Access Info Europe

Activity Report
2018

Photo: Civil society organisations at the Open Government Partnership summit in Tbilisi, Georgia.

The **global community working to promote openness** in government has grown over recent years, and Access Info is a key part of that. So while we have our own projects we also **have an impac**t not because we act alone but because we link our effort to those of others in order to defend human rights and advance democracy.

Access Info leads transparency projects, such as the campaign for access to EU officials' travel expenses and our drive for decision-making transparency at the EU and national level, which we carry out in partnership with other RTI organisations. On other projects where **we form strategic networks**, in areas including opening up data on migration, lobby transparency, transparency of the European Council and EU legislative process, and strengthening national access to information laws.

We balance the proactive, the structured projects, with our **rapid response to threats**, such as when a right to information law is under attack (as in Montenegro) or, more shockingly, a journalist killed after submitting requests for data that might reveal corruption (Jan Kuciak in Slovakia).

Our **support for civil society and journalists** is wide-ranging, and includes providing technical support on requests and appeals made via the AsktheEU.org request platform or at the national level, and working with networks of journalists on civil society **uncovering data on violations of the human rights** of migrants or on the influence of lobbyists.

We collaborate with and provide **technical support to government officials and inter-governmental organisations**, helping **develop laws and regulation and set standards**. In 2018 we worked with the EU and UNESCO, and we did **trainings on implementing transparency rules** with government bodies in Argentina, Bosnia and Herzegovina, and Spain.

The collaborative approach to ensure greater impact is reflected in **Access Info's new strategy for the 2018-2020 period**, which has three priority areas: Defending Democracy, Advancing the Right, and Strengthening the RTI Movement, as set out in more detail below.

Helen Darbishire, Executive Director

Strategy: Impact through Collaboration

In 2018, Access Info's Executive Board and General Assembly adopted a new strategy for the coming period.

The strategy process involved looking at the context in which we work. That context is set out in the European RTI Context paper available on our website.

We took time to examine the fundamental raison d'être of Access Info's work, namely to contribute to a more open, democratic, and participatory society in which human rights are respected, and how we do so through our specific contribution of promoting and defending the right of access to information, the "right to know".

At an operational level, we wanted to ensure a strong logical framework for our strategy so that it helps us manage our resources effectively and facilitates our internal decision making. Our strategy also helps us prioritise how we use the precious funds provided by our donors so that we achieve specific goals and maximise impacts.

The in-depth reflection, guided by external consultants, confirmed the fundamentals of Access Info's mission: Access Info's objective is that the fundamental right of access to information serves in practice to defend and advance human rights, and to strengthen the quality of democracy in Europe, including at the EU and national levels.

For practical purposes, our work will be structured around three key pillars:

➢ *Defending Democracy: That the right of access to information works in practice to help defend and promote human rights and democracy, that decision making is open and that information needed for accountability is available;*

➢ *Advancing the Right: To advance the right of access to information in international standards, and in national legal frameworks and their implementation;*

➢ *Strengthening the RTI Movement: To strengthen and broaden the constituency that defends the right of access to information, including civil society, journalists, academics, lawyers, information commissioners, judges, inter-governmental organisations and public officials.*

The Full strategy, along with supporting documents and information on the strategy development process can be found on our website,

Strategy Consideration: Transparency of Private Actors

There is still a strong need to achieve and defend transparency of public bodies. That said, much of our work touches on securing transparency of private actors, such as lobbyists through lobby regulation, private businesses through openness of public contracts and spending data, media owners through our transparency of media ownership work, and the real beneficiaries behind companies through opening up company and beneficial ownership registers.

We continue to explore how the fundamental right of access to information should apply to private bodies, particularly larger ones with a significant role in the public sphere, and whether that transparency should be mediated via public bodies or be an obligation that private bodies themselves have to comply with.

Impact: EU Commissioners' Travel Expenses

The Campaign Goal: To achieve proactive publication of all the travel expenses of all senior European Union officials, starting with the 28 Commissioners, and the heads of all EU bodies and agencies.

