

# Specialized Supervisory Bodies for the Right to Access Public Information





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# SPECIALIZED SUPERVISORY BODIES FOR THE RIGHT TO ACCESS TO PUBLIC INFORMATION

Compilation of Thematic Reports included in the 2013 and 2014  
Annual Reports of the Office of the Special Rapporteur for  
Freedom of Expression of the Inter-American Commission on  
Human Rights

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Special Rapporteur for Freedom of Expression



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# INDEX

## FOREWORD

7

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## **THE RIGHT TO ACCESS TO PUBLIC INFORMATION IN THE AMERICAS: SPECIALIZED SUPERVISORY AND ENFORCEMENT BODIES**

11

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A. INTRODUCTION	13
B. THE CREATION OF SPECIALIZED GUARANTOR BODIES AND THE PROPER IMPLEMENTATION OF THE LAWS ON ACCESS TO INFORMATION IN THE INTER-AMERICAN SYSTEM	15
C. INDEPENDENCE AND AUTONOMY OF SPECIALIZED ENTITIES	19
1. Legal basis, legal personality, and operational autonomy	20
2. Budget	24
3. Structure of the implementing authority and mechanisms for the appointment of authorities	26
D. POWERS AND DUTIES TO GUARANTEE ACCESS TO INFORMATION	29
1. Authority to resolve disputes	29
2. Authority to classify and declassify information	32
E. MECHANISMS FOR THE MANAGEMENT OF REQUESTS: CENTRALIZED/DECENTRALIZED; ONLINE MANAGEMENT	34
F. MECHANISMS FOR THE MONITORING AND ENFORCEMENT OF PROACTIVE TRANSPARENCY OBLIGATIONS	36
G. MECHANISMS FOR CENTRALIZED STATISTICAL MONITORING	38
H. CONCLUSIONS AND RECOMMENDATIONS	39

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## **THE RIGHT TO ACCESS TO PUBLIC INFORMATION IN THE AMERICAS: RELEVANT INTER-AMERICAN STANDARDS AND RESOLUTIONS FROM SPECIALIZED RIGHTS PROTECTION BODIES**

43

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A. INTRODUCTION	45
B. SPECIALIZED GUARANTOR BODIES: THE OBLIGATION TO PROVIDE A SUITABLE AND EFFECTIVE REMEDY FOR APPEALING A REFUSAL TO TURN OVER INFORMATION	47
C. RESOLUTIONS OF SPECIALIZED BODIES	55
1. Resolutions of application bodies specializing in access to information and the principle of maximum disclosure	55

2.	Preeminence of the right to access to information in the event of conflicting laws or lack of regulation	59
3.	Purpose or scope of the right	61
4.	Parties bound by the right to access to information	63
5.	Obligation to respond to requests in a timely, complete, and accessible manner	64
6.	Obligation to have an administrative remedy to satisfy the right to access to information	66
7.	Limitations on the right to access to information. Legal establishment and regulation of exceptions	68
<i>D.</i>	<i>CONCLUSIONS</i>	70

# Foreword





1. In keeping with the successive mandates issued by the General Assembly of the Organization of American States, the Office of the Special Rapporteur for Freedom of Expression continually monitors the situation of the right of access to public information in the region and compiles best practices on the issue in its annual and thematic reports. It is in this way that we aim to contribute to the positive dialogue between the bodies of the system and the OAS Member States, and to the promotion of the best regulatory and policy frameworks for the implementation of a right that plays a central role in strengthening democratic systems.
2. As explained in the reports included in this compilation, 22 countries in the hemisphere to date have enacted laws on access to public information or amended the existing legal framework to defend this right. In following this development, the Office of the Special Rapporteur has put out reports establishing the inter-American standards and systematizing the regional doctrine and case law on access to information.
3. In this text, the Office of the Special Rapporteur offers a comparative perspective on the institutions that the States of the region have established to supervise the implementation of this right and ensure that all persons have access to an independent administrative authority to adjudicate disputes concerning the opening and release of information. It is a thematic report, included in the 2014 Annual Report of the Office of the Special Rapporteur, which describes the regulatory framework and institutional design of some of the oversight bodies established in the hemisphere.
4. This compilation also includes a second thematic report on the most relevant inter-American standards and a summary of the resolutions passed by those oversight and enforcement bodies. This second report was published together with the 2013 Annual Report, and was prepared during Catalina Botero's tenure at the Office of the Special Rapporteur for Freedom of Expression. It is an extraordinary contribution to the dissemination of the resolutions passed by these new institutions, enriching national case law and scholarly work, while also incorporating the inter-American standards on access to public information.
5. The reports collected in this publication will be exceptionally useful in building mechanisms to guarantee and implement a culture of transparency in the OAS Member States, at a time when most of the region's countries are immersed in the process of creating laws and institutions to guarantee access to public information.
6. These practices are also a contribution from the region to the Sustainable Development Goals (SDG) of the 2030 Agenda adopted by the Member States of the United Nations, effective as of this year. The objective of these goals is to end poverty, reduce inequality, and combat climate change. Goal 16 of the SDG, which promotes inclusive societies and effective and accountable institutions, includes the obligation of the States to ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.
7. This office has reiterated on numerous occasions that in order to fully satisfy the information needs of society and create a long-term culture of transparency, the States not only must provide simple, prompt, and free remedies through which denials of access may be challenged but also must properly implement the respective regulations.



The right to access to public  
information in the Americas:  
Specialized supervisory and  
enforcement bodies

This section corresponds to Chapter IV of the 2014 Annual Report of the Office of the Special Rapporteur for Freedom of Expression, approved by the Inter-American Commission on Human Rights on March 9, 2015, under the mandate of special rapporteur Edison Lanza.

## A. Introduction

1. The Office of the Special Rapporteur has reiterated that the right to access to information is an autonomous right protected under Article 13 of the American Convention. It is a fundamental right for the consolidation, operation, and preservation of democratic systems, and it plays an essential role in the exercise of rights.<sup>1</sup>
2. The scope and content of this right has been developed extensively in the Inter-American System.<sup>2</sup> With respect to the matter, the Inter-American Court has recognized that freedom of thought and expression include “not only the right and freedom to express one’s own thoughts, but also the right and freedom to seek, receive and impart information and ideas of all kinds.” In this regard, it has also held that the right to access to information “protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the [American] Convention, the State is allowed to restrict access to the information in a specific case. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.”<sup>3</sup>
3. Given its significance in the consolidation, operation, and preservation of democratic systems, the right to access to information has been addressed by the OAS Member States at its General Assembly, which has given the Office of the Special Rapporteur its mandate to continue monitoring the issue, and has urged the States to “to respect and promote respect for everyone’s access to public information and to promote the

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<sup>1</sup> IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#) Chapter IV (the Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 1. Regarding the functions of the right to access to information, the UN, OSCE, and OAS Rapporteurs for Freedom of Expression stated in their Joint Declaration of 1999 that, “Implicit in freedom of expression is the public’s right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people’s participation in government would remain fragmented.” Similarly, in their Joint Declaration of 2004, they recognized “the fundamental importance of access to information to democratic participation, to holding governments accountable and to controlling corruption, as well as to personal dignity and business efficiency.” Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States (OAS).

<sup>2</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151; I/A Court H.R., *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219; IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (the Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009; IACHR. [2011 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011; IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework Regarding the Right to Access to Information, Second Edition](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011; IACHR. [2012 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Domestic Case Law on Freedom of Expression). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013.

<sup>3</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paras. 76 & 77.

adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.”<sup>4</sup> In this context, the adoption by OAS General Assembly of the Model Inter-American Law on Access to Public Information and its Implementation Guide,<sup>5</sup> in accordance with the international standards attained in the field, is of particular note. The Office of the Special Rapporteur was part of the group of experts appointed to discuss, edit, and finalize these documents adopted by the General Assembly.

4. Over the last decade, a significant number of the region’s countries have passed laws on access to public information or enacted reforms to the existing legal framework for the defense of this right. In following this development and the express mandate from the General Assembly on this issue, the Office of the Special Rapporteur has drafted reports setting forth the inter-American standards and systematizing the inter-American case law and doctrine on access to information.<sup>6</sup> In addition, this office has produced comparative studies of the content of the laws of different Member States and has systematized the decisions of the courts and specialized bodies that have promoted the standards on access to public information in the domestic legal system of each State.<sup>7</sup>

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<sup>4</sup> OAS General Assembly. [Resolution AG/RES. 1932 \(XXXIII-O/03\). Access to Public Information: Strengthening Democracy](#). June 10, 2003. *See also*, OAS General Assembly. [Resolution AG/RES. 2057 \(XXXIV-O/04\). Access to Public Information: Strengthening Democracy](#). June 8, 2004; OAS General Assembly. [Resolution AG/RES. 2121 \(XXXV-O/05\). Access to Public Information: Strengthening Democracy](#). June 7, 2005; OAS General Assembly. [Resolution AG/RES. 2252 \(XXXVI-O/06\). Access to Public Information: Strengthening Democracy](#). June 6, 2006; OAS General Assembly. [Resolution AG/RES. 2288 \(XXXVII-O/07\). Access to Public Information: Strengthening Democracy](#). June 5, 2007; OAS General Assembly. [Resolution AG/RES. 2418 \(XXXVIII-O/08\). Access to Public Information: Strengthening Democracy](#). June 3, 2008; OAS General Assembly. [Resolution AG/RES. 2514 \(XXXIX-O/09\). Access to Public Information: Strengthening Democracy](#). June 4, 2009; OAS General Assembly. [Resolution AG/RES. 2661 \(XLI-O/11\). Access to Public Information and Protection of Personal Data](#). June 7, 2011. The matter was also taken up at the Summit of the Americas. In the Declaration of Nuevo León, approved in 2004, the Heads of State expressed their commitment “to providing the legal and regulatory framework and the structures and conditions required to guarantee the right of access to information to our citizens,” recognizing that “Access to information held by the State, subject to constitutional and legal norms, including those on privacy and confidentiality, is an indispensable condition for citizen participation.” Special Summit of the Americas. [Declaration of Nuevo León](#). January 13, 2004. Additionally, in the Declaration of Commitment of Port of Spain, approved in 2009, the Heads of State agreed to continue “to enhance legal mechanisms for information sharing, and we will develop and implement policies that foster a culture of integrity and transparency within public and private offices and institutions,” seeking to ensure that “important progress is made in providing access for our citizens to public information, particularly on government revenues, expenditures and budgets.” Summit of the Americas. [Declaration of Commitment of Port of Spain](#). OEA/Ser.E. CA-V/DEC.1/09. April 19, 2009.

<sup>5</sup> OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010. Arts. 51 y ss.

<sup>6</sup> IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 51. December 30, 2009; IACHR. [2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Access to Information on Human Rights Violations). OEA/Ser.L/V/II. Doc. 5. March 7, 2011.

<sup>7</sup> IACHR. [2011 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011; IACHR. [2012 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right to Access to Information). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013; IACHR. [2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

5. This chapter is a continuation of this practice, in fulfillment of the mandate of the Office of the Special Rapporteur to monitor the situation of the right to access to public information in the region and to highlight best practices in the field. As in other annual reports, this type of study aims to contribute to the positive dialogue between the OAS Member States and the bodies of the system, and to the promotion of the best legal and policy frameworks that exist.
6. In this report, the Office of the Special Rapporteur describes the regulatory framework and institutional design of some of the guarantor bodies established in the region to supervise and promote the implementation of the laws on access to public information and the adjudication of disputes related to the disclosure of information. This time, the Office of the Special Rapporteur presents a description of the most important aspects that characterize the guarantor bodies or specialized entities that handle matters concerning access to information in Brazil<sup>8</sup>, Canada, Chile, Colombia, El Salvador, United States, Honduras, Jamaica, Mexico, and Uruguay.<sup>9</sup>

## ***B. The creation of specialized guarantor bodies and the proper implementation of the laws on access to information in the Inter-American System***

7. The Office of the Special Rapporteur has asserted that a fundamental aspect of the proper implementation of the OAS Member States' regulatory frameworks pertaining to access to information lies in the establishment of a specialized administrative body created to oversee the enforcement of the law and to resolve the disputes that arise between the right to access to public information and the State's interest in protecting certain information on the basis of the limitations established by law.

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<sup>8</sup> In the region there are other agencies or entities responsible for implementing regulatory provisions regarding access to information that were not analyzed in this report. For example, Antigua y Barbuda (Information Commissioner and Integrity Commission); Argentina (Anti-Corruption Office [*Oficina Anticorrupción*] and the National Bureau for the Protection of Personal Data [*Dirección Nacional de Protección de Datos Personales*]); Bolivia (Ombudsman [*Defensoría del Pueblo*] and the Ministry for Institutional Transparency and Corruption Combating [*Ministerio para la Transparencia Institucional y Lucha contra la Corrupción*]); Ecuador (Ombudsman [*Defensoría del Pueblo*]); Nicaragua (Offices of Access to Information [*Oficinas de Acceso a la Información Pública*]); Panamá (National Authority of Transparency and Access to Information [*Autoridad Nacional de Transparencia y Acceso a la Información*]); Paraguay (Directorate of Access to Public Information [*Dirección de Acceso a la Información Pública*]); Perú (Ombudsman [*Defensoría del Pueblo*]); República Dominicana (Office of Free Access to Public Information [*Oficina de Libre Acceso a la Información Pública*] and the General Directorate of Ethics and Government Integrity [*Dirección General de Ética e Integridad Gubernamental*]); Trinidad y Tobago (Freedom of Information Unit and the Office of the Ombudsman of Trinidad and Tobago). See also, OAS. Department of International Law. Comparative Law Database. [Agencies of Promotion and enforcement of Access to Public Information by Country](#).

<sup>9</sup> In drafting this report, the general regulatory frameworks on access to information were used as a reference, but the standards on other matters and the more specific regulatory provisions were not. The inter-American legal framework, the international standards on the right to access to information, and the case law of the Inter-American System and studies and relevant monitoring reports were also examined. This information allowed for the development of a questionnaire that was sent to some of the authorities at the institutions responsible for guaranteeing access to information in the countries under study, and another that was sent to civil society organizations involved in the promotion of the right to information in the region. The information submitted was systematized and analyzed for the preparation of this report.



8. Indeed, this office has on numerous occasions underscored the right of individuals to a remedy that is simple, easy to access and that its exercise only demands the fulfillment of basic requirements, effective, quick, free or have a low cost enough so as not to discourage request for information, and that allows them to challenge the decisions of public officials that deny the right of access to specific information or simply fail to answer the request.<sup>10</sup>
9. The Office of the Special Rapporteur has also stated that in order to fully satisfy society's needs of access to information and create a culture of transparency in the long term, the States not only must provide simple and prompt remedies free of charge in order to challenge denials of access to information, but also must properly implement the legal provisions on access to information. The Office of the Special Rapporteur has stated that this obligation entails at least the following types of actions: (a) design a plan for the implementation of access to public information and the respective budget; (b) adopt rules, policies, and practices that facilitate the proper preservation and administration of information; (c) educate and train the public servants responsible for satisfying the right to access to public information in each one of its facets; and (d) carry out systematic campaigns to disclose to the general public the existence and the means for exercising the right to access to information.<sup>11</sup>
10. To develop these objectives and attain the effective satisfaction of this right, the Office of the Special Rapporteur has recognized that it is essential to create an autonomous and specialized supervisory body responsible for promoting the implementation of the laws on access to public information and for reviewing and adjudicating government denials of requests for information.<sup>12</sup> Comparative experience and practice have demonstrated the importance of having this type of independent and specialized authority within the different legal systems to prevent the dilution of efforts to enforce the laws on access to public information. The foregoing, of course, is without prejudice to the timely judicial oversight of decisions that deny access to information. In this respect, in order to strengthen the institutional supervisory structure for the implementation of laws on access to public information, the Office of the Special Rapporteur has urged the States to bring their laws into line with the highest standards on the matter, such as those recognized by the OAS General

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<sup>10</sup> IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (the Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras. 26; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 205.

<sup>11</sup> IACHR. [2011 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 313-315.

<sup>12</sup> IACHR. [2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 50. December 31, 2013. Para. 9 and ss; IACHR. [2011 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 206-208. See also: Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 14.

Assembly in Resolution AG/RES. 2607 (XL-O/ 10) adopting the “Model Inter-American Law on Access to Public Information.”<sup>13</sup>

11. Indeed, the Model Inter-American Law on Access to Public Information and its Implementation Guide provide for the creation of an Information Commission responsible for the effective implementation of the law.<sup>14</sup> In this respect, the Implementation Guide to the Model Law underscores the importance of having a supervisory body that is capable of creating uniform public information policies for all of the agencies subject to the law, and that also has the authority to coordinate the efforts of different departments, train human resources, raise public awareness, identify and disseminate best practices, advise public servants, and develop mechanisms to facilitate the management of requests for information.<sup>15</sup>
12. This Information Commission, in addition to implementing the law and public policies on transparency and access to information, must have the power to “review any information held by a public authority, including through on-site inspection.”<sup>16</sup> Similarly, the review mechanisms must be independent of political influence, accessible to requesters without the need for legal representation, without overly formalistic requisites, timely and, preferably, specialized. The Implementation Guide provides that such body will operate more effectively if it has been created by law, is specialized, and has sufficient human and financial resources to perform its duties.
13. The Inter-American System’s promotion of the right to access to public information has changed the scenario for the right to access to information in the hemisphere. Many countries have enacted laws and policies on access and transparency: a total of 22 countries in the Americas have passed public information access laws, and to different extents have either created entities to develop and enforce this right or given existing bodies the power to protect and guarantee it.<sup>17</sup>

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<sup>13</sup> IACHR. [2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 50. December 31, 2013. Para.35; OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010.

<sup>14</sup> OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010. Art 52 and ss.

<sup>15</sup> Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 14.

<sup>16</sup> OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010. Art 62.

<sup>17</sup> Antigua and Barbuda. [Freedom of Information Act](#). November 5, 2004; Belize. Freedom of Information Act, Chapter 13. Available for consultation at: <http://www.belizelaw.org/web/lawadmin/index2.html>; Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). November 18, 2011; Canada. Government of Canada/Justice Laws Website. [Access to Information Act. \(R.S.C., 1985, c. A-1\)](#); Chile. Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009; Colombia. Secretaría General del Senado. [Ley 1712 de 2014. Diario Oficial No. 49.084](#). March 6, 2014; Ecuador. [Ley No. 24. Ley Orgánica de Transparencia y Acceso a la Información Pública de Ecuador](#). Registro Oficial Suplemento 337. May 18, 2004; El Salvador. Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo Nº 391. April 8, 2011; United States Department of Justice. [Freedom of Information Act, 5 U.S.C. § 552](#); Guatemala. Congreso de la República de Guatemala. [Ley de Acceso a la Información Pública de Guatemala. Decreto No. 57-2008](#). October 23, 2008; Guyana. OEA. [Access to Information Act](#). Act No. 21 de 2011. September 15, 2011; Honduras.

