclosure.<sup>623</sup>

411. The types of information that may be restricted by the public authorities relate to the following matters: personal information, unless the person involved has consented to disclosure; information covered by a legal privilege such as attorney-client privilege; confidential information related to trade secrets or information obtained in confidence from another State; information that would likely endanger the life, health, or safety of any person; sensitive information related to the administration of justice or prevention of crime; information that would likely cause serious prejudice to defense or national security; information that would likely cause serious prejudice to the country's

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<sup>619</sup> Jamaica. Access to Information Act. Sections 14-22. Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>620</sup> Jamaica. Access to Information Act. Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>621</sup> Jamaica. Access to Information Act. Section 6(2). Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf)

<sup>622</sup> Jamaica. Access to Information Act. Section 6(2). Available at: [http://www.iis.gov.jm/special\\_sections/ATI/ATIACT.pdf](http://www.iis.gov.jm/special_sections/ATI/ATIACT.pdf).

<sup>623</sup> Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

economy or commercial interests or to the environment; and information related to Cabinet deliberations or to government matters that are not final.<sup>624</sup>

412. Section 34 of the act provides that information related to sections 27 to 32 apply only to the extent that the harm they seek to protect against would likely continue to occur.<sup>625</sup> Information related to Sections 28(c), 30, 31, and 32, for its part, would be exempt for no more than thirty years, “or such other longer or shorter period as the Minister may, by Order published in the Gazette, prescribe either generally or in respect of any particular class of records.”

413. In the case of Canada, the Access to Information Act contains a specific chapter on exemptions. Under Section 13(1), government institutions shall refuse to disclose any record that contains information that was obtained in confidence from the government of a foreign State, an international organization, a provincial government or institution, a municipal or regional government or institution, or an aboriginal government.<sup>626</sup>

414. Section 14 of the law establishes that “[t]he head of a government institution may refuse to disclose any record that contains information whose disclosure could be expected to be injurious to the conduct by the government of Canada of federal-provincial affairs.”<sup>627</sup> Section 15 establishes the limitations on access to records whose disclosure could be injurious to the conduct of international affairs, the defense of Canada or any State allied or associated with Canada, or the detection, prevention, or suppression of subversive or hostile activities.<sup>628</sup>

415. Section 16 establishes limitations on access to records related to the investigation of crime or activities suspected of constituting threats to the security of Canada within the meaning of the *Canadian Security Intelligence Service Act*, if the record came into existence less than 20 years prior to the request.<sup>629</sup> The same section refers to limitations to access to “information that could reasonably be expected to facilitate the commission of an offence” and “information that was obtained or prepared by the Royal Canadian Mounted Police while performing policing services.”<sup>630</sup> Section 17 establishes

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<sup>624</sup> Antigua and Barbuda. The Freedom of Information Act. Sections 26-33. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>625</sup> Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>626</sup> Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>627</sup> Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>628</sup> Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>629</sup> Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>630</sup> Canada. Access to Information Act. Art. 16(2-3). Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

that access to “information the disclosure of which could reasonably be expected to threaten the safety of individuals may be refused.”<sup>631</sup>

416. For its part, Section 10 stipulates that when the head of a government institution refuses to give access to a record requested, the notice given must state that the record does not exist or state the specific provision of the Access to Information Act on which the refusal was based. The notice shall also state that the person who made the request has a right to make a complaint to the Information Commissioner.<sup>632</sup>

417. Finally, Section 25 establishes that the head of a government institution shall grant access to any part of a restricted record that does not contain confidential information.<sup>633</sup>

418. In the United States, Section (b) of the FOIA allows nine exceptions to access to information: (1) matters that are “(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy<sup>634</sup> and (B) are in fact properly classified pursuant to such Executive order”; (2) internal agency rules; (3) exemptions by statute<sup>635</sup>; (4) trade secrets; (5) inter-agency or intra-agency memorandums; (6) personnel and medical files (privacy); (7) certain information compiled for law enforcement purposes; (8) information related to the regulation or supervision of financial institutions; and (9) geological data concerning wells.<sup>636</sup>

419. Complementing the statute, Executive Order 13526—Classified National Security Information, issued on December 29, 2009,<sup>637</sup> prescribes a uniform system for classifying, safeguarding, and declassifying national security information.<sup>638</sup> It details the

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<sup>631</sup> Canada. Access to Information Act. Art. 17. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>632</sup> Canada. Access to Information Act. Art. 10. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>633</sup> Canada. Access to Information Act. Available at: <http://laws.justice.gc.ca/PDF/Statute/A/A-1.pdf>

<sup>634</sup> United States of America. The Freedom of Information Act, 5 U.S.C. § 552(b). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>635</sup> The intent of the third exception is to limit the disclosure of information that other federal laws consider secret. This exception incorporates such laws as the Census Act, which prohibits the use of information for purposes other than that for which it was provided; the National Security Act, which exempts from disclosure “the names, titles, salaries, and number of persons employed by” the National Security Agency; or the Central Intelligence Agency (CIA) Act, which restricts public access to its operating files. Available at: <http://uscode.house.gov/download/pls/50C15.txt>

<sup>636</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(b). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>637</sup> United States of America. Executive Order 13526 – Classified National Security Information. December 29, 2009. Available at: <http://www.state.gov/documents/organization/135190.pdf>

<sup>638</sup> United States of America. Executive Order 13526 – Classified National Security Information. December 29, 2009. Available at: <http://www.state.gov/documents/organization/135190.pdf>. Executive Order 13526 establishes three levels of classifications in Section 1.2(a), which are: “top secret,” disclosure of which could cause exceptionally grave damage to the national security; “secret,” disclosure of which could cause serious

procedures and principles governing the classification of information, including classification standards, levels, authorized authorities, categories, duration, identification and markings, prohibitions and limitations, and challenges.<sup>639</sup> It also stipulates rules for declassifying information and/or downgrading its category, specifying who has the authority to do so and other aspects such as automatic declassification and systematic declassification reviews.<sup>640</sup>

420. Part 3, Section 3.1, of Executive Order 13526—Classified National Security Information establishes that information shall be declassified as soon as it no longer meets the standards for classification under the order. Subparagraph (d) establishes that it is “presumed that information that continues to meet the classification requirements under the order requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head or the senior agency official. That official will determine whether the public interest in disclosure outweighs the damage to the national security that might reasonably be expected from disclosure.”<sup>641</sup>

421. The FOIA section on the obligation to respond indicates that each agency shall determine within 20 days after the receipt of a request for information whether to comply with the request and shall immediately notify the person making the request of such determination “and the reasons therefor.”<sup>642</sup> However, this same specification is not made with respect to the resolution of administrative appeals, although it could reasonably be understood that the obligation to provide a justification would also apply to this determination.<sup>643</sup>

422. In Trinidad and Tobago, the Freedom of Information Act contains a chapter on “exempt documents,” which defines the types of documents whose disclosure may be restricted. These include: Cabinet documents; documents containing information that, if disclosed, would likely prejudice the defense of the Republic of Trinidad and Tobago

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damage to the national security; “confidential,” disclosure of which could cause damage to the national security. It also states: “(b) Except as otherwise provided by statute, no other terms shall be used to identify United States classified information. (c) If there is significant doubt about the appropriate level of classification, it shall be classified at the lower level.”

