



**Organization for Security and Co-operation in Europe
The Office of the Representative on Freedom of the Media**

COMMENTS ON THE DRAFT LAW ON TRANSPARENCY, ACCESS TO INFORMATION AND GOOD GOVERNANCE OF SPAIN

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I. Introduction and overview

Approximately 90 countries have recognized the need for access to public information laws and have regulated the exercise of this right. However, not all laws drafted under the title “Transparency and Access to Information Law” are, in practice, useful for exercising the right to access information. In other words, both the wording of any access to information law (ATI law) and its subsequent implementation must comply with minimum principles to be considered acceptable under international standards.

The right to access information is considered today a fundamental right in the view of International Human Rights Tribunals in Europe and in the Americas. A set of standards that guarantee this right has been already developed by Inter-Governmental Organizations –IGOs– (such as the United Nations, the Organization for Security and Co-operation in Europe, the Council of Europe, the African Union and the Organization of American States).

It is important to recall that, in 2004, the OSCE Representative on Freedom of the Media held that: “The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) [...]”.¹

From this perspective, Spain’s promotion of a law on access to information should be seen as a positive step taken by the government.

But, unfortunately, the draft law of “Transparency, Access to Information and Good Governance of Spain” (hereinafter the “Spanish draft law” or “draft law”)² does not comply with principles and standards already set by the Human Rights Tribunals or the IGOs,

¹ See 2004 “Joint Declaration by the 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, hereinafter “Joint Declaration” at <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=319&IID=1>

² The draft law can be viewed here: <http://www.leydetransparencia.gob.es/anteproyecto/index.htm>.

including the “Council of Europe Convention on Access to Official Documents”³ (hereinafter CE Convention). Moreover, the draft law does not follow other standards that are considered important, as secondary sources, for an effective regulation on access to information.⁴

This report details some positive and negative aspects of the draft law and provides recommendations to improve it, in accordance with accepted international standards.

II. Access to Information is a fundamental right

Article 1 of the Spanish draft law fails to recognize that access to information is a fundamental right. It is positive that Article 8 of the draft mentions that access to information is a right, but the draft links this right to Article 105b of the Spanish Constitution, which allows limited access to information.

For this reason, it is important to clarify that access to information is either an autonomous fundamental right or a right linked to freedom of expression.

International tribunals have followed this rationale when they recognized access to information as a right. For example, the Inter-American Court of Human Rights included access to information in Article 13 of the Inter-American Convention of Human Rights. The Court finds that “[...] by expressly stipulating the right to ‘seek’ and ‘receive’ ‘information,’ Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention.[...] In this way, the right to freedom of thought and expression includes the protection of the right of access to State-held information, which also clearly includes the two dimensions, individual and social, of the right to freedom of thought and expression that must be guaranteed simultaneously by the State.”⁵

The European Court of Human Rights also recognized access to information in Article 10 of the European Convention on Human Rights.⁶ In a very recent case, the Court said that “[i]n

³ Adopted by the Committee of Ministers on 27 November 2008 at the 1042bis meeting of the Ministers’ Deputies), available at <https://wcd.coe.int/ViewDoc.jsp?id=1377737>

⁴ It would be important to highlight that the approval of access to information laws around the globe has not been exclusively the product of the will of governments. The recognition of the right to freedom of information has been promoted by non-governmental organizations (NGOs) that, in some cases, have managed to build wider alliances that include professionals working in journalism and academia. More than a decade ago, some of these alliances developed standards on access to information that were seriously taken into account by governments or inter-governmental bodies when they developed their own legislation. For the purpose of this report, it is important to mention two examples of standards developed by civil society a while ago that could also be taken into account in the analysis of the Spanish draft. The first is the Principles on Freedom of Information Legislation adopted by the NGO Article XIX, in consultation with organizations in different countries. – see, Article XIX, The Public’s Right to Know, Principles on Freedom of Information Legislation, June 1999, available at www.article19.org/pdfs/standards/righttoknow.pdf -. The second example is a set of 10 principles on the right of access to information, developed by the Open Society Justice Initiative (OSJI) together with other organizations and published on the third annual International Right to Know Day –available at: http://www.access-info.org/documents/Access_Docs/Thinking/Principles/JI_Ten_Principles_on_Right_to_Know_2008_countries.pdf.