14. The variety of institutional designs is related to the degree of independence and autonomy of the agency, its composition and mechanisms for the appointment of its authorities, its powers or duties to guarantee access to information, the accessibility of its mechanisms, and its efficiency in settling disputes.
15. Indeed, as discussed in this report, in some States the laws provide for a specialized mechanism for the guarantee of the right to access to information before an autonomous, independent, and specialized administrative agency; in other places, the law provides for the creation of specialized administrative agencies that do not issue binding decisions, or assign the defense of this right to authorities such as the Ombudsman of the People or Office of the Attorney General as part of their duties.<sup>18</sup>
16. In short, the countries of the Americas have begun to develop—slowly and laboriously—a community of public entities for the promotion and protection of access to public information.<sup>19</sup> The paragraphs below provide descriptive information

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Congreso Nacional/ Instituto de Acceso a la Información Pública. [Ley de Transparencia y Acceso a la Información Pública](#). Decreto Legislativo No. 170 -2006. Diario Oficial La Gaceta. December 30, 2006; Jamaica. Access to Information Unit. [Access to Information Act](#). Act No. 21-2002. July 22, 2002; México. Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental](#). June 11, 2002; Nicaragua. [Ley 621 de 2007. Ley de Acceso a la Información Pública](#). Published on La Gaceta No. 118 of July 22, 2007; Panamá. [Ley N° 6. Ley de Transparencia en la Gestión Pública](#). January 22, 2002; Panamá. OEA/Gobierno Nacional de Panamá. [Gaceta Oficial Digital No. 27275-A](#). April 26, 2013; Paraguay. Congreso Nacional/Biblioteca Archival Central. [Ley No. 5.282. De libre acceso ciudadano a la información pública y transparencia Gubernamental](#). September 18, 2014; Perú. [Ley No. 27.806. Ley de Transparencia y Acceso a la Información Pública](#). Decreto Suprema No. 043-2003-PCM. April 22, 2003; República Dominicana. Comisión Nacional de Ética y Combate a la Corrupción. [Ley General de Libre Acceso a la Información Pública, No. 200-04](#). February 25, 2005; St Vincent and the Grenadines. Freedom of Information Act, 2003. June 27, 2003. Available for consultation at: [http://www.rti-rating.org/files/pdf/Saint\\_Vincent\\_and\\_the\\_Grenadines.pdf](http://www.rti-rating.org/files/pdf/Saint_Vincent_and_the_Grenadines.pdf); Trinidad y Tobago. [The Freedom of Information Act, 2009. Act No. 26 of 1999](#). July 16, 1999; Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Published on Diario Oficial No. 27607 of November 7, 2008.

<sup>18</sup> IACHR. [2011 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 241.

<sup>19</sup> The *Red de Transparencia y Acceso a la Información Pública (RTA)* is a network of bodies and agencies in Latin America and the Caribbean engaged in the supervision of transparency and the right to access to public information. Full members participating in RTA are: Bolivia's Ministry for Institutional Transparency and Corruption Combating [*Ministerio para la Transparencia Institucional y Lucha contra la Corrupción*]; the Office of the Comptroller General of Brazil [*Controladoria-Geral da União*]; Council for Transparency of Chile [*Consejo para la Transparencia*]; the Ombudsman of Ecuador [*Defensoría del Pueblo*]; the Institute for Access to Public Information of El Salvador [*Instituto de Acceso a la Información Pública*]; Federal Institute for Access to Public Information and Data Protection of Mexico [*Instituto Federal de Acceso a la Información Pública y Protección de Datos*]; the Ombudsman of Peru [*Defensoría del Pueblo*]; and the Unit of Access to Public Information of Uruguay [*Unidad de Acceso a la Información Pública*]. As associate members: The Government of the Autonomous City of Buenos Aires, represented by the Undersecretariat of Public Affairs of Argentina [*Subsecretaría de Asuntos Públicos de Argentina*]; the Provincial Anti-Corruption and Transparency Directorate of the Public sector of the Ministry of Justice and Human Rights of Santa Fe, Argentina [*Dirección Provincial de Anticorrupción y Transparencia del sector Público del Ministerio de Justicia y Derechos Humanos de Santa Fe, Argentina*]; Undersecretary of Transparency and Corruption of El Salvador [*Subsecretaría de Transparencia y Anticorrupción*]; The Presidential Commission for Transparency and Guatemala's Electronic Government [*Comisión Presidencial de Transparencia y Gobierno Electrónico de Guatemala*]; High Level Anti-Corruption Commission of the Presidency of Ministers of Peru [*Comisión de Alto Nivel Anticorrupción de la Presidencia de Ministros*]. Furthermore, participating as adherent members: the Secretary of Transparency of Colombia [*Secretaría de Transparencia*]; EUROsocial Regional Cooperation Program; and the Organization of American States. In 2014 they joined as new members: The Office of the Inspector General of Colombia [*La Procuraduría*].

on the design and practices of several such supervisory bodies in the hemisphere, in terms of their features, powers, and duties that are considered key to the effective exercise and enforcement of the right to access to information, such as: the independence and autonomy of the bodies; their composition and mechanisms for the appointment and removal of their authorities; the duties they perform; the mechanisms they have developed to manage requests, monitor compliance with transparency obligations, compile statistics, and to classify and declassify information.

### **C. Independence and autonomy of specialized entities**

17. The Implementation Guide for the Model Inter-American Law on Access to Public Information recognizes that independence is essential for the success of entities such as the Information Commission. In this regard, it states that “A series of factors may determine the real (or perceived) independence of this office and its officers, including the manner of selecting the Commissioners, their term limit and procedures for dismissal, from which branch of government they receive their powers and to whom they report, and the autonomy in budgeting.”<sup>20</sup>
18. Indeed, the independence and autonomy of an entity can be evaluated according to both external and internal factors. The external factors concern the manner in which the body has been created and established or the way in which its mandate to supervise and enforce the access to information laws was granted. It concerns the characteristics conferred upon the body prior to its operation, at the time it was established or received its mandate. One of these aspects is the legal basis and operational autonomy conferred upon the entity. In this regard, the instruments of the Inter-American System provide that “Regardless of which system is selected, it is vital that the oversight body or unit enjoy a statutory mandate.”<sup>21</sup>
19. Among other external aspects to consider are the body’s position within the organizational flow chart and its geographic coverage, the rules for the selection and removal of its authorities, and the existence of rival organizations—that is, organizations that may challenge the body’s performance of its duties.
20. The internal characteristics are related to the actions taken by the organization once its members have been selected. From this perspective, the body’s independence and

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*General de la Nación*], the Office of Human Rights Ombudsman of Guatemala [*Institución del Procurador de Derechos Humanos*] and the Institute of Access to Public Information of Honduras [*Instituto de Acceso a la Información Pública*]. Red de Transparencia y Acceso a la Información Pública. [Quiénes somos](#); Red de Transparencia y Acceso a la Información Pública. November 13, 2014. [Red de Transparencia y Acceso a la Información Pública, RTA: La agrupación de órganos garantes en materia de transparencia y acceso a la información se posiciona como la más importante de América Latina.](#)

<sup>20</sup> Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 20.

<sup>21</sup> Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 14.

autonomy will depend upon the budget it receives for its activities, the staff it has to perform its duties, and the degree of specialization of its staff.

## 1. Legal basis, legal personality, and operational autonomy

21. In Brazil, Public Information Access Law (Law No. 12527)<sup>22</sup> was enacted in 2011 and the regulations thereto were issued by the Federal Government by decree on 2012.<sup>23</sup> Both the law and the regulations state that the Office of the Comptroller General (CGU) [*Controladoria-Geral da União*] is responsible for decisions on remedies and complaints, and for monitoring the implementation of the Public Information Access Law by the Federal Executive Branch.<sup>24</sup> The Office of the Comptroller General was created by Law No.10.683<sup>25</sup> on 2003 and is the body responsible for providing direct and immediate assistance to the President of the Republic on matters concerning the defense of public assets and increased transparency. The CGU's fundamental strategic areas include internal oversight; public hearings; inspection; the prevention and fight against corruption, and advocacy.<sup>26</sup>
22. In Canada, the Office of the Information Commissioner<sup>27</sup> was created in 1983 with the enactment of the Access to Information Act.<sup>28</sup> The entity is headed by a Commissioner with federal jurisdiction and its goal is to assist individuals and organizations who believe that federal institutions have not respected their rights under the Act. The Information Commissioner is an "Agent of Parliament"<sup>29</sup>, independent and reports directly to Parliament. The Office of the Information Commissioner investigates complaints about federal institutions' handling of access requests.<sup>30</sup>
23. In Chile, Law 20285 on Access to Public Information created the Transparency Council [*Consejo para la Transparencia*]<sup>31</sup> (CPLT) as "an autonomous public law entity, with its own legal personality and assets" (Art. 31) with the objective of "promoting transparency in government, overseeing compliance with the legal

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<sup>22</sup> Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). November 18, 2011.

<sup>23</sup> Brazil. Câmara dos Deputados. [Decreto 7.724](#). May 16, 2012.

<sup>24</sup> As it will be explained below, the Access to Information Law also created a Mixed Committee with jurisdiction to decide appeals challenging decisions of the Office of the Comptroller General that deny access to information, and to rule on denials of requests to declassify information issued by the Ministers of State.

<sup>25</sup> Brazil. Palácio do Planalto/Presidência da República. [Lei 10.683](#). 28 de mayo de 2003. Law that establishes the creation of the Office of the Comptroller General [*Contraloría General de la Unión*].

<sup>26</sup> Brazil. Controladoria-Geral da União/ Presidência da República. [Institucional](#)

<sup>27</sup> Canada. Office of the Information Commissioner of Canada. [Who we are](#)

<sup>28</sup> Canada. Government of Canada/Justice Laws Website. [Access to Information Act. \(R.S.C., 1985, c. A-1\)](#).

<sup>29</sup> The "Agents of Parliament" oversee the activities of government in accordance with their specific mandate. Other agents deal with audits, lobbying, official languages, protection of personal information, elections and public sector integrity. Canada. Parliament of Canada. [Officers and Officials of Parliament](#).

<sup>30</sup> Canada. Office of the Information Commissioner of Canada. [What we do](#). Canada. Office of the Information Commissioner of Canada. [Who we are](#).

<sup>31</sup> Consejo para la Transparencia. [¿Qué es el Consejo para la Transparencia?](#)

provisions on transparency and the public disclosure of information held by Government bodies, and guaranteeing the right to access to information” (Art.32).<sup>32</sup>

24. In Colombia, on March 6, 2014, the President of the Republic enacted the Transparency and Access to National Public Information Law.<sup>33</sup> The Transparency and Right to Access National Public Information Act [*Ley de Transparencia y del Derecho de Acceso a la Información Pública Nacional*] provides that the Public Ministry [*Ministerio Público*] headed by the Office of the Inspector General [*Procuraduría General de la Nación*] “is responsible for ensuring proper compliance with the obligations set forth in the law”, and assigns it specific functions to do so. Among these functions, the promotion of the awareness and application of the law; the imposition of disciplinary sanctions; the promotion of government transparency; and the issuance of reports, statistics, and papers regarding compliance with the law. According to the Law, the entities of the Public Ministry will create an “office with all necessary resources” to comply with its functions. On May 8, the Office of the Inspector General [*Procuraduría General de la Nación*], responsible for enforcing legal provisions, issued Resolution No. 146, which created the group responsible for ensuring compliance with the obligations stipulated in the Law.<sup>34</sup> On September 5, the Transparency and Access to Information Committee was created within the Public Ministry. Some of the functions of this Committee are: to coordinate actions and joint efforts of the Public Ministry in this issue; b) establish an action plan and annual goals for the compliance of the functions assigned to Public Ministry by law; c) monitor and evaluate compliance by the Public Ministry, as well as by those subject to the law<sup>35</sup>.
25. In the case of El Salvador, the Public Information Access Act<sup>36</sup> created the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*]<sup>37</sup> as a “public institution with legal personality, its own assets, and administrative and financial autonomy” (Art. 51). According to the Act, the Institute is an independent entity that does not report to any State body, and has national jurisdiction that includes oversight over the three branches of government, “their offices, autonomous institutions, municipalities, and any other entity or body that manages public resources or government assets, or carries out acts of public administration in general” (Art. 7 and 58).
26. In the United States, following the 2007 amendment of the Freedom of Information Act (FOIA), the Office of Government Information Services (OGIS) was created as an independent office within the National Archives and Records Administration. This Office serves as a bridge between requesters and agencies. It is said to be “the Federal

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<sup>32</sup> Chile. Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009; Chile.

<sup>33</sup> Colombia. Secretaría General del Senado. [Ley 1712 de 2014. Diario Oficial No. 49.084](#). March 6, 2014. On September 2014, the Law took effect for all entities at the national level and will take effect on March 6, 2015 for regional authorities.

<sup>34</sup> Procuraduría General de la Nación. [Resolución 146](#). May 8, 2014. Colombia. Procuraduría General de la Nación. [Grupo de Transparencia y del Derecho de Acceso a la Información Pública Nacional](#).

<sup>35</sup> Procuraduría General de la Nación. [Resolución 282](#). September 5, 2014.

<sup>36</sup> Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo N° 391. April 8, 2011. The Act was approved by Decree 534 dated April 8, 2011 and became effective on May 8, 2011.

<sup>37</sup> El Salvador. [Instituto de Acceso a la Información Pública](#).



FOIA Ombudsman.” OGIS responsibilities include the review of policies and procedures of administrative agencies under the FOIA and the compliance with FOIA agencies. Moreover, OGIS can recommend policy changes to Congress and the President to improve the administration of FOIA. This Office may also offer mediation services to resolve disputes between persons making FOIA requests and agencies (non-exclusive alternative to litigation). In this sense, it may issue advisory opinions if mediation has not resolved the issue.<sup>38</sup> The OGIS Director reports to the Archivist of the United States and works with all of the administrative agencies of the Executive Branch.<sup>39</sup> Moreover, the United States also has the Office of Information Policy of the Department of Justice and the Office of Government Information Services. This Office<sup>40</sup> is responsible for developing guidance for Executive Branch agencies on the FOIA, for ensuring that the President’s FOIA Memorandum<sup>41</sup> and the Attorney General’s FOIA Guidelines<sup>42</sup> are fully implemented across the government, and for overseeing agency compliance with the law.<sup>43</sup>

27. In Honduras, the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*] (IAIP) was created by the Transparency and Access to Public Information Act.<sup>44</sup> According to the Act, the Institute is “a decentralized government body with operational, decision-making, and budgetary independence, responsible for promoting and facilitating citizen access to public information, as well as regulating and supervising the procedures of the institutions subject to this law with respect to the protection, classification, and safekeeping of public information in accordance with this Act” (Art. 8). As a decentralized body, the Institute does not report to any other State entity. It has national jurisdiction and the authority to create or set up regional offices in places where there is a proven need for its operation.<sup>45</sup> Furthermore, on 2014 Presidential Office of Transparency, Modernization, and Reform of the State<sup>46</sup> [*Dirección Presidencial de Transparencia, Modernización y Reforma del Estado*] was created with the goal of strengthening transparency in institutions through a process of formulating and proposing policies and programs of transparency.<sup>47</sup> Moreover, according to the law for the Classification of Public

<sup>38</sup> United States. United States Department of Justice. [Freedom of Information Act, 5 U.S.C. § 552](#). Section (h)(1).

<sup>39</sup> United States. National Archives and Records Administration/ Office of Government Information Services. [About OGIS](#).

<sup>40</sup> United States. The United States Department of Justice/Office of the Information Policy. [About the Office](#).

<sup>41</sup> United States. The United States Department of Justice. Presidential Documents. [Memorandum of January 21, 2009/Freedom of Information Act](#). January 26, 2009.

<sup>42</sup> United States. The United States Department of Justice. Office of the Attorney General. [Memorandum for Heads of Executive Departments and Agencies](#). March 19, 2009.

<sup>43</sup> United States. The United States Department of Justice/Office of the Information Policy. [Meet the director](#).

<sup>44</sup> Honduras. Congreso Nacional/ Instituto de Acceso a la Información Pública. [Ley de Transparencia y Acceso a la Información Pública](#). Decreto Legislativo No. 170 -2006. Diario Oficial La Gaceta. 30 de diciembre de 2006.

<sup>45</sup> Honduras. La Gaceta/Instituto de Acceso a la Información Pública. [Reglamento de la Ley de Transparencia y Acceso a la Información Pública](#). March 6, 2008. Article 11.

<sup>46</sup> The Presidential Office of Transparency, Modernization, and Reform of the State was created by Executive Order PCM 001-2014 of February 3, 2014, as an administrative body within the Office of the President of the Republic, attached to the Office of the Minister of State in the Bureau of General Government Coordination, whose Director shall be appointed and removed at the will of the President of the Republic. Honduras. La Gaceta/Instituto Hondureño de Turismo. [Decreto Ejecutivo PCM-001-2014](#). February 22, 2014.

<sup>47</sup> Honduras. Secretaría de Coordinación General de Gobierno. [Dirección Presidencial de Transparencia, Modernización y Reforma del Estado](#).

Documents related to National Security of 2014, the National Council for Defense and Security<sup>48</sup> [*Consejo Nacional de Defensa y Seguridad*] is responsible for classifying as reserved, confidential, secret and top secret information regarding defense and national security.<sup>49</sup>

28. In Mexico, the Federal Institute for Access to Information [*Instituto Federal de Acceso a la Información*] (IFAI) was created in 2003 by the Federal Transparency and Access to Government Information Act.<sup>50</sup> In 2010, the entity changed its name to the Federal Institute for Access to Public Information and Data Protection, with jurisdiction to also guarantee the right to the protection of personal data. In February 2014, a constitutional amendment on transparency was enacted which, both broadened and strengthened Mexico's system for access to information and gave the Institute constitutional autonomy.<sup>51</sup> One notable characteristic that the IFAI has its autonomy guaranteed in the Constitution. Article 6(A)(VIII) of the Constitution of the United Mexican States now states that "The Federation shall have an autonomous, specialized, impartial, collegial body that has its own legal personality and assets, full technical and management autonomy, decision-making power over budget execution, and the ability to determine its internal organization, that is responsible for enforcing the right to access to public information and the protection of personal data in the possession of parties subject to the law and in the terms established by law."<sup>52</sup> The scope of the IFAI-OA's purview is federal.
29. In the case of Jamaica, the Access to Information Unit—which operates within the Office of the Prime Minister—was established to monitor and guide the government in the implementation of the Access to Information Act passed in 2002.<sup>53</sup> The Unit provides guidance and training for government bodies on how to interpret and administer the Act; identifies and address difficult or problematic issues arising from implementation of the Act; provides policy recommendations on how best these

<sup>48</sup> The National Council for Defense and Security is composed by: The President, who shall preside; President of the National Congress; the President of the Supreme Court; the General Prosecutor; The Secretary of State for Security; and Secretary of State in the Department of National Defense. Honduras. Poder Judicial de la República de Honduras. [Ley Especial del Consejo Nacional de Defensa y Seguridad. Decreto No. 239-2011](#). Published on La Gaceta No 32.692 of December 12, 2011.

<sup>49</sup> Honduras. La Gaceta/Tribunal Superior de Cuentas. [Ley para la Clasificación de Documentos Públicos relacionados con la Seguridad Nacional. Decreto No. 418-2013](#). Published on La Gaceta No 33.373 on March 7, 2014.

<sup>50</sup> Mexico. Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental](#). June 11, 2002.

