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SPECIAL SESSION OF THE COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS ON ACCESS TO PUBLIC INFORMATION [AG/RES. 2418 (XXXVIII-O/08)]

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I. Background

Pursuant to General Assembly Resolution AG/RES. 2418 (XXXVIII-O/08) "Access to Public Information: Strengthening Democracy, " the Committee on Juridical and Political Affairs of the Permanent Council convened a special session on Access to Public Information, on December 15, 2008. At that session, representatives of the member States, members of the General Secretariat, representatives of civil society, academics and experts examined the issue in light of the recommendations on Access to Public Information contained in the Study on Access to Information organized by the Department of International Law (document CP/CAJP-2599/08) and presented to the Committee on Juridical and Political Affairs on April 24, 2008.

Consistent with the mandate from General Assembly, the purpose of the special session was to provide inputs – background, examples and recommendations – for member States to consider as they explore the possibility of preparing an inter-American program, an inter-American convention, or any other instrument on access to public information. Although member States were not asked to take a decision on the issue during that session, the Chair of the Committee on Juridical and Political Affairs recommended that States take note of the contributions from the special session in preparation for taking a decision about preparing an instrument, and the form that such an instrument might take. Another session of the Committee will be held before May 2009, in which States will be asked to take a position on the mandate from the General Assembly with respect to a program or other instrument. The special session also provided input for the Department of International Law to use in preparing a Study of Recommendations on the Protection of Personal Data.

II. Opening session

Under the first point on the agenda, Ambassador María del Luján Flores, Chair of the Committee on Juridical and Political Affairs and Permanent Representative of Uruguay to the OAS, stressed the fundamental importance of guaranteeing every person's right to access to information, as a human right which includes the right to be informed and the right to protect wrongly disclosed information. She also noted that access to public information is an indispensable prerequisite for the exercise of democracy. In bringing the opening session to an end, the Chair expressed the Committee's gratitude to the panelists participating in this event, which was of such importance for taking decisions about access to information.

III. Human rights aspects of access to information

In the first panel, Catalina Botero, Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, presented the legal basis for access to public information as a human right. She discussed the jurisprudence and the principles underlying the limits, the scope and the unresolved issues relating to the right to information.

The topic of access to information, she noted, has received much attention in the region, although it was not historically accorded great importance, particularly in States which were recovering from the tragedies of dictatorships that not only denied access to information but actively protected secrecy. In a democracy, she said, the citizen is autonomous and has no need of enlightened guidance: society is self-governing, and it must therefore know how State resources are being used.

She pointed in particular to hemispheric trends over the last 10 years, noting that some States, including Mexico, Argentina, Peru, Chile and Uruguay, have made significant progress, while other countries that as yet have no laws in this area are examining the possibility of adopting legislation. In the best of cases, she hoped that the Americas could present a progressive and united front that would set an example for the entire world.

The Special Rapporteur mentioned the following as basic principles for addressing the issue: (i) democratic society is self-governing; (ii) the only way to exercise individual rights is to understand them and make them effective as a mechanism for exercising other rights; and (iii) greater access results in more transparency, more oversight and less corruption.

This right, moreover, is grounded in the "higher law" of inter-American standards that have been set by the Inter-American Court of Human Rights in the case of *Claude Reyes vs Chile*. The Court ruled that the right of access to information is a human right, and that any violation of that right generates international responsibility for the State.

This right is applicable to all the inhabitants of a given territory: it is sufficient that a person request the information he wants to know, and it must be delivered to him, subject to only a few constraints. The type of information that must be accessible includes all information contained in State files which the State administers, produces or ought to produce. When we speak of the State, it is not only the executive branch but also the legislature and the judiciary that this embraces, and not only at the central but also at the decentralized levels, i.e. all those involved, and it includes all State agencies in any sector and at any level of government.

The positive obligations that this right implies include the following: (i) the State must at its own initiative provide basic information for the exercise of other rights; (ii) the State must respond within a reasonable time to requests from the public for information; and (iii) the State must produce the information necessary to fulfill its duties. Moreover, the State has the obligation to amend any rules or regulations contrary to the right of access to information, and it must issue regulations for implementing laws on access to information, and must also adopt training policies.

With respect to disclosure policies, the right of access to information must also be protected by an administrative appeals procedure that is simple to use and will provide a substantiated response within a reasonable time. The State must also respond through this route when it does not deliver the information requested, and in these cases the burden of proving that the information cannot be disclosed lies with the State.

The right of access to information is not an absolute right, and there may be exclusions or exceptions to that right, where the State will not deliver the information requested. Those limits must be established in a law, in a formal, precise and clear manner, and they must be strictly proportionate and confined to what is necessary to avoid disruptions, as in the case of national security and public order, understood in the democratic sense, or to protect the fundamental rights of third parties. Since they constitute an exception, however, they must be interpreted restrictively.

Such exceptions must be subject to a strict test of necessity, established by jurisprudence, and there must be judicial control over administrative decisions, such as through an independent judge who will assess, for example, whether a legitimate purpose is served in light of international

standards. If it is only information on third parties that is reserved, the judge will take the final decision as to the scope of a given right.

Among unresolved issues, the Special Rapporteur mentioned sensitive information, the obligation to produce information, and the question of whether citizens have the right of access to raw data.

At the conclusion of the Special Rapporteur's presentation, the Committee Chair gave the floor to delegations. The delegation of Colombia expressed a number of concerns. The first had to do with what might happen in sensitive cases (for example, criminal trials) when persons have the possibility of accessing the information in its totality. The terms for responding must be individually spelled out in legislation. The right to privacy must also be protected, including such questions as a person's salary, and limits must be established for reasons of security, e.g. kidnapping. On the other hand, the delegation questioned whether it is the responsibility of the State to provide this information, and as an additional example noted the case of persons deprived of their liberty who would not want this information to be made public. In these cases, who will establish the limits on privacy and access to information?

In response to these concerns, the Special Rapporteur said that the State can provide certain documentation directly, because it is the State's obligation, for example, to post information on judicial proceedings on the Internet. There are at least three cases in which reservation is legitimate: criminal investigations; summary proceedings in criminal cases; and cases involving vulnerable persons, e.g. women or children who have suffered sexual violence.

When it comes to time limits, these are determined by legislation and they must be reasonable. On the issue of salaries, public salaries are one matter and private assets are another: there are laws that mention public salaries and not private assets, and vice versa, so it does not matter whether one is a civil servant. This is still an open question. Finally, when we speak of persons deprived of their liberty, we are referring to the number of persons held in prisons.

The delegate of Trinidad and Tobago spoke next, noting that his country does not recognize the jurisdiction of the Inter-American Court. As to the proposed limits on access to certain types of information, there was the question of how the Committee should address elements covered by common law, customary law, and how those countries could be considered. He also asked how access to information should be treated for persons who are not citizens of the country in question, and whether such persons should have access to information for judicial questions.

Venezuela then took the floor and said that when we speak of the right of access to information – emphasizing the fact that all citizens are entitled to receive any kind of information, access to education, culture – there must be integral access for the citizens of a given country. The delegate asked what happens when we speak of a monopolized communication model in which we are not talking about violating freedom of the press, but information monopoly, i.e. what happens when the State provides information to the media, or to society, and that information is distorted when it is passed on to the citizens, if that distortion is not the fault of the State.

The United States delegation declared that the right of access to information is a very important human rights issue. It shared some information based on experience in the United States, mentioning that country's legislation in this area and stressing the importance of civil society's

participation in the process of access. The United States delegation considered that progress can be achieved in this area through cooperation, and expressed its country's great desire to assist the process.

Mexico reported that it has established clear laws on access to public information, and that the 32 Mexican states have such legislation, which is governed by the principles of maximum publicity, protection for personal data in the terms and exceptions established by law, and free access for all citizens.

Panama then discussed progress in this area. Since 2002 it has had legislation in place, giving this right constitutional status. There are a series of principles under which all inhabitants have the right to government information. Those principles have to do with publicity, cost-free access, a 30-day response time, and judicial appeal through a motion for *habeas data*. In response to the Rapporteur's statement, the ideal outcome would be an Inter-American Treaty, which would make the Americas a pioneer in this field, and the Panamanian delegation would be interested in making this proposal. Finally, the delegation asked if it might be better to prepare a model law, as a first step which States could use in their domestic law, and to think about a treaty later.

Chile reported that it has had a law on access to public information in place since 2007, the text of which establishes broad access to information, with exceptions.

The Peruvian delegation said that its country also has a law on access to information, with constitutional rank since 1993, and that in 2003 a law on transparency and access to public information was adopted, which provides that all government information is public, with the exceptions established in that law. The delegation raised a question about limitations, asking whether there are other limitations in comparative law, dealing for example with diplomatic or trade negotiations.

Finally, the delegation of the Dominican Republic described the law adopted in 2004 by its country, which enshrines and reiterates the right to information, establishing the principle of publicity for all acts of government at the centralized and decentralized levels, and creating a procedure for access to information with a time limit of 15 days, which may be extended by another 15 days. It also establishes an office for free access to information, in compliance with existing legislation and to take seriously the commitment to facilitate information to the citizens.

Following these questions and comments, the Rapporteur responded to each in turn. With respect to the Caribbean, she noted that one of the Commissioners is from the Caribbean, and he is constantly pressing the Commission to translate Roman law into Anglo-Saxon law. With respect to the standards of the Court, there is no standard governed by common law, and that would take a lot of time, but a special meeting with the Caribbean to discuss these and other issues under consideration. Second, citizens have the right to information with the established limitation, and residents must have the same rights, but a tourist could have other individual rights, the right to restricted information; this is an idea for discussion and there are no established standards. Third, a truly activist and inclusive democracy may have social guarantees but without political guarantees they lose their force [...] and absolutely committed to the declaration of principles, for antimonopoly laws must be enforced. Fourth, the State must defend its policies through a pluralistic model, but it must have channels to defend its positions. Fifth, with respect to experience in the United States, and Canadian experience which is also important, the time period during which information may be considered

secret must not be too long, in order to avoid arbitrariness. Sixth, with respect to Peru, these are the same limits as those for freedom of expression, and there must not be any additional limit. Seventh, with respect to a law or treaty, in fact we have two offices working in coordination, the Department of International Law and the Department for State Modernization and Governance, which are now discussing this topic, in particular a serious, pioneering convention. A model law is also an interesting idea, and we are working on various alternatives to promote this right in the region.

IV. Democracy and Governance Aspects of Access to Information

Introducing the panel on democracy and governance, the Chair gave the floor first to Mr. Pablo Zúñiga, Director, OAS Department for State Modernization and Governance.

