

4 December 2013

Why you should not need to provide personal identification documents in order to request access to information

The need to present a personal identification document in order to request information is a question that is not normally a requirement addressed directly in transparency laws. The recent passing of an access to information law in Spain means that at the national and regional (Autonomous Community) levels it is a requirement that will cause problems in the implementation of the right.

[The draft Spanish Transparency, Access to Information and Good Governance Law](#) establishes in Article 17 the requirement of the requester to identify himself in order to make an access to information request. This is not necessarily a problem, given that many access to information laws around the world also ask for such information in order to direct the response directly back to the requester.

The difference and real problem in Spain is that access to information is considered an administrative procedure and therefore requesting information becomes an administrative procedure as established in Law 30/1992, of 26 November, of Public Administration Legal Regime and Common Administrative Procedures. More precisely, Article 70 of this law establishes that to make a request, public administration needs a signature or authenticity check amongst other requirements, in order to confirm the requester is actually making the request.

In this sense, the requirement is not only out of line with international standards but that it establishes unjustifiable obstacles to access.

Based on the principle that should inspire and be reflected in transparency laws, "*all information in the hands of public institutions is public except that which damages legitimate public interests as outlined in the said transparency law*", it does not make sense to limit the number of people that can ask for information given that once it is in the public domain, this information can be consulted by anyone who is interested in it. All information in the hands of public institutions is by its nature, public property and therefore it is not important to know who is asking for the information and consequently there should be no requirement to present an identity document to ask for information.

Secondly, [The Council of Europe Convention on Access to Public Documents](#), the only binding international convention, which Spain should sign, establishes the requirements to request information as the following: *"Formalities for requests shall not exceed what is essential in order to process the request"*. A signature, ID card or any other similar documentation is not necessary in order to be able to respond to a request for access to information.

The Convention also establishes that *"Parties may give applicants the right to remain anonymous except when disclosure of identity is essential in order to process the request"*. Point 42 of the explanatory memorandum explains that the Convention does not oblige States to accept anonymous requests, but rather, it permits states to accept anonymous requests as a logical consequence of the principle of not having to justify requests.

Anonymity when making access to information requests has a number of justifications. As already mentioned, information is public and therefore identification is not necessary to make requests because it does not really matter. Secondly, it is key that in order to safely exercise the right of access to information, the identity of the requester should not be revealed, particularly in some countries for example where there is no respect for press freedom or where journalists or civil society organisations are oppressed. Anonymity encourages the use of the right of access to information and therefore the successful implementation of access to information laws.

Thirdly, it is important to remember that in some countries, such as the United Kingdom, official personal identity documents do not exist. Consequently this ID requirement would exclude many people meaning the law would not be in line with the ratification of the Council of Europe Convention on Access to Public Documents. It would also violate the equal treatment of all citizens of the EU in the exercise of their rights as established in the fundamental treaties of the Union.

Fourthly, the formality of providing ID means the public administration has to make an extra effort to have to assure that the requesters have proved their identity when dealing with requests for access to information. One of the worries that are always raised when discussing the right of access to information is the cost to the public administration. Whilst the expense should not be an impediment to implement a fundamental right that must be respected, we should be thinking about the most effective way to keep costs down. Therefore, adding another element to the process creates an unnecessary higher cost.

Fifthly, the need to provide identity documentation in order to access information is not a common requirement of the countries with access to information laws¹. Access Info Europe sends access to documents requests around Europe all the time and the only country which has ever asked for identity documents has been Malta. The rest do not ask for it, and in many cases, making a request for access to information can be as simple as sending an email.

¹ See Global RTI Rating: <http://www.rti-rating.org/>

Finally, it is important to mention that the region of Navarra, Spain, (whose Transparency Law is currently in force) already demands identification when making access to information requests, despite it having been possible before to ask for information via email without any extra information other than that necessary to answer the request. As of 28 December 2012, it is now only possible to make a request for access to information electronically if the requester possesses a digital certificate or an electronic identification document.

A complaint to the Navarra Ombudsman [highlighted](#) that despite the advanced standards found in the regional Transparency Law, in reality it continued a [series of restrictions](#) that made access to public information difficult for citizens. One of these restrictions was the obligation placed upon citizens to use a digital certificate or ID card, on top of presenting their ID card, postal address and telephone number in order to make a request. *"This new administration does not have time for clichés or demands of the old administration that made difficult or impeded the new rights of citizens"*, explained the Navarra Ombudsman. *"If everything continued the same or similarly, the law would fail and what is worse is that its objectives of transparency, open government, access to public information and simplicity, would result in no more than a mere desideratum or fiasco"*.

Access Info Europe recommends that transparency laws should make clear that it is not necessary to present a personal identification document when making requests to public institutions.