<sup>51</sup> The enactment of the constitutional amendment created a legislative agenda for the drafting of a number of general laws (the General Transparency Act, the General Archives Act), as well as the amendment of the Federal Transparency and Access to Government Information Act and the Federal Law on the Protection of Personal Data Held by Private Parties. Until this legislation passes, the IFAI-OA must continue to carry out its duties in accordance with the existing law, that is, the law that provided for its creation in 2003. México. Diario Oficial de la Federación. [Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de transparencia](#). February 7, 2014.

<sup>52</sup> Mexico. Cámara de Diputados. H. Congreso de la Unión. [Constitución Política de los Estados Unidos Mexicanos](#). February 7, 2014; Mexico. Diario Oficial de la Federación. [Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de transparencia](#). February 7, 2014.

<sup>53</sup> Jamaica. Access to Information Unit. [About Us](#); Jamaica. Access to Information Unit. [Access to Information Act](#). Act No. 21-2002. July 22, 2002.



problems may be addressed.<sup>54</sup> The work of this Unit is complemented by the actions undertaken by the Appeal Tribunal<sup>55</sup> created in December 2003 for the exclusive adjudication of claims alleging the denial of the right to information. The Access to Information Unit has been mandated to provide logistical and secretarial support to the Appeal Tribunal.<sup>56</sup>

30. In Uruguay, the Law on the Right of Access to Public Information<sup>57</sup> also established a Public Information Access Unit [*Unidad de Acceso a la Información Pública*] (UAIP) within the Agency for the Development of e-Government Management and the Information and Knowledge Society [*Agencia para el Desarrollo del Gobierno de Gestión Electrónica y la Sociedad de la Información y del Conocimiento*] (AGESIC) responsible for monitoring compliance with the law.<sup>58</sup> Law 19.178<sup>59</sup> granted additional powers to the Unit regarding the authority to declassify information which the classification process does not comply with the provisions set forth in the regulations. The Public Information Access Unit is a decentralized body of the AGESIC, which operates within the sphere of the Office of the President of the Republic. The Unit has technical autonomy and is national in scope.

## 2. Budget

31. As stated previously, independence and autonomy can also be evaluated on the basis of its budget sovereignty. In this respect, the Implementation Guide to the Model Inter-American Law asserts that “[...] budget sovereignty is a significant component to overall independence and autonomy. If the Commission is vested with its own line item in the budget, it is less obliged to a specific ministry or agency for proposing and promoting its financial needs. In cases, for example, where an executive branch ministry must submit the Commission’s budget for legislative approval, there is an inherent dependency created with that ‘host’ agency. Fiscal autonomy is afforded in the Model Law by allowing the Commission to present its budget requirements directly to the legislature.”<sup>60</sup>

<sup>54</sup> Jamaica. Access to Information Unit. [About Us](#); Jamaica. Jamaica Information Service. [Access to Information Unit](#).

<sup>55</sup> Jamaica. Access to Information Unit. [Access to Information \(Appeal Tribunal\) Rules, 2005](#).

<sup>56</sup> Jamaica. Ministry of Local Government & Community Development. [Access to Information/The Appel Tribunal & Secretariat](#).

<sup>57</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 18.381. Derecho de Acceso a la Información Pública](#). Published on the Diario Oficial No. 27607 November 7, 2008. Article 19.

<sup>58</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 19.178](#). December 18, 2013. Published on the Diario Oficial No. 28879 of January 18, 2014.

<sup>59</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Published on the Diario Oficial No. 27607 November 7, 2008.; Uruguay. Asamblea General de la República Oriental del Uruguay. Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 19.178. Derecho de Acceso a la Información Pública](#). December 18, 2013. Published on the Diario Oficial No. 28879 of January 18, 2014.; Uruguay. Unidad de Acceso a la Información Pública. [Quiénes somos](#).

<sup>60</sup> Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 21.

32. In this regard, in States like Canada,<sup>61</sup> Chile,<sup>62</sup> El Salvador,<sup>63</sup> Honduras,<sup>64</sup> and Mexico,<sup>65</sup> the law gives the specialized supervisory and enforcement agency in charge of overseeing the Access Law the authority to design, present, and manage its own budget. In the case of bodies that do not have such power, the manner in which they manage each fiscal year and negotiate their annual budgets will determine the degree of autonomy they enjoy. In some countries of the region like Brazil,<sup>66</sup> Colombia, and Uruguay,<sup>67</sup> the budget of the specialized supervisory and enforcement agency depends upon the State body to which it reports.
33. Having a sufficient budget is essential for the orderly management of the body and the discharge of its missions and duties. On this topic, the Implementation Guide states that “The ultimate risks of under-resourcing the program are a lack of credibility in the program and negative public perception of the transparency and openness of government. Lack of resources will also expose the public authority to

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<sup>61</sup> The 2014 annual budget of the Office of the Information Commissioner, which has budget autonomy, was \$11.2 million. The execution of the budget is examined annually by the chamber and monitored by the Treasury Board Secretariat. Canada. Office of the Information Commissioner of Canada. [Future-Oriented Statement of Operations](#).

<sup>62</sup> The Transparency Council reportedly has an annual budget of US\$ 4.606.752. In addition, it reportedly has 117 staff members. Chile. Dirección de Presupuesto. Ley de presupuesto del Sector Público año 2014. [Ley No. 20.713. Publicada en el Diario Oficial del 18 de diciembre de 2013](#). P. 28; Information received from the Transparency Council in Chile. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>63</sup> The Institute for Access to Public Information has its own assets and enjoys administrative and financial autonomy. The Institute reportedly had a budget of US\$ 885,565 for the 2014 fiscal year and a 35-person staff. El Salvador. Instituto de Acceso a la Información Pública. [Presupuesto 2014 Instituto de Acceso a la Información Pública](#); El Salvador. Instituto de Acceso a la Información Pública. [Memoria de Labores 2013-2014](#). September 29, 2014. Information received from the Institute for Access to Public Information in El Salvador. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>64</sup> The Institute for Access to Public Information, which has budget autonomy, was reportedly allocated a budget of approximately US\$ 1,500,000 from the General Budget of the Republic for the 2014 fiscal year. The Institute is said to employ 55 public servants. Honduras. Secretaría de Finanzas/La Gaceta. [De los Ingresos de la Administración Pública. Decreto No. 360-2013](#). January 24, 2014; Information received from the Institute for Access to Public Information in Honduras. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>65</sup> The budget allocated to the IFAI-OA for 2014 was approximately \$607 million Mexican pesos (approximately US\$ 44,792,254). The agency reportedly has 542 authorized staff positions. México. Instituto Federal de Acceso a la Información Pública y Protección de Datos. [11 Informe de Labores al H. Congreso de la Unión 2013](#); Information received from the IFAI-OA in Mexico. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>66</sup> In 2014, the National Congress allocated a budget of \$ 810,492,921.00 reales (approximately US\$ 328,600,000) to the Office of the Comptroller General [*Controladoria-Geral da União*]. This sum was reportedly earmarked for the entire Office of the Comptroller General—which does not have budget autonomy—so it is impossible to identify precisely how much is designated for the implementation of the Information Access Law insofar as it does not have a specific item. Around 35 people work directly with the Information Access Law in the central body of the Office of the Comptroller General. Similarly, 64 staff members, who work in the regional units of the CGU, reportedly work on matters related to the Information Access Law as part of their activities. Brazil. Palácio do Planalto/Presidência da República. [Anexo I – Receita dos Orçamentos Fiscal e da Seguridade Social por Categoria Economica e Fonte](#); Information received from the Contraloría General de la Unión. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>67</sup> The Public Information Access Unit reportedly has a budget and staff provided by the Agency for the Development of e-Government Management and the Information and Knowledge Society, to which it reports. Information received from the Public Information Access Unit in Uruguay. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

complaints.” In this respect, the Guide recommends designing a budget that takes account of: the scope of the law, the expected demand of requests, an estimate of the staff requirements to cover this demand, the inclusion of activities designed to enhance the management of information, record-keeping and the use of technology, staff training and organizational capacity-building, and the stipulation of promotional activities.<sup>68</sup>

### 3. Structure of the implementing authority and mechanisms for the appointment of authorities

34. As established in the Implementation Guide to the Model Inter-American Law, the selection process and the threshold assents for the appointment of authorities are key to the autonomy, political differentiation, and legitimacy of the body charged with ensuring access to information. Both the selection of authorities and the rules for their removal can help shield the body from political influence. The numerical composition, in the case of collegial bodies, and the duration of the mandate can also be factors in assessing the body’s independence and autonomy.
35. According to the Guide, “the Model Law calls for the selection of an odd number of Commissioners – such as five – in order to facilitate voting and to have a sufficient number of Commissioners to diminish potentials for political capture. [...]Once appointed, the term of office becomes a key consideration for continuing independence. Periods of appointment are in many respects a balancing act. If term limits are too short, then the Commissioner may be more concerned with pleasing those responsible for subsequent appointments than in serving the duties of his or her post. On the other hand, if terms are too long then officers may be less responsive to the shifting trends of openness and needs of all constituencies. At a minimum, the term of service should be longer than the term of the President or appointing body, thus reducing potential for politicization. The length of term is relevant not just to ensure sufficient independence, but also the functioning of the Commission. As previously noted, enforcing the right of access to information often necessitates some specialization, which takes time to acquire.”<sup>69</sup>
36. The rules for the removal of a commissioner are one of the most important elements in guaranteeing the continued independence of the Commission. According to the Implementation Guide, in general, “members of the enforcement body should only be suspended or removed ‘for reasons of incapacity or behavior that renders them unfit to discharge their duties.’” Such reasons, as the Model Law provides, may include a

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<sup>68</sup> Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010.

<sup>69</sup> Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 20.

criminal conviction or an illness that affects the person’s ability to perform his or her duties.<sup>70</sup>

37. There are a variety of systems in the region for the appointment and composition of authorities for the monitoring of access to information. The Information Commissioner of Canada is appointed by the Governor in Council after consultation with the leader of every recognized party in the Senate and House of Commons and approval of the appointment by resolution of the Senate and House of Commons. The term of office is 7 years—longer than the duration of an administration—and can be renewed for one term. The Commissioner may be removed from office at any time by the decision of the Governor in Council in consultation with Parliament.<sup>71</sup>
38. In Chile, the four members of the Directive Council of the Transparency Council are appointed by the President of the Republic upon the assent of a two-thirds majority of the Senate. Their term of office is six years, and they can be reappointed for one additional term only (Art. 36). They can be removed by the Supreme Court at the request of the President of the Republic, a simple majority of the House of Representatives, or at the request of ten members of the House of Representatives (Art. 38).<sup>72</sup>
39. In Mexico, the IFAI Commissioners are appointed by the Senate, following public consultation and nomination by the parliamentary groups, by a two-thirds majority vote of those members present. The President of the Republic may object to the appointment within ten business days. The commissioners’ term of office is seven years, and they can be removed from their positions by means of impeachment.<sup>73</sup>
40. In El Salvador, the Institute for Access to Public Information is managed by five commissioners selected by the President of the Republic from short lists of three candidates nominated by different sectors of society: duly registered business associations; duly registered professional associations; the University of El Salvador and private universities duly authorized; duly registered journalists associations; unions authorized by the Ministry of Labor and Social Welfare [*Ministerio de Trabajo y Previsión Social*]. According to the law, the candidates on the short lists are chosen via a “general assembly” convened by the Executive Branch. The commissioners’ term of office is 6 years, and they cannot be reelected.<sup>74</sup>
41. In Honduras, the Institute for Access to Public Information is composed of three commissioners elected by the National Congress, through a two-thirds vote of its members. They have a five-year term of office. The members are elected from among

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<sup>70</sup> OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). Article 12. June 8, 2010. Article 59.

<sup>71</sup> Canada. Government of Canada/Justice Laws Website. [Access to Information Act. \(R.S.C., 1985, c. A-1\)](#). Section 54.

<sup>72</sup> Chile. Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009.

<sup>73</sup> Mexico. Cámara de Diputados del H. Congreso de la Unión. [Constitución Política de los Estados Unidos Mexicanos](#). Article 6.

<sup>74</sup> El Salvador. Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo N° 391. April 8, 2011. Article 53.

- candidates nominated by: the President of the Republic; the Attorney General of the Republic; the National Commissioner of Human Rights; National Convergence Forum [*Foro Nacional de Convergencia*]; and the Superior Court of Auditors [*Tribunal Superior de Cuentas*]. They have a mandate for 5 years and can only be replaced in the event of legal or physical impossibility, when their actions are incompatible with the nature of the Institute's duties (Art. 9). The candidates for commissioner are interviewed at public hearings by a committee that includes all of the political parties represented in the National Congress, who present a short list of five candidates to the full session of the Legislative Chamber for the selection of the three commissioners who will head the entity.<sup>75</sup>
42. Although the Access to Information Unit of Jamaica operates under the Office of the Prime Minister, the Appeal Tribunal is composed through a special selection mechanism. The five members of the Tribunal are appointed by the Governor-General after a series of consultations with the Prime Minister and the leader of the opposition in Parliament. The members of the Tribunal have a 5-year term of office and can be reelected. By law, the members of the Tribunal can be terminated by the Governor-General upon consultation with the Prime Minister and the leader of the opposition in Parliament. They may terminate the appointment of any member of the Tribunal who, among others, becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health; is convicted and sentenced to a term of imprisonment; is convicted of any offence involving dishonesty; or who fails to carry out the functions conferred or imposed on him by the Act.<sup>76</sup>
43. Uruguay's Public Information Access Unit is directed by a Executive Committee [*Consejo Ejecutivo*] conformed by has three members: the Executive Director of the Agency for the Development of e-Government Management and the Information and Knowledge Society [*Agencia para el Desarrollo del Gobierno de Gestión Electrónica y la Sociedad de la Información y del Conocimiento*] (AGESIC); and two persons appointed by the Executive Branch who can ensure independence of opinion, efficiency, objectivity, and impartiality. The appointed members rotate through the position of President of the Committee. The removal of the members is given by "ineptitude, omission, or the commission of an offense, in accordance with due process guarantees." The authorities of the Executive Committee are appointed for four years, with the exception of the Executive Director of the AGESIC. The authorities may be reappointed (Art. 19).<sup>77</sup>

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<sup>75</sup> Honduras. Congreso Nacional/ Instituto de Acceso a la Información Pública. [Ley de Transparencia y Acceso a la Información Pública](#). Decreto Legislativo No. 170 -2006. Diario Oficial La Gaceta. December 30, 2006; Information received from the Institute for Access to Public Information in Honduras. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>76</sup> Jamaica. Access to Information Unit. [Access to Information Act](#). Act No. 21-2002. July 22, 2002. Section 32.

<sup>77</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Publicada en el Diario Oficial No. 27607 de 7 de noviembre de 2008.

## ***D. Powers and duties to guarantee access to information***

### **1. Authority to resolve disputes**

44. The evaluation of the entity's ability to guarantee access to information must consider whether they have specific—not ambiguous—duties and clear jurisdiction vis-à-vis the authority of other bodies. In the case of the guarantor bodies responsible for ensuring access to information, a key point of authority lies in their ability to resolve disputes regarding the provision of information through binding decisions. In this regard, the Inter-American Court has underscored that the State, “guarantee of the effectiveness of an appropriate administrative procedure for processing and deciding requests for information, which establishes time limits for taking a decision and providing information, and which is administered by duly trained officials.”<sup>78</sup>
45. In Brazil, the Law on Access to Public Information and its regulations provide that the Office of the Comptroller General [Controladoria-Geral da União] (CGU) is responsible for decisions about appeals and complaints about access to information from the Federal Executive. Prior to going to the Comptroller, the applicant must go to the hierarchically higher authority to the one which refused the access to information. If the superior refuses the access to information, the applicant may appeal the decision to the supreme authority of the agency or entity. Subsequently, the applicant may appeal to the CGU and if it refuses the access to information, he/she may appeal to the Joint Committee on Revaluation of Information (see supra para. 56).<sup>79</sup>
46. In Canada, the Information Commissioner's powers include investigating claims (Section 30). For the discharge of this function, the Law grants the Commissioner the authority to summon and require the appearance of individuals before the entity to provide sworn statements or testimony and to produce documents or evidence that the Commissioner deems necessary for the complete investigation and examination of the claim, as well as the authority to access all necessary documents under the control of a government agency during an investigation (Section 36). As an ombudsperson, the Commissioner may not order a complaint to be resolved in a particular way, and therefore his/her recommendations are not binding, though she/he may refer a case to the Federal Court for resolution. After the investigation and the recommendations, any persona who has been refused access to information may apply to the Court directly (Section 41).<sup>80</sup>
47. In Chile, the duties of the Transparency Council include monitoring compliance with the provisions of the Access to Information Act and assessing penalties in cases of

<sup>78</sup> I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151. para. 163.

<sup>79</sup> Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). November 18, 2011; Brazil. Câmara dos Deputados. [Decreto 7.724](#). May 16, 2012.

<sup>80</sup> Canada. Government of Canada/Justice Laws Website. [Access to Information Act. \(R.S.C., 1985, c. A-1\)](#); Canada. Office of the Information Commissioner of Canada. [What we do](#). Information received from the Office of the Information Commissioner of Canada. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

their violation. The most relevant powers and duties granted to the Council by law include: adjudicating claims alleging government authorities' refusal to disclose information, promoting transparency, training public servants, keeping statistics, and issuing general instructions on the implementation of transparency and access to information, as well as requiring that government agencies change their procedures and systems for serving the public (Art. 31).<sup>81</sup> Its decisions are binding, although requesters and agencies can file complaints challenging the Council's decisions to deny access to information before the Court of Appeals in their local jurisdiction (Art 28).<sup>82</sup>

48. In Colombia, the Law does not assign the Public Ministry [*Ministerio Público*] or any other specialized entity with responsibility to settle disputes regarding denials of access to information. Article 28 of the Law provides that denials of information can be challenged by individuals through an administrative appeal [*recurso de reposición*] before the same authorities that adopted the decision. It also provides for judicial review in case of negative decisions. A court or competent administrative judge will handle the case if the reserve invoked to not grant information refers to security and national defense or international relations. This authority within ten days has to decide as sole instance if it refuses or accepts, in whole or in part the request. A judge competent to review request for protection of constitutional rights [*juez de tutela*] will handle the other cases once the internal administrative appeal [*recurso de reposición*] is exhausted. The Office of the Inspector General [*Procuraduría General de la Nación*] is responsible, among other things, for ensuring proper compliance with the obligations set forth in the law, and in so doing, has the power to take preventive action; assess the disciplinary penalties provided for in this law; render disciplinary decisions, in cases involving the exercise of preferential power, in cases of infractions or misconduct derived from the right to access to information.<sup>83</sup>
49. El Salvador's Institute for Access to Public Information also has the authority to hear and decide appeals for review filed by requesters, for which it takes binding decisions by a simple majority.<sup>84</sup> The Access to Information Act establishes that "private parties may challenge denials of their claims before the Administrative Disputes Division of the Supreme Court of Justice" (Art. 101). The Salvadorian law is clear on the powers of the Institute to enforce the right to information, including in particular: the power to hear and decide appeals, render decisions in sanctions proceedings, and issue administrative sanctions; issue the pertinent precautionary measures in a reasoned decision; resolve disputes relating to the classification and declassification of

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<sup>81</sup> Chile. Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009.