Mr. Zúñiga said that promoting access to information requires a comprehensive and coordinated effort, and he presented a text with the objective of supporting an inter-American program or convention on access to public information. He thought it important to present the conclusions that would serve as the basis for the document, which would be an input for consideration in this special session. The right of access to information is closely related with transparency and integrity in public institutions, which are key for democracy, and represent a means for promoting public participation and generating trust in government institutions, facilitating the exercise of social, civil and political rights, while expanding opportunities to influence and take decisions. It also strengthens the relationship between governments and the people they govern: it allows people to understand the exercise of the mandate that elected governments have established and in turn it ensures that collective decisions are based on informed criteria. This is a central issue in combating corruption, as the most powerful threat facing the economic and social development of any State, since the opening of channels of information, oversight and citizen participation makes it possible to single out abuses, errors and shortcomings in public management. He considered the following points essential:

1. It is undeniably important to have clear political will in adapting and formulating policies for access to information in order to ensure their effective application.

2. Efforts to date are not enough, and it is essential to create mechanisms for enforcing existing legislation.

3. Among the problems identified in implementing rules and standards, we may mention shortcomings in the handling of public records and in systematizing and categorizing information.

4. It is essential to understand the practices and processes and to generate means of sharing experiences.

5. It is also very useful to know about the practices and processes followed in other countries with respect to access to information, in order to adjust the internal processes of each country more effectively.

6. There must be instruments in place for enforcing policies, accompanied by adequate diagnoses of the situation of access to information, and the problems in providing

information, and there must be mechanisms and resources needed to implement policies.

7. Civil society has an essential role in promoting the right of access to information with room for public participation.

8. To lay the bases and the infrastructure needed to supply public information requires profound changes in processes and in the culture, beliefs and attitudes of public officials and also among the citizenry, and requires outreach campaigns and training.

9. The government must offer information technology for strengthening its management, by improving a growing range of services, promoting greater transparency and efficiency on the part of public servants.

10. Finally, it is worth noting that electronic government offers practical ways to guarantee and facilitate access to public information.

The next speaker was Jacqueline Peschard Mariscal, Commissioner, Instituto Federal de Acceso a la Información of Mexico, who described Mexico's experience with its internal legislation in this area, and its commitment to give effect to the practical exercise of access to information:

Introduction of the right in Mexican legislation. In 1977 the right of access to information was specifically introduced, with the addition to the Constitution of the following clause: "The right to information shall be guaranteed by the State." In 2001 a federal transparency bill was introduced, and it came into force in 2002. Since 2003, any person may submit a request for information from any person or agency obligated by federal law.

This Mexican legislation is based on the following principles:

- Maximum publicity.
- No requirement to demonstrate a legal interest.
- No requirement to explain what the information will be used for.
- No charge for exercising the right.
- A simple and expeditious process of access and review.
- Limited exceptions.

The only exceptions are the following:

- National security and public safety.
- Information that could undermine international relations, damage the country's financial, economic or monetary stability, or pose a risk to the life or health of any person.
- Commercial, industrial, tax, banking, fiduciary and other secrets.
- Previous inquiries.
- Files relating to judicial cases or administrative proceedings.
- Opinions or recommendations that form part of the deliberative process of public servants, until a final decision has been adopted.
- Personal data.

The Commissioner noted that persons obligated by law include all public servants and government agencies, including the legislative, judicial, executive branches and autonomous constitutional bodies such as the Bank of Mexico, the federal elections institute, the national human rights commission, etc.

The legislation itself has three main purposes: to resolve shortcomings in the responses that agencies and entities of the federal executive branch give to citizens' requests for public information and for access to and correction of personal data; to protect personal data in the hands of federal agencies and entities; and to promote and disseminate exercise of the right of access to information.

She then presented some statistics on requests for information submitted to the Mexican federal public administration since 2006. She also mentioned the subject matter covered by requests for information, in particular contracts for all types of services, health records, medical files, environmental issues, fines, sanctions imposed on companies of public interest, and on civil servants, and government statistics. These statistics reveal visits to the transparency obligations portal, how many times it has been visited and the issues most commonly sought, which were contracts, the public service telephone directory, and remuneration of public officials.

She reported that 5% of requests will eventually lead to an appeal for review.

Profile of applicants: in first place come academics, business people, the communications media. Journalists account for 8% of all requests to the IFAI.

Attitudes towards citizen participation have improved as a result of this system, she said, and society is now more aware of its rights. Access to information is a right that gives substance to other rights, by allowing them to be more clearly exercised. It is a good idea to have an archives law, and this may be even more important than an access law, since the keeping of archives by the public administration needs to be improved. She mentioned that the legislation has had no effect on public perceptions of corruption.

Among the main challenges still facing the practice in Mexico, she mentioned the establishment of an electronic system for accessing information in the 32 federal entities and in *municipios* with more than 70,000 inhabitants; complementing the legislative cycle (laws on archives and personal data protection in the private sector), and making a greater effort to promote a culture of transparency and accountability in the public service.

The Venezuelan delegation then took the floor and discussed progress and legal regulation in Venezuela. The delegation reiterated Venezuela’s strong commitment to fully guaranteeing access to public information, in accordance with its principles, and stressed the importance of access to public information as a right to participation by communities and citizens and as a way to bring greater transparency to government management.

Next, the special guest of the Argentine delegation discussed some questions and related what was being done in Argentina, which for five years now has had a decree obliging the executive branch to deliver public information and establishing other mechanisms for citizen participation. He cited the regulations in this area: access to public information; participatory preparation of rules; the holding of public hearings; and publicity for hearings of public interest.

In Argentina, senior public officials are required to make public their functions. Regulatory entities must hold public meetings to hear the citizens in taking decisions about the services they provide. The decree has thus created many challenges of implementation, the possibility of having a law, which functions as a point of arrival and not of departure, as the process of implementation and of the sanction must be differentiated, the process of implementation is complicated by the issue of decisions about public resources and financing.

Argentina also has a law protecting personal data and *habeas data*, adopted 10 years ago, for confidential data relating to sex, religion etc., and other personal data that are not of a sensitive nature. With respect to challenges there are no statistics, he said, but there have been some local studies and in none of these cases do they exceed 2% of applications, for which reason it may be said that access to information is being well disseminated.

Uruguay then reported that it has already promulgated a law on access to information and another on community radio broadcasting.

The US delegation said that the United States was considering how the OAS could work with citizens and civil safety to expand access to information in the OAS and the member States, as a way of helping member States fulfill their commitments in this fundamental area.

Finally, Mexico declared that access to public information is a government policy, and the law serves to help the most vulnerable because it gives access to all citizens.

V. The Protection of Personal Data

The Chair then gave the floor to Hugh Stevenson, Deputy Director for International Consumer Protection, U.S. Federal Trade Commission, who gave a presentation on personal data protection.

He noted that the topic addresses a whole range of issues, with a great variety of laws and a set of international agencies that play a role in analyzing and protecting the privacy of data. When we speak of protecting the privacy of personal information, the conversation generally proceeds from the commercial and public sector viewpoint. In the latter case, government generally establishes a set of rules regulating what can (and cannot) be done with personal data, and when such data can or must be disclosed. In these cases, the government generally takes privacy as the point of departure in the receipt and handling of data. On the other hand it is governments that establish strategies to open or limit access to protected or confidential information, and they establish strategies on the potential use of those data by government or by private players.

Consequently, it is governments that have the most direct influence in protecting people's privacy with respect to their personal data. It is therefore the supreme responsibility of government to establish a consistent strategy ensuring the security of privileged information in all its manifestations, including for example the security of computers, databases and cybernetic security.

Mr. Stevenson then explained that there is also a great challenge with respect to the terminology used in relation to "data protection," "personal data protection" and "privacy". For example, the term "data protection" is a technical one that means protecting the confidentiality of a

person's personal data. However it also refers to a judicial approach developed in Europe, with technical meanings that are specific to the legal context in which it was developed and that cannot be readily appreciated outside of that context. These terms must be used with care in referring to this branch of law and government.

With respect to the use of privileged data, Mr. Stevenson explained that we must first consider the way in which the government compiled the data, i.e. whether the data were supplied voluntarily by the individual concerned or whether they were obtained in some other way. In each case, there must be a consistent strategy to limit the use and disclosure of those data. In contrast, he said, there are more general laws applicable to the private sector with respect to data protection, the use of personal data, and individual privacy. He mentioned some control mechanisms that limit or regulate the use of personal data by private entities, as well as the occasion and the manner in which they must or may be used. As an example, he cited a 1995 European Union directive that sets limits on the use of such data, and that could serve as a model for the Americas to consider in exploring the best way to regulate this field. There are also guidelines that regulate privacy and the use of related data, and there is renewed interest in guidelines that will protect those data when they cross borders. These models have been in operation for several years in the European Union, and they could provide some lessons applicable to regulating these issues within the OAS member States.

Finally, he referred to a proposed world dialogue on information privacy and automated data, which will provide a more specialized expression of the limits on the use of private information in the commercial sector. He urged American States to take part in these efforts to establish a new universal standard for the protection of privacy and personal data.

VI. Recommendations of the Special Session

The Chair gave the floor to Laura Neuman, Associate Director of the Americas Program and Access to Information Project Manager for the Carter Center.

In her presentation, Mrs. Neuman offered a series of recommendations and measures to member States for advancing the issue of access to information in the Americas. First, she reviewed the important progress already made, including the decision of the Inter-American Court of Human Rights in the case of Claude Reyes versus Chile. She also cited various resolutions of the OAS General Assembly. She stressed, however, that much more can and must be done to guarantee the right of access to information in all States of the hemisphere.

First, she referred to the possible adoption of an American convention on access to information, and explained the steps needed to draft and implement such a convention, as well as the advantages and drawbacks of the process. A convention would help to harmonize and standardize national rules in this area., and would also help many States to strengthen or establish legislation for the protection and promotion of this right. A convention would therefore represent significant progress in the region, especially if it contains the provisions and mechanisms needed to monitor its implementation, as well as specific instructions and oversight for ensuring its observance.

However, there are several disadvantages that must be taken into consideration in deciding whether States should adopt a convention on access to information. First, drafting and negotiating such a text would take a good deal of time and resources, which could usefully be spent on other efforts to promote the right of access to information in the region. Moreover, by its nature a

convention would represent the lowest common denominator among States with regard to its text. She cited the experience of the Council of Europe, which recently adopted a convention on access to information, one that has attracted sharp criticism. That convention is weaker and its scope more limited than the laws of States parties, she said, and in many respects it represents backsliding.

She noted moreover that, as often happens with conventions, an American convention on access to information could be unenforceable or might not be fully observed. It could also pose a distraction from other efforts in this field. There was also the risk that, as happened in Europe, an American convention could be more limited than current national legislation in member States.

In weighing the pros and cons, she said that if States decided to move forward without a convention, they could consider other instruments to advance and protect the right of access to information. First, they could establish an intergovernmental working group of experts to create a practical regime for promoting this right. She cited here the principles already prepared by the Inter-American Juridical Committee, which could serve as a point of departure. Second, the Summits of the Americans process could and should play an important role in promoting this right, for example by including specific guidelines and giving broad scope to the issue in the Summit Declaration and Plan of Action. An alternative would be to create a monitoring mechanism, perhaps within an inter-American program on access to information, similar in some respects to the OAS anticorruption monitoring mechanism. That mechanism could rely on information supplied by member States about progress in implementing and enforcing the public's right to documents held by the State.

