

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES
COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

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SPECIAL MEETING OF THE COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS
ON ACCESS TO PUBLIC INFORMATION

[AG/RES. 2514 (XXXIX-O/09) and AG/RES. 2607 (XL-O/10)]

STATEMENT BY COLOMBIA

December 13, 2010

Permanent Mission of Colombia
to the Organization of American States

MPC/OEA No. 1726

The Permanent Mission of Colombia to the Organization of American States presents its compliments to the Chair of the Committee on Juridical and Political Affairs of the OAS and wishes to refer to the special meeting held on December 13, 2010 to discuss Access to Information.

Attached please find the document that explains the position of the Government of Colombia and the legal framework currently in force with respect to *Access to Information*.

The Permanent Mission of Colombia to the Organization of American States would like to avail itself of this opportunity to convey to the Chair of the Committee on Juridical and Political Affairs renewed assurances of its highest consideration.

Washington, D.C., December 28, 2010

COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS
Att. Ambassador HUGO DE ZELA MARTINEZ,
Organization of American States- OEA,
Washington, D.C.

STATEMENT BY COLOMBIA AT THE SPECIAL MEETING OF THE COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS ON ACCESS TO PUBLIC INFORMATION

In accordance with international law, the right to access information has been recognized by the Colombian State as a fundamental right of each and every one of its citizens. The Colombian legal system has enshrined that right in the Political Constitution. Colombia is, in fact, one of the countries that have embedded the right to access to information in their constitutional system.

First and foremost, Colombia wishes to highlight the efforts made by the group of experts comprising various OAS bodies, civil society, and member states working together to define the principles governing the right of access to information, the recommendations made regarding that right, and the drafting of the model law on the subject. These documents constitute a core framework for ensuring that this right is guaranteed and protected in the countries of the Hemisphere.

Colombia is a “lawful societal State” based and organized, as its Constitution proclaims, on democracy and citizen participation. Thus, as stipulated by the principles regarding the right to information, the Colombian State considers that in principle all information is accessible and that the right of access to information extends to all public bodies in the executive, legislative and judicial branches of government. Moreover, this right must be respected by private enterprises and by international (governmental and nongovernmental) organizations providing public services or making use of State funds, because that ensures effective implementation of the right of access to information.

The Colombian State considers that the right of access to information is vital for the exercise of democracy and good governance. Guaranteeing and respecting the right of access to information make it possible for Colombian citizens to make informed decisions, to play an active part in public affairs, and to exercise oversight of those affairs. For that reason, this Government is committed to transparent governance and permanent accountability of government entities. Accordingly, it is worth mentioning that the Colombian Government is aware of the importance of an ongoing flow of information between State institutions and citizens and cognizant of the fact that such information pertains to the citizens of Colombia and that State institutions are at the service of those citizens. That is why it has included among its Good Governance initiatives, for instance, the duty to inform Colombian families every year regarding national budget appropriations for municipalities and departments, so that heads of household and businessmen can demand that local authorities make correct use of those funds.

As already mentioned, the Colombian legal system has specific provisions regulating right of access to information. Article 74 of the Political Constitution states that “Every person has a right to access to public documents except in cases established by law.”

A study of regulations associated with Colombian laws on the right of access to information reveals a number of aspects referred to in the document of recommendations regarding this right:

First, Colombian legislation establishes the obligation of government entities to publish information on their spheres of activity on an ongoing basis, not just for information purposes, but also in connection with citizens’ right to exercise social oversight of the State. One example of such legislation is Law 57 of 1985, which establishes the duty of the various national, departmental, and

municipal authorities to publish in their newspapers and gazettes all governmental and administrative acts related to information on the handling of public affairs. Law 962 of 2005 and Law 190 of 1995 contain similar provisions.

In addition, Colombia has implemented new mechanisms to ensure transparency and ongoing accountability, such as “*On-line Governance*,” the chief purpose of which is to foster joint efforts by State institutions to provide better service to the public and encourage citizen participation.

Thus, Colombia is making a huge effort to keep public information accessible to all citizens and to ensure that governance is both efficient and transparent.

As regards exceptions, the Colombian State shares the view that the right of access to information must be construed as broadly as possible, while allowing restrictions already specifically established by law for legitimate purposes within the framework of a democratic society, such as those needed to ensure respect for the rights or reputations of others, the protection of national security, public order, or public health or morals, as stipulated in article 13 of the American Convention on Human Rights. Colombia, too, is of the opinion that information may only be denied for a legitimate purpose, so that anyone has the right to consult public documents provided that they are not confidential in accordance with the Constitution and the law.

As regards the formulation and response to requests for information, article 23 of the Political Constitution of Colombia establishes the right of petition. This right, that entitles citizens to request and obtain access to information on actions taken by the authorities, has been further developed in the Code of Administrative Litigation (*Código Contencioso Administrativo*), which establishes a clear and simple procedure, including time frames with which the requested entities must respond to requests. Accordingly, and based on the Constitution, the law has established, under the right to petition, the obligation for government entities to allow easy access to information that is not constitutionally or legally secret.

Finally, the Colombian laws and regulations provide for various supervisory and appeal mechanisms to give effect to the right of access to information, should it be denied or impaired by a government entity. On the one hand, a petitioner may seek administrative remedy (*vía gubernativa*), inasmuch as the response to petition rights is an administrative act. In that sense, a citizen dissatisfied with the State’s response to his or her right to petition, can file the corresponding recourse – for reconsideration, appeal, or complaint. On the other hand, given that, *nota bene*, the right to petition is a fundamental right under our Constitution, an appeal for protection of that right (*acción de tutela*) may also be filed. The appeal for protection of a right is another mechanism established by the Constitution to ensure that anyone may apply to the courts for protection of their fundamental rights whenever they are impaired or threatened by an act or omission of any government authority. Such claims must be resolved within 10 working days. Finally, Law 57 of 1985 provides for reiteration of an appeal (*recurso de insistencia*) against an administrative decision explaining the reasons why a public authority refuses to provide the information requested in a petition. The reiterated appeal must be settled by the Administrative Litigation Court within the following 10 working days, either by repeating the refusal because of constitutional and legal restrictions or else ordering the entity concerned to furnish the information requested.

Thus Colombia has developed legislation that protects and guarantees the right of access to information. In our view, that body of law fully incorporates the recommendations and principal provisions of the model law.

Colombia reiterates its steadfast conviction that only by protecting and guaranteeing the right to access information, with transparent government entities and citizen participation, is it possible to achieve a truly democratic society and a State comprised of legitimate institutions in which citizens can place their trust. A State open to scrutiny by citizens is a State subject to a continuous process of accountability for the results of its actions. In that sense, the State reaffirms the opinion of Colombia's Constitutional Court that "(...) transparency and the disclosure of public information are two necessary conditions for government agencies to be obliged to provide public explanations for the decisions they make and the use they make of power and public funds; (...) they are the basis for the exercise of genuine citizen oversight of public management and for the fulfillment of the political rights that go with it."

Guided by these principles and standards, Colombia will continue working to strengthen and guarantee observance of the fundamental right of access to information.

Thank you very much.