<sup>639</sup> United States of America. Executive Order 13526 – Classified National Security Information. December 29, 2009. Available at <http://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information>

<sup>640</sup> United States of America. Executive Order 13526 – Classified National Security Information. December 29, 2009. Available at <http://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information>

<sup>641</sup> United States of America. Executive Order 13526 – Classified National Security Information. Sec. 3.1(d). December 29, 2009. Available at <http://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information>

<sup>642</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(A)(i). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

<sup>643</sup> United States of America. The Freedom of Information Act. 5 U.S.C. § 552(a)(6)(A)(ii). Available at: <http://www.justice.gov/oip/amended-foia-redlined-2010.pdf>

or prejudice the lawful activities of the security or intelligence services; documents whose disclosure would prejudice Trinidad and Tobago's international relations; the government's internal working documents; those related to the work of law enforcement if disclosure could prejudice the investigation of a breach of the law or the enforcement or proper administration of the law or prejudice a fair trial; documents containing trade secrets; documents containing information that would be reasonably likely to have a substantially adverse effect on the country's economy and commercial activities; and documents containing information that has been prohibited from disclosure based on a written law in force.<sup>644</sup>

423. The grounds for refusing access to a document must be provided. Section 27(3) specifies that “[w]here a decision is made under Part III that an applicant is not entitled to access to a document by reason of the application of this section, the notice under section 23 shall state the public interest considerations on which the decision is based.”<sup>645</sup>

424. Paragraph (2) of Section 24 indicates that exemptions shall cease to apply to a document brought into existence on or after the commencement of the Freedom of Information Act when a period of 10 years has elapsed since the last day of the year in which the document came into existence. In addition, Section 24 (3) does not exempt documents containing purely statistical, technical, or scientific material, unless the disclosure of the document would involve the disclosure of any deliberation or decision of Cabinet.<sup>646</sup>

425. Importantly, Section 35 establishes that a public authority shall give access to an exempt document where there is reasonable evidence of significant abuse of authority or neglect in the performance of official duty; injustice to an individual; danger to the health or safety of an individual or of the public; or unauthorized use of public funds.<sup>647</sup>

426. In the case of Colombia, the exceptional nature of the limitations is not clear, given that provisions on confidentiality are dispersed throughout different types of laws and there is no legal precept that specifically establishes the preeminence in interpretation of the right to access to information. Nevertheless, the Constitutional Court has developed the exceptional nature of confidentiality in its case law. Thus, in judgment C-887 of 2002, the Court affirmed that every person has the right to obtain access to information and that only the law and the Constitution may restrict this right.

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<sup>644</sup> Trinidad and Tobago. The Freedom of Information Act. Sections 24-34. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

<sup>645</sup> Trinidad and Tobago. The Freedom of Information Act. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf).

<sup>646</sup> Trinidad and Tobago. The Freedom of Information Act. Available at: [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)

<sup>647</sup> Trinidad and Tobago. The Freedom of Information Act. Available at [http://www.carib-is.net/sites/default/files/publications/trinidadtobago\\_FOIA1999.pdf](http://www.carib-is.net/sites/default/files/publications/trinidadtobago_FOIA1999.pdf)



*[T]he general rule on disclosure of public documents is enshrined in the Constitution itself, and only the law is authorized to establish exceptions to the right to access public documents. The Court has recognized this from its first decisions, in finding that 'the exercise of the right to access to public documents must, then, conform to the postulates of the Constitution and the law, as is expressly provided in Article 74. That is: only the Founding Charter and the law may establish limits to the exercise of this right which, of course, includes the right to inspect documents in situ and not just, as could be thought, the right to request copies.'*<sup>648</sup>

427. Law No. 57 of 1985 does not specifically establish what are the limitations to the right to information, although Article 21 provides that the public administration shall may refuse a request to inspect or copy a document only by means of a reasoned decision that explains the privileged nature of the document, indicating the pertinent legal provisions that apply.<sup>649</sup> Limitations to the right of access to information are dispersed throughout the legal system, with all the problems of legal uncertainty that implies. The Constitution itself establishes that Congress may not demand from the government information regarding instructions in diplomatic matters or negotiations of a classified nature.<sup>650</sup> For its part, Article 9 of Law No. 63 of 1923 establishes that the sessions of the Council of Ministers as a consultative body are completely privileged;<sup>651</sup> Article 4 of Law. 10 of 1961 provides that persons who work in the oil industry shall provide the government with a series of data, and that the government shall hold as confidential any information that could compromise those persons' legitimate interests;<sup>652</sup> Article 2 of Decree No. 1651 of 1961 establishes the confidential nature of data contained in statements related to income and assets<sup>653</sup>; Article 12 of Law No. 57 of 1985 provides that information on defense and national security is not open to the public;<sup>654</sup> Article 27 of the General Law on Archives provides that those responsible for public and private archives must guarantee

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<sup>648</sup> Constitutional Court of Colombia, Judgment C-887 of 2002. Available at: <http://www.corteconstitucional.gov.co/relatoria/2002/C-887-02.htm>. "La regla general sobre publicidad de los documentos públicos está consagrada en la propia Constitución, y únicamente la ley está habilitada para establecer las excepciones al derecho de acceder a los documentos públicos. Así lo ha reconocido la Corte desde sus primeros pronunciamientos al considerar que 'el ejercicio del derecho al acceso a documentos públicos debe, pues, ceñirse a los postulados de la Constitución y la ley tal como lo dispone expresamente el artículo 74. Vale decir: solo la Carta Fundamental y la ley pueden establecer límites al ejercicio de este derecho que por supuesto, incluye la consulta de los documentos in – situ y no sólo como pudiera pensarse, la solicitud de copias".