<sup>82</sup> Government agencies cannot file claims before the Court of Appeals when they have alleged, as a ground for the confidentiality of information based on article 21(1) (the disclosure of that information would adversely affect the proper discharge of their institutional duties). Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009.

<sup>83</sup> Colombia. Secretaría General del Senado. [Ley 1712 de 2014. Diario Oficial No. 49.084](#). 6 de marzo de 2014. Article 27.

<sup>84</sup> El Salvador. Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo N° 391. April 8, 2011. Arts. 51, 52 & 58.



confidential information, and hear proceedings initiated as a result of the Information Official's failure to respond (Arts. 58 and 75).<sup>85</sup>

50. In the United States, the Office of Government Information Services mandate is to offer mediation services to resolve disputes between persons making FOIA requests and agencies. The goal is to identify issues that are ripe for partnership and explore ways to work together to prevent and resolve disputes as well as avoid litigation. The Office may issue advisory opinions if mediation has not resolved the issue.<sup>86</sup>
51. The Institute for Access to Public Information of Honduras is authorized to resolve disputes related to access to public information. Its decisions are binding and can only be challenged through "the *amparo* in terms of the Constitutional Justice Law" [*recurso de amparo en los términos de la Ley de Justicia Constitucional*] (Art. 4[15] and 26). This entity also has broad powers related to the implementation of a culture of transparency, including in particular the power to: (a) create manuals and instructions on procedures for the classification, archiving, safekeeping, and protection of public information; (b) support the actions of the national archives with regard to the formation and protection of the Nation's document collections; (c) establish criteria and recommendations for the operation of the National Public Information System; and (d) conduct promotion and disclosure activities in connection with the right to access to public information (Art 11).<sup>87</sup>
52. In Mexico, the IFAI has the power to hear and decide appeals for review filed by requesters. The Constitution states that IFAI's decisions are "binding, final and not subject to appeal by the entities under the Law." However, the Legal Adviser to the Government [*Consejero Jurídico del Gobierno*] "may appeal for review before the Supreme Court of Justice of the Nation in the terms established by law only in the case that such decisions may endanger national security under the law on the issue". IFAI has jurisdiction over matters decided by counterpart bodies at the state level, as well as over challenges of denials of information adjudicated by other autonomous constitutional bodies and the rest of the authorities of the Union, with the exception of the Federal Supreme Court. It is also authorized to participate in disputes regarding the constitutionality of acts and regulations.<sup>88</sup> Moreover, IFAI has the power to: establish and review criteria for the classification, declassification, and safekeeping of secret and confidential information; assist the National Archives in the drafting and application of criteria for cataloging and preserving documents, as well as the organization of the archives of government offices and agencies; monitor, and in the event of noncompliance, make recommendations to government agencies to comply with the obligations of proactive transparency; guide and advise private parties with regard to requests for access to information; prepare access to information request forms, as well as forms for access to and the correction of

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<sup>85</sup> El Salvador. Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo Nº 391. April 8, 2011.

<sup>86</sup> Unites States. Office of Government Information Services. [Building a Bridge Between FOIA requesters & Federal Agencies. 2014 Report for FY 2013](#).

<sup>87</sup> Honduras. Congreso Nacional/ Instituto de Acceso a la Información Pública. [Ley de Transparencia y Acceso a la Información Pública](#). Decreto Legislativo No, 170 -2006. Diario Oficial La Gaceta. December 30, 2006.

<sup>88</sup> Mexico. Cámara de Diputados. H. Congreso de la Unión. [Constitución Política de los Estados Unidos Mexicanos](#). Article 6.



personal data; hold training sessions for public servants on matters concerning access to information and the protection of personal data, and to draft and publish studies and research to disseminate and broaden knowledge of the laws on the issue (Art. 37)<sup>89</sup>.

53. In Uruguay, the Executive Council of the Unit for Access to Public Information, by virtue of its authority to monitor compliance with the law, can issue resolution which may, in some case, instruct agencies under the law to disclose certain information. However, decisions are not binding<sup>90</sup>. The Unit also has the following duties: (a) advise the Executive Branch with regard to compliance with the laws on access to public information; (b) oversee the implementation of the law at the respective government agencies; (c) coordinate with national authorities for the implementation of policies; (d) provide training to public servants at the agencies required to provide access to information; (e) promote educational and advertising campaigns to reaffirm the right to access to information as a fundamental right; (f) prepare an annual report for the Executive Branch on the status of access to information, and (g) report any conduct that violates the law to the competent authorities.<sup>91</sup> In addition to these powers, Law 19.178 grants the UAIP the authority to declassify information whose classification process is inconsistent with the provisions of the laws in force.<sup>92</sup>

## 2. Authority to classify and declassify information

54. The right to access to information, as a constituent element of the freedom of expression protected by the American Convention, is not an absolute right; it can be subject to limitations. Nevertheless, such limitations must be in strict conformity with the requirements derived from Article 13.2 of the American Convention—that is, they must be truly exceptional, clearly established by law, pursue legitimate aims, and be necessary to accomplish the aim pursued.<sup>93</sup>
55. In their Joint Declaration of 2004, the UN, OAS and OSCE Special Rapporteurs summarized the requirements that limits to the right to access to information must meet, and addressed in greater depth some issues concerning “restricted” or “secret” information and the laws establishing those classifications, as well as the public servants legally required to maintain its confidentiality.<sup>94</sup> Among other things, they stated that “Certain information may legitimately be secret on grounds of national

<sup>89</sup> Mexico. Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental](#). June 11, 2002.

<sup>90</sup> Uruguay. Unidad de Acceso a la Información Pública. [Resoluciones](#); Information received by the Office of the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>91</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Published on the Diario Oficial No. 27607 of November 7, 2008.

<sup>92</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 19.178](#). 18 de diciembre de 2013. Published on the Diario Oficial of January 8, 2014.

<sup>93</sup> IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 45.

<sup>94</sup> IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 56.

security or protection of other overriding interests,” but that “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,” and therefore, “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.”

56. For purposes of making the classification process more transparent, the bodies and agencies subject to Brazil’s Public Information Access Law must publish a list of classified and declassified information on their websites.<sup>95</sup> In order to facilitate information searches, the Office of the Comptroller General has compiled a list of agencies to which the law applies.<sup>96</sup> The Office of the Comptroller General, together with other bodies such as the Ministry of Communication of the Presidency of the Republic [*Secretaria de Comunicação da Presidência da República*], also created a guide for agencies on how to publish the list of classified and declassified information, and statistical reports regarding Access to Information Law on their websites.<sup>97</sup> In addition, the Public Information Access Law created a Mixed Committee for the Reassessment of Information responsible for deciding the “treatment and classification” of secret information in the federal government. Accordingly, the Mixed Committee has the authority to request clarification from the authorities responsible for classifying information as “top secret” or “secret,” and to request the content of the secret information in part or in whole; to review the classification of “top secret” and “secret” information on its own initiative or at the request of the interested party; and to extend the period of secrecy of information classified as “top secret,” provided that the extension is for a specific period of time. The Mixed Committee also has jurisdiction to decide appeals challenging decisions of the Office of the Comptroller General that deny access to information, and to rule on denials of requests to declassify information issued by the Ministers of State.<sup>98</sup>
57. In Canada, the Office of the Information Commissioner does not does not have a statutory role in regard to classification and declassification of documents. Therefore, each institution is responsible for the classification and declassification of its own documents. The Office of the Information Commissioner has produced reference documents in order to guide employees in managing information.<sup>99</sup>
58. In Mexico, the IFAI issued General Guidelines for the classification and declassification of information held by Federal Government agencies. These guidelines do not prevent the IFAI, in the exercise of its authority, “from ensuring that

<sup>95</sup> Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). November 18, 2011. Art. 30.

<sup>96</sup> Brazil. Acesso à informação/Governo Federal. February 19, 2014. [Órgãos que publicaram página de informações classificadas e desclassificadas](#); Brazil. Acesso à informação/Controladoria-Geral da União. [Relatório sobre a implementação da Lei No 12.527: Lei de Acesso à Informação](#). 2013.

<sup>97</sup> Brazil. Acesso à informação/Governo Federal. [Guia para publicação do rol de informações classificadas e desclassificadas e de relatórios estatísticos sobre a Lei de Acesso à Informação](#). 2ª versão.

<sup>98</sup> Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). November 18, 2011. Art. 16(III), 17 y 35.

<sup>99</sup> Canada. Office of the Information Commissioner of Canada. [OIC’S Information Management \(IM\) Training Module](#). Information received from the Office of the Information Commissioner of Canada. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

the classification adheres strictly to the provisions of the Federal Transparency and Access to Government Information Act, the Regulations thereto, these Guidelines, the specific classification criteria and, if appropriate, other legal provisions.”<sup>100</sup>

59. In Uruguay, the Public Information Access Unit published a practice manual for the classification of information and held training sessions for parties subject to the respective laws.<sup>101</sup> In addition, entities under the Law must submit each semester to the Unit an updated report containing the list of confidential information (Art.7).<sup>102</sup> The 2013 amendment to Uruguay’s Access Law established, as an exception, the option for each agency to classify information at the time a request is handled. When such classification is made, it must be reported to the Unit, which will then “check” that action within a period of 5 days. Also, at all times, the Unit “will have access to classified information to assess the legality of their classification.”<sup>103</sup>

### ***E. Mechanisms for the management of requests: centralized/decentralized; online management***

60. The bodies of the Inter-American System have reiterated that Article 13 of the American Convention establishes a positive obligation for the State to provide the requested information in a timely, complete, and accessible manner. Otherwise, the State must offer, within a reasonable time period, its legitimate reasons for impeding access.”<sup>104</sup> On this point, this Office of the Special Rapporteur has stated that “In order to guarantee the true universality of the right to access,” the remedy available to request information must meet certain conditions. For example, “it must be a simple [remedy] that is easy for everyone to access and only demands basic requirements, like a reasonable method of identifying the requested information or providing the personal details necessary for the administration to turn over the requested information to the petitioner,” and it must be “free or have a cost low enough so as not to discourage requests for information.”<sup>105</sup>
61. The Office of the Special Rapporteur observes that all requests for information in Brazil and their respective responses are reportedly processed through the Electronic

<sup>100</sup> Mexico. Instituto Federal de Acceso a la Información Pública y Protección de Datos Personales. [Lineamientos Generales para la clasificación y desclasificación de la información de las dependencias de la Administración Pública Federal](#). August 18, 2003.

<sup>101</sup> Uruguay. Unidad de Acceso a la Información Pública. [Guía de Clasificación](#);

<sup>102</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Published on the Diario Oficial No. 27607 of November 7, 2008.

<sup>103</sup> Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 19.178](#). December 18, 2013. Published on the Diario Oficial of January 8, 2014.

<sup>104</sup> IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (the Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 24/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paras. 77; IACHR. Arguments before the Inter-American Court in the *Case of Claude Reyes et al.* Reprinted in: /A Court H.R., *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paras. para. 58 (a) & ( b).

<sup>105</sup> IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (the Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 26.

System for Information Service (e-SIC).<sup>106</sup> The e-SIC system enables citizens to exercise their right by having a single entry point for requests, and provides them with the opportunity to follow up on requests, view responses, and file complaints. It also facilitates management for public servants, insofar as the system “makes it possible for the agencies and entities and for the CGU to support the implementation of the Law and produce statistics on compliance with the extraction of reports containing data on all of the requests for access to information and their respective follow-up.”<sup>107</sup>

62. Canada has had an online system since 2013 for the management of information requests filed with federal government agencies. As reported, “To date, it is a pilot project that extends to 21 of the 250 institutions covered by the law, but which handle 80% of the requests received at the entire federal level.”<sup>108</sup>
63. On October 1, 2012, the United States launched FOIAonline, a multi-agency web-application that enables the public to submit FOIA requests to participating agencies.<sup>109</sup> Moreover, the public can track the progress of an agency’s response to a request, search for information previously made available, and generate up-to-the-minute reports on FOIA processing.<sup>110</sup>
64. In Honduras, the Institute for Access to Public Information set up the Electronic Information System of Honduras (SIELHO). According to the information available, the SIELHO “is a mechanism designed to manage requests for information and receive appeals for review online. The system is responsible for redirecting citizen requests for information to the public information officers (OIP) of each institution, electronically regulating the process that the request follows; at the same time, it provides feedback to the requester on the status of the request for information. The SIELHO enables the public information officer (OIP) to monitor all of the requests pending response and to handle them in order of their deadlines.”<sup>111</sup>
65. With regard to request management mechanisms Mexico, the IFAI-OA implemented the INFOMEX system:<sup>112</sup> “a computer tool that allows citizens to exercise their rights to access to information and the protection of personal data held by the government,

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<sup>106</sup> Brazil. E-SIC/ Sistema Eletrônico do Serviço de Informações ao Cidadão. [Manual do Cidadão](#).

<sup>107</sup> Brazil. E-SIC/ Sistema Eletrônico do Serviço de Informações ao Cidadão. [Manual e-SIC/Guia do SIC](#).

<sup>108</sup> Information received from the Office of the Information Commissioner of Canada. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. Canada. Treasury Board of Canada/Secretariat. [Access to Information and Privacy Online Request Pilot Project](#). Additional information about the initiative is available at: <http://www.tbs-sct.gc.ca/atip-aiprp/tools/request-demande-eng.asp>

<sup>109</sup> FOIAonline participating agencies include: Environmental Protection Agency; National Archives and Records Administration, Office of General Counsel; Department of Commerce (except U.S. Patent and Trademark Office); Merit Systems Protection Board; Federal Labor Relations Authority; U.S. Customs and Border Protection; U.S. Customs and Border Protection; Pension Benefit Guaranty Corporation; Department of the Navy (including Navy and Marine Corps); General Services Administration; Small Business Administration; U.S. Citizenship and Immigration Services (Only accepting requests for records that do not contain Personally Identifiable Information (PII)); Federal Communication Commission. United States. [FOIAonline](#).

<sup>110</sup> United States. FOIAonline. [Frequently asked questions](#).

<sup>111</sup> Institute for Access to Public Information de Honduras. [Sistema De información Electrónico de Honduras \(SIELHO\)](#).

<sup>112</sup> Mexico. [Sistema INFOMEX Gobierno Federal](#).

through an electronic system for the receipt and expedited handling of requests for information.” According to the information received, “The main objectives of INFOMEX are as follows: to handle requests for access to information and personal data, as well as requests for the correction of such data, filed by citizens electronically through this medium; for citizens to be able to receive the information they request through this medium, to be able to monitor the status and processing of the requests, and to be able to file appeals for review through the same electronic medium in the event of the denial of a request for information. INFOMEX also makes it possible to view the responses of the Federal Government, using multiple filters such as date, status, and response type, by Federal Government office or entity.”<sup>113</sup>

66. In Uruguay, requests are received in person or electronically. According to the information received, the Public Information Access Unit “is working on the E-access System that will centralize all requests for information filed in Uruguay in a single computer system, thus allowing it to monitor them in its capacity as the supervisory body.”<sup>114</sup>

## ***F. Mechanisms for the monitoring and enforcement of proactive transparency obligations***

67. The right to access to information imposes upon the State the obligation to provide the public with the maximum amount of information on its own initiative, at least with respect to: (a) the structure, function, and operating and investment budget of the state; (b) the information needed for the exercise of other rights—for example, those pertaining to the satisfaction of social rights such as pensions, health, and education; (c) the availability of services, benefits, subsidies, or contracts of any kind; and (d) procedures for filing complaints or requests, if they exist. This information should be complete, understandable, available in accessible language, and up to date. Also, given that significant segments of the population do not have access to new technologies—and yet many of their rights can depend on having information about how to exercise them—the State must find efficient ways to meet its obligation of active transparency in these circumstances.<sup>115</sup>
68. The Model Inter-American Law on Access to Public Information clearly stated some of the State’s obligations with regard to proactive transparency. The Model Law prescribes that “even in the absence of a specific request, public bodies should disseminate information about their functions on a routine and proactive basis and in a manner that assures that the information is accessible and understandable.” In

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<sup>113</sup> Information received from IFAI-OA in Mexico. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>114</sup> Information received from the Public Information Access Unit in Uruguay. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>115</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework Regarding the Right to Access to Information, Second Edition](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011. Para. 261, *et seq.*; IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (the Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. para. 30-32.

addition, Article 9 of the Model Law establishes the obligation to “[make] information available proactively so as to minimize the need for individuals to make requests for information.” Article 12 of the Model Law specifies in detail the types of key information subject to proactive disclosure by a public authority.<sup>116</sup>

69. In this respect, the specialized entity responsible for overseeing and enforcing access to information laws must be capable of formulating consistent policies for all of the agencies subject to the regulations, and must have the authority to coordinate the efforts of different departments. Therefore, it must have the ability to monitor compliance with the obligation of proactive transparency.
70. With a view to enhancing transparency and facilitating information searches by citizens, the Federal Government of Brazil ordered all bodies and entities of the Executive Branch to disclose information of public interest in an organized and centralized manner in a specific section of their websites. To guide them in this task, the Office of the Comptroller General developed a manual containing guidelines on how to build an “Access to Information” section on their websites. This manual aims to provide consistency with details on the structure, nomenclature, and content of the information of public interest that government agencies and entities are required to publish under the Access to Information Act.<sup>117</sup> In order to verify compliance with the manual’s guidelines and the obligations of proactive transparency, the Office of the Comptroller General is conducting a survey of all of the agencies of the Federal Executive Branch to obtain information about their websites. The agencies that have not observed the provisions of the Law or the guidelines set forth in the manual have received letters with recommendations for proper compliance with their proactive transparency obligations. According to the information received, a Working Group has been formally established in Brazil and authorities responsible for monitoring compliance with the Access Law have been appointed in the agencies and bodies subject to the law.<sup>118</sup>
71. In Canada, the government institutions subject to the Access Law must report annually to Parliament regarding their compliance.<sup>119</sup>
72. Mexico’s IFAI created the Transparency Portal, a system through which citizens have access to information relating to the transparency obligations of Federal Government agencies.<sup>120</sup> The IFAI also implemented *ZOOM*, a search engine of public information

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<sup>116</sup> OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010. Article 12.

<sup>117</sup> Brazil. Acesso à informação/Governo Federal. [Guia para Criação da Seção de Acesso à Informação nos sítios eletrônicos dos Órgãos e Entidades Federais](#). 2ª versão.

<sup>118</sup> Brazil. Acesso à informação/Governo Federal/Controladoria-Geral da União. [Lei No.12.527:Lei de acesso a Informação. Poder Executivo Federal 2011-2012](#). Pag. 13; Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). November 18, 2011. Art. 40.

<sup>119</sup> Canada. Treasury Board of Canada/Secretariat. [Access to Information Manual](#). Information received from the Office of the Information Commissioner of Canada. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. Canada.