⁵ See: Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006, Series C No. 151, http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf.

⁶ See, among others cases: Case of Társaság a Szabadságjogokért v. Hungary, Application no. 37374/05 of 14 April 2009, available at <http://home.broadpark.no/~wkeim/files/echr->

the Court's view, finding that the applicant had such a right under Article 10 of the Convention would run counter to the property rights of the University of Gothenburg. It would also impinge on K's and E's rights under Article 10, as granted by the Administrative Court of Appeal, to receive information in the form of access to the public documents concerned, and on their rights under Article 6 to have the final judgments of the Administrative Court of Appeal implemented [...]"⁷

International documents, such as the Model Inter-American Access to Information Law⁸ (OAS Model Law),⁹ states that access to information is a fundamental human right and an essential condition for all democratic societies.¹⁰ Interpreting Article 19 of the International Covenant on Civil and Political Rights (ICCPR), the UN Human Rights Committee stated that "[A]rticle 19, paragraph 2 embraces a right of access to information held by public bodies [...]"¹¹

Finally, the OSCE Representative stated that "[a]ccess to information is a citizens' right".¹²

Recommendation: Include a paragraph at the beginning of the draft law clarifying that access to information is a fundamental right. Change the reference in article 8 of the draft law to article 20 of the Spanish Constitution.

III. Scope: the right of access should apply to all public bodies

Article 2 of the draft law allows access to information of public bodies, but excludes some

[CASE OF TARSASAG v. HUNGARY.html](#).

⁷ See CASE OF GILLBERG v. SWEDEN, (Application no. 41723/06) available at <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=876602&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

⁸ This Model Law is a product developed within the framework of the OAS after years of discussions among the member States. See OAS General Assembly Resolution on Access to Official Information: Strengthening Democracy, AG/Res. 1932 (XXXIII-O/03), June 10, 2003, http://www.oas.org/juridico/english/ga03/agres_1932.htm; OAS General Assembly Resolution Access to Official Information: Strengthening Democracy, AG/Res. 2057 (XXXIV-O/04), June 8, 2004, http://www.oas.org/xxxivga/english/docs_approved/agres2057_04.asp; OAS General Assembly Resolution on Access to Official Information: Strengthening Democracy, AG/RES. 2121 (XXXV-O/05), May 26, 2005, <http://www.oas.org/XXXVGA/docs/ENG/2121.doc>; OAS General Assembly Resolution on Access to Public Information: Strengthening Democracy, AG/RES. 2252 (XXXVI-O/06), June 6, 2006, <http://www.oas.org/juridico/English/regeneas.html>; OAS General Assembly Resolution on Access to Public Information: Strengthening Democracy, AG/RES. 2288 (XXXVII O/07), June 5, 2007, <http://www.oas.org/juridico/English/regeneas.html>. See also AG/RES. 2418 (XXXVIII-O/08), and AG/RES. 2514 (XXXIX-O/09), "Access to Public Information: Strengthening Democracy," and resolution AG/RES. 2607 (XL-O/10), "Model Inter-American Law on Access to Public Information", http://www.oas.org/DIL/general_assembly_resolutions.htm

⁹ Member States of the Organization of American States recognized the importance of the OAS Model Law during the last OAS General Assembly, held in El Salvador in 2011. Member states resolved "To encourage states, in designing, executing, and evaluating their regulations and policies on access to public information, to consider embracing and implementing the Model Inter-American Law on Access to Public Information contained in resolution AG/RES. 2607 (XL-O/10) and its Implementation Guide.". See: AG/RES. 2661 (XLI-O/11), ACCESS TO PUBLIC INFORMATION AND PROTECTION OF PERSONAL DATA (Adopted at the fourth plenary session, held on June 7, 2011), available at http://www.oas.org/DIL/general_assembly_resolutions.htm.

¹⁰ See AG/RES. 2607 (XL-O/10), available at http://www.oas.org/dil/AG-RES_2607-2010_eng.pdf.

¹¹ See General Comment No. 34, par. 18, available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

¹² See Joint Declaration.

information of the legislative branch and the judiciary. Article 2 clearly states that these bodies should provide information related only to their activities performed under the administrative law. This could be interpreted as a limitation to the right to access public information.