<sup>649</sup> Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: [http://www.cntv.org.co/cntv\\_bop/basedoc/ley/1985/ley\\_0057\\_1985.html](http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html)

<sup>650</sup> Political Constitution of Colombia. Article 136. Available at: <http://web.presidencia.gov.co/constitucion/index.pdf>

<sup>651</sup> Republic of Colombia. Law 63 of 1923. Art. 9. Available at: [http://www.cntv.org.co/cntv\\_bop/basedoc/ley/1923/ley\\_0063\\_1923.html](http://www.cntv.org.co/cntv_bop/basedoc/ley/1923/ley_0063_1923.html)

<sup>652</sup> Republic of Colombia. Law 10 of 1961. Art. 4. Available at: [http://www.anh.gov.co/media/normatividadHidrocarburos/Ley\\_10\\_de\\_1961.pdf](http://www.anh.gov.co/media/normatividadHidrocarburos/Ley_10_de_1961.pdf)

<sup>653</sup> Decree 1651 of 1961, published in Official Gazette No. 30583. August 10, 1961. Available at: <http://www.imprenta.gov.co>

<sup>654</sup> Republic of Colombia. Law 57 of 1985, by which the publicity of official documents is ordered. Available at: [http://www.cntv.org.co/cntv\\_bop/basedoc/ley/1985/ley\\_0057\\_1985.html](http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html)

the rights to personal and family privacy, and persons' right to honor and reputation;<sup>655</sup> and the Sole Disciplinary Code<sup>656</sup> and the Organic Law on the Financial System<sup>657</sup> establish the confidentiality of investigations during certain stages; and so on.

428. Meanwhile, Articles 13 of Law No. 57 of 1985<sup>658</sup> and Article 28 of Law No. 594 of 2000<sup>659</sup> establish that the legal confidentiality of any document shall cease once 30 years have passed since it was issued. Other laws establish different time periods for certain types of information. Thus, for example, Article 5 of Law No. 1097 of 2006 established a confidentiality period of 20 years related to “discretionary expenditures.”<sup>660</sup>

429. Finally, in the case of Argentina—which, as has been mentioned, does not have a statute but rather an executive order that regulates the matter with respect to the executive branch— Article 16 of the Regulations on Access to Public Information determines that entities subject to the law “may only exempt themselves from providing information that has been requested when a Law or Decree so establishes...” and when one of the grounds contemplated in the same article is involved. Thus, the regulations allow for other legal provisions, including administrative decrees, to establish limitations to access to information.<sup>661</sup> In particular, the fact that information may also be classified as secret through a decree casts doubt on the exceptional nature of the restrictions to the right to access.<sup>662</sup>

430. The limitations to access contained in the Regulations on Access include classified information, especially as relates to security, defense, or foreign policy; secrets related to economic or scientific activities; information that could jeopardize the financial system; personal data of a sensitive nature; and information that could endanger a

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<sup>655</sup> Republic of Colombia. Ley 594 de 2000. Enacting the General Law on Archives. Available at: <http://www.archivogeneral.gov.co/?idcategoria=2023>

<sup>656</sup> See Republic of Colombia. Law 734 of 2002. Enacting the Sole Disciplinary Code (Código Disciplinario Único). Available at: [http://www.secretariassenado.gov.co/senado/basedoc/ley/2002/ley\\_0734\\_2002.html](http://www.secretariassenado.gov.co/senado/basedoc/ley/2002/ley_0734_2002.html)

<sup>657</sup> See Republic of Colombia. Decree 663 of 1993. Organic Statute of the Financial System. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/ley/2002/ley\\_0734\\_2002.html](http://www.secretariassenado.gov.co/senado/basedoc/ley/2002/ley_0734_2002.html)

<sup>658</sup> Republic of Colombia. Law 57 of 1985, ordering the publicity of official acts and documents. Available at: [http://www.cntv.org.co/cntv\\_bop/basedoc/ley/1985/ley\\_0057\\_1985.html](http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html)

<sup>659</sup> Republic of Colombia. General Law of Archives. Law 594 of 2000. Official Gazette No. 44.093. July 20, 2000. Article 28. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/ley/2000/ley\\_0594\\_2000.html](http://www.secretariassenado.gov.co/senado/basedoc/ley/2000/ley_0594_2000.html)

<sup>660</sup> Republic of Colombia. Law 1097 of 2006. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/ley/2006/ley\\_1097\\_2006.html](http://www.secretariassenado.gov.co/senado/basedoc/ley/2006/ley_1097_2006.html)

<sup>661</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf). “sólo pueden exceptuarse de proveer la información requerida cuando una Ley o Decreto así lo establezca”.

<sup>662</sup> In addition, according to information the Office of the Special Rapporteur has received, in practice the private nature of information and *habeas data* are commonly used to deny access to information.

person's life or security.<sup>663</sup> Otherwise, different laws and regulations provide for information to be withheld. Such is the case, for example, with Law No. 25.520 on National Intelligence<sup>664</sup> and Decree No. 950 of 2002, which regulates it;<sup>665</sup> these provide that information related to intelligence efforts shall be subject to classification.<sup>666</sup> Also, Article 101 of Law No. 11683 on Fiscal Procedures establishes the secrecy of sworn statements of income, communications, and reports presented to the Federal Administration of Public Income, as well as the administrative litigation proceedings where such information is assigned.<sup>667</sup> Similarly, Law No. 21.526<sup>668</sup>, involving financial entities, establishes financial secrecy in its Articles 39 and 40, and Law No. 17.622<sup>669</sup>, creating the National Institute of Statistics and Census, stipulates in its Article 10 that information provided to the bodies of the National Statistics System is secret and may be used only for statistical purposes.

431. Pursuant to Article 13 of the General Regulations on Access to Public Information, the denial of a request for access to particular information must be duly reasoned, and may be based only on the fact that the information does not exist or that it is included in one of the established grounds for secrecy.<sup>670</sup>

#### **b. Regime of sanctions**

432. On this subject, in their 2004 Joint Declaration, the UN, OAS, and OSCE rapporteurs for freedom of expression stated that “[n]ational authorities should take active steps to address the culture of secrecy that still prevails in many countries within the public sector,” which “should include provision for sanctions for those who willfully obstruct

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<sup>663</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Article 16(j). Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf)

<sup>664</sup> Republic of Argentina. Law 25.520. Law on National Intelligence, enacted December 3, 2001. Available at: [http://www.mindef.gov.ar/institucional/marco\\_legal/ley-25520.php](http://www.mindef.gov.ar/institucional/marco_legal/ley-25520.php)

<sup>665</sup> Republic of Argentina. Decree 950/2002. Regulations for the Law on National Intelligence. Available at: <http://www.espaciosjuridicos.com.ar/datos/DECRETOS/Decreto%20950-2002%20Ley%20de%20Inteligencia%20Nacional.htm>

<sup>666</sup> Article 16 provides that only the President of the Nation or the official to whom such an authority has been expressly delegated may authorize its disclosure. In addition, Article 10 of the Decree establishes five security classifications to which documents may be subject, namely: strictly secret and confidential, secret, confidential, privileged, and public.