In concluding, Mrs. Neuman spoke of processes, examples and instruments that contained significant lessons for OAS member States. These included the Atlanta Declaration and Plan of Action agreed at the Universal Conference on Access to Information, held at the Carter Center in February 2008, which contains steps that experts from all parts of the world considered important for States. She also mentioned the Convention of the Council of Europe and the lessons to be drawn from other processes regarding both the elements that must be included in an instrument of this type and the procedural pitfalls that must be avoided in its preparation.

As to final recommendations, she recalled that, regardless of the type of instrument States may decide to adopt, they will need to involve and consult civil society at all levels and in the most transparent manner. Clear rules and measures will have to be established for States to follow, and any instrument that States decide to adopt must be effectively implemented and monitored. Moreover, any instrument adopted must apply not only to States but also to other organizations, including the OAS itself, which at the present time is the only regional organization in the world that has no internal policy on access to information and disclosure of documents.

VII. Juridical/Political Recommendations for Access to Information

To wrap up this special session, the Chair gave the floor to John Wilson, Senior Legal Adviser, OAS Department of International Law, who summarized the juridical aspects and recommendations for creating and implementing a new system of access to public information. These were drawn from the report on Recommendations on Access to Information commissioned by the General Assembly in Resolution AG/RES 2288, which was coordinated by the Department of International Law and prepared jointly by that department, the Department for State Modernization and Governance, the Interamerican Juridical Committee, the Special Rapporteurship for Freedom of Expression of the Inter-American Commission on Human Rights, and the Committee on Juridical and

Political Affairs of the Permanent Council, with active participation of civil society, in particular the Carter Center, and which was presented to the Committee on Juridical and Political Affairs on April 24, 2008.

In discussing these recommendations, Mr. Wilson referred to the presentations given by Mrs. Botero, establishing that access to information is a human right, and by Mr. Zúñiga, establishing that access to information is a democratic right, and said that in conjunction these rights establish specific obligations for States. The recommendations contained in his presentation, he said, were intended specifically to assist States in fulfilling these obligations.

The policy recommendations contained in the study are divided into recommendations to member States and recommendations to the Organization of American States

One of the recommendations to States holds that access to public information must be made an inherent part of all public functions. States, he said, must promulgate legislation establishing the right of access to information (in the terms of the legislative recommendations contained in the second part of his presentation). He also cited the need for States to revoke legislation that protects excessive secrecy or that conspires in any way against access to information.

He recommended that States consider preparing and implementing an inter-American instrument on access to information, whether this be an inter-American program, an inter-American convention, a model law for the region or some other instrument. He also pointed to the need for States to earmark sufficient resources to create and maintain an access to information system, and the need to create a system of remedies and hearings for cases in which a citizen has been denied access.

The policy recommendations for States also stress the need for States to create mechanisms to monitor their compliance with their obligations in this area. To that end, they should appoint information officials or offices to support applicants for information, they should train their government officials in how to fulfill their access obligations, and they should educate their citizens about the existence and exercise of their rights of access to information.

Moving on to policy recommendations for the OAS, he stressed the need for the OAS to implement an internal system of access to public information. He recalled the recommendation that the OAS should launch a process of drafting and implementing an instrument – convention, program, declaration, model law, etc. – on access to information. The OAS, he said, could and should play a role in helping States to implement the right of access to information, and in establishing mechanisms to report on progress in the promulgation, implementation and enforcement of this right. The OAS could and should play a role as well in training State officials and in helping States to share their experience and best practices; it should prepare an annual report on the status of this right; sponsor seminars and courses on the right of access, encourage donors to support the efforts of States and civil society in protecting this right, and prepare recommendations on the issue of personal data protection.

Among the legislative recommendations, designed to help States prepare the legal framework to guarantee broad and transparent access to State information, he said that all legislation must be based on the principle of maximum disclosure. That legal framework should open access to all information in the possession of the State, without any limitations as to the definition of "information", the manner in which it is recorded and stored, the source of information, the date of its

creation, or its official status, and regardless of whether the information has been classified by the State.

This principle should govern information from all governmental sources, including federal and state governments, and their executive, legislative and judicial branches. It should also extend to government agencies and their employees, including any agency established by the constitution, by law, or by any other government order.

The principle of maximum disclosure should also extend to non-State players. Any private person or entity who receives public funds or benefits, who performs public functions or who exploits natural resources should be covered by the legislation. This right of access also extends to any private individual or enterprise, without limitation, when the information requested is directly applicable to the exercise or protection of human rights.

In conjunction with the principle of maximum disclosure, there is also the presumption of publicity, which must always be observed in a system of access to information. That presumption means that information in the possession of government is public and therefore subject to disclosure. Consequently, if there is any doubt as to whether information is public or not, there will be a presumption in favor of access and disclosure. That presumption also means that information in the possession of government must be disclosed in a transparent and accessible manner, that governments must disclose core public information clearly and methodically, and that they must create a list of core information that is to be published pro-actively and pre-emptively.

When it comes to preparing and submitting individual applications for access to information, he cited several recommendations essential for the functioning of a complete and operational system. First, it should be possible to submit applications in person or in writing, and the application form should require only the minimum data needed for locating and delivering the information requested. It is also important to create a system that accepts and processes requests without requiring the applicant to demonstrate any personal interest in the information requested, any connection with that information, or any justification (however minimal) for obtaining it. The simple fact that the information is in the possession of the State is sufficient for any person to invoke the right of access.

A legislated system for the disclosure of public information should also provide that the cost to the applicant of conducting research, recording or copying the information in any medium, and delivering it should be low or nil, and that in no case should cost be an obstacle to delivery of information. An information access system must also guarantee that any person exercising this right will be held free from any sanction or persecution.

Mr. Wilson then described the recommendations as to how the State should respond to an application once submitted. The State should create a clear and transparent system for reaching decisions on applications, and for processing the information requested, and it should establish by law a reasonable but short deadline for responding. That deadline should be extendable only in cases where the requested information is difficult to identify or locate, and in these cases the applicant must be notified of any such problem before the deadline runs out.

To ensure smooth functioning of the system for responding to requests and delivering the information, the State should create information offices (or appoint an information officer) within

every government agency. Those officers must see to the delivery of the requested information, and make it available not only to the applicant but to the general public.

With respect to exceptions to the disclosure principle, these must always be previously, clearly and concisely defined in legislation, they must serve an express objective permitted by international law for States parties to the American Convention on Human Rights, they must be expressly limited to those mentioned by the Inter-American Court in the *Claude Reyes vs Chile* case, and any exception must interfere as little as possible with the right of access to information. The State must bear the burden of proving that an exception exists and is applicable in each individual case; that burden must never fall on the applicant.

In cases where the State invokes an exception, it must so notify the applicant in writing, establish clearly the reason why the requested information will not be delivered, and provide sufficient information so that the applicant can understand and enforce his rights of appeal against the decision. Such exceptions must be clearly limited, and the legislation on access to information must include penalties against public officials who fail to fulfill their obligations.

There are also grounds for overriding exceptions to disclosure, in cases where the information requested is of such great public interest that it should be disclosed despite any privilege the State might be able to claim for it. In these cases, the "public interest override" will prevail, and the right of the State to keep information secret must yield to the public's right to know. Moreover, in cases where a portion but not all of the information contained in a document is privileged, the remaining information (i.e. that not exempt under the exception) must be delivered to the applicant. In addition, a complete system of access to information must envision the eventual delivery of information covered by the exception and thus exempt from disclosure. That system must include a "sunset clause" which provides that information excluded by exception must be made public within a reasonable period of time.

Finally, any system of access to information must have an independent oversight and appeals process for examining cases where the State fails to deliver the information requested. The appeal system must be independent and impartial, and must have the authority not only to decide specific cases but also to monitor the system's implementation and operation. That system can be created in the form of an independent agency, commission, or court (or any combination of the three), provided it has the impartiality and independence to hear and decide cases of nondisclosure. The cost to the applicant of using the system must be low, and the system must be applicable in any case where the request was delayed, denied or in any manner infringed.

VIII. Closing session

At 2 p.m. the Chair declared the special session closed, thanking the panelists and the delegations for their participation. In particular, she welcomed the inputs and recommendations that will allow the Committee, pursuant to the General Assembly's mandate, to determine the possibility of drafting a program, convention or other inter-American instrument on access to information. In this regard, she noted that the topic of access to information will be added to the Committee's work plan so that States can pronounce themselves on the issue in the first months of 2009.

ANEXO I:

PALABRAS DE LA PRESIDENTA DE LA COMISIÓN DE ASUNTOS JURÍDICOS Y POLÍTICOS (CAJP), EMBAJADORA MARÍA DEL LUJÁN FLORES, REPRESENTANTE PERMANENTE DE URUGUAY ANTE LA OEA

SESIÓN ESPECIAL SOBRE ACCESO A LA INFORMACIÓN PÚBLICA

Washington, DC.
15 de diciembre de 2008

Quiero dar inicio a esta sesión especial de la Comisión de Asuntos Jurídicos y Políticos sobre Acceso a la Información Pública que se celebra en cumplimiento del mandato contenido en la resolución 2418 de la Asamblea General de la OEA, dando la bienvenida a todos los aquí presentes y agradeciendo la presencia de los señores panelistas cuya participación es garantía del éxito de la reunión.

De acuerdo a la doctrina más recibida la información en un sentido amplio comprende tanto los procedimientos para obtenerla es decir acopiar, tratar, difundir, recibir como los distintos tipos de ella ya sean hechos, datos, ideas, opiniones, noticias y sus diversas funciones. El derecho a la información es un derecho humano cuyo contenido básico comprende la facultad de investigar, difundir y recibir información. En un sentido más general el derecho a la información se ha descrito como una expresión de la libertad de información que comprende el derecho a informar, a informarse y a la protección contra la información disfuncional o abusiva.

Cuando nos referimos al acceso a la información cabe preguntarse respecto a la categorización de libertad o derecho involucrado. Jellinek distingue los derechos de carácter positivo o derechos - deber de los derechos-libertades. Los primeros requieren la acción positiva del Estado, mientras que los segundos su abstención. Según esta distinción el acceso a la información se asimila al derecho - deber, es decir que implica en tanto que derecho, que los poderes públicos asuman medidas positivas para garantizar su ejercicio. El puede definirse como la prerrogativa de acceder a datos, registros y todo tipo de información en poder de cualquier organismo público sea o no estatal, con las excepciones que establezca la ley en una sociedad democrática.

Porque nos interesa este derecho?

La visibilidad el poder es uno de los atributos que caracteriza a las democracias frente a otras formas de Gobierno. Norberto Bobbio decía preferir, entre todas las definiciones de democracia, aquella que la presenta como “el poder público”. Utilizaba esta expresión para referirse a todos los mecanismos institucionales que obligan a los gobernantes a tomar decisiones a la luz del día y que se permiten a los gobernados “ver” cómo y donde se toman dichas decisiones.