Imposing limitations to access some information “as a rule” does not follow international standards.

For example, the Inter-American Juridical Committee of the Organization of American States¹³ established that: “The right of access applies to all public bodies, including the executive, legislative and judicial branches at all levels of government, constitutional and statutory bodies, bodies which are owned or controlled by government, and organizations which operate with public funds or which perform public functions.”¹⁴

The UN Human Rights Committee considered that under Article 19 of the ICCPR the right of access to information applies to all branches of the State (executive, legislative, and judicial) and other public or governmental authorities.¹⁵

Article 3 of the OAS Model Law established that the law “applies to all public authorities, including the executive, legislative, and judicial branches at all levels of government, constitutional and statutory authorities.”¹⁶

The CoE Convention noted that bodies obliged to provide information included “legislative bodies and judicial authorities in so far as they perform administrative functions according to national law.”

In relation to the judiciary, it would be possible to recognize that “[...] access to information from judicial proceedings may present particular conflicts of rights. For example, the success of criminal investigations may be jeopardized if some information is made public, dissemination of family cases may collide with individuals’ right to privacy, and child victims’ rights may be put at risk when their identities are revealed [...]”¹⁷

However, such conflicts are anticipated in the exceptions provided for by the CoE Convention, which is what makes it possible to extend the right of access to information to the entire judiciary and yet ensure that other rights and interests are appropriately protected.

Recommendation: Change the wording of Article 2 so that the rule is that all public bodies are obliged to provide information.

IV. Proactive disclosure

¹³ See information about the mandate of the Committee at http://www.oas.org/cji/eng/inter_american_juridical_committee.htm.

¹⁴ See, CJI/RES.147 (LXXIII-O/08), Principles on Access to Information, OAS/Ser.Q CJI/RES.147 (LXXIII-O/08), Original: Spanish, principle 2 (herein after “CJI Principles”).

¹⁵ See General Comment No. 34, par. 18 and 7, available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

¹⁶ See AG/RES. 2607 (XL-O/10), available at http://www.oas.org/dil/AG-RES_2607-2010_eng.pdf

¹⁷ See “Disclosing Justice. A Study of Judicial Access to Information in Latin America”, published by Due Process of Law Foundation, Washington DC, 2007, p.2, available at http://www.dplf.org/index.php?c_ID=314

Articles 3 to 7 of the Spanish draft law recognize the importance of proactively disclosing relevant information. This is a positive aspect of the draft law.

The OSCE Representative states that “[p]ublic authorities should be required to publish proactively, even in the absence of a request, a range of information of public interest. Systems should be put in place to increase, over time, the amount of information subject to such routine disclosure.”¹⁸

Proactive disclosure has also been included in model laws developed by inter-governmental organizations, like the OAS Model Law. As it was stated in the “Commentary and Guide for Implementation for the Model Inter-American Law on Access to Information”:

An access to information law may contain provisions requiring public authorities to proactively disclose certain information and documents. These requirements are generally intended to foster transparency and confidence in government and provide useful information to the public. An added benefit of these policies is that they may reduce the number of requests a public authority must process, as the information sought may already be available. This may translate into cost savings for the public authority as employees are relieved from searching for, reviewing and producing information.¹⁹

Finally, proactive disclosure is included in the “Draft Model Law for African Union Member States on Access to Information” (AU Model Law).²⁰ Article 6 states:

Each public body and relevant private body is required to publish the following information produced by or in relation to that body as soon as the information is generated or received by the body:

1. (a) information containing interpretations or particulars of Acts or schemes administered by the body;
2. (b) manuals, policies, procedures or rules which have been prepared for, or are used by, officers of the body in making decisions or recommendations or providing advice to persons outside the body with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons may be entitled;
3. (c) contracts entered into by the body from the commencement of this part for the provision of services to or on behalf of the body where the amount payable under the contract is in excess of [insert amount];
4. (d) the budget and expenditure plans for the current financial year and any previous financial years from the date of the commencement of this part; and
5. (e) any other **information** directed by the oversight mechanism.

V. Definition of information and the principle of “maximum disclosure”

¹⁸ See Joint Declaration.