<sup>667</sup> Republic of Argentina. Law No. 11.683 of January 12, 1933. Available at: <http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=18771>

<sup>668</sup> Republic of Argentina. Law 21.526. Available at: [http://www.metropoliscf.com/PDF/Ley\\_de\\_Entidades\\_financieras.pdf](http://www.metropoliscf.com/PDF/Ley_de_Entidades_financieras.pdf)

<sup>669</sup> Republic of Argentina. Law 17622 of January 25, 1968. Creation of the National Institute of Statistics and Census. Available at: <http://www.deis.gov.ar/LEY17622.htm>

<sup>670</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Article 16(j). Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf)

access to information.” It adds that “[s]teps should also be taken to promote broad public awareness of the access to information law.”<sup>671</sup>

433. The Model Law on Access to Information, adopted by the OAS General Assembly, establishes that: “No one shall be subjected to civil or criminal action, or any employment detriment, for anything done in good faith in the exercise, performance or purported performance of any power or duty in terms of this Law, as long as they acted reasonably and in good faith.” The law also indicates that it is “a criminal offense to willfully destroy or alter records after they have been the subject of a request for information.” It also stipulates a limited list of willful conduct that should be considered administrative offenses, including: obstructing access to any record; obstructing the performance by a public authority of a duty; interfering with the work of the Information Commission; failing to create a record either in breach of applicable regulations and policies or with the intent to impede access to information; and destroying records without authorization.<sup>672</sup>

434. In this regard, the countries that were the objects of this study provide sanctions for violating the right to access to public information. Punishable offenses in this regard vary: some impose sanctions for the refusal of access to information, while others also penalize the destruction or modification of information or delays in providing it.

435. Ecuador's Organic Law on Transparency, in Article 23, establishes sanctions on employees or public or private officials who “incurred in acts or omissions to illegitimately deny access to public information, this being understood as information that has been completely denied or partially denied based on incomplete, altered, or false information they provided or should have provided [...]”<sup>673</sup> Disciplinary and administrative sanctions are applied without prejudice to any criminal or civil actions that may be brought for the same reasons; these range from monetary fines up to suspension and dismissal from the person's post. When private legal persons or individuals incur in the actions or omissions indicated in the statute, a monetary fine ranging between US \$100 and \$500 dollars is imposed for each day of failing to comply.<sup>674</sup>

436. In Mexico, Articles 63 and 64 of the Federal Transparency and Access to Public Governmental Information Act establish seven grounds for public servants'

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<sup>671</sup> Joint Declaration of the UN, OAS, and OSCE rapporteurs for freedom of expression (2004). Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=319&IID=1>

<sup>672</sup> OAS. General Assembly. AG/RES. 2607 (XL-O/10), adopting a “Model Inter-American Law on Access to Public Information.” June 8, 2010. Articles 64, 65, and 66. Available at: [http://www.oas.org/dil/CP-CAJP-2840-10\\_Corr1\\_eng.pdf](http://www.oas.org/dil/CP-CAJP-2840-10_Corr1_eng.pdf)

<sup>673</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 23. Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>. “Los funcionarios de las entidades de la Administración Pública y demás entes señalados en el artículo 1 de la presente Ley, que incurrieren en actos u omisiones de denegación ilegítima de acceso a la información pública, entendiéndose ésta como información que ha sido negada total o parcialmente ya sea por información incompleta, alterada, o falsa que proporcionaron o debieron haber proporcionado, serán sancionados [...]”.

<sup>674</sup> Republic of Ecuador. Organic Law on Transparency and Access to Public Information. Art. 23 (c). Available at: <http://www.informatica.gob.ec/files/LOTAIP.pdf>

administrative liability for failing to comply with the provisions of the law. These are: using, appropriating, destroying, hiding, damaging, disclosing, or altering, in whole or in part and in an unlawful manner, the information in their safekeeping; acting negligently or in bad faith in the processing of the requests for access to information or in the dissemination of the information; intentionally denying information that has not been classified as privileged or confidential; fraudulently classifying as privileged information that does not meet the prescribed characteristics; releasing information classified as privileged or confidential under this statute; intentionally releasing incomplete information as derived from a request for access, and failing to release information as ordered by entities with jurisdiction.<sup>675</sup> Administrative liabilities are independent of any civil or criminal liability that may be involved based on the same actions.<sup>676</sup>

437. In Uruguay, Article 31 of the Law on Access establishes four grounds that constitute serious offenses and engender administrative liability, namely: denying access to information that is not privileged or confidential; omitting information that has been requested or releasing intentionally incomplete information, acting negligently or in bad faith; allowing access to classified information; and using, hiding, disclosing, or altering, in whole or in part, the information in their safekeeping.<sup>677</sup> It does provide for criminal sanctions for disclosing or facilitating awareness of secret or confidential information.<sup>678</sup>

438. In the case of Guatemala, Articles 36 and 37 of the Law on Access to Public Information establish that information, documents, and records that belong to administrative archives may not be destroyed, altered, or concealed by public servants, unless such actions were justified based on legal grounds.<sup>679</sup> Failing to comply with this prohibition could lead to administrative and criminal sanctions, in the latter case for abuse of authority and failure to comply with duties. The statute also indicates that individuals who participate in the previously mentioned conduct shall be charged with the crime of destruction of the national patrimony.<sup>680</sup>

439. Title Five of the law, for its part, refers to the sanctions and liabilities for failing to comply with the law's provisions.<sup>681</sup> There it is established that public servants or

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<sup>675</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 63. Available at: <http://www.ifai.org.mx/English>

<sup>676</sup> United States of Mexico. Federal Transparency and Access to Governmental Public Information Act. Art. 64. Available at: <http://www.ifai.org.mx/English>

<sup>677</sup> Oriental Republic of Uruguay. Law on Access to Information of Uruguay. Law No. 18.381. Available at: <http://www.informacionpublica.gub.uy/sitio/descargas/normativa-nacional/ley-no-18381-acceso-a-la-informacion-publica.pdf>

<sup>678</sup> Oriental Republic of Uruguay. Criminal Code. Article 163. Available at: [http://www0.parlamento.gub.uy/Codigos/CodigoPenal/Cod\\_Pen.htm](http://www0.parlamento.gub.uy/Codigos/CodigoPenal/Cod_Pen.htm)

<sup>679</sup> Republic of Guatemala. Law on Access to Public Information. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>680</sup> Republic of Guatemala. Law on Access to Public Information. Articles 37, 38. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>681</sup> Republic of Guatemala. Law on Access to Public Information. Article 61 *et seq.* Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

individuals who break the law shall be subject to administrative or criminal sanctions.<sup>682</sup> Punishable conduct includes the commercialization of personal data protected by the law, without the express and written authorization of the person to whom it relates;<sup>683</sup> the alteration or destruction of sensitive personal information contained in the archives of public institutions;<sup>684</sup> the arbitrary or unjustified obstruction of access to information;<sup>685</sup> and the disclosure of confidential or privileged information.<sup>686</sup>