Why it is important? Given that misuse of expenses is something that has caused many political scandals in other countries, and given that in many countries such data is now available, it's surprising that the EU is lagging behind. In the context of a crisis of trust in Europe's political leadership, transparency of travel expenses is a basic step towards demonstrating integrity.

How did Access Info select this campaign? We didn't, rather it selected us! The story goes back to 2014, when Access Info's director Helen Darbishire was showing a journalist how to submit a request to the European Union. We were very surprised to find that, at first, the information was refused to us. Since then we have been using requests, advocacy and legal appeals to open up this data.

Impact #1: In February 2018, the European Commission started publishing the travel expenses of the 28 Commissioners. While Access Info welcomed this publication, we note that it is only minimal, with basic information being made available. There is however no detail on miscellaneous expenses.

Furthermore, anyone wishing to see this data must go through the EU's website, checking Commissioner by Commissioner, mission by mission, to find it.

Impact #2: By May 2018, Access Info had secured access to the travel expenses of almost all EU agencies and bodies. While only a couple of these – the European Ombudsman and the European External Action Service were publishing these proactively, a further 46 provided us with the travel expenses of their most senior official.

The media reporting on this proclaimed that "Transparency is the new standard!" For Access Info Europe, this is a step forward, although more needs to be done to ensure proactive publication of this data in a place and a way that makes it easy for European Union citizens to find.

Future Challenges: Secure the publication of all EU senior official's travel expenses in one single, easy to locate and search database.

Challenge: Opening the Council of the EU

The Campaign Goal: Securing proactive, real-time publication of documents on decision making within the Council of the EU.

Why is Council Transparency important? The EU Member States meet in the Council as one of the EU's co-legislators deciding on laws that affect all EU citizens. Without transparency, it's impossible for the public to follow and participate in those debates. Without transparency citizens can't hold their governments accountable.
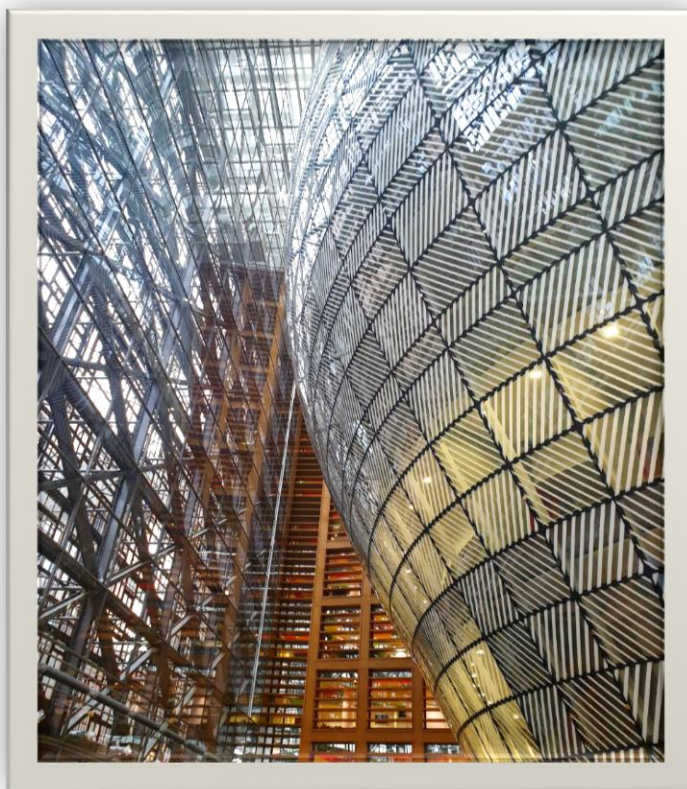
Strategy: How can greater Council transparency be achieved? For years the Council operated more as a diplomatic, inter-governmental body, than an open legislative body. Member States have resisted greater openness. To change this requires a systematic approach to institutional reform. Disputes and litigation over access to particular documents must be complemented by constructive proposals and dialogue involving all relevant stakeholders.

Obstacles to Council Decision-Making Transparency: Through our decision-making transparency research, Access Info identified a series of obstacles, which we presented to the European Ombudsman in 2018 as part of her enquiry into Council transparency.