<sup>120</sup> Mexico. Instituto Federal de Acceso a la Información y Protección de Datos. [Lineamientos que habrán de observar las dependencias y entidades de la Administración Pública Federal para la publicación de las obligaciones de transparencia señaladas en el artículo 7 de la Ley Federal de Transparencia y Acceso a la](#)

requests made to the Federal Government, of the answers provided, and the resolutions that IFAI issues, in addition to studies and opinions that support these resolutions.<sup>121</sup>

73. In Honduras, the Institute for Access to Public Information created the Office of Transparency Verification [*Gerencia de Verificación de Transparencia*] in 2013 aiming to corroborate the information that the institutions under the Law have to publish on their transparency portals [*portales de transparencia*]. This Office produces annual reports evaluating the compliance of government agencies in accordance with the transparency evaluation methodology design that was approved by the full session of the Commissioners of the Institute. According to the methodology, the transparency portal must have at least the following five main components: “Organic Structure and Services; Planning and Accountability; Finances; Citizen Participation and Oversight. Within this framework, the agencies subject to regulation have been classified according to their interest in or commitment to observing the LTAIP [Transparency and Access to Public Information Act].”<sup>122</sup>
74. An external audit was conducted of Uruguay’s Public Information Access Unit that applied a matrix specially designed by the Unit for the periodic assessment of progress made by the regulated agencies in their compliance with the provisions of the Access Law. With this matrix, the Unit will perform audits on a regular basis.<sup>123</sup> Decree 484/2009<sup>124</sup> issued by the Executive Branch established that all agencies subject to the law have the right to conduct self-evaluations in order to report on their compliance with the obligations of proactive transparency.

## ***G. Mechanisms for centralized statistical monitoring***

75. In Mexico, the IFAI-OA compiles and publishes statistic on various topics, which are largely reprinted in its annual report. The themes addressed include: the 20 agencies with the greatest number of requests for information; the most common subjects of requests for information; the geographic location of the requesters; the number of requesters per year according to the reported age of the requester; percentage of

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[Información Pública](#). Second Edition. November 1, 2006; México. Instituto Federal de Acceso a la Información y Protección de Datos. [Portal de Obligaciones de Transparencia](#).

<sup>121</sup> Mexico. Instituto Federal de Acceso a la Información y Protección de Datos. [Zoom](#). Buscador de Solicitudes de Información y Recursos de Revisión.

<sup>122</sup> Honduras. Instituto de Acceso a la Información Pública. Gerencia de Verificación de Transparencia. [Resumen Ejecutivo-Verificación de la información de oficio-Portales de Transparencia-Instituciones Obligadas](#); Information received from the Institute for Access to Public Information in Honduras. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>123</sup> Information received from the Public Information Access Unit in Uruguay. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>124</sup> Uruguay. Agencia de Gobierno Electrónico y Sociedad de Información/Presidencia de la República. [Decreto No. 484/009](#). November 3, 2009.



requests received by gender; the number of requests per year according to the requester's reported occupation, among other subjects.<sup>125</sup>

76. Uruguay's Public Information Access Unit presents its statistics in its annual report. These data refer to the number of compliance forms and confidentiality request forms filed the number of decisions and opinions issued and their subject matters, and statistics on compliance with the law. To meet this objective, all of the agencies subject to the law must submit a report to the UAIP with data on requests received and procedures followed during the prior year.<sup>126</sup>
77. In Brazil, according to the information received, the Office of the Comptroller General publishes statistical reports on the Internet with daily data updates on requests for information and appeals, based on the data extracted from e-SIC. These reports include the consolidated data from the entire Federal Executive Branch, as well as data specific to bodies or entities registered in the system, without the need to log in to e-SIC.<sup>127</sup>

## **H. Conclusions and Recommendations**

78. Over the past decade 22 countries of the hemisphere have enacted laws to guarantee the effective exercise of the right to access to public information; this reality is largely result of the promotion that the Inter-American Human Rights System has given to the protection and implementation of the right of access to public information. In general, the regulatory frameworks, adopted by different States, are in line with the standards developed by inter-American doctrine and caselaw.
79. The main conclusion that can be drawn from the study is the growing consensus in the OAS Member States, in recognizing the right to information as one of the pillars of the consolidation of established and robust democratic systems through citizen participation. This was expressed fundamentally in the enactment of laws on access to public information following the standards developed by the inter-American doctrine and caselaw.
80. In order to implement and enforce the laws on access to information in an efficient, suitable and adequate manner, several countries in the region have created supervisory institutional mechanisms, which demonstrates a concern to promote a culture of transparency in the long term. The existence of such mechanisms is vital both to effectively implement the access to information laws and to satisfy the public's need for a simple and effective remedy for review the denial of information.

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<sup>125</sup> Mexico. Instituto Federal de Acceso a la Información y Protección de Datos. [Estadísticas e Indicadores](#). Information received from the IFAI in Mexico. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>126</sup> Information received from the Public Information Access Unit in Uruguay. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

<sup>127</sup> Information received from the Office of the Comptroller General in Brazil. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.



81. The information gathered in this report leads to the conclusion that the institutions created in the region to ensure the implementation and enforcement of the right of access to information, inroads in each one of the States very painstakingly, which requires significant efforts from authorities to consolidate their space of autonomy and develop the ability to fulfill their mission .
82. As seen in this report, these bodies are not uniform in their designs and features, and not all meet the inter-America standards for independence, autonomy and power to resolve disputes. A number of countries have set up specialized bodies to implement the right to information with autonomy and independence. In other cases, commissioners have been appointed or specialized units were created and located within preexisting bodies (Public Ministry, Comptroller, the National Archives or Parliament). A third group of states have chosen to establish authorities or expert committees on the right to information, but under the aegis of the Executive branch or other body controlled by it.
83. Among the supervisory bodies that were designed with independence and autonomy within the government structure, we can also find differences due to the factors that makes them independent (process of selection and appointment of the commissioners, dismissal or termination of the mandate, budgetary sovereignty, etc.) A recent constitutional amendment positioned the IFAI as one of the most important bodies among those created in the region for the enforcement of access to public information, granting it autonomy and independence with a constitutional status within the political organization of the federation. However, Chile, Canada, Honduras, and El Salvador have established bodies with varying degrees of autonomy and independence in relation to the factors that can determine the real (or perceived) independence of these offices.
84. A critical issue in the institutional designs studied lies in the powers granted by law to these bodies to resolve disputes and if they have the power to order agencies under the Law to grant access to information intended to be held in reserve. Only a minority of the cases studied have the power to issue binding resolutions for authorities under the Law, as advised by international standards to provide accessible and affordable appeal to the applicant. The IFAI in Mexico the Transparency Council of Chile, the Institute for Access to Public Information in El Salvador and the Institute for Access to Public Information of Honduras can issue binding resolutions but not final; this has allowed agencies under the Law to challenge the decisions of those bodies in court, thereby delaying the disclosure of the requested information.
85. In the cases of Canada, United States and Uruguay the supervisory bodies overseeing access to information can only issue recommendations, for the government bodies who denied access to information to review their decisions. In these cases, the requesters who wish to enforce their right to information may avail themselves of the judiciary, with all of the attending costs.
86. The rest of the designs studied must be examined individually. Brazil delegated the duties of implementing and monitoring compliance with the law to a pre-existing body with sufficient authority, independent from the Executive Branch, and federal in scope. In case of dispute the regulation on access to information established a complex mechanism that requires prior presentation of a petition for review before

the agency under the law, and then he may appeal to his superior. If the superior refuses the access to information, the applicant may appeal the decision to the supreme authority of the agency or entity. Subsequently, the applicant may appeal to the Office of the Comptroller General [*Controladoria-Geral da União*] and if it refuses the access to information, he/she may appeal to the Joint Committee on Revaluation of Information.

87. A similar case is that of Colombia, which by law assigned the implementation of decisions on access to public information to the Office of the Inspector General [*Procuraduría General de la Nación*] of Colombia, a pre-existing agency with the power to sanction public official and within which a Working Group was established for the application of the Access to Information Act. However, when there is a dispute between a person requesting information and an agency under the Law, applicants should go to the courts to seek protection of their rights.
88. In light of the issues presented on this report, the countries of the region may continue to make progress in their obligation to implement a culture of transparency and guarantee the right to access to information. It is therefore essential to persist in building robust supervisory bodies with sufficient power to give life and meaning to the mandates of transparency of access to information laws and align State practice to international case law.
89. The Office of the Special Rapporteur reiterates the importance that bodies responsible of defending the right to information have a budget and allocation of human resources to fulfill their important assigned mission. Without resources or staff, is very difficult to fulfill all the functions assigned to these agencies, such as the promotion of the regulation, exercise control over the rest of the state organization and resolve appeals with the speed necessary to guarantee the right to access to information.
90. The Office of the Special Rapporteur hopes that this report will be of use to the States and to civil society, to get to know the legal frameworks and institutional practices developed in the region to build supervisory bodies that grant the protection and defense of the right to access to information, capable of implementing systematic transparency policies and of resolving disputes between citizens and government agencies to access information of public interest. In this regard, this report is expected to be useful to bring the regulatory frameworks into line with the highest relevant standards and inspire those states that have not yet adopted laws to defend the right of access to information.



The right to access to public  
information in the Americas:  
Relevant Inter-American standards  
and resolutions from specialized  
rights protection bodies

This section corresponds to Chapter V of the 2013 Annual Report of the Office of the Special Rapporteur for Freedom of Expression, approved by the Inter-American Commission on Human Rights on December 31, 2013, under the mandate of special rapporteur Catalina Botero.

## A. Introduction

1. The right to access to information is a fundamental right protected under Article 13 of the American Convention. The right is a particularly important one for the consolidation, functioning and preservation of democratic systems, for which reason it has received significant attention, both from OAS member States<sup>128</sup> and in scholarship and international case law.<sup>129</sup>
2. The Inter-American Court has established that on explicitly stipulating the rights to “seek” and “receive” “information,” Article 13 of the American Convention protects the right of all persons to access information that is under State control, with exceptions permitted under a strict regime of restrictions established in the Convention.<sup>130</sup>
3. The right to access to information is a fundamental requirement for guaranteeing transparency and good public administration of the government and other State authorities. The full exercise of the right to access to information is crucial for preventing abuses by public officials. It fosters the rendition of accounts and transparency in State administration and prevents corruption and authoritarianism.<sup>131</sup> In addition, free access to information is a measure that allows citizens to

<sup>128</sup> The General Assembly of the OAS holds that the right of the access to information is “a requisite for the very functioning of democracy.” In this sense, all democratic American States “are obliged to respect and promote respect access to public information for all persons and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.” General Assembly of the OAS. [Resolution AG/RES. 1932 \(XXXIII-O/03\). Access to Public Information: Strengthening Democracy](#). June 10, 2003. See also, General Assembly of the OAS. [Resolution AG/RES. 2057 \(XXXIV-O/04\). Access to Public Information: Strengthening Democracy](#). June 8, 2004; General Assembly of the OAS. [Resolution AG/RES. 2121 \(XXXV-O/05\). Access to Public Information: Strengthening Democracy](#). June 7, 2005; General Assembly of the OAS. Resolution AG/RES. 2252 (XXXVI-O/06). [Access to Public Information: Strengthening Democracy](#). June 6, 2006; General Assembly of the OAS. [Resolution AG/RES. 2288 \(XXXVII-O/07\). Access to Public Information: Strengthening Democracy](#). June 5, 2007; General Assembly of the OAS. [Resolution AG/RES. 2418 \(XXXVIII-O/08\). Access to Public Information: Strengthening Democracy](#). June 3, 2008; General Assembly of the OAS. [Resolution AG/RES. 2514 \(XXXIX-O/09\). Access to Public Information: Strengthening Democracy](#). June 4, 2009; General Assembly of the OAS. [Resolution AG/RES. 2661 \(XLI-O/11\). Access to Public Information and Protection of Personal Data](#). June 7, 2011.

<sup>129</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 1.

<sup>130</sup> I/A Court H.R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 76 y 78. See also, I/A Court H.R. *Case of López-Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141. Para. 161 *et seq*; I/A Court H.R. *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 108.

<sup>131</sup> Free access to information is a measure that, in a representative and participative democratic system, the citizens exercise their political rights; effectively, the full exercise of the right of access to information is necessary for preventing abuses by public officials, promoting transparency in government administration, and allowing solid and informed public debate that ensures the guarantee of effective recourses against government abuse and prevents corruption. Only through access to State-controlled information in the public interest can citizens question, investigate, and weigh whether the government is adequately complying with its public functions. I/A Court H. R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 86-87. See also, IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 4 and 5.

adequately exercise their political rights in a representative and participatory democracy. Certainly political rights presuppose the existence of a broad and vigorous debate, for which it is crucial to have the public information to allow for the sober evaluation of the progress made and difficulties encountered by different authorities. Only through accessing information held by the State is it possible for citizens to know whether the government is performing adequately.<sup>132</sup> Finally, access to information plays an essential role as a tool. It is only through the proper implementation of this right that people are able to know with precision their rights and the mechanisms that exist to protect them. In particular, the adequate implementation of the right to access information in all of its dimensions is an essential condition for the fulfillment of the social rights of excluded or marginalized sectors of society. Effectively, these sectors often do not have systemic and safe alternatives for learning the scope of the rights that the State has recognized and the mechanisms for demanding them and making them effective.<sup>133</sup>

4. This chapter continues the series of the Office of the Special Rapporteur's reports on the issue of freedom of expression and access to public information, pursuant to its mandate to highlight best practices on the subject that have been recognized and implemented by governments.
5. The Office of the Special Rapporteur has recognized that independent of the legal frameworks of OAS member States, the rulings of the human rights protection bodies have significantly promoted standards on access to public information in the context of the domestic jurisdiction of each of the States.
6. For the above reason, the Office of the Special Rapporteur recognizes the need to bring together and assess the rulings of some of the autonomous bodies of OAS member States in charge of protecting the right to access to public information, such as the Federal Institute on Access to Information and Protection of Personal Information in Mexico (IFAI) and the Council on Transparency in Chile (CPLT). The study of these resolutions is vitally important for taking stock of progress made in perfecting best practices on the issue, as well as for identifying the use of guidelines on the right to access to public information. In certain countries, despite the existence of special legislation on the subject, there is no specialized administrative body, meaning that the courts have been the ones in charge of interpreting and applying the law.
7. Likewise, the Office of the Special Rapporteur continues to highlight the special importance of inter-American comparative law and the role it plays in enriching regional scholarship and case law. Although it is true that one of the objectives of the regional human rights protection bodies is to ensure domestic application of Inter-American standards, it is also true that standards have been raised thanks to developments in institutional practices in OAS member State. The interpretations of civil society and State domestic bodies continue to establish the conditions that allow

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<sup>132</sup> I/A Court H.R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 86 and 87.

<sup>133</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 5.

for the regional system to remain on the path toward strengthening its scholarship and case law on the right to access to information.

8. The following paragraphs summarize some of the recent decisions on access to information of guarantor bodies in major States to which the Office of the Special Rapporteur had access. The decisions are arranged according to the central issues they address. However, it should be noted that the majority of the decisions cited address a variety of issues, and therefore should be read in their entirety.

## ***B. Specialized guarantor bodies: The obligation to provide a suitable and effective remedy for appealing a refusal to turn over information***

9. States must enshrine the right to appeal an administrative ruling denying access to information through a remedy that is simple, effective, swift and not onerous, and that allows for the challenging of decisions of public officials who deny access to specific information or simply fail to respond to the request.<sup>134</sup> In these cases, remedies must be simple and swift, as the speed with which the information is turned over is often indispensable for accomplishing the functions that this right is associated with.<sup>135</sup>
10. The countries of the region have different types of administrative and judicial remedies for challenging administrative responses or omissions with regard to requests for access to public information.<sup>136</sup> In some states, these remedies consist of a specialized mechanism to guarantee the right to access to information. The mechanism is presented before an administrative, autonomous, independent and specialized entity (this is the case in Chile and Mexico)<sup>137</sup>. In other places, appellants can turn to specialized administrative entities whose rulings are not binding (this is the case in Uruguay and Panama) or to an authority such as the Office of the People's Ombudsman that assume the defense of the right to access as part of their functions (like in the case of Guatemala, Colombia or Peru). In some cases, constitutional judicial remedies exist, such as *amparo* in Peru and *tutela* in Colombia. Finally, some States only have ordinary administrative and/or legal remedies. The following

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<sup>134</sup> I/A Court H.R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para.137; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 238.

<sup>135</sup> I/A Court H.R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 116-139; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 205.

<sup>136</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 241.

<sup>137</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 208.



paragraphs briefly explain some of the basic characteristics of the aforementioned specialized appeals bodies.<sup>138</sup>

11. In Mexico, the law [*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental* (LFTAIPG)] created the Federal Institute on Access to Information and Protection of Personal Information in Mexico (IFAI), which is probably one of the most important institutions for the defense of the right to access to information in the whole region. The mandate of the IFAI is to “promote and disseminate the exercise of the right to access to information; resolve denials of requests to access to information; and protect personal information held by offices and agencies”<sup>139</sup>.
12. The Institute functions may be classified as follows: 1. Litigious and regulatory functions to ensure access to public information and to protect personal data, through the resolution of denials of access to information, the interpretation of the Law and to issue guidelines;<sup>140</sup> 2. Coordination and oversight functions to encourage compliance with transparency laws, pursuant to its competency;<sup>141</sup> 3. Responsible for publicizing the benefits of the right to access to public government information and encouraging a culture of transparency and rendering of accounts; 4. Finally, operational and administrative functions necessary for the proper operation of the Institute and to ensure compliance with its other functions.<sup>142</sup>
13. The decree creating it was published on December 24, 2002, in the *Diario Oficial de la Federación*.<sup>143</sup> It established the Institute as a decentralized, non-sectoral body of the Federal Public Administration with operational, budgetary and decision-making autonomy. The legal framework under which it was created, reiterates the purpose of the Institute to “promote and disseminate the exercise of the right to access to information; resolve denials of requests to access to information; and protect personal information held by offices and agencies.”<sup>144</sup>
14. On November 26, 2013, the Chamber of Deputies of the United Mexican States passed an initiative to amend the Constitution that had been sent to it by the Senate. The initiative would give constitutional autonomy to the federal oversight agency on matters of transparency and access to public information. The scope of this autonomy

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<sup>138</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 241.

<sup>139</sup> Estados Unidos Mexicanos. Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental](#). June 11, 2002. Art. 33.

<sup>140</sup> Instituto Federal de Acceso a la Información Pública. [Informe de Labores al H Congreso de la Unión 2003-2004](#). P. 12.

<sup>141</sup> The IFAI should monitor the agencies compliance of the obligations of transparency, proper attention to requests for information and compliance with the resolutions of the plenary and complaints of breach before internal control body. Instituto Federal de Acceso a la Información Pública. [Informe de Labores al H Congreso de la Unión 2003-2004](#). P. 12.

<sup>142</sup> Instituto Federal de Acceso a la Información Pública. [Informe de Labores al H Congreso de la Unión 2003-2004](#). P. 12.

<sup>143</sup> Estados Unidos Mexicanos. [Decreto del Instituto de Acceso a la Información Pública](#). Diario Oficial de la Federación. December 24, 2002.

<sup>144</sup> Estados Unidos Mexicanos. [Decreto del Instituto de Acceso a la Información Pública](#). Diario Oficial de la Federación. December 24, 2002. Art. 2.

would mean that its rulings are “definitive, binding and cannot be challenged by those legally bound” and that hereinafter it will hear matters resolved by its peer institutions in the federal entities as well as challenges to denials of information resolved by other constitutionally autonomous bodies and other powers, with the exception of the Supreme Court of Justice of the Nation. It also allows federal oversight agency to participate in conflicts over the constitutionality of actions and laws. The ongoing reform also broadens the sources of information considered public<sup>145</sup>.