440. In 2010, the Constitutional Court of Guatemala handed down a decision in an *amparo* action filed by a national Congresswoman against the Minister of Education. The plaintiff had asked the Minister to provide her with a list with the full name, address, and identity card number of each of the beneficiaries of the “*Mi Familia Progres*a” social program. When the Ministry did not turn over the information she had requested, the Congresswoman filed an *amparo* action, arguing that she had been denied access to information. The Court's decision of November 10, 2009, granted provisional *amparo* to the plaintiff and ordered that the information be given to her in an expedited period of three days.<sup>687</sup>

441. Then in 2010, the Court established that the Ministry had not complied with the order to turn over the documentation requested by the plaintiff. The Ministry argued that it had been unable to turn over the complete information because the beneficiaries' identity cards fall under banking secrecy, which is classified as confidential information by the Ministry, and that the beneficiaries had provided the information based on a guarantee of confidentiality.<sup>688</sup>

442. The Court stated that the Ministry's argument was unacceptable, as it could not be alleged that banking secrecy was grounds for denying the information requested, all the more so since the Ministry was not a banking entity. The Court also stated that the decision to classify the information as privileged came after the request for access, and so it was not applicable in this case. Finally, it affirmed that confidentiality could not be opposed when the information was requested by a State official in the context of his or her oversight functions:

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<sup>682</sup> Republic of Guatemala. Law on Access to Public Information. Article 61. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>683</sup> Republic of Guatemala. Law on Access to Public Information. Article 64. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>684</sup> Republic of Guatemala. Law on Access to Public Information. Article 65. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>685</sup> Republic of Guatemala. Law on Access to Public Information. Article 66. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>686</sup> Republic of Guatemala. Law on Access to Public Information. Article 67. Available at: <http://www.scspr.gob.gt/docs/infpublic.pdf>

<sup>687</sup> Republic of Guatemala. Judgment of the Constitutional Court. February 25, 2010. Docket No. 4255 de 2009. Available at: <http://www.cc.gob.gt/documentosCC/mifapro.pdf>

<sup>688</sup> Republic of Guatemala. Judgment of the Constitutional Court. February 25, 2010. Docket No. 4255 de 2009. Available at: <http://www.cc.gob.gt/documentosCC/mifapro.pdf>

*Even when it is maintained that the requested information was provided by the interested parties under guarantee of confidence, such confidentiality may not be used as an argument to oppose if the information has been requested by a State official who, based on a law, has the prerogative to request information, as long as the request is made as part of the exercise of a function to provide oversight of State activity, the way funds belonging to the public treasury are invested, and how the State Budget of Income and Expenditures is executed...*<sup>689</sup>

443. Therefore, the Court ordered the Ministry to materially turn over the information requested by the Congresswoman. Moreover, based on Articles 32 and 50, paragraph (b), of the Law of Amparo, Habeas Corpus, and Constitutionality, it sanctioned the Minister of Education by removing him from his post for having failed to comply with the order to turn over the information that was requested. The following was stated in the provisional *amparo* remedy:

*All decisions of this tribunal, in the exercise of its jurisdictional function on constitutional matters, are non-appealable on the merits and thus, pursuant to the previously cited Law, they must be fully obeyed, without avoiding or evading compliance.*

*[...] This Court arrives at the final conclusion that the Minister of Education failed to comply with, and therefore disobeyed, the order issued to said ministerial authority by this Court, in a ruling of the tenth of November, two thousand and nine: an order which, the decision it contained having been definitive, should have been complied with completely and without excuses in the time period indicated in that ruling. Thus, it is fitting to find disobedience of an order issued by an amparo court, with the effect established for such incompliance in Article 50, paragraph (b) of the Law of Amparo, Habeas Corpus, and Constitutionality.*<sup>690</sup>

444. In Nicaragua, the statute establishes, in Article 47, that public servants shall be sanctioned with fines of up to six months of their monthly salary when they refuse, in an unjustified manner, to provide public information that is requested of them; destroy or alter information in their safekeeping; turn over, copy, or disseminate privileged information; or classify as privileged information that is public. These sanctions are applied

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<sup>689</sup> Republic of Guatemala. Judgment of the Constitutional Court. February 25, 2010. Docket No. 4255 de 2009. Available at: <http://www.cc.gob.gt/documentosCC/mifapro.pdf>. “Aun cuando se esgrima que la información solicitada fue proporcionada por los interesados bajo la garantía de confidencia, tal confidencialidad no puede oponerse para el caso de que sea información requerida por un funcionario del Estado, que de acuerdo con una ley, ostenta una prerrogativa para solicitar información, siempre que la solicitud de aquella se haga en el marco del ejercicio de una función fiscalizadora de la actividad estatal, de la forma como se invierten fondos pertenecientes al erario público y cómo se ejecuta el Presupuesto de Ingresos y Egresos del Estado”.

<sup>690</sup> Republic of Guatemala. Judgment of the Constitutional Court. February 25, 2010. Docket No. 4255 of 2009. Available at: <http://www.cc.gob.gt/documentosCC/mifapro.pdf>. “Todas las decisiones de este tribunal, en ejercicio de la función jurisdiccional en materia constitucional, son irrecurribles por el fondo, y de ahí que de acuerdo con la Ley antes citada, deben ser plenamente acatadas, sin excusar o eludir el cumplimiento de las mismas. // (...) esta Corte arriba a la conclusión final de que existió incumplimiento y, por ende, desobediencia del Ministro de Educación a la orden emanada hacia dicha autoridad ministerial por parte de esta Corte, en auto de diez de noviembre de dos mil nueve; orden que, al estar debidamente firme la resolución que la contenía, debió ser cumplida de manera íntegra y sin excusas en el plazo señalado en aquel auto, de manera que por ello procede declarar la desobediencia de una orden emanada por un tribunal de amparo, con el efecto previsto para tal incumplimiento en el artículo 50, inciso b) de la Ley de Amparo, Exhibición Personal y de Constitucionalidad”.

without prejudice to any criminal responsibility inferred from the Criminal Code.<sup>691</sup> In addition, Article 49 establishes that sanctions consisting of fines shall also be imposed on the head of any entity that, in contravention of the law, “classifies as privileged information that which is public.”<sup>692</sup>

445. Chapter VI of Panama's Transparency Law addresses the sanctions and liabilities of officials. It establishes, in Article 20, that any official who fails to comply with the obligation to provide information after being ordered to do so by a Court is in contempt [*desacato*] and shall be sanctioned with a “minimum fine equivalente al doble del salario mensual que devenga”.<sup>693</sup> A recurrence shall be punished with dismissal.<sup>694</sup> Article 22 provides that any official who blocks access to information and/or destroys or alters a document shall also be sanctioned with a fine.<sup>695</sup> These fines operate without prejudice to any possible criminal or administrative liability that may be derived from the offense. In addition, the person harmed by the refusal of access to information may sue the public servant for damages that he or she may have incurred as a result.