» **Lack of proactive publication**: Legislative documents are not systematically available proactively in the Council register, therefore citizens are not informed and have to request document by document

» **Poor record keeping**: Council working parties have diverging practices on record keeping, with some not keeping a full record of discussions

» **Details not recorded**: The names of Member States making proposals or taking positions are not recorded

» **Published documents are hard to find**: The public register is not user friendly, and you need to know the terminology, for example, "outcome of proceedings" instead of "minutes of meetings"

» **Automatic classification**: Many documents are automatically classified for limited circulation, "LIMITÉ" particularly key documents such as legal advice.

> **Don't Blame Brussels!** Lack of record keeping and invisible decision making makes it easier for governments to "blame Brussels" for any decisions rather than taking responsibility themselves – this is undermining citizen confidence in the EU itself, and is a threat to the entire European democratic project.

What is Access Info doing? Access Info has been campaigning on Council transparency for a number of years, with a positive impact.

- ✓ Over 340 requests to the Council on AsktheEU.org, with the documents released is available to all;
- ✓ Constant monitoring of the issues;
- ✓ Advice to requesters on how to access documents and how to challenge refusals;
- ✓ Litigation won in favour of transparency;
- ✓ Complaints to the European Ombudsman decided in favour of transparency;
- ✓ Reports based on data from AsktheEU.org resulted in improved practice, such as acknowledgements and detailed responses indicating how to appeal.

Engagement in Policy dialogue: During 2018, Access Info participated in policy dialogue with key actors on an ongoing basis. Our director Helen Darbishire gave a talk at the Council about our concerns and recommendations (January 2018). We participated in debates in Brussels (February and July 2018). We held discussions with MEPs and representatives of national parliaments, part of the COSAC group, and representatives of governments supporting openness in EU decision making.

Impact: Finding of Maladministration: In 2018 the European Ombudsman, basing her arguments heavily on the jurisprudence in the *Access Info v Council* case, as well as the submissions to her enquiry by Access Info Europe and others, found that two key problems with Council transparency constitute maladministration.

- ➤ "The current administrative practice of the Council's General Secretariat, not to record systematically the positions expressed by Member States in discussions within preparatory bodies, constitutes maladministration."
- ➤ "Marking most preparatory documents in ongoing legislative procedures as 'LIMITE', constitutes a disproportionate restriction on citizens' right to the widest possible access to legislative documents [and] constitutes maladministration."

Impact: From Classified to Proactively Published: The Council's Legal Opinion on the proposal for an EU directive requiring Member States to publish registers of the beneficial owners of companies was classified as LIMITE. National civil society organisations were told by their governments that the opinion concluded that open beneficial ownership registers were not possible. Access Info requested and was denied access to the legal opinion, went to Ombudsman, and as during the mediation with the Council, the document was published proactively. The opinion does not contain strong legal arguments against open beneficial ownership registers, undermining the argument given by some national governments.

Rules on Record Keeping: It's not just the Council! Poor record keeping on decisions is an issue in the European Commission and many EU bodies and agencies. Access Info supports adoption of an EU administrative law that will require detailed records and justifications of all decisions, along with human rights and environment impact assessments.

- ✓ **6000+ requests**

- ✓ **Answers for the public to see**

- ✓ **Support to civil society, journalists, MEPs, business, and others**

- ✓ **Appeals to the European Ombudsman.**

Of the 32 most frequent users of AsktheEU.org, 13 are journalists, 10 are CSOs, 7 are independent researchers, and an MEP and a lawyer also are regular users.

Access Info provides support to these and other requesters on a daily basis. We give advice on which EU body to contact, on how to actually phrase a request, how to handle delays and clarifications, and how to make an appeal – known in EU jargon as a confirmatory application.

We also help with making complaints to the European Ombudsman. In 2018, an MEP, Denis de Jong, won an Ombudsman complain against the Council of the EU regarding access to legal advice on the EU's lobby register. Access Info had helped secure pro bono legal support to the MEP as well as providing our strategic input on the case.