“Gobernar en público” supone hacer que el poder sea controlable por la mirada de los ciudadanos. Desde el punto de vista de los ciudadanos, la publicidad constituye una garantía esencial

del funcionamiento del poder del Estado en una sociedad democrática, no sólo porque fortalece la confianza en ese poder, sino también porque fomenta la responsabilidad en quienes lo ejercen.

Pero la garantía del acceso público a información en poder del Estado no es sólo una herramienta práctica que fortalece la democracia, las normas de derechos humanos y que promueve la justicia, es también y ante todo un derecho humano basado en la dignidad de la persona humana. Derecho recogido en instrumentos internacionales tanto de alcance universal como regional, de índole general o vinculada a áreas específicas. A vía de ejemplo ha sido plasmado en la Declaración Universal de Derechos Humanos, el Pacto Internacional de Derechos Civiles y Políticos, la Declaración Americana de Derechos y Deberes del Hombre, la Declaración de Principios sobe Libertad de Expresión. Ha tenido particular desarrollo en el campo del medio ambiente de allí que fuera contemplado en declaraciones como la de Río sobre Medio Ambiente y Desarrollo y en Convenciones como la de Aarhus sobre Acceso a la Información, Participación Pública en la Toma de Decisiones y Acceso a la Justicia en temas medioambientales.

La tendencia actual se orienta a un creciente consenso en torno al principio de que los Estados tienen la obligación positiva y autónoma de brindar la información en su poder a sus ciudadanos, con el correlativo derecho de éstos a su acceso y que este derecho aunque interrelacionado es sustancial e independiente de otros derechos fundamentales.

Como resultado de la creciente conciencia que existe en las Américas acerca de la importancia del derecho al acceso a la información pública, los Jefes de Estado y de Gobierno del continente han reconocido en las Cumbres de las Américas que una administración sólida de los asuntos públicos exige instituciones gubernamentales efectivas, transparentes que realicen una debida rendición de cuentas.

A su vez, la Asamblea General de la OEA ha aprobado una serie de resoluciones sobre el acceso a la información pública, en donde reafirma que toda persona tiene la libertad de buscar, recibir, acceder y difundir informaciones, y que el acceso a la información pública es un requisito indispensable para el funcionamiento de la democracia.

Ha reiterado también que los Estados tienen la obligación de respetar y hacer respetar el acceso a la información pública a todas las personas, y de promover la adopción de disposiciones legislativas o de otro carácter que fueren necesarias para asegurar su reconocimiento y aplicación efectiva.

En el ámbito del Sistema Interamericano de Derechos Humanos, el artículo 13 de la Convención Americana sobre Derechos Humanos protege explícitamente la “Libertad de buscar, recibir y difundir informaciones e ideas de toda índole”. A ese respecto, la Comisión Interamericana de Derechos Humanos ha señalado que “el derecho a la libertad de expresión incluye el derecho a divulgar y el derecho a procurar y recibir ideas e información. Sobre la base de este principio, el acceso a la información en poder del Estado es un derecho fundamental de los individuos y los Estados tienen la obligación de garantizarlo”.

Este principio sólo admite limitaciones excepcionales que deben estar establecidas previamente por la ley para el caso de un peligro real e inminente que amenace la seguridad nacional en sociedades democráticas (Principio 4 de la Declaración de Principios sobre Libertad de Expresión).

El primer Tribunal Internacional que resaltó que el acceso a la información constituye un derecho humano fue la Corte Interamericana de Derechos Humanos. Es así que en el Caso Marcel Claude Reyes y otros vs. Chile señaló que el artículo 13 de la Convención "Ampara el derecho de las personas a recibir dicha información y la obligación positiva del Estado de suministrarla, de forma tal que la persona pueda tener acceso a conocer esta información o reciba una respuesta fundamentada cuando por algún motivo permitido por la Convención el Estado pueda limitar el acceso a la misma para el caso concreto. Dicha información debe ser entregada sin necesidad de acreditar un interés directo para su obtención o una afectación personal, salvo en los casos en que se aplique una legítima restricción. Su entrega a una persona puede permitir a su vez que esta circule en la sociedad de manera que puede conocerla, y acceder a ella y valorarla. De esta forma -señaló la Corte- el derecho a la libertad de pensamiento y de expresión contempla la protección del derecho de acceso a la información bajo el control del Estado, el cual contiene de manera clara las dos dimensiones, individual y social, del derecho a la libertad de pensamiento y de expresión, las cuales deben ser garantizadas por el Estado de forma simultánea".

Del análisis de la jurisprudencia del tribunal surgen elementos de importancia a considerar en primer lugar que el derecho de acceso a la información se rige por el principio de máxima divulgación el cual establece que toda información es accesible, sujeta a un sistema restringido de excepciones.

En segundo término las restricciones que pueden aplicarse a este derecho deben estar previamente fijadas por ley como medio de asegurar que no queden al arbitrio del poder público. Dichas leyes deben dictarse por razones de interés general y con el propósito para el cual han sido establecidas. Las restricciones deben responder a un objetivo permitido por el artículo 13.2 de la Convención Americana. En esa línea de pensamiento la Corte estableció que las restricciones que se impongan deben ser necesarias en una sociedad democrática, lo que depende de que estén orientadas a satisfacer un interés público imperativo colocando la carga de la prueba de las posibles restricciones a este derecho, en el Estado.

El vínculo entre democracia, acceso a la información y control democrático en las cuestiones de interés público también es fácil de percibir.

La Corte ha declarado que las justas exigencias de la democracia deben "…orientar la interpretación de la convención y, en particular, de aquellas disposiciones que están críticamente relacionadas con la preservación y el funcionamiento de las instituciones democráticas". Expresó además que el derecho de cada persona a estar bien informada es un requisito previo fundamental para una sociedad democrática.

En ese sentido, es de particular relevancia lo señalado por el Tribunal en el caso La Nación, sobre la transparencia de las actividades gubernamentales y su incidencia en la libertad de expresión, al permitir el funcionamiento de "mecanismos de control" para que los ciudadanos denuncien toda irregularidad. En el mismo caso, el Tribunal reconoció que el "control democrático" por parte de la sociedad civil exige reducir al mínimo las restricciones al debate de cuestiones de interés público.

En el caso Canese la Corte consideró la importancia de la libertad de expresión en el contexto de una campaña electoral afirmando que ésta "permite una mayor transparencia y fiscalización de las futuras autoridades de su gestión"

Del amplio reconocimiento hecho por la Corte sobre el papel que juega la divulgación de información en una sociedad democrática, se deriva que existe una obligación positiva por parte del Estado de brindar esa información a los ciudadanos, especialmente cuando se encuentra en su poder y no existen otros medios para acceder a ella. Esto, sin perjuicio de las limitaciones excepcionales que establezcan previamente las leyes, con base en los reconocidos principios de proporcionalidad y de necesidad.

Un elemento importante a señalar es que se requiere también de la concientización de los actores políticos y sociales y de la movilización y participación de la sociedad civil para garantizar el ejercicio de este derecho. A pesar de los significativos avances normativos, queda todavía mucho por hacer para lograr un clima de respeto y efectiva vigencia del derecho al acceso de la información. En este sentido la mayor transparencia que se logra entre otras cosas con el dictado y aplicación de leyes de acceso a la información pública, disminuye la corrupción. Ello trae aparejado un aumento en las posibilidades de inversión y de la capacidad productiva de los Estados, es decir que incide directamente en su desarrollo y en la necesaria justicia social que debe presidirlo.

Esta sesión especial se constituye pues en un esfuerzo más que esperamos contribuya a que los Estados Miembros de la OEA y los demás actores involucrados vuelquen a favor del derecho al acceso a la información pública, a su normatización, de modo que se facilite cada vez más su ejercicio a todas y todos los ciudadanos.

ANEXO II:

CONTRIBUCIÓN DEL DEPARTAMENTO DE MODERNIZACIÓN DEL ESTADO Y GOBERNABILIDAD A LA SESIÓN ESPECIAL DE LA CAJP SOBRE ACCESO A LA INFORMACIÓN PÚBLICA

Pablo Zúñiga, Director
Departamento de Gobernabilidad y Modernización del Estado

Con el objeto de apoyar a esta Comisión en el examen de la posibilidad de elaborar un programa interamericano sobre acceso a la información pública, el cual es el objeto de esta Sesión Especial, como lo establece la Resolución 2418 de la más reciente Asamblea General, consideramos importante presentar aquí las consideraciones que sirvieron de base para el aporte del Departamento de Modernización del Estado y Gobernabilidad al documento CP/CAJP-2599/08. Dicho documento, como lo estipula también la misma Resolución, constituye el insumo central para la reflexión en esta Sesión.

Como es sabido por todos, el derecho de acceso a la información tiene una estrecha relación con niveles más elevados de transparencia e integridad en las instituciones públicas y es un aspecto clave de la democracia y un elemento esencial para asegurar mejores condiciones de gobernabilidad. Representa un medio para promover la participación ciudadana, la rendición de cuentas y la confianza en las instituciones gubernamentales, así como niveles más elevados de eficiencia y responsabilidad en el manejo de los recursos públicos. Facilita el ejercicio adecuado de los derechos sociales, civiles y políticos de los ciudadanos, en tanto que amplía las posibilidades de estos últimos de influenciar y tomar parte en los procesos decisorios.

El debido ejercicio del derecho de acceso a la Información Pública fortalece la relación entre gobernantes y gobernados y posibilita la adecuada acción e interacción de todos los actores estratégicos de la sociedad; En esas condiciones, permite a las personas conocer cómo ejercen el mandato los gobernantes elegidos, a la vez que garantiza que la toma de decisiones colectivas se produzca sobre la base de un entendimiento informado. Esta dinámica constituye el fundamento primordial para la gobernabilidad democrática, elevando la confianza en los funcionarios e instituciones del Estado y contribuyendo a incrementar la legitimidad de los mismos.

Es además un elemento central de la lucha contra la corrupción, la cual se ha convertido en una de las amenazas más poderosas que enfrenta el desarrollo económico y social de todo Estado y que conspira en contra de la recta y correcta administración de los recursos públicos. La apertura de canales de información, control y participación ciudadana hace posible señalar los abusos, errores y deficiencias en la función pública y se convierte además en un elemento disuasivo de eventuales actos de corrupción.

Teniendo en cuenta lo anterior, consideramos primordial tener en cuenta los siguientes puntos, con el fin de promover acciones que contribuyan a asegurar los beneficios que ofrece el derecho de Acceso a la Información a las Democracias de nuestros países:

1. Es indiscutible la importancia de una clara voluntad política, tanto en la adopción de marcos jurídicos como en la formulación de políticas para su efectiva implementación, teniendo en cuenta que los objetivos primordiales del acceso a la información se pueden resumir en términos de: mejorar la función de gobernar, informar a los ciudadanos y rendir cuentas de las acciones de los administradores del Estado.