446. In El Salvador, Article 28 of the Access Law determines that officials who disclose privileged or confidential information shall be sanctioned in accordance with the provisions of this law or other laws. It also establishes that “in the same way, persons who disclose information having knowledge of its privileged or confidential nature shall be held to account.”<sup>696</sup> It falls to the Institute for Access to Information to take cognizance of sanctions processes and order administrative sanctions.<sup>697</sup> Article 76 makes distinctions between very serious, serious, and minor offenses. Very serious offenses include the appropriation, destruction, concealment, or alteration of information in the custody of the person being investigated; the release of privileged or confidential information; the refusal to release information as ordered by the Institute; the failure to appoint an information officer for the entity subject to the law; the denial of access to information without justification; and the violation of the provisions on conservation and custody of

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<sup>691</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument)

<sup>692</sup> Republic of Nicaragua. Law 621 of 2007. Law on Access to Public Information. Available at: [http://legislacion.asamblea.gob.ni/NormaWeb.nsf/\(\\$All\)/675A94FF2EBFEE9106257331007476F2?OpenDocument](http://legislacion.asamblea.gob.ni/NormaWeb.nsf/($All)/675A94FF2EBFEE9106257331007476F2?OpenDocument). “El titular de cada entidad que indebidamente y en contravención a esta Ley, clasifique como información reservada, aquella que es pública, será sancionado pecuniariamente con la tercera parte de su salario mensual de uno a seis meses”.

<sup>693</sup> Republic of Panama. Law of Transparency in Public Administration. Law No. 6. January 22, 2002. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf)

<sup>694</sup> Republic of Panama. Law of Transparency in Public Administration. Law No. 6. January 22, 2002. Art. 20. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf). “multa mínima equivalente al doble del salario mensual que devenga”.

<sup>695</sup> Republic of Panama. Law of Transparency in Public Administration. Law No. 6. January 22, 2002. Art. 22. Available at: [http://www.presidencia.gob.pa/ley\\_n6\\_2002.pdf](http://www.presidencia.gob.pa/ley_n6_2002.pdf)

<sup>696</sup> Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>697</sup> Republic of El Salvador. Law on Access to Public Information. Article 58(e). Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>



information.<sup>698</sup> Sanctions for very serious offenses consist of fines ranging from 20 to 40 times the monthly minimum wage. The commission of two or more very serious offenses within a one-year period shall lead to the suspension of the employee for 30 calendar days, ordered by the appropriate superior authority, unless the conduct warrants dismissal.<sup>699</sup> Article 81 provides that the application of administrative sanctions contemplated in the law “shall be understood to be without prejudice to any criminal, civil, administrative, or other type of liability that may be incurred by the person responsible.”<sup>700</sup>

447. In Chile, the grounds for a sanction to apply are related to obstruction of access to information. Thus, Article 45 of the Law on Access to Public Information establishes that the unjustified denial of access to requested information, as well as the failure to turn the information over in a timely manner, are grounds for an administrative sanction with a “fine of 20 to 50% of their remuneration”<sup>701</sup>. A fine shall also be imposed on any authority who does not comply with the law's provisions related to active transparency. In the case of a recurrence, the official may be suspended. The sanctioning body is the Council for Transparency.<sup>702</sup>

448. In the Dominican Republic, Article 30 of the General Law on Free Access to Public Information indicates that “the public official or responsible agent who arbitrarily refuses, obstructs, or impedes an applicant's access to the information being requested shall be sanctioned with a sentence of deprivation of liberty of six months to two years in prison, and will be ineligible to hold public posts for five years.”<sup>703</sup>

449. In Antigua and Barbuda, Section 48 of the law provides that any person who obstructs access to any record, obstructs a public authority's performance of a duty to disclose information, interferes with the work of the Information Commissioner, or destroys records without legal permission commits an offense and is liable to

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<sup>698</sup> Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>699</sup> Republic of El Salvador. Law on Access to Public Information. Article 70. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>

<sup>700</sup> Republic of El Salvador. Law on Access to Public Information. Available at: <http://www.accesoinformacionelsalvador.org/documentos/LEYDEACCESOALAINFORMACION.pdf>. “se entenderá sin perjuicio de las responsabilidades penales, civiles, administrativas o de otra índole en que incurra el responsable”.

<sup>701</sup> Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Arts. 45, 46. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

<sup>702</sup> Republic of Chile. Law on Transparency in Public Administration and Access to information in the Administration of the State. Law 20.285 of 2008. Articles 46-47. Available at: <http://www.leychile.cl/Navegar?idNorma=276363>

<sup>703</sup> Dominican Republic. General Law on Access to Public Information. Law 200-04. Available at: <http://www.senado.gob.do/dnn/LinkClick.aspx?fileticket=CrmpGj6hrl%3d&tabid=69&mid=421>. “el funcionario público o agente responsable que en forma arbitraria denegare, obstruya o impida el acceso del solicitante a la información requerida, será sancionado con pena privativa de libertad de seis meses a dos años de prisión, así como con inhabilitación para el ejercicio de cargos públicos por cinco años”.

imprisonment for up to two years or to a fine not exceeding five thousand East Caribbean dollars or both.<sup>704</sup>

450. Argentina and Colombia have less specific provisions. However, in both cases, delays in the release of requested information are subject to sanction. Thus, Argentina, in Article 15 of the General Regulations on Access to Public Information of the Federal Executive Branch, provides that any official who obstructs access to information, or provides information incompletely, incurs a serious offense, without prejudice to ensuing criminal or civil liability.<sup>705</sup> In this regard, Article 249 of the Criminal Code imposes special fines and one-year ineligibility penalties on any official who, through omission or delay, fails to perform his legal duty to provide information.<sup>706</sup>

451. For its part, Article 25 of Colombia's Law No. 57 of 1985 establishes that if a response is not given to a request for access to information within the legally established period, the unwilling official shall be sanctioned with the loss of employment. Likewise, Article 29 provides that failing to comply with or violating any of the law's provisions shall be grounds for misconduct and sanctioned with the dismissal of the responsible official from his or her post.<sup>707</sup>

452. In Peru, Article 4 of the Law on Transparency determines that those officials who fail to comply with the provisions contained therein shall be sanctioned for committing a grave offense, and could even be charged criminally for committing the offense of abuse of authority.<sup>708</sup>

#### **D. Conclusions**

453. In this report, the Office of the Special Rapporteur offers a comparative study of the legal norms regulating the right to access to public information in some of the countries of the region that have access statutes or general regulations of another nature, as with Argentina. This report limits itself to describing the content of the legislation. In future efforts, the Office of the Special Rapporteur will focus on questions related to implementation, as it is mindful that putting these laws into practice requires systematic implementation policies, and that in many cases some aspects of the laws may not be implemented efficiently, effectively, or adequately.