Legal Leaks Toolkit: Training Journalists

Training journalists is a core part of Access Info's regular work. We do it through formal, structured, trainings. We are also frequently contacted by journalists from around Europe who call or write to our Madrid office looking for help, often on trans-national requests.

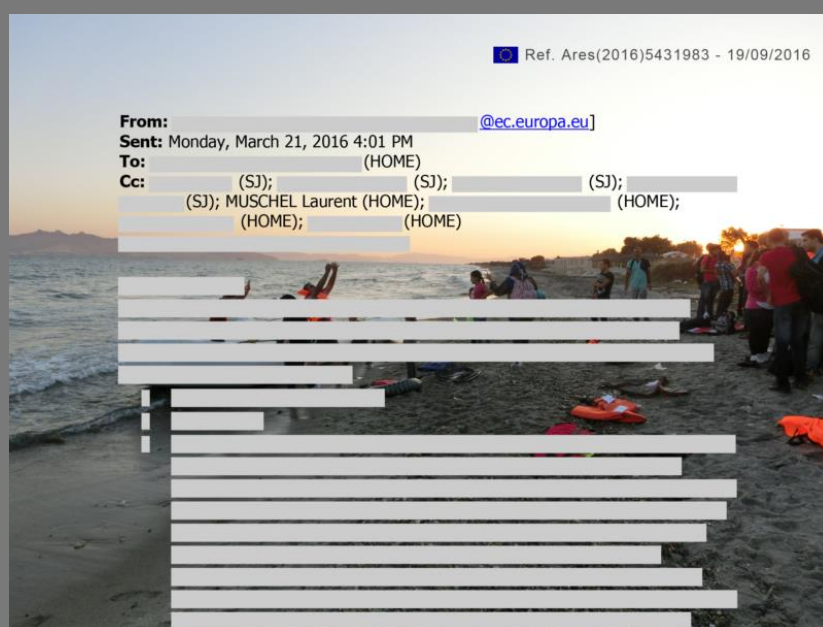Legal leaks: inspiring stories on the art of using access to inf...

At the Perugia International Journalism Festival in April 2018, we presented the Legal Leaks Toolkit – available in 13 country versions (in the respective languages of each country and adapted to national law), supported by UNESCO and the OSCE. Pictured here are journalists Gavin Sheridan of thestory.ie, Anuška Delic of OCCRP, Helen Darbishire of Access Info, Julia Reda MEP, Andrea Menapace of Diritto di Sapere and Alberto Alemanno of The Good Lobby.

Many of our projects involve journalists, such as the work with the Returns Network of investigative journalists looking into migration issues. Access Info also participated in the 1st International Symposium of Migration Journalists, in the Spanish city of Mérida, in October 2018.

Migration: All that we don't know!

There is still a huge amount that we don't know about the way in which the European Union and EU Member States are responding to the migration into Europe.

The goal of Access Info's work on Migration is to that there be greater transparency around how decisions on migration policy are being taken, how funds allocated to migration are really being spent, and how human rights law is taken into consideration.

Access Info's has found that lack of transparency about migration in Europe means that CSOs, journalists, parliamentarians and – most likely – governments are struggling to have a clear overview. The reluctance to be open with the public, combined with deficiencies and discrepancies in data collection, is reducing the possibility of evidence-based public debate. This in turn is a serious democratic concern, with the migration debate playing into the hands of political forces which are less friendly to human rights considerations.

The frustrations in finding out what is really going on are illustrated by the litigation that Access Info took to the Court of Justice of the European Union, to obtain the legal analysis underlying the March 2016 deal between EU Member States and Turkey. We lost that case, with the Court finding that the few documents that exist are protected by the international relations and legal advice exceptions. And yet we did learn something very important: not rigorous analysis of the deal against human rights law was produced. Rather there were a series of late-night emails between high level public officials discussing legal and political aspects of the controversial deal. There is more advocacy work to be done to press for decision making to be grounded in full considerations for human rights law.