15. Another of the important institutions for the defense of the right to access information in the region is the Transparency Council in Chile (CPLT). This is “an independent public-sector corporate entity with legal personality and its own funding”<sup>146</sup> created by the Transparency Act of Public Service and Access to Information of the State Administration [*Ley de Transparencia de la Función Pública y de Acceso a la Información de la Administración del Estado*]. It was approved in 2008 and has been in force since 2009.
16. In its Article 32, the Law on Access to Public Information establishes the objectives of its creation and the principles that will guide its actions as a guarantor body, establishing “as an objective to promote the transparency of public administration, supervise compliance with laws on transparency and the public nature of the information of State administrative bodies, and guarantee the right to access to information.”<sup>147</sup>
17. Article 33 of the law establishes the functions and attributes of the CPLT. The most relevant are: supervising compliance with the provisions of the law; resolving challenges to authorities’ refusal to turn over information; carrying out promotional and training activities to officials regarding transparency and access to public information; supervising proper classification of information; and supervising compliance with the law on the protection of personal information (Law 19.628) by the organs of state administration.<sup>148</sup> The direction and administration of the CPLT is through a Board of Directors made up of four members, elected by the Senate by a qualified vote (two-thirds) of candidates proposed by the Executive. Appointment terms are for six years, with the possibility of being reelected for one more term immediately afterward. The Board of Directors chooses a President from among its members. In the absence of an agreement, the President is chosen by lottery. The

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<sup>145</sup> Cámara de Diputados. H. Congreso de la Unión. [Minuta. Proyecto de Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de transparencia](#). November 26, 2013. See also, Cámara de Diputados. H. Congreso de la Unión. November 26, 2013. [Boletín No 2613 Aprueban diputados minuta en materia de transparencia; la remiten a Congresos estatales](#); Cámara de Diputados. H. Congreso de la Unión. November 26, 2013. [Nota No 5131 Aprueban Diputados minuta que regresó el Senado sobre reforma constitucional al IFAI y la turna a los congresos estatales para su eventual ratificación](#).

<sup>146</sup> Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art. 31.

<sup>147</sup> Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art. 32.

<sup>148</sup> Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art. 33.

- presidency rotates over a period of 18 months. Board members may not be reelected again during a single term.<sup>149</sup>
18. Board members can be removed by the Supreme Court at the request of the President of the Republic, a simple majority of the Chamber of Deputies, or at the request of 10 deputies for incapacity, misbehavior or manifest negligence in the performance of their duties.<sup>150</sup>The main activity of the CPLT is to resolve cases in which applicants challenge a refusal by obligated subjects to turn over information. The Board fulfills this role through plenary sessions where it decides on conflicts over transparency or access to information through a majority vote. In the case of a tie, the Board President casts the deciding vote.<sup>151</sup>
  19. In Chile, the obligated subjects and applicants seeking information can file a claim of illegality [*reclamo de ilegalidad*] against the CPLT resolutions that deny the access to information, before the Court of Appeals of his/her domicile.<sup>152</sup>
  20. The Access to Public Information Act of Uruguay, Law 18,381, establishes in its Article 19 a “decentralized body of the Agency for the Development of an Electronic Administration Government and Information and Knowledge Society (AGESIC) imbued with the broadest of technical autonomy, the Unit on Access to Public Information [*Unidad de Acceso a la Información Pública*] (UAIP).”<sup>153</sup>
  21. The same article establishes that the UAIP “will be directed by an Executive Council made up of three members: the Executive Director of the AGESIC and two members designated by the Executive Branch between persons [...] who are independent in terms of criteria, efficiency, objectivity and impartiality.” With the exception of the Executive Director of the AGESIC, members will serve for four years and can be renominated. As established by the Law “[t]hey can only be removed following the expiration of their terms or by the Executive Branch in cases of ineptitude, negligence or crime [...]. The presidency of the Executive Council will rotate annually between the two members named to that body by the executive branch. The president will be in charge of representing the Council and carrying out the activities necessary for compliance with its resolutions.”<sup>154</sup>
  22. Article 20 establishes that the “Executive Council of the the Unit on Access to Public Information will be assisted by an Advisory Council made up of five members: a) A

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<sup>149</sup> Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art. 36.

<sup>150</sup> Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art. 38.

<sup>151</sup> Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art. 40.

<sup>152</sup> State administrative bodies may not bring a claim before the Court of Appeals when they have invoked, on confidentiality grounds to oppose the release of information, the argument that releasing it would hamper their ability to properly carry out their institutional functions (Art. 21 N°1). Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art. 28.

<sup>153</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Ley N° 18.381. Acceso a la Información Pública](#). October 7, 2008. Art. 19.

<sup>154</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Ley N° 18.381. Acceso a la Información Pública](#). October 7, 2008. Art. 19.

person with a recognized career in the promotion and defense of human rights, nominated by the Legislative Branch, and who cannot be a current legislator. b) A representative of the Judicial Branch. c) A representative of the Office of the Public Prosecutor. d) A representative from academia and e) [a] representative of the private sector. The Advisory Council may be consulted by the Executive Council on any aspect related to its competency and shall be consulted when the Executive Council exercises its authority to establish rules.”<sup>155</sup>

23. In El Salvador, the Law on Access to Information orders in Article 51, the creation of the “Institute on Access to Public Information as a public law institution with legal personality and its own funding, with administrative and financial autonomy, in charge of supervising the application of this law.” Pursuant to Article 52, the Institute “will be made up of five Commissioners and their corresponding substitutes, who will be named by the President of the Republic. Their terms will last six years and they cannot be renominated. The substitute commissioners will replace the commissioners in cases of death, resignation, absence, inability to participate, recusal in the case of conflicts of interest, or any other valid reason. The Institute will make its decisions by simple majority.”<sup>156</sup>
24. The Law on Access to Information establishes that “private parties shall be able to challenge denials of their requests before the Contentious Administrative Chamber of the Supreme Court of Justice.”<sup>157</sup> The process is governed in a suppletive quality, by the rules established in the Law on Contentious Administrative Jurisdiction of 1978.<sup>158</sup> The Access to Public Information Act was published in El Salvador’s *Diario Oficial de La República* on April 8, 2011.
25. The procedure for electing the commissioners and their substitutes, regulated by Article 53 of the law, indicates that they will be chosen from a shortlist proposed by duly registered business associations; duly registered professional associations; the Universidad de El Salvador and duly authorized private universities; duly registered journalist associations; and by the unions authorized by the Ministry of Labor and Social Security [*Ministerio de Trabajo y Previsión Social*].
26. In Panama, the National Assembly approved in April 2013, the Law No. 33, which created a National Authority of Transparency and Access to Information.<sup>159</sup> The new authority is constituted as the “guiding body in the field of the right to petition and gain access to public information, protection and of personal data, transparency, ethics and prevention of corruption at the governmental level” (Art. 4.2). It is to be a decentralized institution “with full functional, administrative and independent authority” (Art. 1). Its main powers include overseeing compliance with the Law on

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<sup>155</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Ley Nº 18.381. Acceso a la Información Pública](#). October 7, 2008. Art. 20.

<sup>156</sup> Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo Nº 391. April 8, 2011. Arts. 51 and 52. The Act was approved by Decree 534 dated April 8, 2011 and became effective on May 8, 2011.

<sup>157</sup> Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo Nº 391. April 8, de 2011. Art. 101.

<sup>158</sup> Asamblea Legislativa de El Salvador. [Ley de la Jurisdicción Contencioso Administrativa. Decreto Nº 81](#). Published on December 19, 1978.

<sup>159</sup> OEA/Gobierno Nacional de Panamá. [Gaceta Oficial Digital No. 27275-A](#). 26 de abril de 2013.

- Transparency (Arts. 4.6 y 6.6); to periodically providing statistics, reports and evaluative reports on the compliance of all institutions with the law (Art. 6.7); coordinating and facilitating the requests of interested parties their requests for access to public information when an institution has not responded regarding the requested information (Art. 6.11); training public servants regarding transparency and access to information (Art. 6.16) and dealing with claims, complaints and matters involving the right to petition and the right of access to information and “to press the respective institutions to eliminate practices that prevent people from fully exercising their rights” (Art. 6.24). The law stipulates that all persons can “petition the Authority when the established measures for the effective exercise of the right to petition and the right of access to public information held by the state” are not being met (Art. 36) and that “once a claim has been admitted, the Authority must verify and resolve the complaint” (Art. 38). The Authority may sanction the public official responsible if it is proven that they did not comply with the law (Arts. 40 y 41). The Authority will be directed and administered by a director general nominated by the executive branch and confirmed by the National Assembly for a period of seven years, renewable for one time only (Art. 10 and 12). The Law also provides for establishment of information officials in various state institutions, which are to serve as liaisons with the Authority to coordinate implementation of the Law on Transparency (Arts. 7 and 8).
27. In Guatemala, the Access to Public Information Act (Decree of the Congress Number 57-2008) of 2008 does not establish a guarantor body. Article 53 of this law states that “the highest authority of each obligated subject will be the court with authority to rule on the writs of review brought against actions or resolutions of the obligated subjects indicated in this law on the subject of access to public information and *habeas data*.”<sup>160</sup>
  28. The remedy of review is envisioned as a legal defense instrument that allows, among other things, for the guarantee of compliance with the right to access information as established in applicable law. Also, Article 52 stipulates that the remedy of review “is a measure for legal defense whose purpose is to guarantee that the actions and resolutions of obligated subjects respect the guarantees of legality and legal certainty.”
  29. Although the Act does not establish a specialized guarantor body, it does give the Office of the Office of the Ombudsman for Human Rights the status of regulatory authority and protector of the human right to access to information. Article 46 establishes that access to public information “as a fundamental human right provided for in the Political Constitution of the Republic of Guatemala and international treaties or conventions on the subject ratified by the State of Guatemala shall be protected by the Human Right Ombudsman pursuant to the terms of the Law on the Congress of the Republic Human Rights Commission and Human Rights Ombudsman.”
  30. The Human Rights Ombudsman intervenes to ensure compliance with the law. One of the Ombudsman’s main tasks is to present a report every year on his/her activities

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<sup>160</sup> Congreso de la República de Guatemala. [La Ley de Acceso a la Información Pública. Decreto No. 57-2008](#). Law passed by Congress on September 23 and published on October 23, 2008.

and the human rights situation to the Congress of the Republic.<sup>161</sup> The Access Act establishes that “those subject to the law must present the Human Rights Ombudsman with a report in writing corresponding to the previous year,”<sup>162</sup> which may be included by the Ombudsman in his/her annual report to the Plenary of the Congress.<sup>163</sup>

31. In this sense, governmental Accord number SG-033-2012 instructs the Executive Secretariat of the Commission on Access to Public Information of the Office of the Ombudsman for Human Rights to develop the obligations established in Subhead Three, Chapter I (Intervention of Human Rights Ombudsman) of the Access to Public Information Act.<sup>164</sup>
32. The Presidential Commission on Transparency and Electronic Governance was established in December of 2012 through Governmental Accord 360-2012.<sup>165</sup> One of its central objectives is to implement public policies on transparency, fight corruption, and work for electronic and open government. The Commission’s work clearly aids the implementation of measures for complying with and strengthening the Access to Information Act.
33. In Colombia, the recent Transparency and Access to Public Information Act does not establish a technical, autonomous, independent and specialized entity for resolving conflicts on the issue. However, it does assign the Office of the Ombudsman of the Nation responsibility for complying with its provisions. The Ombudsman's Office must establish methodology in order to perform the following functions: “[d]evelop preventative actions to enforce” the law; “[p]repare reports on compliance with protective actions on access to information”; “[p]ublish rulings of protection and regulatory rulings on access to public information;” “[p]romote the knowledge and application of the law and its provisions; “[a]pply disciplinary sanctions” set forth in the law; “[m]ake disciplinary decisions in the cases of discretionary exercise of power, cases of offenses or misconduct derived from the right to access to information;” “[p]romote transparency in public administration, access and disclosure of information held by State entities through any publication method;” “[r]equire obligated subjects to adjust their procedures and systems for providing service to citizens to the legislation;” “[t]rain public officials - directly or through third parties - on transparency and access to information;” “[p]repare statistics and reports on transparency and access to the information of State administrative bodies and regarding compliance” with the law; “[p]roperly submit responses to petitions made

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<sup>161</sup> Procurador de los Derechos Humanos. [Ley de la Comisión de los Derechos Humanos del Congreso de la República y del Procurador de los Derechos Humanos. Decreto 45-86](#). Art. 15.

<sup>162</sup> Congreso de la República de Guatemala. [La Ley de Acceso a la Información Pública. Decreto No. 57-2008](#). Law passed by Congress on September 23 and published on October 23, 2008. Art. 48.

<sup>163</sup> Congreso de la República de Guatemala. [La Ley de Acceso a la Información Pública. Decreto No. 57-2008](#). Law passed by Congress on September 23 and published on October 23, 2008. Art. 49.

<sup>164</sup> Procurador de los Derechos Humanos. [Acuerdo número SG-033-2012](#). September 17, 2012.

<sup>165</sup> Gobierno de Guatemala. Comisión Presidencial de Transparencia y Gobierno Electrónico. [Acuerdo Gubernativo 360-2012](#). December 26, 2012.

with requests to maintain anonymity;” “[i]mplement and manage information systems.”<sup>166</sup>

34. In Brazil, the law on access to public information has created a Mixed Commission for the Reevaluation of Information that is responsible for deciding on the “handling and classification” of confidential information in the public federal administrative realm. The Mixed Commission has authority to request clarifications from authorities responsible for classifying information as top secret and secret or classifying information fully or partially; reviewing the classification of top-secret or secret information *ex officio* or at the request of an interested party; and extending the classification deadline of information classified as top-secret, always for a set period of time. The Mixed Commission is also in charge of reviewing remedies brought against decisions of the General Audit Office of the Union that deny access to information and resolving disputes over refusals by State Ministries in response to requests to un-classify information.<sup>167</sup> According to Decree 7724 of 2012, the Commission is composed of the heads of the Civil House of the Presidency of the Republic (which will preside it), the Justice Ministry, the Foreign Affairs Ministry, the Defense Ministry, the Treasury Ministry, the Planning, Budget and Management Ministry, the Human Rights Secretariat of the Presidency of the Republic, Cabinet of Institutional Security of the Presidency, the Attorney General of the Union, and the General Audit Office of the Union.<sup>168</sup>
35. The Office of the Special Rapporteur has recognized that the creation of an autonomous and specialized agency for supervision, responsible for promoting implementation of legislation in the field of access to public information and for reviewing negative responses by the administration with the aim of adopting a decision in this respect is of fundamental importance to achieve effective satisfaction of the right<sup>169</sup>. Experience and compared practice have shown the importance of the existence of this type of independent and specialized authorities in the diverse legal systems to avoid weakening efforts to comply with laws regarding access to public information. All of the above, naturally, notwithstanding timely judicial control with respect to decisions denying access to information. In this sense, the Office of the Special Rapporteur has urged the countries to adapt their legislation to strengthen the institutional structure for supervision of the implementation of laws regarding access to public information, pursuant to the highest standards in this field, such as those adopted by the General Assembly of the OAS, in its Resolution AG/RES. 2607

<sup>166</sup> Congreso de la República de Colombia. [Informe de conciliación al proyecto de ley 228 de 2012 Cámara, 156 de 2011 Senado](#). June 19, 2012. Art. 24; Corte Constitucional. May 9, 2013. [Comunicado No. 18. Norma Revisada: Proyecto de ley número 156 de 2011 Senado, 228 de 2012 Cámara](#). IV. Expediente PE-036 - sentencia C-274/13.

<sup>167</sup> Estado do Brasil. Controladoria-Geral da União. [Lei 12.527](#). November 18, 2011. Art. 16, para. 3, 17, and 35.

<sup>168</sup> Estado do Brasil. Câmara dos Deputados. [Decreto 7.724](#). May 16, 2012. Art. 46.

<sup>169</sup> IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 208. In this regard, Permanent Council of the OAS. Committee on Juridical and Political Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 14.



(XL-O/10), by means of which it adopts the “Model Inter-American Law on Access to Information”<sup>170</sup>.

36. In effect, the Model Law provides for the creation of a specialized agency that it denominates “Information Commission”<sup>171</sup>, which is to be in charge of promoting effective implementation of the Law in each Member State and the review of appeals of rulings adopted regarding its nonfulfillment. Among other specifications, the Model Law stipulates that said agency must have full legal standing, operational, budgetary and decision-making autonomy, and be composed of at least three commissioners, designated by means of a public, open and transparent process. Also, as a means to guarantee the effectiveness of the supervisory agency’s decisions, the Model Law stipulates that, independently of its mediating role, in resolving appeals, the agency shall have the power to “require the public authority to take necessary measures to comply with its obligations under [...] Law, such as, but not limited to, providing information or reduction of costs” and to “file a complaint before the competent court to obtain compliance” with its decisions. Practice has shown that systems that have an autonomous and specialized “Information Commission”, as provided for in the Model Law, are in a better position to guarantee adequate implementation and supervision of norms in the field of access to information.

## C. Resolutions of specialized bodies

### 1. Resolutions of application bodies specializing in access to information and the principle of maximum disclosure

37. The Inter-American Court has established in its case law that “in a democratic society, it is essential that the State authorities are governed by the principle of maximum disclosure”<sup>172</sup> such that “all information in State power is presumed public and accessible, subject to a limited regime of exceptions”<sup>173</sup>. Likewise, the IACHR has explained that, by virtue of Article 13 of the American Convention, the right to access to information is governed by the principle of maximum disclosure.<sup>174</sup> By the same token, subsection 1 of Resolution CJI/RES.147 (LXXIII-O/08) (“Principles on the Right to Access to Information”) of the Inter-American Juridical Committee has established that, “in principle, all information is accessible. Access to information is a fundamental

<sup>170</sup> General Assembly of the OAS. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010.

<sup>171</sup> General Assembly of the OAS. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010.

<sup>172</sup> I/A Court H.R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para.92.

<sup>173</sup> I/A Court H.R. *Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 230.

<sup>174</sup> I/A Court H.R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 58 c); IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 9.