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<sup>704</sup> Antigua and Barbuda. The Freedom of Information Act. Available at: <http://www.laws.gov.ag/acts/2004/a2004-19.pdf>

<sup>705</sup> Republic of Argentina. Decree No. 1172/2003. Annex VII. General Rules regarding Access to Public Information for the National Executive Branch. Article 16(j). Available at: [http://www.orsna.gov.ar/pdf/Decreto%201172\\_2003.pdf](http://www.orsna.gov.ar/pdf/Decreto%201172_2003.pdf)

<sup>706</sup> Republic of Argentina. Criminal Code of the Nation of Argentina. Law 11.179. Available at: <http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm>

<sup>707</sup> Republic of Colombia. Law 57 of 1985, ordering the publicity of official acts and documents. Available at: [http://www.cntv.org.co/cntv\\_bop/basedoc/ley/1985/ley\\_0057\\_1985.html](http://www.cntv.org.co/cntv_bop/basedoc/ley/1985/ley_0057_1985.html)

<sup>708</sup> Republic of Peru. Law on Transparency and Access to Public Information. Law No. 27806. Available at: [http://www.peru.gob.pe/normas/docs/LEY\\_27806.pdf](http://www.peru.gob.pe/normas/docs/LEY_27806.pdf)

454. This comparative evaluation confirmed the importance of establishing specific legislative instruments to ensure the right to access to public information. One general conclusion of this study is the importance that these laws expressly enshrine the principles contained in inter-American standards in this area, which lay the groundwork for this right to be fully guaranteed. This study also reveals the need for regulatory frameworks to assign responsibilities to autonomous, independent specialized units to resolve any disputes that may arise with respect to access or denial of access to public information; thus, it recommends that States follow the example of those States such as Mexico and Chile where the right to access is vigorously protected through such institutions. Finally, one important general conclusion of this study is the essential role that judges and courts should play in the implementation of the right to public information, as the final guarantors of the effective protection of human rights.

455. In general, the different legal frameworks studied have important safeguards for protecting the right of access to public information. However, there are differences among these frameworks, and in some cases the legal norms have not been designed, in the strictest sense, in keeping with the highest international standards. Nevertheless, based on the comparative information and the relevance of some of the best practices that have been developed in some States, this report may serve to establish adjustments in standards, jurisprudence, and regulations that may be necessary to advance in the protection of this right.

456. The Office of the Special Rapporteur notes that the legal systems that were studied incorporate, in one way or another, the principle of maximum disclosure. While in some countries this principle is adopted expressly, in others the principle of maximum disclosure is incorporated indirectly in some provisions. In this regard, the principle establishing that the right to access to information is the rule, and secrecy the exception, is contemplated in nearly all the countries that were studied, through the principle of disclosure.

457. However, only some of the legal systems studied establish expressly and directly that the State is responsible for proving the legitimacy of limitations to access to information. Likewise, not all laws establish expressly that the State has the burden to prove the legal basis for denying a request for information and must demonstrate the “proof of harm” that releasing the information would produce. The laws that have such a provision introduce a greater demand on the burden of proof regarding restrictions to access, and greater guarantees that this right will be protected.

458. Another aspect to highlight, which is appropriately included in the laws of Uruguay, Guatemala, Mexico, and Colombia, is the concept of affirmative administrative silence, meaning that if no response is given to a request for information within the legal time period, the person making the request may have access to the information. In other countries of the region that lack provisions in this area, administrative and judicial mechanisms are generally provided to challenge denials of requests. However, it is very important to incorporate the aforementioned standard into all laws in effect, as non-compliance imposes disproportionate obstacles and burdens on those entitled to this right.

459. The Office of the Special Rapporteur notes that some of the legal systems studied have provisions designed to guarantee various of the aspects embodied in the principle of good faith. However, only some countries expressly adopt this principle. While a broad interpretation of the presumption of disclosure may engender an assurance that the right to access to information will prevail in other laws, everything indicates that for this right to be guaranteed unequivocally, the law must contemplate an explicit provision to that effect.

460. The majority of the legal systems studied establish that all persons are entitled to the right of access to information. In some countries this definition does not include more detail about this right, while in others the definition is accompanied by specifics regarding its exercise—specifics which in some cases limit or restrict the right. Generally, in the majority of countries the determination that all persons have the right to access information carries an explicit mention that those who request information do not need to prove a direct interest or personal stake in making the request. However, some countries establish as a prerequisite for access that the person making the request justify or legitimize the petition, which places an unnecessary barrier in the way of effectively exercising this right. Another unjustified restriction arises in the case of countries that restrict the access right to persons who are citizens or immigrants with legal status.

461. Nevertheless, in none of the countries studied are individuals prohibited from disclosing public information—which would be a setback in terms of protection of the collective scope of the right to access to information. Case law has also developed along the lines of strengthening the right to access.

462. The Office of the Special Rapporteur has found that the legal systems studied are generally in line with the standard with regard to determining what entities are subject to the obligation to guarantee access to public information. Some States have extended this obligation directly to entities that are not public in nature but carry out public functions or execute public services—such as in the case of Ecuador, Guatemala, Nicaragua, the Dominican Republic, Panama and Peru—while others refer to entities that are indirectly subject to the law—such as in the case of Mexico—or omitted from it. On this point, it should be mentioned that while States should recognize that not only State institutions but also private persons that carry out public functions or receive support from the State are subject to the law, in such cases the duty to provide information refers exclusively to the public activities they perform or those they carry out with State support, so that the right to the confidentiality of private information is at the same time preserved.

463. In other cases, the study found that in some countries the obligation to provide access to information is excluded for companies with more than 50% private ownership, even though they execute public funds. Nevertheless, the study notes that in some States, case law and complementary legislation have served to open up this concept.

464. The study makes it possible to conclude that most of the countries studied incorporate into their laws clear definitions regarding the object of the right of access to information. Moreover, the legal systems of all the countries studied establish the obligation to respond to requests for information submitted by individuals. For such,

they provide that entities subject to the disclosure requirements have a deadline in which to respond to requests for information, a period that ranges from 7 business days to 30 calendar days. In the majority of cases, the period may be extended, as long as there is a reason that justifies the extension. Several legal systems also provide that if the information has already been published, via any means, the response of the party subject to the law may simply be to give the petitioner the information that would allow the publication to be identified.