Support for Journalists: In 2018, Access Info commenced a formal relationship with the Returns Network, a group of investigative journalists from across Europe. We have been providing them with training and guidance use of access to information laws, and we have matched journalists with pro bono lawyers to help obtain information at the national and EU level. A significant concern of the journalists is to track cases where migrants are returned to harmful situations, in order to expose problematic practices and weaknesses in the current system.

Data on Returns: Building on Access Info's work on mapping data on detention of migrants, we are researching the data held by each country on returns operations, as well as how much is spent on these operations. This mapping will run into 2019, and is collecting data from EU bodies, including Frontex, the EU's Border and Coast Guard Agency, and national governments.

The shooting dead at his home of Slovak journalist Jan Kuciak on 21 February 2018 rocked Europe and the journalistic community in particular. The second investigative journalist to be killed in the EU in recent years, after the car bomb that killed Daphne Caruana Galizia in Malta in 2017.

Even more so because it seems that the killers had known about his investigation – into how the Italian mafia is benefitting from EU funds in Slovakia – and had obtained his home address as a result of his access to information requests.
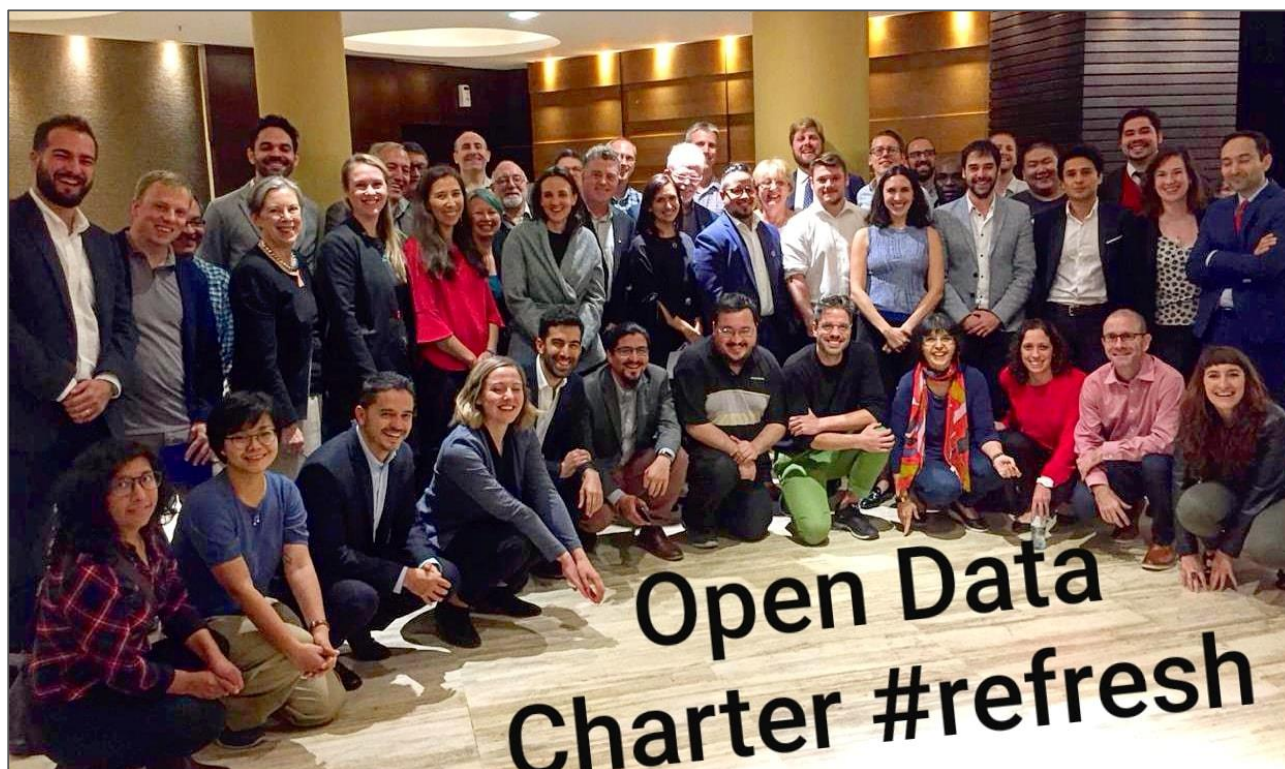

Our Actions included:

➤ **Mapping the problem**: Access Info was already aware of multiple cases where journalists had received inappropriate reactions after submitting requests for information: ranging from questions about why the want the documents, to attempts to "spin" the story in the media, to pressure on editors not to publish. And in the wake of this terrible murder of the journalist, we gathered many more examples from across Europe. These examples were published by media outlets as a part of calls for greater protection for journalists using access to information laws.