¹⁹ Document presented by a Group of Experts on Access to Information pursuant to General Assembly Resolution AG/RES. 2514 (XXXIX-O/09). See OEA/Ser.G CP/CAJP-2841/10, April 23, 2010, Original: English/Spanish, page 44, available at http://www.oas.org/dil/CP-CAJP-2841-10_eng.pdf

²⁰ This draft law was prepared under the auspices of the Special Rapporteur on Freedom of Expression and Access to Information in Africa in partnership with the Centre for Human Rights, University of Pretoria, <http://www.achpr.org/english/other/MODEL%20LAW%20FINAL.pdf>

Article 9 of the Spanish draft law defines “information” in a way that could be interpreted as incompatible with the principle of “maximum disclosure”. The principle of maximum disclosure “establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances.” It states that both “information” and “public bodies” should be defined broadly.²¹

As the OSCE Representative states, legislation on access to information should be “based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.”²²

The principle of “maximum disclosure” has been included in various domestic laws, as well as in the OAS Model Law (Art.2):

This Law establishes a broad right of access to information, in possession, custody or control of any public authority, based on the principle of maximum disclosure, so that all information held by public bodies is complete, timely and accessible, subject to a clear and narrow regime of exceptions set out in law that are legitimate and strictly necessary in a democratic society [...]

Article 9 of the Spanish draft law limits some of the information that could be requested. It exempts all information that could affect national security, defense, foreign relations, public security, as well as information that affects the prevention, the investigation or the punishment of crimes or other kinds of administrative or disciplinary misconducts.

More exceptions to access information are detailed in the Spanish draft law in subsequent articles (see comments below). However, Article 9 included exceptions in the definition of information itself. In doing so, Article 9 dramatically affects the possibility for people to exercise their access to information right because it includes a very broad and vaguely defined list of exceptions in the definition.

Finally, it is important to recall that the CoE Convention includes (Article 2) in the definition of “officials documents” all information recorded in any form, drawn up or received and held by public authorities.

Recommendation: Article 9 should be redrafted following the principle of maximum disclosure. Specifically, the limitations included in the definition of article 9 should be eliminated.

VI. Exceptions to the right of access should be established by law, clear, and specific

Articles 10 to 13 of the Spanish draft establish, on the one hand, some “facultative” limitations to access to certain information (Article 10) and, on the other hand, some exceptions to the information that could be requested (Article 13). In practice, there could be

²¹ See, among others, “Article XIX” principles cited above.

²² Joint Statement

no difference for the requesters between “limitations” and “exceptions.” The way that these issues are included in the law is confusing and could be also interpreted as incompatible with international standards.

The OSCE Representative stated that:

The right of access should be subject to a narrow, carefully tailored system of exceptions to protect overriding public and private interests, including privacy. Exceptions should apply only where there is a risk of substantial harm to the protected interest and where that harm is greater than the overall public interest in having access to the information. The burden should be on the public authority seeking to deny access to show that the information falls within the scope of the system of exceptions.²³

In any regulation on access to information it is crucial that exceptions are clearly defined. The Spanish draft law fails to do so adequately.

The Commentary and Guide to the OAS Model Law clearly expresses that “Implementation of the system of exceptions to the right of access to information is a core issue for the effectiveness and observance of this fundamental right. It is a process of legal interpretation based on the presumption of publicity over other interests.”

The CoE Convention clearly states that “[l]imitations shall be set down precisely in law, be necessary in a democratic society and be proportionate [...]”

Exceptions to the dissemination of information should not become the rule. Unfortunately, because both the limitations and the exceptions are worded vaguely, the Spanish draft law runs the high risk of making the exceptions the rule practiced by the officials who should provide information. Exceptions are an indisputably critical part of any freedom of information law, and the Spanish draft should address these ambiguities to avoid confusion in interpretation and judicial application.

Furthermore, the Spanish draft law recognizes the harm test for only some limitations. However, it does not include the public interest case for all the exceptions included in the draft. International standards follow a different path.

For example, the CoE Convention states that “[a]ccess to information contained in an official document may be refused if its disclosure would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.”