- human right which establishes that everyone can access information from public bodies, subject only to a limited regime of exceptions.”<sup>175</sup>
38. Likewise, the Transparency in Public Administration and Access to Administrative Information Act in Chile incorporates the principle of maximum disclosure, meaning that “the State’s administrative bodies shall provide information in the broadest terms possible, excluding only the information that is subject to constitutional or legal exceptions.”<sup>176</sup>
  39. For its part, the Federal Transparency and Access to Public Government Information Act (LFTAIPG)<sup>177</sup> in Mexico also establishes that the right to access to public information shall be interpreted pursuant to the international treaties signed on the issue, thereby ensuring the validity of the principle.
  40. In a Resolution dated September 18, 2013,<sup>178</sup> in case file 25-A-2013, the Institute for Access to Information in El Salvador ruled a request for information with regard to the “name, surname and salary of advisors to the Legislative Assembly,” indicating that “it has been recognized that the right to access to information holds the indisputable position as a fundamental right, anchored in the constitutional recognition of the right to freedom of expression (art. 6 of the Constitution), which presupposes the right to investigate or seek and receive information of all kinds, public and private, that is in the public interest, and under the democratic principle of the Rule of Law - of the Republic as a State - (art. 85 Cn.) that requires the government to guarantee the transparency and public account of its Administration, as well as accounting for the expenditure of resources and public funding.”
  41. The Institute found that the law establishes “‘citizen oversight of public administration’ (art. 3 subparagraph d) and its principles require ‘those with State responsibilities [...] to give an account to the public [...] regarding their administration’ (art. 4 subparagraph h).” It found that “given that the remuneration or salaries of the advisors comes from public funds, and given citizen oversight of the exercise of public administration and the duty to give an account thereof, should there be any doubt as to whether information is public or subject to one of the exceptions, this Institute shall apply the principle of maximum disclosure and as a consequence, shall order said information be turned over to the applicant (arts. 4 subparagraph a. and 5 of the LAIP).”<sup>179</sup>
  42. Chile’s Transparency Council (CPLT) has reiterated the principle of maximum disclosure, including in cases involving information having to do with private parties.

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<sup>175</sup> The Inter-American Juridical Committee. [Resolution CJI/RES. 147 \(LXXIII-O/08\). Principles on the Right of Access to Information](#). August 7, 2008. Operative paragraph 1.

<sup>176</sup> Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009. Art. 1, literal d).

<sup>177</sup> Estados Unidos Mexicanos. Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental](#). June 11, 2002. Art. 6.

<sup>178</sup> República de El Salvador. Gobierno Abierto. Proceso 25-A- 2013 contra la Asamblea Legislativa. Available for consultation at: <http://www.gobiernoabierto.gob.sv/pages/instituto-de-acceso-a-la-informacion-publica>

<sup>179</sup> República de El Salvador. Gobierno Abierto. Proceso 25-A- 2013 contra la Asamblea Legislativa. Available for consultation at: <http://www.gobiernoabierto.gob.sv/pages/instituto-de-acceso-a-la-informacion-publica>

In a ruling dated October 26, 2012, it ruled on tax debt information after weighing an appeal to the right to access to information (Rol C1028-12). The case had to do with a request from an appellant who sought documentation on debt forgiveness granted to a company. The appellant asked for information regarding the original amount of the debt, the fines that were applied, interest on arrears, the original date of the debt, annual payments, and the nature of the collections.

43. The Council found that the scope of secrecy or confidentiality "is an exceptional rule in our legal system, reason why it should be interpreted restrictively [...] establishing the corollary that '[...] tax confidentiality should be understood to cover the personal wealth information of taxpayers and not all the general information held by the Service [...]' (Considering 5 of the decision ruling on the remedy to resubmit against the A117-09 *amparo* ruling and Considering 7 of the Record C315-09 *amparo* ruling)."<sup>180</sup> The Council held that the subject of tax forgiveness is in the public interest, as tax debts "constitute a reflection of public responsibility, whose compliance has a clear public interest that justifies its publication, something that is especially true with regard to tax debts that have been forgiven."<sup>181</sup>
44. On another occasion, the Council established the scope of the presumption of disclosure established in Article 11, subparagraph c, of the Transparency Act. In its ruling on Record C457-10, the Council found in continuation of the previously mentioned criteria that "the right to access to public information's status as a fundamental right and the condition of the general rule that Article 8 of the Constitution grants to the disclosure of Administrative acts -and [that] Article 5 extends to information that it holds-, pursuant to the burden of proof of the circumstances on which a claim of secrecy or confidentiality depends that lifts or relieves the entity of the duty to turn over information sits with the party arguing as such, that is, the public body."<sup>182</sup>
45. In a ruling in case C533-09 dated April 6, 2010, the CPLT based on the prior criteria issued on June 30, 2009, and confirmed that publicizing administrative actions is particularly relevant for oversight of discretionary authorities. On this point, the Council stated that the exercise of discretionary authority does not mean exemption from the duty to offer grounds for the decisions taken. According to the Council, "these cases require special and careful compliance with the legal necessity that the Administration provide justification for its actions, a requirement whose purpose is to ensure that the Administration's actions do not deviate from the end established by the law that grants it its corresponding authorities, that they have a rational basis and that they are fully in line with the constitutional and legal provisions in force. This certainly prevents making arbitrary distinctions between individuals who are in the same situation."<sup>183</sup>

<sup>180</sup> República de Chile. Consejo para la Transparencia. Decisión de amparo ROL C1028-12. October 26, 2012. Available for consultation at: <http://productos3.legalpublishing.cl/CPLT/modulos/pages/busqueda.asp>

<sup>181</sup> República de Chile. Consejo para la Transparencia. Decisión de amparo ROL C1028-12. October 26, 2012. Available for consultation at: <http://productos3.legalpublishing.cl/CPLT/modulos/pages/busqueda.asp>

<sup>182</sup> República de Chile. Consejo para la Transparencia. [Decisión de amparo ROL C457-10](#). November 16, 2010.

<sup>183</sup> República de Chile. Consejo para la Transparencia. [Decisión de amparo ROL C533-09](#). April 6, 2010.

46. In Mexico, the IFAI has also interpreted the scope of the principle of maximum disclosure as a guiding standard for revealing private information on individuals who receive public funds. By the Resolution of Remedy [*Resolución del Recurso*] 2431/09 regarding the case of the names of beneficiaries of social programs and access to electoral registries containing personal information, the Institute found that based on Article 12 of the Transparency Act, divulging such information would be lawful. In the Remedy mentioned, it analyzed specifically the request to access to databases with the names of the members of the System of Social Protection in Health [*Sistema de Protección Social en Salud*] (*Seguro Popular*). The Institute ruled on the balance between access to information and protection of personal information, finding that although a rule establishes that it is legal to reveal the information, the sub-offices can use their judgment to determine which information is relevant for publicizing from the perspective of access to information.<sup>184</sup>
47. The balance between the protection of specific sensitive information and the public nature of activities in which private individuals and government agencies take part has also been studied by the IFAI. In this case, the Institute has found that pursuant “to Article 7, section XIII of the Federal Transparency and Access to Public Government Information Act, the information on contracts that have been signed is public in nature and making that information available constitutes an obligation for sub-offices and entities. According to this line of reasoning, financial and technical proposals received as part of a bidding process generally constitute information of a public nature. Nevertheless, in cases in which the proposals contain confidential information, a public version shall be produced that omits aspects of a commercial, industrial or financial nature pursuant to the grounds provided for in Article 18, section I of the Act in question, such as the characteristics or uses of the product; methods or processes of production; or means or forms of distribution or sale of products, among other things, addressed in the technical proposal. With regard to the financial proposal, certain aspects may be omitted - such as the cost and price structure offered, the way in which sales will be carried out or the acquisition of the project will be negotiated, among other things - that provide their owner with an advantage over its competitors; however, information such as the document number, the amount of product offered, the measurement unit, the generic description of the product, the unit price of each item, the total amount of each item, and the sum of the amount of all the items, among other things, shall not be omitted.”<sup>185</sup>
48. In Uruguay, Article 2 of the Access to Public Information Act (LAIP) includes the principle of disclosure and establishes a presumption of access to public information: “Everything that is produced by or in possession of any public body, whether or not it is part of the State, shall be considered public information, save for exceptions or secrecy established by law, as well as classified or confidential information.” Likewise, Article 4 presumes public all information “produced, obtained, in the possession or

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<sup>184</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Recurso de Revisión. Expediente 2431/09](#). July 15, 2009.

<sup>185</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Expediente 0127/10](#).

under the control of the obligated subjects, regardless of the medium in which they are contained."<sup>186</sup>

49. In its Resolution 29/2012, Uruguay's Unit on Access to Public Information established specific obligations regarding certain information that must be made available to the public periodically. Based on articles 2 and 4 of the LAIP, it found that the National Telecommunications Administration had failed to comply with the obligations set forth in Law number 18,381 of October 17, 2008, on refusing to turn over public information. In the case, the Unit on Access to Public Information ordered the public entity to "distribute the requested information through a website to be updated periodically, pursuant to the active transparency obligation established in Article 5 of Law No. 18,381 and Article 38 of regulatory Decree 232/010 of August 2, 2010."<sup>187</sup>

## 2. Preeminence of the right to access to information in the event of conflicting laws or lack of regulation

50. As has been broadly recognized by this Office of the Special Rapporteur given conflicting laws, the law on access to information should prevail over other legislation.<sup>188</sup> This is because the right to access to information has been recognized as an indispensable requirement for the very functioning of democracy.<sup>189</sup> This requirement helps to encourage States to effectively comply with the obligation to establish a law on access to public information and that the interpretation of the law is effectively favorable to the right to access.<sup>190</sup> The OAS General Assembly has

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<sup>186</sup> República Oriental del Uruguay. Unidad de Acceso a la Información Pública. [Ley Nº 18.381. Acceso a la Información Pública](#). October 7, 2008. Arts. 2 and 4.

<sup>187</sup> República Oriental del Uruguay. [Resolución 29/2012](#). December 28, 2012.

<sup>188</sup> UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression. December 6, 2004. [Joint Declaration by the Rapporteurs on freedom of Expression of the UN, OAS and OSCE \(2004\)](#); IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 14; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 72.

<sup>189</sup> General Assembly of the OAS. [Resolution AG/RES. 1932 \(XXXIII-O/03\). Access to Public Information: Strengthening Democracy](#). June 10, 2003. *See also*, General Assembly of the OAS. [Resolution AG/RES. 2057 \(XXXIV-O/04\). Access to Public Information: Strengthening Democracy](#). June 8, 2004; General Assembly of the OAS. [Resolution AG/RES. 2121 \(XXXV-O/05\). Access to Public Information: Strengthening Democracy](#). June 7, 2005; General Assembly of the OAS. [Resolution AG/RES. 2252 \(XXXVI-O/06\). Access to Public Information: Strengthening Democracy](#). June 6, 2006; General Assembly of the OAS. [Resolution AG/RES. 2288 \(XXXVII-O/07\). Access to Public Information: Strengthening Democracy](#). June 5, 2007; General Assembly of the OAS. [Resolution AG/RES. 2418 \(XXXVIII-O/08\). Access to Public Information: Strengthening Democracy](#). June 3, 2008; General Assembly of the OAS. [Resolution AG/RES. 2514 \(XXXIX-O/09\). Access to Public Information: Strengthening Democracy](#). June 4, 2009; General Assembly of the OAS. [Resolution AG/RES. 2661 \(XLI-O/11\). Access to Public Information and Protection of Personal Data](#). June 7, 2011; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 14; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 72.

<sup>190</sup> I/A Court H.R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 58 d). IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51.

therefore recommended in the aforementioned Model Law that the legislation explicitly state that “In case of any inconsistency, this Law prevails over any other law.”<sup>191</sup>

51. Chile’s Transparency Council heard a case on the application of the “damage test” in the revealing of information on the investigative powers of banking and financial authorities on tax issues, determining that the principle of transparency prevails over the expectation of confidentiality. The case would require a balance be struck between legislation on transparency issues and a provision in the General Banking Act (LGB), which in Article 7 establishes that: “all employees, delegated agents or individuals of any title who provide services to the Superintendency are prohibited from revealing any detail of the information that has been issued or giving individuals outside the organization any notice regarding any facts, business activities or situations of which they have learned while performing their duties. Violations of this provision will incur the penalty indicated in articles 246 and 247 of the Penal Code”.
  
52. In ruling C1266-11 of January 27, 2012, the Council ruled on an injunction (*amparo*) filed against the Superintendency of Banks and Financial Institutions (SBIF) for having denied access to information regarding the number of inspections or audits of banks and other financial institutions carried out in 2010 and 2011, under the terms required. The Council reiterated the principle of maximum disclosure and stated that “as the information requested is of a statistical nature, and as the SBIF has not provided specific facts that would make it possible to determine how the release of the information would infringe on the legal rights being invoked or hamper its ability to carry out its functions, this Council deems that it does not agree with the grounds for confidentiality argued by the agency being challenged. [W]ithout prejudice to the preceding conclusion, it should be added that the meaning of the first paragraph of the aforementioned Article 7 of the General Banking Act may not lead to an interpretation that assumes that all reports prepared by Superintendency officials, or that any facts, business, or situations they may have handled in the course of performing their functions, would be secret or confidential. This Council has reasoned along these same lines in previous decisions (such as the *amparo* decisions in Record C486-09, dated January 22, 2010, and Record C203-10, dated August 10, 2010), in establishing the criterion that, with respect to other similar legal provisions, an interpretation such as that being claimed by the defendant ‘[w]ould mean inverting, through interpretation, the constitutional rule requiring the legislature to positively establish the cases in which confidentiality applies and base them on one of the grounds in paragraph 2 of Article 8 [...]’ [F]urthermore, to deny access to a particular piece of information, it is not enough for there to be a case considered secret or

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December 30, 2009. Para. 14; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 72.

<sup>191</sup> General Assembly of the OAS. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010; Permanent Council of the OAS. Committee on Juridical and Political Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010; Permanent Council of the OAS. Committee on Juridical and Political Affairs. [Model Inter-American Law on Access to Information](#). OEA/Ser.G. CP/CAJP-2840/10 Corr. 1. April 29, 2010. Chapter I (Definitions, Scope and Rights of Access). Art. 4; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 72.

confidential as provided under a law approved by qualified quorum and for this case to meet one of the grounds established in the second paragraph of Article 8 of the Constitution; rather, the party affected by the disclosure of the information being requested must establish how its disclosure would harm that party or infringe on the legal rights protected in the aforementioned constitutional rule.”<sup>192</sup>

53. In Mexico, the Federal Institute for Access to Public Information and Protection of Information heard a case on borrowing by states and municipalities and the lack of federal regulation on the issue. The federal authority argued that the Federal Government does not have power or jurisdiction over debts incurred by states and municipalities and that the information requested was classified and constituted a banking secret based on articles 13, section III and 14, sections I and II of the Transparency Act. In its ruling (Remedy 3211/12), the Institute ordered the Office of the Secretary of the Treasury and Public Credit (SHCP) to revoke the classification invoked with regard to the Registration of Obligations and Public Loans of Federated Entities and Municipalities on finding, among other things, that the condition for bank secrecy established in the Lending Institutions Act was not applicable to the case in question as it dealt with the information that clients (federative entities and municipalities) delivered directly to the SHCP in compliance with the Fiscal Coordination Act and “that the circulation of the true, timely, complete and sufficient information on the public debt incurred by states and municipalities guarantees society's confidence in its authorities and in the decisions regarding how public money is spend.”<sup>193</sup>

### 3. Purpose or scope of the right

54. The right to access to information applies to information that is in the custody, administration or possession of the State; information that the State produces, or information that it is legally required to produce; information in the possession of persons who exercise or manage public duties, services, or funds, solely with respect to those services, duties, or funds; and information that the State obtains, and that it is required to collect in the discharge of its duties.<sup>194</sup>
55. In Mexico, the IFAI ruled that “the entities and agencies of the Federal Government must distinguish between information that in and of itself documents the deliberative process or the meaning of the decision to be made, and information that is not directly related to decision-making, such as briefing or support materials used in the deliberative process. In the case of the former, it is understood that the information is directly linked to the deliberative processes, and its dissemination could possibly

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<sup>192</sup> República de Chile. Consejo para la Transparencia. [Decisión de amparo ROL C1266-11](#). January 27, 2012.

<sup>193</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Recurso de Revisión. Expediente RDA 3211/12](#); Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [10° Informe de Labores al H. Congreso de la Unión 2012](#). Page 40.

<sup>194</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 21; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 149.



- interrupt, undermine, or inhibit the design, negotiation, and implementation of the object of the process; whereas briefing or support materials do not form part of the opinions, recommendations, or points of view of the deliberative process, and therefore their dissemination does not affect the decision that might eventually be made.”<sup>195</sup>
56. The Institute has also found that statistical information, even when it refers to other information that does have reason to be classified, is public in nature. In resolving a dispute about information on the seizure of weapons and communications equipment in the context of counter-narcotics efforts, the IFAI determined that the information that the authorities produce for statistical or administrative purposes is also subject to public access. It argued in this case that “the confidentiality cannot be considered to refer to all of the documents that bear some relationship to the preliminary investigation, without regard to their relevance in proving the *corpus delicti* and the responsibility of the perpetrator, since that would entail noncompliance with other legal provisions on access to government information, and it would be logically inconsistent.” Information that exists for administrative purposes is also, under the IFAI’s interpretation, subject to access. In its decision, the Institute held that “the requested information is found in statistical documentation or in the records of seized assets kept by the Seized Assets Registration and Oversight Office [*Dirección General de Control y Registro de Aseguramientos Ministeriales*], which contain a description of the weapons, explosives, and communications equipment referred to in the request. It is plain to see that these documents are not essential to knowing the historical truth of the punishable act, and to prove the *corpus delicti* and responsibility of the perpetrator; rather, they are generated by Office of the Attorney General of the Republic in the course of its duties relating to the administration of assets, which are different from those performed in the investigation and prosecution of crimes.”<sup>196</sup>
57. In Chile, the Council on Transparency [*Consejo para la Transparencia*] has found that information on private individuals that has been turned over to government agencies in a legal proceeding can also be requested. In a case of a request for information, over the opposition of third parties, to the Metropolitan Housing and Urbanization Service [*Servicio de Vivienda y Urbanización Metropolitana*] (SERVIU) related to information pertaining to a subsidy from the program Solidarity Housing Fund [*Fondo Solidario de la Vivienda*] to the “La Estrella” community organization, the Council indicated that the requested information was directly related to an administrative act of the SERVIU and therefore formed part of the information covered by article 3, subsection g) of the Regulations of the Transparency Law (support or direct object) [*Reglamento de la Ley de Transparencia*].
58. In this case, the Council found in its decision “that the information to which the opposing party refers is directly related to the granting of the subsidy. In light of the requirements of the applicable law, the background information is part of the basis for the decision that contains the SERVIU’s administrative act with a view to granting and paying the subsidy, in addition to the associated transfer of public funds, its direct

<sup>195</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Criterio 16/13. Insumos Informativos o de Apoyo. Resolución RDA 3156/12.](#)

<sup>196</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). Resolución. Recurso de Revisión 3284/12. Available for consultation at: <http://buscador.ifai.org.mx/buscador/buscar.do>

and essential complement in the terms established in the [...] Regulations to the Transparency Act.” The Council further stated that the information requested is part of the Service’s obligations of active transparency with regard to the design, sums, and criteria for access to the subsidy programs.<sup>197</sup>

59. The case is also highly relevant insofar as it broadens the transparency standards based on the idea of the oversight of public resources received by private individuals, considering that “the act of receiving benefits from the State of Chile reduces the sphere of privacy of the individuals who enjoy them, since appropriate public oversight over those to whom such benefits are granted must be allowed.”

