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Scope of Spanish Right to Information Law Too Limited

The Spanish government has been preparing a Draft Law on Transparency and Citizen Access to Public Information, so far in secret. A draft of the law was leaked to the press and civil society in August 2010 and CLD has prepared a detailed set of Comments on the draft. The government has still not released an official version, apparently waiting until it has a very developed version before soliciting public comment.

“The draft Law has some positive features, but these are seriously undercut by major limitations on the scope of both information and public authorities it covers,” said Toby Mendel, Executive Director of CLD. *“Furthermore, given the important social implications of this exercise, the government should have prepared a policy paper and held wide-ranging public consultations before proceeding to draft the actual legislation.”*

Some of the key problems with the draft Law highlighted in the Comments include:

- Information which is not destined to become ‘part of the file’, such as notes, drafts, opinions, reports and internal communications are not covered.
- ‘State secrets’, which term is not defined in the draft Law, will be accessible only through other (as yet unspecified) rules granting access to information.
- The draft Law has only limited application to legislative and judicial bodies.
- The regime of exceptions is significantly overbroad, both in terms of the scope of the exceptions – which include vague and expansive items such as ‘external relations’, ‘secrecy as required by the decision-making process’ and the ‘legitimate interests of private individuals’ – and the weak nature of the test for engaging them, which is ‘might result in harm’.

Spain remains the only major country in the European Union, and one of very few members of the Council of Europe, that does not have a right to information law. It is thus welcome that progress is being made to adopt one. We call on the government to approach this task in a consultative manner, and to ensure that the law that is adopted complies with international standards in this area, in accordance with our Comments.

The full set of Comments is available at: http://www.law-democracy.org/wp-content/uploads/2010/07/11.01.Spain_FOI.pdf.

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