465. However, as was mentioned earlier, the majority of countries studied have the concept of negative administrative silence, which means that when the government does not respond in the period indicated, it is understood that access to the requested information has been refused. While these countries do not prescribe an affirmative administrative silence, they do establish the obligation to respond to requests for information within a period that, in general, may be extended through a reasoned decision.

466. On another point, some countries contemplate the possibility of presenting verbal requests for access to information, or requests made by telephone, but in the majority of cases the petition must be in writing, either on paper or electronically. The study notes that some countries establish the duty of public servants to advise interested parties in preparing the request for information (among them Guatemala, Nicaragua, Mexico, Jamaica), although not all the countries have sufficient policies in place for implementation.

467. The Office of the Special Rapporteur notes that all the countries studied have established regulations for the administrative procedures used to access information, as well as subsequent judicial guarantees. Included in the regulation process is the creation of an administrative remedy, as well as the determination of requirements that access requests must meet and the procedures arising from such requests. States such as Antigua and Barbuda, El Salvador, Mexico, Chile, and Canada have a specialized agency responsible for reviewing negative responses from the administration and adopting a final decision with respect to the request. The experience and practice of these institutions has been enormously important in advancing the effective guarantee of the right of access, and shows the importance of having these types of specialized authorities in the various legal systems. In all cases, it is essential to ensure the specialization and autonomy of these entities, which is evidenced to varying degrees in the systems discussed.

468. In the regulation of remedies and administrative procedures to access information, most of the countries studied establish a simple and easily accessible remedy, one that does not require contracting the services of a lawyer for requesting access to information. They also meet the requirement that the request be free of charge— independent of any costs that could be involved with making copies which in practice may become a disproportionate barrier to access the right—and that tight deadlines be established for responding to access requests. Nevertheless, in some places the remedies have not operated as the law has ordered, as adequate implementation policies have not been adopted.

469. Complementing this, the countries have different types of judicial remedies designed to challenge the government's denial of access or failure to respond to a request for access to public information. However, in practice, these remedies are not always truly effective to satisfy the right, since in some cases the matter is not resolved in an adequate period of time to protect this right effectively. In some States, the remedy consists of a special mechanism to guarantee the right of access to information (as occurs, for example, in Trinidad and Tobago, Uruguay and Chile); a constitutional action (such as the remedy of *amparo* or *tutela* in Colombia); or an administrative litigation remedy, which tends to take longer to resolve. In some legal systems, the interested party may select which remedy to pursue among several that are available.

470. This study leads to relevant conclusions in terms of the State's obligation to produce information and promote a culture of transparency. In fact, the duty of entities subject to the law to proactively provide public information is contemplated in all the legal systems that were examined in this study, although to varying degrees. Some of the legal systems studied do not refer to the State's duty to produce or gather information. However, some of them clearly establish that the State must turn over the information it is obligated to produce or gather, and that the entities subject to the law have the obligation to compile or assemble data already in their possession, in order to meet the standards of the right of access to information.

471. Similarly, some of the legal systems studied expressly provide for the obligation of the State to create a culture of transparency. States such as Ecuador, Guatemala, the Dominican Republic, and Nicaragua not only assign an official responsible for developing and executing the training of public officials and citizens in general, but also provide for educational programs to be developed in schools and educational institutions.

472. In general, the legal systems studied do not make reference to the design of a strategic plan to ensure that the right of access to information is in full effect. Some countries—such as Antigua and Barbuda, Mexico, Canada, Chile, and Uruguay—have created entities designed to ensure compliance with the provisions of the access to information law, while others have simply established special units within each entity for that purpose.

473. The States do have regulations regarding archives, either because they have issued laws on the subject or because provisions along those lines are included in their access to information law or in other laws and regulations. Finally, the legal systems of Nicaragua, and Peru order the adoption of budgetary measures to guarantee compliance with the laws.

474. All the legal systems studied have provisions establishing limitations to free access to public information. The Office of the Special Rapporteur recognizes that the regulation of exceptions to the right of access is one of the most complex and important issues in each legal system. In some cases, the statute itself presents some difficulties, while in others it is the interpretation and application of the law that has led to problems with implementation, a subject for more detailed study in future reports. What follows are

some of the most relevant conclusions that relate exclusively to the design of the legal systems studied.

475. In the majority of the countries studied, the laws on access to information establish the principle of maximum transparency and the obligation to justify denials of access. They also establish the grounds that authorize an entity subject to the law not to release information that has been requested. Laws such as those of Nicaragua and Guatemala expressly establish that when an entity subject to the law deems it necessary to classify certain information as secret or confidential, the decision should be put to a proportionality test before it is issued.

476. In general, the grounds for secrecy are limited to the confidentiality of personal data and the classification of information that could prejudice other interests, such as national security. In some exemplary cases such as Guatemala, Mexico, Peru, and Uruguay, the law establishes that information on human rights violations may not be considered classified. Likewise, in cases such as that of Mexico, entities subject to the law are required to develop public indexes of the information considered privileged. The laws of Mexico, Nicaragua, and Guatemala specify the grounds for secrecy classification more precisely than many other laws with broad or vague provisions on subjects such as the defense of national security.

477. Nevertheless, in some cases the exceptions are very broad with no clear and precise conceptual definition given of the terms used or the legal criteria for establishing limits; consequently, their true scope is established in the implementation process, which will be the subject of future reports. In addition, many legal systems do not establish the obligation to separate classified information from public information, which means that entities subject to the law could be led to believe, erroneously, that if part of a document is secret its entire content may be withheld, in contradiction to the provisions established by the principle of maximum disclosure.

478. In terms of the periods for classifying records, Ecuador, Nicaragua, Panama, Uruguay, Peru, Chile, Mexico, the Dominican Republic, Jamaica, and Guatemala establish initial maximum periods for classification. All of those countries authorize an extension of that period, but only Nicaragua, Panama, Chile, and Guatemala contemplate a maximum period of classification. Colombian law sets the maximum reserve term, which may vary from 20 to 30 years. Argentina does not address this issue in its Regulations on Access to Information of the Federal Executive Branch. Finally, it is important to note that Chile has established that the period for classifying matters of national defense and foreign affairs is indefinite.

479. In the majority of cases, some of the grounds for classifying documents continue to be broad in content and thus will require legal and administrative implementation measures, such as the existence of public criteria for classifying information and effective measures for protection. A more detailed evaluation along these lines will be the subject of future studies by the Office of the Special Rapporteur.