#### 4. Parties bound by the right to access to information

60. The right to access to information creates obligations for all public authorities in all branches of government and at all levels of government. This right also binds those who discharge public duties, provide public services, or spend public funds on behalf of the State. With respect to the latter, the right to access information requires them to provide information exclusively with respect to the management of public funds, the satisfaction of the services under their responsibility, and the fulfillment of the previously mentioned public duties.<sup>198</sup>
61. In its judgment of October 26, 2012 in Case No. C1028-12, on the protection of the right to access information, the Council on Transparency acknowledged that access to information is also applicable to the functions of authorities such as the Investigative Committee of the House of Representatives, which is investigating the forgiveness of Internal Revenue Service (SII) [*Servicio de Impuestos Internos*] fines owed by large taxpayers.<sup>199</sup>
62. The Council itself has underscored the importance of having access to information in the possession of municipal authorities. In a case dated August 29, 2012 related to access to the project based on which permits were granted for the construction of an event center, a mayor stated that because the disclosure of the information was affecting third parties, the Director of Public Works contacted the owner of the property for which the building permit was granted, who did not authorize the disclosure of the information requested.
63. The Council stated that the Transparency Law stipulates that all information referring to administrative acts is public, including information that is the direct basis for or direct and essential complement and the procedures that are used for such acts, and

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<sup>197</sup> Consejo para la Transparencia. República de Chile. Decisión de amparo ROL C206-13. April 3, 2013. Available for consultation at: <http://productos3.legalpublishing.cl/CPLT/modulos/pages/busqueda.asp>

<sup>198</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 19; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 119.

<sup>199</sup> República de Chile. Consejo para la Transparencia. Decisión de amparo ROL C1028-12. October 26, 2012. Available for consultation at: <http://productos3.legalpublishing.cl/CPLT/modulos/pages/busqueda.asp>



that the requested project is the type of information that is the basis for an administrative act, in this case, the granting of permits by the Office of Municipal Public Works. It also advocated that in this case “any rights of third party involved [...] yield in order to create a procedure that sheds light on the government management of construction. In addition, the public nature of this background information makes it possible for the citizens to oversee the granting of permits by the Offices of Municipal Public Works, which demonstrates the public benefit of its disclosure.”<sup>200</sup>

64. The IFAI determined that information provided for the granting, renewal, or maintenance of concessions and the information derived from their operation, is public, with the exception of trade secrets or industrial information. The Institute held that “the purpose of a concession is to confer upon a private party the exercise of certain public prerogatives for the provision of a public good or service. Therefore, all information derived from the proceeding conducted for their granting, renewal, or maintenance, and the information relating to their operation, in principle, is public.”
65. The IFAI later found that the disclosure of such information “makes it possible to directly evaluate the performance and use of the good that is the object of the concession, as well as the actions of the granting entity. Nevertheless, in exceptional cases, when the information includes economic or financial facts or acts of private individuals that could be useful to a competitor—for example, details about the owner’s management of the business, about his investment decision-making processes, or information that could affect his negotiations with suppliers or clients—a public version should be drafted.”<sup>201</sup>

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

66. The State has the obligation to respond substantially to the requests for information it receives. Indeed, Article 13 of the American Convention, by protecting the right of individuals to access information in the possession of the State, creates a positive obligation for the State to provide the requested information in a timely, complete, and accessible manner; otherwise, it must provide within a reasonable period of time the legitimate reasons that prevent such access.<sup>202</sup>
67. On Resolution 01/2013, Uruguay’s Unit for Access to Public Information [*Unidad de Acceso a la Información Pública*] reiterated that the procedure for handling requests

<sup>200</sup> República de Chile. Consejo para la Transparencia. Decisión de amparo ROL C704-12. August 29, 2012. Available for consultation at: <http://productos3.legalpublishing.cl/CPLT/modulos/pages/busqueda.asp>

<sup>201</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Criterio 11/13. Concesiones. Resolución RDA 3284/12.](#)

<sup>202</sup> I/A Court H.R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 77; CIDH. I/A Court H.R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 58 a) and b); IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 24; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 172.

for information sets specific time limits and imposes special requirements for information to be deemed secret. On this point, in reviewing the treatment of information of a tape of an extraordinary session by the Municipality of Cardona, it determined that the municipal government had not met its obligations under Law No. 18.381 of October 17, 2008. It noted in particular that entities governed by the Law have “[obligations] pertaining to the classification of information (art. 9) such as the imposition of a deadline for responding to requests for access (art. 15).” It determined that “the secret nature of the information can only be established by statute, approved by the Legislative Branch and ordered for reasons of general interest, as an exception and limitation to the right to access public information (art. 7 of the Constitution of the Republic);” and the obligation “to establish that keeping certain information from public knowledge requires compliance with the current laws on the classification of information.”<sup>203</sup>

68. In Mexico, the IFAI has laid out detailed obligations that must be met before declaring certain information nonexistent. Thus, in a case dealing with a request for information from *Petróleos Mexicanos*, in which the public sector entity argued a technicality asserting legal nonexistence at the time in question, the Institute determined that “although the time period during which the incidents referred to by the appellant occurred, PEMEX Refining had still not been created and the terminal in question was under the responsibility of *Petróleos Mexicanos*, the obligated party should have received the records generated by the other entity based on the powers it exercised until 1992, including that related to the requested information.”
69. On this basis, it indicated that in the case it was “proper to revoke the nonexistence asserted by PEMEX Refining” and instruct it to conduct “an exhaustive search of the information relating to the causes of the explosions that took place on November 18, 1984 and November 23, 1990 at the PEMEX facilities in San Juan Ixhuatepec, municipality of Tlalnepantla, State of Mexico, in the archives of the administrative units that would have such information in their possession.”<sup>204</sup>
70. In Mexico, assertions of nonexistence entail substantial obligations and specific acts and not a mere statement of justification. The IFAI itself has detailed this scope in the order corresponding to Motion for Review 3658/07, in which it adjudicated a dispute concerning budget information about expenditures made by the Office of the Presidency.
71. In this specific case, the Institute determined that it was not enough to assert nonexistence; rather, material proof of it had to be provided. In its order, the Institute held “that the obligated party failed to prove that it had conducted a search in each and every one of its competent administrative units to obtain the requested information. It is thus proper to modify the obligated party’s response, and it is instructed to conduct an exhaustive search in accordance with the Federal Transparency and Access to Government Information Act and the Regulations thereto, and to deliver the requested information to the appellant; otherwise, it must turn over any document that records public expenditures, the use of federal human

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<sup>203</sup> República Oriental del Uruguay. [Resolución 01/2013](#). January 3, 2013.

<sup>204</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). Resolución Recurso de Revisión 3369/11. Available for consultation at: <http://buscador.ifai.org.mx/buscador/buscar.do>

resources, financial resources, and materials, particularly if there has been any expenditure included in the budget item relating to official services.”<sup>205</sup>

## 6. Obligation to have an administrative remedy to satisfy the right to access to information

72. The adequate satisfaction of the right to access to information requires the inclusion in the legal system of an effective and suitable remedy that can be used by all persons to request information. To guarantee the true universality of the right to access, this remedy must have certain characteristics: (a) it must be a simple remedy, easily accessible to all persons, and must only require basic conditions such as the reasonable identification of the information requested and the data needed for the government to be able to turn the information over to the interested party; (b) it must be free or low-cost, so as not to discourage requests for information; (c) it must establish short but reasonable time periods for the authorities to provide the requested information; (d) it must allow requests to be made verbally when it is not possible to do so in writing, for example, because a person does not know the language or cannot write, or in situations of extreme urgency; (e) it must establish the obligation of the government to advise the requesting party of the manner in which to make the request, including advice about the authority authorized by law to respond, even to the point of the authority itself making the respective submission and informing the interested party of its processing; and (f) it must establish the requirement that a denial must be well-founded, accessible, and subject to challenge before a higher or autonomous body, and subsequently subject to judicial review.<sup>206</sup>
73. With respect to the obligation to create a special mechanism for enforcing the right to access, the Inter-American Court has underscored that the State “guarantee of the effectiveness of an appropriate administrative procedure for processing and deciding requests for information, which establishes time limits for taking a decision and providing information, and which is administered by duly trained officials.”<sup>207</sup>
74. In Mexico, the IFAI held that for purposes of enforcing the remedy for handling requests for access to information in due time and proper form, responses to requests for access made outside the time limits established in the Act carry the obligation of covering the copying costs, when it is proper to turn over the information. The Institute determined that “in accordance with Article 53 of the Federal Transparency and Access to Government Information Act, in the event that the response to a

<sup>205</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Resolución Recurso de Revisión 3658/07](#). August 20, 2007.

<sup>206</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 26; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 172.

<sup>207</sup> I/A Court H.R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 163; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 27.

request for access is granted outside the time limits established in Article 44 of the Act and the disclosure of the requested government information is proper, the government entities and agencies shall be required to cover all costs arising from the reproduction of the information.”<sup>208</sup>

75. In another decision, ruling on Motion for Review 0973/12, the Institute found that “when there is a justified impediment to disclosing the information in the manner chosen by the requesting party, it is proper to offer all other options provided for in the Act. According to Articles 42 and 44 of the Federal Transparency and Access to Government Information Act, and Article 54 of the Regulations thereto, the information must be turned over, to the extent possible, in the format requested by the interested party, unless there is a justified impediment to doing so, in which case the reasons must be stated for which it is not possible to use the requested means of reproduction. In this respect, the delivery of the information in a form other than the one chosen by the requesting party is only appropriate when complying with that request is demonstrated to be impossible.” In the same decision, the Institute held that “when the impediment is justified, the obligated parties must notify the requesting party of the availability of the information in all of the possible forms of delivery, such as direct viewing, certified and uncertified copies, as well as its reproduction in any other format. It must also inform the requesting party, if appropriate, of the cost of reproducing and sending it, so that he or she may choose the method that is convenient or in his or her interest.”<sup>209</sup>
76. On the other hand, the Council on Transparency in Chile, in deciding a dispute involving the declaration of nonexistence of information relating to pregnant women’s right to education broken down by years, region, neighborhood, etc., as well as actions of the Ministry of Education, related to programs and regulations, set an interpretive standard with respect to the legal limits that do not require the production of information.
77. The Council held in *amparo* [Petition for a Constitutional Remedy] Decision C186-12 that the Law refers exclusively to the creation of information and not to its processing. The CPLT cited its own precedent and noted the applicability of “the decision handed down by this Council in *Amparo* A80-09, which held that the collection, processing, and systematization of information, for delivery in the requested terms, does not entail the creation of information.” That decision cited case law of the UK’s Information Commissioner’s Office (<http://www.ico.gov.uk/>), establishing that “although there is no obligation to create information under the Freedom of Information Act (2000), a government authority is not creating information when it is asked to process it in the form of a list of the information it has, to handle information that it is in its archives, or to extract information from an electronic database through a search,”<sup>210</sup> and that even when it comes to creating information, it would have to do so if it would not be an “excessive cost or expense not budgeted.”

<sup>208</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Resolución RDA 2200/12](#).

<sup>209</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Resolución Recurso de Revisión. Expediente: RDA 0973/12](#).

<sup>210</sup> República de Chile. Consejo para la Transparencia. Decisión de amparo ROL C186-12. Available for consultation at: <http://productos3.legalpublishing.cl/CPLT/modulos/pages/busqueda.asp>

## 7. Limitations on the right to access to information. Legal establishment and regulation of exceptions

78. As an essential element of the freedom of expression protected by the American Convention, the right to access to information is not an absolute right; rather, it can be subject to limitations. Nevertheless, such limitations must strictly comply with the requirements of Article 13.2 of the American Convention—that is, they must be truly exceptional, be clearly established in a law, pursue legitimate aims, and be necessary for the accomplishment of the aim pursued.<sup>211</sup>
79. In March 2013, the Chilean Police [*Carabineros de Chile*] were asked to provide “protocols for the use of lethal weapons in counter-drug operations, protocols for the use of weapons against civilians, and protocols for the use of lethal weapons in public disturbances.” The authority refused to disclose the information on the grounds that it was confidential for national security reasons. In its deliberation of the case, the CPLT mentioned that confidentiality cannot simply be asserted without demonstrating the specific and present harm.
80. During the case proceedings, the Chilean Police alleged the probable and specific harm of disseminating the protocols named in the request. After weighing the specific harm identified by the Police, the Council affirmed the confidentiality of one protocol and denied the grounds for confidentiality of the document entitled “Complementary Directive to the Regulations on Weapons and Ammunition of the Chilean Police, No. 14,” finding that “it does not pose the national security threat asserted by the Police, that is, the possibility that the Police could be undermined in what they do to maintain law and order.”<sup>212</sup>
81. It further stated that given its nature, the public interest in seeing the protocol outweighs the generalities of its content. The Council asserted that “there is a public interest involved in the disclosure of the aforementioned documents, especially with respect to knowledge of the general precautions or methodology of action with which police personnel must proceed when using institutional weaponry and when weapons should be used in the protection of law and order, and that interest sufficiently justifies its disclosure.”<sup>213</sup>
82. In terms of legal establishment, because this issue concerns a right enshrined in Article 13 of the American Convention, the limitations on the right to seek, receive, and impart information must be expressly set forth in advance in a law, to ensure that they do not remain within the government’s discretion. Additionally, their establishment must be sufficiently clear and precise, to ensure that an excessive degree of discretion is not conferred upon the public servants who decide whether or not to disclose the information.<sup>214</sup>

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<sup>211</sup> IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para.45.

<sup>212</sup> República de Chile. Consejo para la Transparencia. [Decisión de amparo ROL C354-13](#). October 23, 2013.

<sup>213</sup> República de Chile. Consejo para la Transparencia. [Decisión de amparo ROL C354-13](#). October 23, 2013.

<sup>214</sup> I/A Court H.R. *Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19,

83. In Uruguay, the Unit for Access to Public Information, held in Order 01/2013 that government entities have the obligation to inform the requesting parties that “the secret nature of the information can only be established by statute, approved by the Legislative Branch and ordered for reasons of general interest, as an exception and limitation to the right to access public information (art. 7 of the Constitution of the Republic), [and] to establish that keeping certain information from public knowledge requires compliance with the current laws on the classification of information.”<sup>215</sup>
84. On a Motion for Review (Case File No. 3971/12) on which it was argued that certain environmental information was confidential, the IFAI considered that, as a general rule, this type of information is not subject to classification because it is of public and collective interest. The Institute found that under Article 4 of the Constitution of Mexico, as well as under various international instruments signed and ratified by Mexico, “the right to adequate environmental protection has been recognized as a fundamental right, which involves a number of obligations to the Mexican State.” The Institute affirmed the previously developed criteria, stating that “said provisions confer a collective character upon this human right, and therefore all members of society are entitled to this right, in addition to the fact that the environment is a phenomenon in which everyone has a stake and an interest, and the action of any person, entity, or group directly affects society as a whole. Accordingly, government entities and agencies must grant access to the environmental information contained in their records, in view of the collective and public interest in having information about issues that could affect the community or the environment in general. The government may only protect information that could be considered classified under the Federal Transparency and Access to Government Information Act.”<sup>216</sup>
85. In another case (Motion for Review 0583/13), the Institute held that in cases of information on private individuals in the possession of public entities, the fact that such information was provided confidentially is insufficient for it to be so. In this case, the Institute found that “[s]ubparagraph I of Article 18 of the Federal Transparency and Access to Public Government Information Act protects confidential information provided as such by private persons to those subject to the law; [i]ndividuals who turn in such information may consider it classified only when they have the right to do so, pursuant to the provisions that expressly [so] determine [...]. Information concerning a private legal person that may be considered confidential is that which relates to the person’s assets; that which includes facts that could be useful for the person’s competitors; and that which may be expressly prohibited by a confidentiality clause or agreement.”<sup>217</sup>
86. On the issue of public safety and the application of restrictions, the Institute has also set standards governed by the principle of maximum disclosure and has held that it

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2006. Series C No. 151. Para. 58 f); IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 343.

<sup>215</sup> República Oriental del Uruguay. [Resolución 01/2013](#). January 3, 2013.

<sup>216</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Resolución. Recurso de Revisión 3971/12](#).

<sup>217</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Resolución. Recurso de Revisión 0583/13](#).

must be applied to restrictions that are not specifically regulated, including those related to safety, because the information can be disclosed without causing harm. For example, in Motion for Review 3215/13 concerning the criminal cases that had been opened and closed against a person accused of serious crimes, as well as the documents related to the case, the IFAI found that it was possible to protect the confidentiality of information with the disclosure of public information (the dissemination of which does not involve the opening of a preliminary investigation), about open criminal cases, “such as records or documents related to the dissemination of information on the actions of the Office of the Attorney General of the Republic or the oversight of matters for which it is responsible, such as press releases and, specifically, the court orders containing the convictions.”<sup>218</sup>

## **D. Conclusions**

87. In this report, the Office of the Special Rapporteur presents a summary of some of the most relevant decisions of guarantor bodies that regulate and interpret the right to access to public information in the States of the region that have laws on access to information. This report is limited to pointing out some of the best practices identified in the direct interpretation of the transparency laws.
88. The systematization made reaffirms the importance of the work performed by specialized autonomous bodies that guarantee the right to access to public information. In addition, a general conclusion of this study is that it is crucial for these bodies to have the specific and precise mandate of resolving disputes concerning the implementation of the laws on this subject. The influence of these bodies on the full guarantee of the right is clear. The regulatory frameworks that grant authority to specialized, autonomous, and independent units to adjudicate disputes arising from access to or the denial of public information tend to produce more robust and exhaustive decisions. Therefore, it is advisable to follow the example of those States such as Mexico and Chile that have a vigorous practice of protecting the right of access through such institutions.
89. The Office of the Special Rapporteur notes that some of the decisions studied tend to broaden and specify the scope of the principles governing the right of access to information. Of the decisions examined, those that stand out are the ones that define and specify the scope of recognition of the right to access to information as a fundamental right and the obligation of States to be governed by the principle of maximum disclosure. In most of the countries studied, the grounds for confidentiality and classification are generally restricted to those provided for by law, and the interpretative bodies have developed criteria to weigh those grounds against the public interest.
90. The study makes it possible to show some of the most recent decisions of the supervisory bodies that advance the interpretation of the right to access to information. Most notable are the judgments that broaden the consideration of the

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<sup>218</sup> Estados Unidos Mexicanos. Instituto Federal de Acceso a la Información (IFAI). [Resolución. Recurso de Revisión 3215/13](#).



types of documents that can be accessed and those that determine the conditions under which information must be disclosed, both in terms of procedure and with respect to the requirements that must be met.

91. The Office of the Special Rapporteur underscores the importance of simplifying the administrative procedures for accessing information, as well as the subsequent judicial guarantees. The experience and practice of the supervisory bodies has been enormously important in making progress toward the effective guarantee of the right to access, and demonstrates the importance of the existence of these types of authorities specialized in the implementation, interpretation, and resolution of disputes. In all cases it is essential to ensure the specialization and autonomy of these entities<sup>219</sup>, which exists to varying degrees in the bodies whose decisions were examined.

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<sup>219</sup> The Office of the Special Rapporteur made the following specific recommendations: preserve the advances made with respect to access to information, ensuring that the transparency bodies are autonomous, have appropriate and stable budgets, and that their decisions are final and unchallengeable; continue to expand real access to the right of access to public information, strengthening the institutional capacity at every level of government so as to respond appropriately and in a timely manner to requests for information and establishing simple mechanisms (which include, but are not limited to, the Internet) to make such requests; deepen transparency in the justice system, guaranteeing access to the judgments of the courts and to a public version of pretrial investigations that have either concluded or have been inactive for an unreasonable period of time. IACHR. [Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011. Para. 831.