2. Si bien aún es prioritario fortalecer la normativa relativa al acceso a la información pública, los esfuerzos en ese sentido, por sí solos, no son suficientes; es indispensable, también, generar mecanismos para implementar la legislación existente.

3. Entre las dificultades que se han detectado en el proceso de implementación de las normas, se pueden mencionar las deficiencias en el manejo de los registros públicos y la sistematización y categorización de la información. Algunas de las razones para esto pueden ser la capacidad limitada de almacenamiento y entrenamiento insuficiente para el manejo de las solicitudes de información.

4. Una tarea inaplazable es dar a conocer entre los ciudadanos la existencia y el contenido de los recursos y los mecanismos legales de acceso a la información, y sobre todo, divulgar ampliamente el mensaje sobre el derecho que le asiste de informarse y sobre la importancia y los alcances de ejercer ese derecho.

5. Si bien es necesario tomar como punto de partida la situación, características y necesidades propias de cada país, resulta también de gran utilidad conocer las prácticas y procesos seguidos por otros países en materia de acceso a la información y generar medios efectivos de intercambio de experiencias.

6. Es indispensable tener conciencia sobre la responsabilidad que implica el suministro adecuado y efectivo de la información, en especial aquella que se refiere a las acciones y políticas gubernamentales. Es decir, la información que se ofrece debe ser útil, verificable y comparable, y debe incluir indicaciones claras sobre los retos y las áreas de mayor éxito o dificultad y las acciones o planes a seguir. Esto apunta a garantizar las condiciones para un ejercicio más consciente y responsable de los derechos por parte de la ciudadanía.

7. Una vez definidas, es necesario contar con los instrumentos que permitan aplicar de manera efectiva las políticas relativas al acceso a la información; es decir, dichas políticas deben estar acompañadas de diagnósticos adecuados sobre la situación de acceso a la información y sobre los problemas más relevantes relacionados con las expectativas y el suministro de la información. También es indispensable contar con los mecanismos y recursos que se requieren para la implementación de las políticas, así como disponer de indicadores y mecanismos de seguimiento y evaluación de dicha implementación.

8. Es evidente la relevancia del rol desempeñado por las organizaciones de la sociedad civil en la promoción y avances del derecho de acceso a la información. Por ello, se considera primordial asegurar espacios y mecanismos que faciliten su participación.

9. Construir las bases y la infraestructura que se requiere para facilitar y hacer eficiente el suministro de información pública implica cambios profundos, tanto en los procesos, plataformas y aspectos operacionales, como en la misma cultura organizacional, las creencias y actitudes de los

funcionarios públicos, y también de los ciudadanos. Esto trae consigo la necesidad de llevar a cabo campañas y procesos de entrenamiento y capacitación.

10. Por último, vale la pena señalar que el gobierno electrónico ofrece medios prácticos para garantizar y facilitar el acceso a la información pública. Mediante el uso de tecnologías de información, los gobiernos fortalecen su gestión a través de mejorar el acceso a una creciente gama de servicios y a la información, promoviendo una mayor transparencia, eficiencia y responsabilidad por parte de los servidores públicos.

Quiero terminar con una cita de un texto de Joan Prats, del Institut Internacional de Governabilitat de Catalunya y Universitat Oberta de Catalunya titulado: "Ética del oficio politico":

"Los buenos políticos impulsan siempre la transparencia, combaten la opacidad en la que se envuelven siempre los malos políticos. Sin transparencia en el ámbito público tiene poco sentido la participación política y se hace muy difícil la rendición de cuentas. La transparencia se mide por el grado que un sistema institucional permite a los ciudadanos o a las organizaciones interesadas acceder eficazmente a información relevante, confiable, suficiente y de calidad en el ámbito económico, social o político que resulte necesario para la defensa de sus intereses o para su participación en la definición de los intereses generales. Estos flujos de información no pueden ser asegurados por los mercados, en parte porque puede haber beneficios importantes derivados de la no revelación. Por eso el rol de la política y del estado resulta crítico en este punto, aunque nada fácil pues también hay rentas políticas derivables de la opacidad."

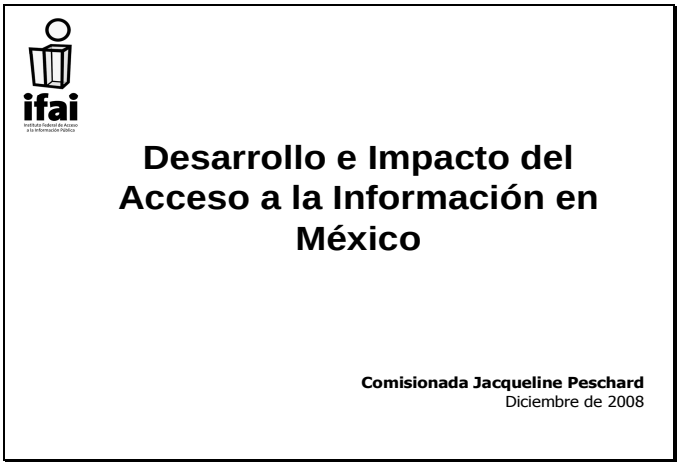
A continuación me permito presentar a la Comisionada Jacqueline Peschard Mariscal, del Instituto Federal de Acceso a la Información Pública (IFAI) de México.

Como todos saben, México es uno de los países de América Latina que se encuentra a la vanguardia en cuanto al tema de acceso a la información pública, puesto que no sólo ha desarrollado un amplio marco legal, sino que cuenta con un organismo especializado en la materia, a cuyo cargo se encuentra garantizar la implementación de las leyes mediante la promoción y diffusion del Derecho de Acceso a la Información, la supervisión de los procesos de información, la protección de los datos personales y la revisión de las denuncias sobre la materia.

Pero dejemos que sea ella misma quien nos ilustre sobre estos importantes avances, que sin duda serán muy útiles para la reflexión en el seno de esta Comisión.

ANEXO III:

DESARROLLO E IMPACTO DEL ACCESO A LA INFORMACIÓN EN MÉXICO

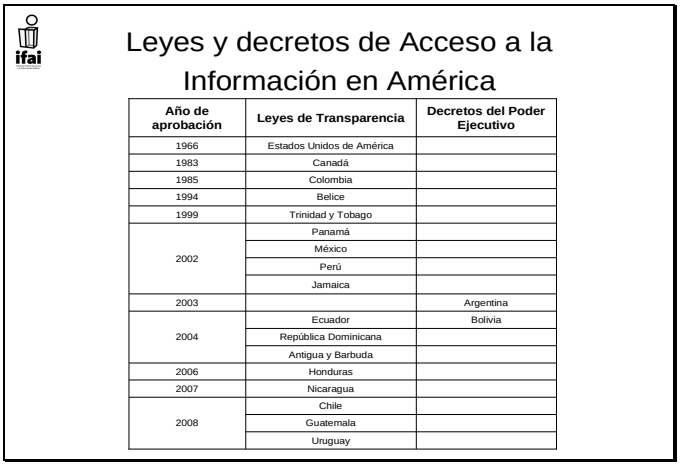


ifai

Instituto Federal de Acceso a la Información Pública

Desarrollo e Impacto del Acceso a la Información en México

Comisionada Jacqueline Peschard
Diciembre de 2008



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Leyes y decretos de Acceso a la Información en América

Año de aprobación	Leyes de Transparencia	Decretos del Poder Ejecutivo
1966	Estados Unidos de América	
1983	Canadá	
1985	Colombia	
1994	Belice	
1999	Trinidad y Tobago	
2002	Panamá	
	México	
	Perú	
	Jamaica	
2003		Argentina
2004	Ecuador	Bolivia
	República Dominicana	
	Antigua y Barbuda	
2006	Honduras	
2007	Nicaragua	
2008	Chile	
	Guatemala	
	Uruguay	

Introducción del derecho en el marco normativo mexicano

- En 1977 se introdujo parcialmente el derecho de acceso al marco normativo mexicano. Se agregó a la Constitución esta frase: “el derecho a la información será garantizado por el Estado”.
- En diciembre de 2001 se presentó la iniciativa de Ley Federal de Transparencia.
- El 11 de junio de 2002 entró en vigor la referida Ley.
- El 21 de diciembre de 2002 se creó el IFAI.
- Desde el 12 de junio de 2003 cualquier persona puede presentar solicitudes de información a todos los sujetos obligados de la Ley Federal.

Principios que rigen el acceso a la información en México

- La Ley se interpreta bajo el principio de **máxima publicidad**.
- No se requiere acreditar **interés jurídico**.
- No es necesario exponer el uso que se le dará a la información.
- El ejercicio del derecho es **gratuito**.
- El procedimiento de acceso y revisión es **sencillo** y **expedito**.

Excepciones del acceso a la información en México

- Seguridad nacional, seguridad pública.
- Información que pueda menoscabar las relaciones internacionales, dañar la estabilidad financiera, económica o monetaria del país, poner en riesgo la vida o salud de cualquier persona.
- Los secretos comercial, industrial, fiscal, bancario, fiduciario u otro considerado como tal por una disposición legal.
- Las averiguaciones previas.
- Los expedientes judiciales o de los procedimientos administrativos seguidos en forma de juicio en tanto no hayan causado estado.
- La que contenga las opiniones, recomendaciones o puntos de vista que formen parte del proceso deliberativo de los servidores públicos, hasta en tanto no sea adoptada la decisión definitiva.
- Los datos personales.

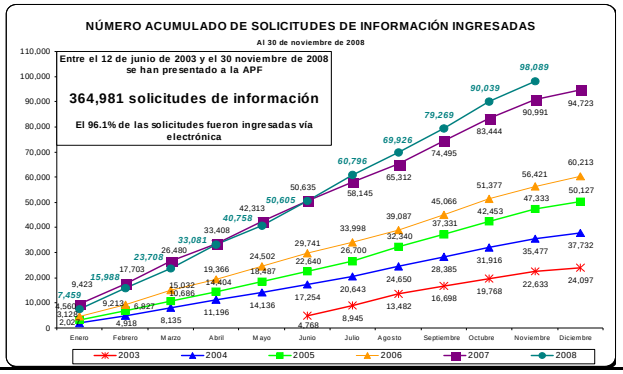
Sujetos Obligados de la Ley de Transparencia

Sujetos Obligados	**Poder Ejecutivo Federal**	Es el órgano encargado de garantizar el ejercicio del derecho en este poder.
	Poder Judicial Federal	Cada uno de estos poderes y órganos constitucionales autónomos crean sus organismos encargados de garantizar el ejercicio del derecho.
	Poder Legislativo Federal	
	Órganos Constitucionales Autónomos (Banco de México, Instituto Federal Electoral, Comisión Nacional de Derechos Humanos, etc.)	

Instituto Federal de Acceso a la Información Pública

- El IFAI fue creado con la Ley Federal de Transparencia en 2002.
- Es un órgano con autonomía operativa, presupuestaria y de decisión.
- Se encarga, principalmente, de tres actividades:
  - Resolver las inconformidades a las respuestas que las dependencias y entidades del Poder Ejecutivo Federal dan a las solicitudes de información publica y de acceso y corrección de datos personales de los ciudadanos.
  - Proteger los datos personales en poder de las dependencias y entidades del Poder Ejecutivo Federal.
  - Promover y difundir el ejercicio del derecho de acceso a la información.