➤ **Condemning & Campaigning**: Coordinating with journalistic networks, specifically the Organised Crime and Corruption Reporting Project, for which Jan worked, we mobilised right to information organisations, with 60 CSOs, international and national, signing a letter to the European Parliament. In April 2018, the European Parliament adopted a resolution urging better protection of investigative journalists.

➤ **Linking to a media freedom context**: The resolution also raised related concerns on issues on which Access Info works, including the need for transparency of media ownership and better protection of whistleblowers, both of which are still absent in most EU countries! Creating a strong framework to protect media freedom and to advance open government requires a series of laws to be put in place, some with strong transparency elements, and Access Info continues to press for these regulations to be adopted.

The Problem of IDs: Access Info and partners in various European countries are campaigning against ID requirements. It's a problem in the Czech Republic, Italy, Malta, and Spain, among others. The European Commission asks for postal addresses, and Frontex for copies of ID documents. The European Ombudsman has supported our challenge to the postal address, but the Commission did not yet change its practice.

The right to information is a fundamental right. It must be possible to exercise it without fear!
Access Info is calling for a right to anonymous requests, as recommended by the Council of Europe Convention on Access to Official Documents. We also call on public authorities take steps to ensure that the identity of requesters is protected and does not get into the wrong hands. This is an issue we will continue to monitor, campaign on, and urge to be included in training for public officials.

Bringing the right to information and open data communities together is something that Access Info has been working on since 2009, playing a bridging role to ensure that the wealth of knowledge on the right of access to information serves also in the world of open data. Indeed, we see open data as just one part of the proactive publication obligations that all countries have – something confirmed in the international standards on the right to information, by bodies such as the UN Human Rights Committee.

The huge challenge for the open data movement is to ensure that the data that is published is actually relevant to the wider society. This was the number one concern at the International Open Data Conference (IODC), held in Buenos Aires in September 2018. In preparation for the IODC, Access Info worked with the organisation the International Open Data Charter to develop strategies for promoting meaningful open data, drawing on the experience of the right to information movement.

Citizens must feel confident that open data will not compromise their right to privacy

– Principle 1, the Open Data Charter

Access Info also brought our expertise on privacy issues to the IODC. On the one hand, open data must never compromise the data of private persons and governments need to take stronger action to protect privacy. On the other hand, privacy rules must not be misused to close down information about the spending of public funds and about the activities of public bodies. After the problematic Court of Justice of the European Union decision denying access to the spending allowances of MEPs on grounds of privacy, Access Info has developed a litigation strategy to take cases in Europe to strike the correct balance with access to information.

Community: The Open Government Partnership

The Open Government Partnership, launched in 2011, has become the global forum for advancing quesitons of transparency, participation and accountability. Access Info plays an active role in the OGP, with five strategic goals:

➢ Ensuring that the OGP serves as a vehicle for promoting the right of access to information
➢ Ensuring that participation in OGP helps advance Spain's transparency agenda
➢ That OGP participation of European countries helps advance access to information
➢ That the European Union bodies engage with OGP
➢ That UNESCO engages with OGP given its right to information mandate

Access Info participated in a series of activities OGP-related activities during 2018. These included an in-depth discussion on participation for European governments in Milan (February 2018) and the OGP Summit in Tbilisi, Georgia (in July 2018), which issues of civic space and rising populism were the main concerns for European groups.

