

Declaration on behalf of the Coalición Pro Acceso on the international day of Universal Access to information

On the occasion of the celebration of the International Day for Universal Access to Information on 28 September 2021, the members of the *Coalición Pro Acceso* present the following declaration:

Confirming the *Coalición Pro Acceso*'s ten principles, which are the basis for all its work and for the guarantees that any legal system should put in place to ensure that right of access to information is respected:

1. The right of access to information is a fundamental right inherent to all people.
2. The right of access to information applies to all public entities, all branches of government, and all private entities performing public functions.
3. The right of access to information applies to all information produced, received or held by public entities, irrespective of how it is stored.
4. Making requests should be simple, fast and free.
5. Each public entity should appoint information officers to process requests, as well as assist requesters.
6. The Transparency Law shall prevail over any other laws regulating access to information.
7. Denials of access to information must be limited and duly motivated, within the limits set by international standards and subject to a harm and public interest test.
8. Proactive publication: public entities, at their own initiative, should make basic and essential information available to the public, without the need for requests.
9. The right of access to information shall be guaranteed by an independent body.
10. Access to justice. Everyone has the right to appeal against refusals of access to information and failures to respond to access to information requests.

Recalling that, although there is a Transparency Law in Spain that regulates the right of access to information, this law does not comply with all of the principles of the *Coalición Pro Acceso*; in particular, it fails to recognize access to information as a fundamental right.

Stressing the importance of access to information, especially in critical moments such as the Covid-19 pandemic, to avoid that in the near future the right is suspended due to situations arising from social, economic, climactic or any other issue which affects us as a society

Emphasising that the lack of recognition of the right of access to information as a fundamental right in Spain has led to a varied and complex legal framework for citizens who wish to exercise their right to access of information.

Demanding the strengthening of the bodies which enforce this right so that they have greater resources and powers to ensure that public bodies comply with the right and do not ignore or mount unjustified challenges to the decisions of the oversight bodies.

Recalling the many commitments in the IV Open Government Action Plan to improve transparency in Spain, including the reform of the Transparency Law, the signing and ratification of the Council of Europe Convention on Access to Official Documents, and the holding of debates on the possible recognition of this right as a fundamental right.

Given all this, we once again appeal to the Government of Spain to:

- a. **Fundamental Right:** Recognise the right of access to information as a fundamental right and adopt an organic law on transparency.
- b. **All public entities:** The right should apply to all public authorities belonging to any of the executive, legislative and judicial branches and at all levels of the government structure (national, regional, and local), as well as any other entity owned or controlled by the government that provides public services or exercises public functions. It shall also apply to any natural or legal persons to the extent that they perform public functions and/ or services or operate primarily with public funds.
- c. **All information:** The right of access shall apply to all information held by public entities regardless of the date of creation, except that information that is justifiably withheld under an exception. Further, Article 18.1 b. of the Transparency law, which excludes certain information from the scope of the law, shall be deleted. The right of access to information shall include the right to consult the original documents, provided that there are no physical limitations to doing so nor applicable exceptions.
- d. **Open access to historical documentation:** Publication of the catalogue of historical documents in open format, to facilitate access for researchers.
- e. **Limited Exceptions:** In order to ensure that the Transparency law complies with international standards and does not establish conditions limiting the right other than those permitted by these standards, we ask that the grounds for inadmissibility set out in Article 18 of the Transparency law be removed and, in this way, all requests for information in the hands of the appointed subjects be processed. From the CPA we recall that in cases where an abusive use of the right is alleged, the provisions of Article 7 of the Civil Code will apply, and the measure taken to prevent abuse under Article 35.1a of Law 39/2015 must always be justified. A future organic law on transparency must include measures that strike the right balance between rights on the protection of personal data and access to information, nonetheless always taking into account the public interest of transparency.
- f. **Primacy of the Transparency law:** The Transparency law should be classified as an organic law because it develops a fundamental right. This means that the fundamental right of individuals prevails over any other regime of access to information, unless it ensures wider access and provides the requester with greater guarantees of access. This requires amending the Transparency law and annulling other relevant regulations, including the access to archives rules in Royal Decree 1708/2011.