Solicitudes de información ingresadas a la Administración Pública Federal

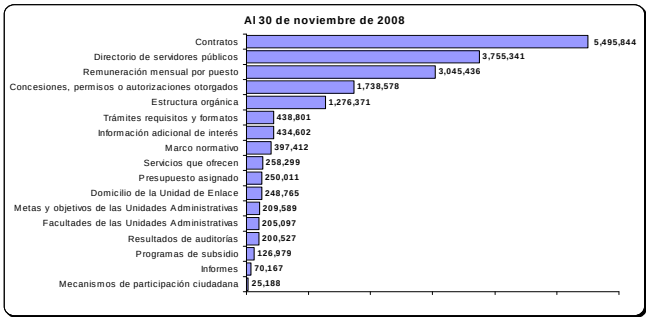


Solicitudes de información hechas de conformidad con la Ley de Transparencia.

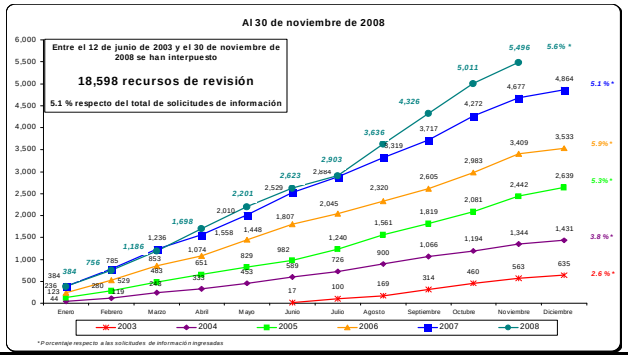
Temas relevantes de las solicitudes de información:

- Documentos que justifiquen las decisiones relacionadas con contrataciones gubernamentales, así como con el otorgamiento de autorizaciones, concesiones y permisos.
- Registros sanitarios, expedientes médicos (Secretaría de Salud).
- En materia ambiental proyectos que necesitan reportes de impacto ambiental. (Semarnat.)
- Multas y sanciones aplicadas a compañías en diferentes áreas de interés público: ambiental, competencia económica, protección al consumidor, etc.
- Sanciones impuestas en contra de servidores públicos.
- Estadísticas gubernamentales y bases de datos útiles para compañías (contratación de servicios o adquisición de activos, registro de proveedores, etc).

Consultas al Portal de Obligaciones de Transparencia



Número acumulado de recursos de revisión interpuestos ante el IFAI



Recursos de revisión resueltos

Al 3 de diciembre de 2008

Total acumulado de recursos de revisión resueltos al 3 de diciembre de 2008:17,694

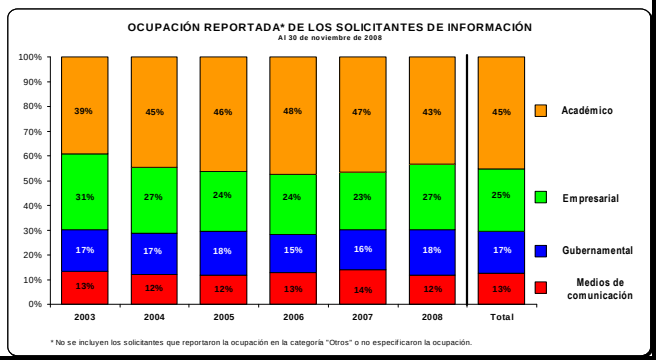
RECURSOS DE REVISIÓN RESUELTOS DE FORMA[1]	RECURSOS DE REVISIÓN RESUELTOS DE FONDO
7,978 (45%)	9,716 (55%)

RECURSOS DE REVISIÓN RESUELTOS DE FONDO[2]

TOTAL	MODIFICA	REVOCA	CONFIRMA
9,716	3,768 (39%)	2,871 (29%)	3,077 (32 %)

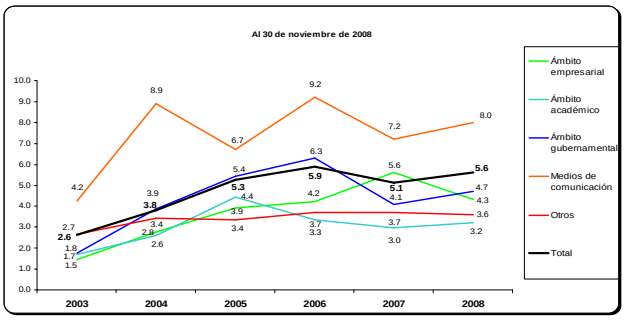
[1] Se refiere a sobreseimientos (por desistimiento o por entrega de la información), desechamientos (por incompetencia del IFAI o por extemporaneidad del recurso), etc.
[2] **Modifica** se refiere a los recursos en los que sólo una parte de la respuesta del sujeto obligado fue confirmada.
Revoca se refiere a los recursos en los que se revoca la totalidad de la respuesta del sujeto obligado.
Confirma se refiere a los recursos en los que se confirma la respuesta del sujeto obligado.

Perfil del solicitante



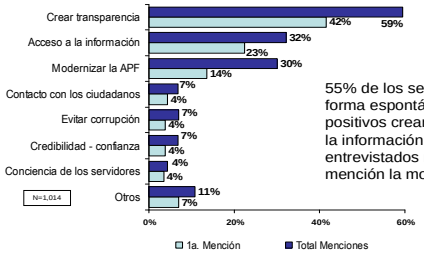
* No se incluyen los solicitantes que reportaron la ocupación en la categoría "Otros" o no especificaron la ocupación.

Perfil del recurrente



Efectos percibidos de la Ley

¿Cuál cree que son los efectos **positivos** más importantes de la aplicación de esta Ley?



55% de los servidores mencionan de forma espontánea como efectos positivos crear transparencia y acceso a la información. Sólo 14% de los entrevistados refiere en primera mención la modernización de la APF

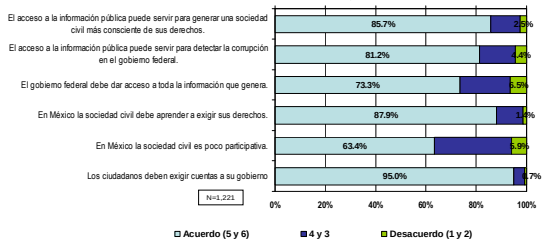
Centro Internacional de Estudios de Transparencia y Acceso a la Información. "La cultura de los servidores públicos alrededor de los temas de transparencia y acceso a la información." Encuesta presentada en junio de 2007

Actitudes hacia la participación ciudadana*

En general la gran mayoría de los informantes cree que el acceso a la información pública puede traer beneficios como una sociedad civil más consciente y la posibilidad de detectar corrupción.

Sin embargo, también creen que en México la sociedad civil es poco participativa y debe aprender a exigir sus derechos

¿Qué tan de acuerdo está con que...



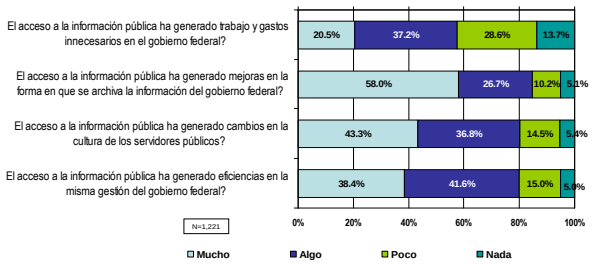
* Estas respuestas parecen muy altas

Centro Internacional de Estudios de Transparencia y Acceso a la Información. "La cultura de los servidores públicos alrededor de los temas de transparencia y acceso a la información." Encuesta presentada en junio de 2007

Actitudes hacia el acceso a la información

Se observa nuevamente la dualidad en la opinión: aunque los servidores creen que el acceso a la información genera trabajo y gastos innecesarios (58% del total), la gran mayoría (entre 80 y 85% del total) cree que el acceso a la información ha generado mejoras en el archivo de la información y eficiencias en la misma gestión pública.

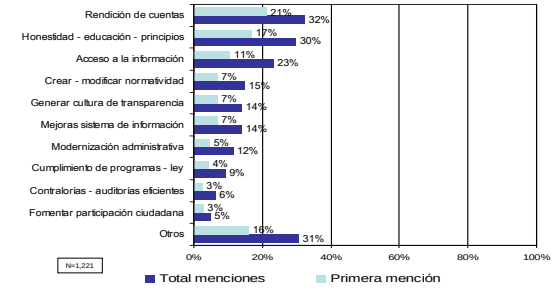
¿Qué tanto cree usted que..



Centro Internacional de Estudios de Transparencia y Acceso a la Información. "La cultura de los servidores públicos alrededor de los temas de transparencia y acceso a la información." Encuesta presentada en junio de 2007

Corrupción

De forma espontánea los servidores dicen que los elementos que pueden combatir la corrupción en el gobierno federal son rendición de cuentas (21% de las primeras menciones), educación o valores morales y generación de cultura de transparencia (24%) y el acceso a la información (11%).



Centro Internacional de Estudios de Transparencia y Acceso a la Información. "La cultura de los servidores públicos alrededor de los temas de transparencia y acceso a la información." Encuesta presentada en junio de 2007

¿Es la Ley de Acceso a la Información mexicana una verdadera institución de transparencia o únicamente un escaparate, considerando la tradición de opacidad del estado mexicano?

- Fomenta la participación social a través de una sociedad mejor informada. La información es crucial para la expansión de la participación de la ciudadanía en democracias contemporáneas.
- Reduce la discrecionalidad en el poder de los servidores públicos y fomenta el Estado de Derecho. Por medio del acceso a la información, ha sido posible detectar actuaciones deficientes del gobierno, incompetencia administrativa.
- Ayuda a construir sociedades abiertas y con menor desigualdad.
- Un impacto importante: Se ha difundido dentro de la sociedad que el acceso a la información gubernamental es un derecho individual fundamental *(66% de la población identifica a la LFTAI)*
- Ha fomentado el desarrollo de una prensa independiente y mejor informada, lo cual ha probado ser indispensable para que los gobiernos rindan cuentas de sus acciones.

Retos

- Establecimiento de un sistema electrónico para el acceso a la información en las 32 entidades federativas y los municipios con una población mayor de 70, 000 habitantes. Actualmente 27 entidades han adoptado INFOMEX.
- Completar el "Ciclo Legislativo" (Leyes sobre archivos y protección de datos personales en el sector privado).
- Promover con mayor fuerza una cultura de transparencia y rendición de cuentas dentro del servicio público.

ANEXO IV:

El DERECHO DE ACCESO A LA INFORMACIÓN PÚBLICA EN VENEZUELA

Documento presentado por la Delegación de Venezuela

El Gobierno Bolivariano de Venezuela quiere ratificar en la mañana de hoy su más alto compromiso con la garantía plena al derecho humano fundamental que tienen todos los ciudadanos de nuestro hemisferio al acceso a la información pública.