As it is stated in the Commentary and Guide of the OAS Model law:

The public interest and harm tests are standards against which the justification for an exemption to disclosure must be weighed, to determine if it meets requirements of proportionality and necessity. In applying these tests it is necessary to adopt a restrictive interpretation of the exemption [...]. The presumption of publicity thus requires an exemption be the least restrictive as possible; that is: non-disclosure must have a direct effect on the exercise of a particular exception, be proportionate to the

²³ Joint Declaration

public or private interest protected, and interfere to the least extent possible with the effective exercise of the right of access.

The AU Model law (Article 35) includes a similar test:

35. Public interest override

1. (1) Notwithstanding any of the exemptions in this Part, an information officer must grant a request for access to information if the public interest in the disclosure of the information outweighs the harm to the interest protected under the relevant exemption [...].

Finally, another important principle regarding exceptions that is omitted in the Spanish draft is that no exception or limitation should apply in cases of violation of human rights or crimes against humanity. Article 45 of the OAS Model law included this limitation to the exceptions.

Recommendation: Articles 10 to 13 should be redrafted. First, the system of exceptions should be clarified (limitations are also exceptions and their wording should avoid vague or broad definitions); second, the Spanish draft law should include the public interest test for all the exceptions (including those related to personal data) that should be clearly drafted.

VII. It should be possible to request information anonymously and without disclosing the motives for the request

Under Article 14 of the Spanish draft law, the requesters of information must (in Spanish *deberá*) identify themselves. This obligation is not in accordance with international standards. This identification could potentially lead to retaliation by public officials against requesters and, for that reason, this obligation creates a chilling effect that causes people to avoid requesting information.

For example, the AU Model law does not ask for the name of requesters for asking information. Moreover, the comment of Article 24 of the OAS Model Law mentions that “[t]he requester need not provide their name on the request for information. However, insofar as the request concerns personal information, the requester’s name may be required.”

Article 14 of the Spanish draft includes a provision related to the motives of the request. It is true that Article 14 says that the requesters “may” provide the justification and that the omission to provide justification should not be a reason to deny information. Yet, international standards are clear that motives should not be requested.

For example, Article 4.1 of the CoE Convention says that “[a]n applicant for an official document shall not be obliged to give reasons for having access to the official document.”

Similarly, Article 11 of the AU Model law clearly says that “No person shall be requested to provide a justification or reason for requesting any information.”

Furthermore, interpreting Article 13 of the Inter-American Convention on Human Rights, the Inter-American Court mentioned that “[t]he 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.”²⁴

Article 14 wording of the Spanish draft law may encourage public officials to ask for the justification of the request of information.

Recommendation: Article 14 should not oblige requesters to identify themselves and should not include the need to justify the request, even when it is not an obligation.

VIII. Oversight and appeals mechanisms should be clearly developed and include independent oversight bodies

Article 21 of the Spanish draft law includes, rightly, the possibility of an administrative appeal before making an appeal to the judiciary.

As the OSCE Representative stated: “Those requesting information should have the possibility to appeal any refusals to disclose to an independent body with full powers to investigate and resolve such complaints.”²⁵

Unfortunately, the body mentioned in the Spanish draft law (the *Agencia Estatal de Transparencia, Evaluación de las Políticas Públicas y de la Calidad de los Servicios*) does not offer sufficient guarantees of independence, since it will function within the framework of one Ministry, according to the “Third Final Disposition” of the draft. Moreover, the statute of the body should be approved by the Council of Ministers.

The Commentary and Guide of the OAS Model Law explained that:

Assuring a procedure that allows persons to enforce their right to information when a request is ignored or denied, or when their rights are otherwise impeded, is arguably the most important set of provisions within an access to information law. Without an independent review procedure of decisions, the right to information will quickly become discretionary and based on the whims and desires of the persons receiving the request. If the enforcement mechanisms are weak or ineffectual it can lead to arbitrary denials, or foment the “ostrich effect,” whereby there is no explicit denial but rather the government agencies put their heads in the sand and pretend that the law does not exist. Thus, some independent external review mechanism is critical to the law’s overall effectiveness.

International standards, such as the OAS Model law, provide the opportunity for appeal to an external body. In this context, an external body means a body that was not involved in the decision of denial (total or partial) of the information requested. International experience shows that there are a number of potential models that could be used. The Commentary to the OAS Model law includes:

1. An Information Commission(er) or Appeals Tribunal with the power to issue binding orders

²⁴ See Claude Reyes case, cited above.