- g. A single channel for requests and appeals:** It should be possible to submit requests for access to any information or document held by any public through a single channel without having to specify the applicable regulations. Similarly, a single procedure, should be available for appeals to the Transparency Council or similar regional bodies regardless of the legal regime that applies.
- h. For all, without identification:** The requirement that those wishing to exercise their right of access to information should first formally identify themselves should be abolished. Access to information must be a right available to all, easy to exercise, without bureaucratic formalities and where the use of computer applications necessitating electronic identification is not required; it shall be sufficient to provide an email or postal address to make a request and receive a response.
- i. Sanctions for noncompliance with the right of access and proactive publication obligations:** The oversight bodies shall have sufficient powers to monitor compliance with transparency obligations and to sanction institutions that do not comply with them. In addition, the Transparency Council and the other guarantor bodies in Spain should have the necessary material, human and financial resources to carry out their work.
- j. Increased proactive publication:** More information shall be published proactively, in reusable formats, especially information that is of particular public interest, as well as information related to the achievement of the Sustainable Development Goals (SDGs) and information that has been frequently requested by citizens.
- k. Open knowledge:** Information resulting from scientific research and reports from publicly-funded commissions should be published with open licenses that permit reuse.
- l. Algorithmic transparency:** Access should be provided to the source code and algorithms of programs used by public administrations, as well as the data and inputs used to train the algorithms, thereby making it possible to audit their impact. The law should make it obligatory to notify citizens when a decision affecting them, directly or indirectly, has been made using this technology.
- m. Easily understandable (user friendly) information:** Ensure that key information is published proactively in simple and understandable language.
- n. Open Registers:** Open access to all data contained in public registers, prioritising the opening of the company register.
- o. Lobbying transparency:** Establish a lobbying regulation that guarantees access to information about who is conducting lobbying, and about the decision-making processes and laws that have been subject to lobbying. There should also be transparency about any participatory process that has an impact on a particular decision.
- p. Open European Funds:** Ensure the proactive publication of the use of European funds, specifically the NextGenEU funds, of which special attention should be paid to transparency of the EU Recovery and Resilience Facility, by publishing among other key data, information on all the beneficiaries of these funds.
- q. Climate Change:** Publish relevant on measures being implemented or planned to prevent climate change, as well as the publication of all information that will inform

citizens about the current environmental situation and encourage dialogue and discussions regarding joint action that can be taken in the present and immediate future to avoid catastrophes with social, economic, political and health related implications, as has happened with the Covid-19 pandemic.

- r. **International Commitment:** Sign and ratify the Council of Europe Convention on Access to Official Documents, which entered into force on 1 December 2020.

Given the importance of achieving recovery after the pandemic and democratic renewal, the *Coalición Pro Acceso* urges the Government of Spain to establish the necessary measures to ensure genuine transparency, starting by providing sufficient human and financial resources to the Transparency Council for the effective fulfilment of its functions and to give it the capacity to resolve requests for access to information within the deadlines established in the Transparency Law; the government should also comply with the Council's resolutions.

The *Coalición Pro Acceso* is aware that many of these demands are included as commitments of the IV Open Government Action Plan. Therefore, we urge that the timetable for their implementation is respected. We note that the Independent Review Mechanism has indicated that, if fulfilled, the commitments in the IV Action Plan would represent a substantial advance for transparency in Spain.

This Declaration sets out the demands that the *Coalición Pro Acceso* endorses today, on the International Day for Universal Access to Information,

In Alicante, 28 September 2021.

Access Info Europe

Archiveros Españoles de la Función Pública (AEFP)

Asociación Andaluza para la Defensa de los Animales (ASANDA)

Asociación de Archiveros y Gestores de documentos del Principado de Asturias (AAPA)

Asociación de la Prensa de Madrid (APM)

Asociación de Usuarios de la Comunicación (AUC)

Asociación Española de Acreditación de la Transparencia (ACREDITRA)

Asociación Innovación y Derechos Humanos (ihr.world)

Asociación Pro Derechos Humanos de España (APDHE)

Associació Ciutadania i Comunicació (ACICOM)

Associació d'Arxivers i Gestors de Documents Valencians (AAV)

Col·legi oficial de Bibliotecaris i Documentalistes de la Comunitat Valenciana (COBDCV)

Confederación de Consumidores y Usuarios (CECU)

Coordinadora de Organizaciones para el Desarrollo

Daniel Ruiz Nodar. Profesor Universidad Carlos III

Federación de Sindicatos de Periodistas (FeSP)

Fundación Civio

Fundación Cultura de Paz

Fundación Global Nature

Fundación Hay Derecho

Gobierno Transparente

Iniciativa Barcelona Open Data
Manuel Sánchez de Diego. Profesor de la Universidad Complutense de Madrid
Observatorio de RSC
Plataforma en Defensa de la Libertad de Información (PDLI)
SEO/BirdLife
Sociedad Española de Documentación e Información (SEDIC)
Transparencia Internacional España
Xnet

Other civil society organisations and experts that support the Declaration:

Associació de Professionals de l'Arxivística i la Gestió de Documents de Catalunya (AAC)
Blueprint for Free Speech
Centre d'Estudis sobre Dictadures i Democràcies. Universitat Autònoma de Barcelona
(CEDID-UAB)
Escola Superior d'Arxivística i Gestió de Documents (ESAGED) de la Fundació Universitat
Autònoma de Barcelona (FUAB)
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Observatorio Valenciano de Datos abiertos y transparencia / Cátedra de transparencia y
gestión de datos