La República Bolivariana de Venezuela en concordancia con sus principios Constitucionales e ideológicos fundados en la democracia participativa y protagónica del pueblo, quiere resaltar la importancia de el acceso a la información pública como un derecho estrechamente vinculado a las posibilidades de ejercicio pleno de los derechos a la participación por parte de comunidades y ciudadanos, así como una vía que posibilita una mayor transparencia en la gestión pública.

En ese sentido y teniendo en cuenta lo antes dicho quisiéramos mencionar los aspectos legales más importantes que promueven y garantizan el derecho de acceso a la información pública en Venezuela.

La Constitución de la República Bolivariana de Venezuela establece el acceso a la información pública como un derecho ciudadano fundamental en un contexto integral.

En efecto nuestra constitución determina el derecho que tiene todo ciudadano de participar libremente de manera directa o por medio de sus representantes en los asuntos públicos a través de la participación en la formación, ejecución y control de la gestión pública, en aras a materializar el principio de protagonismo del pueblo, a través del cual se busca el desarrollo, individual y/o colectivo de la sociedad venezolana.

Así mismo nuestra Carta Magna establece el derecho de toda persona a acceder a información y datos sobre sus bienes contenidos en registros públicos o privados. De igual manera, establece el acceso a documentos contentivos de información de interés para comunidades o grupos de personas, al tiempo que determina el derecho que toda persona tiene de presentar solicitudes ante cualquier funcionario público.

Por otra parte se consagra el derecho de todos los ciudadanos y ciudadanas a recibir información oportuna, veraz e imparcial de la misma forma como propicia el control sobre los servicios informáticos para proteger a los ciudadanos y garantizar el ejercicio de sus derechos. De esta forma el Estado queda comprometido a permitir el acceso universal a la información pública.

El derecho de acceso a la información pública en Venezuela posee otros mandatos constitucionales; Por ejemplo, establece que los electores y electoras tienen el derecho a que sus representantes rindan cuentas de manera transparente y periódicamente, determina las condiciones de funcionamiento y la obligación de informar a la población de la administración pública.

Además, manda que la gestión fiscal se encuentre signada por los principios de transparencia y la rendición de cuentas

Es importante mencionar igualmente las leyes nacionales que también consagran el derecho a la información pública.

La Ley Orgánica de Administración Pública, contempla la obligación de las agencias estatales de informar en forma debida y completa a la ciudadanía no sólo en cuanto a temas específicos sino también en cuanto a su estructura, normas y procedimientos.

La Ley Orgánica del Poder Público Municipal, prescribe una serie de mecanismos para garantizar la adecuada información de los ciudadanos y ciudadanas, por ejemplo la facultad de los ciudadanos para solicitar la información y documentación administrativa que sea de interés para la comunidad cuando sea necesaria para ejercer la contraloría social, esta solicitud obliga legalmente a la autoridad administrativa municipal a suministrar lo que se le ha otorgado, lo cual de no cumplirse por parte de concejales particularmente que son los funcionarios municipales, les genera una sanción previstas en esta Ley, la cual consiste en la suspensión de su sueldo hasta que sea presentada la cuenta ante los ciudadanos.

Importante también resulta destacar, que a nivel nacional la Ley contra la corrupción establece que toda información sobre la administración del patrimonio público tienen carácter público, por lo cual deben informar a los ciudadanos publicando trimestralmente un informe detallado de fácil manejo y comprensión sobre el patrimonio que administran con la descripción y justificación de su utilización y gasto. En caso de omitirse la obligación a presentar el informe, la ley contra la Corrupción establece una sanción pecuniaria a los titulares de los órganos del poder público que omitiesen este deber.

Finalmente La Ley Orgánica de Planificación es otro instrumento legal que determina el compromiso ineludible de los entes públicos de informar a los ciudadanos sobre los asuntos de su interés.

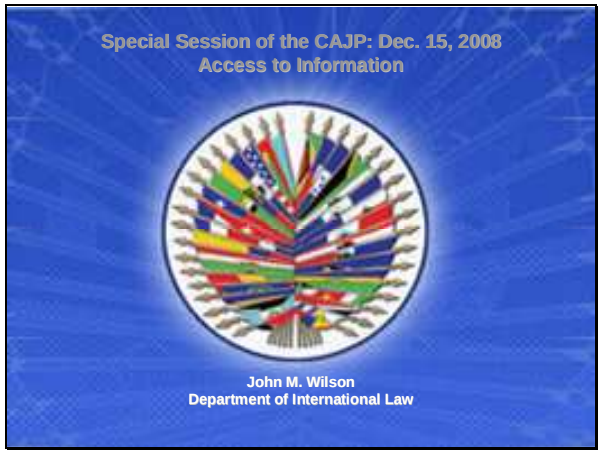
De esta manera el Gobierno Bolivariano de Venezuela quiere reiterar su más alto apego a los principios legales internacionales del derecho de acceso a la información pública.

ANEXO V:

RECOMENDACIONES LEGISLATIVAS Y DE POLÍTICA PARA EL DERECHO DE ACCESO A LA INFORMACIÓN PÚBLICA

John M. Wilson
Oficial Jurídico Principal
Departamento de Derecho Internacional

Presentación en PowerPoint:



CAJP Study

- AG/RES. 2288 OP 8(a) and 13 (a)
- Joint Document: DIL / DSMGG / IAJC / IACHR SR / Americas Trust / CAJP
- CAJP / Carter Center / civil society
- Presentation: CAJP 04/24/2008

Recommendations Study

- **Structure:**
  - Human Rights
  - Democratic Rights
  - Recommendations:
    - Policy
    - Legal
  - Best Practices

Human Right

ATI established as human right in various int'l instruments & jurisprudence

- Obligations of the State
- Case - Law
- Limits Exceptions

Democratic Right

Political decisions must be based on ATI -- an indispensable to effective exercise of political rights, to functioning of democracy, to governance

- Citizen participation
- Transparency and Accountability
- Legitimacy and Trust in Government
- Efficiency in Public Administration

CAJP Study

Human Right +
Democratic Right
State Obligations

→ **Recommendations**

Recommendations

- **Policy Recommendations**
  - Member States
  - Organization of American States
- **Legislative Recommendations**

Policy Recommendations - States

- Make ATI inherent to public duties & state functions
- Enact legislation on ATI - rescind laws contrary to ATI
- Consider drafting & implementation ATI instrument
- Resources needed to create/maintain ATI system
- Create court system to hear appeals
- Mechanisms to monitor compliance
- Designate information officials
- Educate public on ATI
- Train officials on ATI

Policy Recommendations - OAS

- Adopt - implement an internal information policy
- Draft convention, model law, other instrument on ATI
- Assist states in implementing right of ATI
- Assist states to establish mechanisms for reporting progress in enactment, implementation, enforcement
- Assist states in providing education and training
- Help states share best practices and lessons learned
- Include section on ATI in annual report IACHR (SR)
- Prepare ATI seminars and workshops
- Encourage donors to support state efforts
- Prepare recommendations on Data Protection

Legislative Recommendations

a. Fundamental Principles
b. Presumption of Publicity
c. Requesting Process
d. Response to the Request
e. Exceptions
f. Oversight and Appeals Process

Principle: Maximum Disclosure

- **Adopt comprehensive legislation based on principle of maximum disclosure**
- **Include Information in all its forms:**
  - **NO limits to manner in which information is defined**
  - **NO limits to manner in which information recorded**
  - **NO limits to its form or source**
  - **NO limits to the date of creation or official status**
  - **NO limits whether or not information is classified**

Principle: Maximum Disclosure

Applies to State Actors:

- **ALL state agencies and officials (federal & local)**
- **ALL branches of government (leg, exec, judicial)**
- **ALL agencies whether established by Constitution or statute**

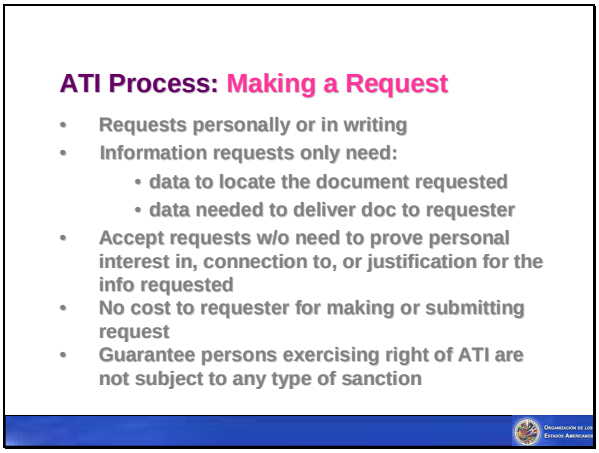
Applies to Non-State Actors:

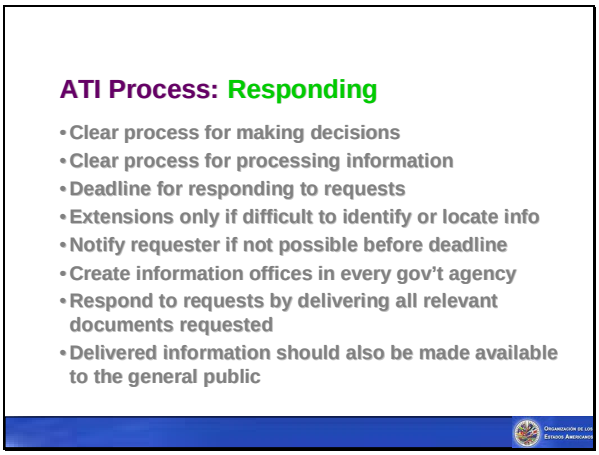
- **ALL private actors that receive public funds or benefits, carry out public functions or exploit natural resources.**
- **Require private entities to divulge requested information when it pertains to the exercise or protection of human rights**

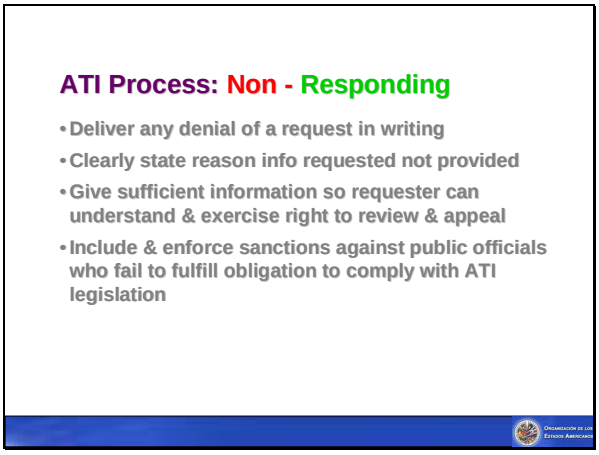
Presumption of Publicity

ALL information in possession of the state is public & should be disclosed to all persons in transparent and accessible manner:

- States must make all core public information accessible in clear and methodical manner
- Create a compulsory list of core information that must be published preemptively


ATI Process: Making a Request
• Requests personally or in writing
• Information requests only need:
• data to locate the document requested
• data needed to deliver doc to requester
• Accept requests w/o need to prove personal interest in, connection to, or justification for the info requested
• No cost to requester for making or submitting request
• Guarantee persons exercising right of ATI are not subject to any type of sanction


ATI Process: Responding
• Clear process for making decisions
• Clear process for processing information
• Deadline for responding to requests
• Extensions only if difficult to identify or locate info
• Notify requester if not possible before deadline
• Create information offices in every gov't agency
• Respond to requests by delivering all relevant documents requested
• Delivered information should also be made available to the general public


ATI Process: Non - Responding
• Deliver any denial of a request in writing
• Clearly state reason info requested not provided
• Give sufficient information so requester can understand & exercise right to review & appeal
• Include & enforce sanctions against public officials who fail to fulfill obligation to comply with ATI legislation

Exceptions to Disclosure

All exceptions must be limited:

- Must be previously established by law
- Must respond to objective permitted under int'l law
- Must interfere as little as possible with right of ATI
- Exceptions limited by Inter-American Case Law for States Parties to American Convention on Human Rights (Claude Reyes v. Chile)

Burden of Proof than an Exception applies falls Exclusively on the State

Exceptions to Exceptions

- Exceptions must be subject to public interest override: info normally exempt should be divulged when public interest outweighs exception
- Partial disclosure when some (but not all) information in a document is protected by exception = Redaction
- Compulsory sunset system that mandates eventual disclosure after reasonable period of time

Appeals / Commissions

- **Create independent/impartial oversight system with authority to monitor ATI implementation**
- **Ensure request for information that are delayed, denied, or infringed have access to effective and low-cost appeal procedure before independent & impartial body**
- **Create an independent and impartial appeals system composed of an independent agency, commission, or court (or any combination of the three) to hear cases of denied appeals**

Best Practices

CAJP Report

The Report compiles the answers to the questionnaire presented by the CAJP and it contains the following elements:

1) Questionnaire of the CAJP
2) Table answers by States
3) Table answers by Civil Society
4) Recommendations from Civil Society

Best Practices: Questionnaire

CP/CAJP-2548/07: 4 States (Argentina, Chile, Colombia, Peru)
Civil Society Organizations (11 States)

Re-Circulate: December 15 , 2008
State Response: February 28, 2008

IAJC Principles

73rd REGULAR SESSION August 4 to 14, 2008 Rio de Janeiro, Brazil	OAS/Ser.Q CJI/RES. 147 (LXXIII-O/08) 7 August 2008

CJI/RES. 147 (LXXIII-O/08)
Principles on the right of access to Information

Ten IAJC Principles

1. In principle, all information is accessible…
2. The right of ATI applies to all public bodies…
3. The right to ATI applies to all information defined broadly…
4. Public bodies should disseminate information proactively…
5. Clear, fair, non-discriminatory and simple rules should be put in place regarding the processing of requests…
6. ATI exceptions should established by law, clear & narrow
7. Burden of proof in any denial of ATI falls on state…
8. Individuals should have the right to appeal any refusal…
9. Willfully denials or obstructions to ATI subject to sanction.
10. Measures should be taken to promote, to implement and to enforce the right to access to information…

Inter-American Program

Type of Instrument

- **Hard Law Instrument: Treaty, Convention, Protocol**
- **Soft Law Instrument: Model Law, Regulatory Guidelines, Principles, Inter-American Program**

Hard Law	Soft Law
• Legally Binding	• Not Legally Binding
• Clear Obligations for the State	• Unclear Obligations the State
• Regular Adoption	• Irregular Adoption
• Difficult Negotiation	• Ease of Negotiation
• Lowest Common Denominator	• More Comprehensive Text

ANEXO VI:

Access to Information as a Fundamental Human Right: Ten Principles on Access to Information Approved by the Inter-American Juridical Committee

Jaime Aparicio Otero
President Inter-American Juridical Committee
Rapporteur on Acces to Information
Organization of the American States

Information rights include rights to create and communicate information (e.g., freedom of expression, freedom of association), to control others' access to information (e.g., privacy, data protection and intellectual property), and rights to access information (e.g., freedom of thought, the right to read). Some information rights have been recognized as human rights in international instruments (e.g., Universal Declaration of Human Rights, The AMERICAN CONVENTION ON HUMAN RIGHTS "PACT OF SAN JOSE, COSTA RICA, on the Rights of the Child, Declaration on the Rights of Indigenous People).

"The philosophical discussion of access to information has focused on intellectual freedom, e.g., rights to free speech and to a free press. While intellectual freedom is crucial, it is at best only half of the answer to people's crucial information needs. Free speech and freedom of the press gain their primary value from their capacity to provide people with information and knowledge."

I will briefly refer in my presentation to each one of the ten principles on access to information approved by the IJC in late August:

The IAJC took into consideration the paper organized by the Department of International Law of the OAS, the main international declarations on the right of access to information adopted by several intergovernmental organs and non-governmental organizations, including, among others, the principles of Article 19, The Right to Public Knowledge, The Lima Principles, The Ten Principles of the Right to Know of the Open Society Justice Initiative and the Atlanta Declaration and Plan of Action for the development of the right of access to information, under the auspices of the Carter Center;

We hope that the principles adopted by the IAJC would have an impact in the region if we work together in a region were many countries are still in a very basic stage, due to cultural and political traditions of secrecy inherited of authoritarian practices.

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."

The most important contribution of the recently approved PRINCIPLES ON THE RIGHT OF ACCESS TO INFORMATION by the Inter-American Juridical Committee, related to freedom Information of information in the Americas is the claim that “Access to information is a fundamental human right.

Access to information is a fundamental right. Allowing people to seek and receive public documents serves as a critical tool for fighting corruption, enabling citizens to more fully participate in public life, making governments more efficient, encouraging investment, and helping persons exercise their fundamental human rights.

This principle was also established in the decision of the Inter-American Court on Human Rights in re Claude Reyes vs. Chile of September 19, 2006, in which it was decided that the right to the freedom of expression enshrined in Article 13 of the American Convention on Human Rights comprises the right to access to information.

According to the Court, Article 13 contains an implied right of general access to government-held information, and States must adopt legal provisions to ensure the right is given full effect. The Court specifically ordered Chile to adopt adequate procedures to protect the right in the future and to train public officials to uphold the public's right to information.

The Court stated that: article 13 of the Americas Human Rights Convention, protects the right of all persons to request access to information held by the State, with the exceptions permitted by the restrictions regime of the Convention.

As a result, jurisprudence in the Americas supports now the right of persons to receive such information and the positive obligation on the State to supply it, so that the person may have access to the information or receive a reasoned response when, for ground permitted by the Convention, the State may limit access to it in the specific case.

The IACHR, (who has jurisdiction in most of the countries) also conclude that “access to information held by the State permits participation in public governance.” The Court ruled that “in a democratic society it is indispensable that state authorities are governed by the principle of maximum disclosure, which establishes the presumption that all information should be accessible, subject to a restricted system of exceptions.”

Principle 2:

“The right of access to information 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.”

The right of access applies to all public administrations, institutions and powers, including private bodies performing public functions or using public funding; that applicants must not explains why they want the information nor what they intend to do with it.

Principle 3:

“The right to access to information applies to all significant information, defined broadly to include everything which is held or recorded in any format or medium.”

The general principle of publicity is that anyone can request and receive information; that all information be accessible unless covered by exceptions envisaged in a specific law; Certain information may legitimately be secret on grounds of national security or protection of other overriding interests. However, secrecy laws should define national security precisely and indicate clearly the criteria which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label “secret” for purposes of preventing disclosure of information which is in the public interest. Secrecy laws should set out clearly which officials are entitled to classify documents as secret and should also set overall limits on the length of time documents may remain secret. Such laws should be subject to public debate.

Principle 4:

“ 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.”

Public 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. Access to information is a citizens’ right. As a result, the procedures for accessing information should be simple, rapid and free or low-cost. Public authorities should be required to meet minimum record management standards. Systems should be put in place to promote higher standards over time.

Principle 5:

“ Clear, 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.”

Although governmental participation is a crucial component of our democratic heritage, it is also a fragile one. For every citizen seeking to discover what's going on behind the closed doors of government offices, there's often at least one bureaucrat coming up with reasons to keep things secret. Secret government is dangerous. Public trust is the nucleus of our democracy and open government keeps public officials accountable and presumably honest. The more government hides, the more distrust there is in government.

By using e-mail, for example, the cost of copying is eliminated and public agencies can't manipulate the law to make obtaining public information cost prohibitive and accessible only to those who could afford to pay the costs imposed by officials.

Principle 6:

“ Exceptions to the right to access should be established by law, be clear and narrow”.

As soon as there is a compromise on the principle that all information should be public, there is clearly a danger that the authorities holding information will seize on any excuse to keep it secret. The principle that exceptions to public access should be 'narrowly drawn' is aimed at cutting off the possibility of such excuses.

Principle 7:

“The burden of proof in justifying any denial of access to information lies with the body from which the information was requested.”

The body to which the information is requested should clearly define the types of information that may be made an exception and clearly define the circumstances in which these may be made an exception.

Principle 8:

“ Individuals should have the right to appeal against any refusal or obstruction to provide access to information to an administrative jurisdiction. There should also be a right to bring an appeal to the courts against the decisions of this administrative body.”

“Those requesting information should have the possibility to appeal any refusals to disclose to an independent body with full powers to investigate and resolve such complaints.

Principle 9:

“ Anyone who willfully denies or obstructs access to information in breach of the rules should be subject to sanction.”

Sanction the denial of access to public records and the prosecution of a public official would be an effective reminder to others that giving access to public information isn't discretionary, its mandatory.

Principle 10”

“Measures should be taken to promote, to implement and to enforce the right to access to information, including creating and maintaining public archives in a serious and professional manner, training public officials, implementing public awareness-raising programmes, improving systems of information management, and reporting by public bodies on the measures they have taken to implement the right of access, including in relation to their processing of requests for information.”

With an access to information law, governments must establish record keeping and archiving systems, which serves to make them more efficient, reduce discretionarily and allow them to make better decisions. Steps should also be taken to promote broad public awareness of the access to information law., opening, as an example, public spaces that provide assistance, training and support

for people to actively exercise his right to obtain information. Public authorities should be required to meet minimum record management standards. Systems should be put in place to promote higher standards over time.

Conclusion:

The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions. Democracies die behind closed doors. As important as a free press is the access to information to protect the people's right to know that their government acts fairly, lawfully, and accurately. The urgent need to develop basic principles related to the right of access to information, particularly to support the drafting and implementation of legislation, as well as an Inter-American Convention on Freedom of Information, that keeps the standards raised by the principles of the IAJC, to make this right effective is highly recommended.

Only with information, citizens can better secure their democratic rights. Moreover, greater transparency can help reestablish trust between government and its citizens.