²⁵ See Joint Declaration.

2. An Information Commission(er) or Ombudsman with the power to make recommendations
3. Judicial Review

Although the model selected for appeals depends greatly on the specific context and culture – political, economic and bureaucratic – of the country as well as budgetary considerations, the first model mentioned above has proven successful in a variety of jurisdictions.

For example, the AU Model law establishes (Article 59) an independent and impartial oversight mechanism comprised of Information Commissioners for the purposes of promotion, monitoring and protection of the right of access to information. It should be highlighted that this body not only deals with appeals, but also works in promotion and monitoring.

The Spanish draft does not choose one of these recommended models clearly.

In any case, independence is fundamental for any model (particularly models 1 and 2 mentioned above). There are many conditions that could influence the real or perceived independence of the body. Among them is the way the head of the office is selected, the term of office and procedures of dismissal, from which branch of government the body receives its power and to whom it reports, as well as its autonomy in budgeting.

The body included in the Spanish draft law should follow these requirements.

Recommendations: Article 21 of the Spanish draft law should be complemented by provisions that give real independence to the body mentioned in it. Moreover, the article could be augmented by giving the body the ability to resolve appeals, oversee the implementation of the law and promote access to information within the administration.

IX. Importance of specific sanctions for those who obstruct access to information

Articles 22 to 27 of the Spanish draft law describe a number of sanctions for public officials in their duties. The OSCE Representative states that an access to information law should “include provision for sanctions for those who willfully obstruct access to information.”²⁶ The Spanish draft law does not include a specific sanction for public officials in this area.

Inclusion of specific sanction is recommended. As the Commentary to the OAS Model law states:

In order to assure full functioning and compliance with the law, the best access to information legislation includes a comprehensive section on sanctions for failure to fulfill the procedural responsibilities or for affirmative actions to subvert the law. Sanctions, which often carry a fine or other administrative remedy such as suspension or termination, should apply when civil servants fail to comply with the provisions set forth in the law, such as time for response or obligation to assist requesters. Additionally, actions to impede the release of information – from obstruction and hiding information to destruction of documents – should also carry a sanction. Generally, administrative sanctions work better, as they are more likely to be applied.

²⁶ See Joint declaration

Nevertheless, there should be provision for criminal sanctions when the action rises to the level of intentional obstructionism. When a civil servant has knowingly, i.e. in the face of an information request, willfully destroyed or altered requests, it is important that there be the potential for applying more severe penal sanctions.

Recommendation: Articles 22 to 27 should include specific sanctions for violating the right to access information.

X. “The access to information law should, to the extent of any inconsistency, prevail over other legislation”²⁷

“Additional Disposition First,” paragraph 2 of the Spanish draft law, does not make the law superior to other legislation on the matter. In fact, the draft specifies the contrary.

Recommendation: The “Additional Disposition First”, paragraph 2, should be deleted and include a provision that establishes that “to the extent of any inconsistency, this Law shall prevail over any other statute.”

XI. Recommendations

- *Include a paragraph at the beginning of the draft law clarifying that access to information is a fundamental right. Change the reference in article 8 of the draft law to article 20 of the Spanish Constitution.*
- *Change the wording of Article 2 so that the rule is that all public bodies are obliged to provide information.*
- *Article 9 should be redrafted following the principle of maximum disclosure. Specifically, the limitations included in the definition of article 9 should be deleted.*
- *Articles 10 to 13 should be redrafted. First, the system of exceptions should be clarified (limitations are also exceptions and their wording should avoid vague or broad definitions). Second, the Spanish draft law should include the public interest test for all the exceptions (including those related to personal data) that should be clearly drafted.*
- *Article 14 should not oblige requesters to identify themselves and should not include the need to justify the request, even when it is not an obligation.*
- *Article 21 should be complemented by provisions that give real independence to the body mentioned in it. Moreover, the article could be complemented by giving the body the ability to resolve appeals, oversee the implementation of the law and promote access to information within the administration.*

²⁷ OSCE Representative, Joint Declaration.

- *Articles 22 to 27 should include specific sanctions for violating the right to access information.*
- *The “Additional Disposition First”, paragraph 2, should be deleted and include a provision that establishes that “to the extent of any inconsistency, this Law shall prevail over any other statute.”*