Access Info held meetings with meeting government officials to discuss their OGP membership and to press them to advance on their action plans in Bosnia and Herzegovina, Croatia, and Montenegro, and, working with national civil society, used these as advocacy moment to raise concerns about the need to protect the right of access to information and not to weaken the national laws.

Spain: the cultural shift towards open government!

The value of the OGP is evident in how it has helped advance Access Info's work in Spain. A few years ago, we had to litigate to obtain information about what Spain was doing with OGP. In 2018, the Spanish government created a formal forum for developing OGP action plans (pictured). Spain is also the only OGP country with two subnational entities – Madrid and the Basque Country – as members, and it was the country with the largest number of OGP Week activities anywhere in the world. Furthermore, even subnational entities that are not members of OGP are creating action plans (Murcia is an example). Spain has now introduced questions on open government into the exams that public officials must take.

The importance of all of this is that it helps the cultural shift towards transparency, and helps to build the institutions that sustainable openness requires.

Future: Measuring Levels of Transparency

A significant win for the right to information movement has been to secure the inclusion of the right of access to information as one of the Sustainable Development Goals.

Goal 16.10 specifically requires governments to "Ensure public access to information and protect fundamental freedoms"

Indicator 16.10.2 is "Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information"

UNESCO is charged with monitoring 16.10, and Access Info was one of the key organisations working with UNESCO during 2018 on how to measure this. The biggest challenge is how to measure transparency in practice, something that is absolutely essential to have an accurate idea of whether the right to information is really being enjoyed or not.

Proposals: Amongst the proposals we put forward, which were still being reviewed at the end of 2018, is measurement of the proactive publication of data related to the other SDGs and indicators.

Access Info has also recommended that countries gather much more accurate data on the number of requests submitted, rates of response and denial, and timelines for responding. User surveys could be conducted to assess which communities are actually making use of their right to know.

Given the importance of the right of access to information, it's high time we had some accurate measures of how well it's being respected in practice. The monitoring of the SDGs by UNESCO offers the hope that that will now happen. Access Info will continue to engage in this measurement.

UNESCO officials, civil society, academic experts, the OECD, UNDP / Paris 2018

Access Info Europe

Cava de San Miguel 8, 4C

28005, Madrid

Fiscal Code G84816610

Income and Expenditure Accounts
Financial Year 1 January 2018 – 31 December 2018

This is a summary presentation in English of the original accounts prepared under Spanish law by:

Numéritas, SL
ALCALA 75 3ºIZQ
28009 MADRID
B83593764

Income		
Grants and Project funds		277,148.57
These funds comprise:		
» Open Society Foundations	173,883.97	
» European Commission	81,928.05	
» OSCE	11,500.00	
» Journalism Network	8,652.00	
» OSP	1,184.55	
Honoraria Conferences & Consultancies		29,723.91
Reimbursement travel / Per diems		8,219.14
Donations private individuals		50.00
Total Income		**315,141.62**

Expenditure		
Personnel & Management Costs		
Executive Director (with tax and insurance payments)		60,984.00
Staff and professional collaborators (inc. tax and social security)		32,988.54
Consultants & Researchers		20,924.46
Accountant, Payroll		6,927.55
Legal services		363.00
	sub-total	**122,187.55**
Operating and Project costs		
Accommodation		2,379.87
Bank charges (includes transfer fees)		351.26
Depreciation Office Equipment & Furniture		1,613.61
Gifts (in lieu of accommodation) and presents		108.91

Insurance – Office, Liability, Travel, Health	908.34
Office & IT Equipment	26.62
Office cleaning	2,446.28
Office rental	26,136.00
Office supplies, consumables, newspapers, books	273.43
Postage and couriers	203.90
Printing	256.40
Refreshments, business meals, per diems	2,036.75
Re-Grants to Partners	66,630.46
Software	393.06
Telephone/internet/mobile/Skype	1,238.19
Travel (includes long distance and local ground transport)	8,262.88
Utilities – Electricity, Gas & Water	1,377.16
Web domains	232.47
Web hosting	1,171.50
sub-total	**116,047.09**
Total Expenditure	**238,234.64**
BALANCE	**76,906.98**

Approved by the *Junta Directiva*