



Helen Darbshire: "Right of access to information is one of the instruments to defend democracy"

 [Natalia Smolentceva](#)  12/04/2018



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Citizens have a right to know how their money is being spent by governments, investigative journalists have a right to obtain information for their investigations, civil society organizations are fighting to get better access to data around Europe –all of them are exercising the old European right of access to information. The past fifteen years have seen significant changes with regard to this right both in terms of laws adopted and how it is used by citizens. To find out about these changes, Legal Dialogue met in Madrid with Helen Darbshire, executive director of *Access Info Europe*—an organization that defends and promotes the right to know on the European continent.

***Access Info Europe* was founded in 2006. What was the situation with access to information back then and why was the organization created?**

I had been working on access to information for quite a long time since the mid-1990s, helping with the adoption of information laws across Central and Eastern Europe, Latin America, and Africa. At the same time I really wanted to make sure



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that we don't forget about this important right in Western Europe itself. For example, in 2006, Spain did not have an access to information law, Germany's law had only just come into force, and the UK law had been adopted a year before, in 2005. So, on the one hand, this right has a long history on the European continent that starts with the Swedish law of 1766^①, but on the other hand, it is also very young. It is only in the last 10-15 years that most countries in Europe have adopted such a law; Cyprus passed its law just a few months ago, in December 2017. It is a very important right for defending human rights, democracy, for investigative journalists, human rights organizations, to fight against corruption, and it is really important to have a high standard in the whole of Europe.

What has changed since 2006?

In 2006, the Inter-American Court of Human Rights **recognized** access to information as a fundamental right. In 2009, the European Court of Human Rights **followed** suit, and in 2011, the EU and the Human Rights Committee declared access to information to be a fundamental right linked to our freedom of expression. A law was adopted in Spain that eventually came into force in 2014. Democracy is under pressure in Europe and all over the world. Levels of trust are falling while nationalist-populist politics are on the rise. There is a need now more than ever for instruments to defend democracy and the right of access to information is clearly one of these instruments.

What are the concrete ways to exercise this right?

Basically, civil society organizations and journalists are trying to get information from their respective governments, every day in every European country. Sometimes they get it, sometimes they don't, and they have to appeal to the Information Commissioner or go to court to fight for this right. For example, in Spain we managed to gain to access, for the first time ever, **minutes of the decisions taken by the Cabinet** going back to 1996. It is the first time in Spanish history that the public has seen these documents on weekly decisions taken by top leaders. In that sense, access to information can be something that affects day-to-

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day life or it can be something connected to high-level politics. Investigative journalists frequently use it to get information for their investigations into corruption, for example. Human rights groups working on migration have been trying to get information about the way migrants are treated across Europe.

Have people become more aware of this right in recent years?

Yes, absolutely, I think we are seeing a huge transition to a greater awareness. It starts with civil society, journalists, lawyers, more active citizens if you like. But I would say that the discourse is changing. We now see that a growing part of the population knows that it has a right to know. I mentioned the problem of trust. And while we see this declining level of trust, it is really important that the political class acts rapidly to be more transparent. Because if they don't, it only makes people more suspicious.

So access to information can also be an instrument for politicians to regain the public's trust?

Yes. I don't think trust is a goal by itself. Good decision-making is the goal, having decisions that are taken in the public interest. But how are we going to know that if we don't have information? A bit of healthy mistrust is good. We should be asking questions, we should be demanding information. Because we know there is a problem of corruption, we know there are lobbyists trying to influence decisions. And it is good to have something to balance that.

Coming back to the ground, we are now in Spain. What are the current issues here?

The Spanish political system is just beginning to get used to the idea of access to information. For example, at Access Info we are working with human rights organizations trying to find out about policies on housing, policies on the prices of medicine. We have helped an environmental organization gain access to information on solar energy policy. The energy lobby against people having solar panels is strong here in Spain. It is a rainy day today in Madrid, but normally the

sun is shining, so why don't we see solar panels everywhere? There has been a bit of resistance to renewable energies.

How exactly does *Access Info* work: do you go to court, are you active in advocacy?

We are a small organization and we are trying to be strategic and effective. We use a range of tools. This afternoon I am doing a training session for judges about the right of access to information. We are still working to change their mentality and to help them gain a real understanding of the problem. We work with civil society and journalists to explain what this right is to the public—this is the starting point. The next step is when we ourselves request information or when we help other to request it. If we can get this information—great, if we can't—we have pro bono lawyers that will help us to get this case to court, we will make noise around that. Litigation is never litigation on its own. It is always part of a broader campaign.

Can you give an example of one of your campaigns?

Last year we campaigned for access to the European Commissioners' travel expenses. They did not want to give us insight, I still don't know why. So we made noise about this, we mobilized a lot of people to request the information. People want to know. This is a trust and integrity question as well. We've achieved that the **European Commission will publish**, every two months, travel expenses of the Commissioners, which is great. We do campaigns like that; we also take cases to all kinds of courts. The most recent case we took, we have lost, that happens, too. Sometimes we lose cases.

What was the case and what did you do about it?

We tried to find information about the way **EU-Turkey deal** was concluded. We lost the case because the documents we had requested "would harm international relations", the judges said. The issue is this: on the EU level, international relations create an exception to the right to information access, but there is no public interest consideration to balance that. So we understand that it can harm

international relations, and maybe it is a bit sensitive, but the public has a right to know how you took this decision and what your legal arguments were. We lost this case. We now plan to argue for changing the rules, so the law is stronger in favor of transparency and next time we or somebody else will have a public interest test.

Access Info also publishes a ranking of quality of access to information laws in the world—RTI. It was surprising to see that Europe is not doing that great, with Austria and Germany at the bottom positions. And then I checked Russia, which ranked really high. Why is that so?

It is very easy for any government—Russia, Azerbaijan, or some countries in Africa—to pass the best freedom of information laws if they don't have any intention of implementing them. The Azerbaijani law is a very good law, but look at the situation in Azerbaijan: I know some journalists who have been imprisoned there. That's a phenomenon we have to be very aware of. What we need to do is to measure transparency in practice. It is good to have a strong instrument, because there is evidence a strong law can help in the right political context. Maybe in Russia it doesn't help so much, but in Serbia we have been seeing NGOs getting information, exposing corruption, forcing people to resign. A stronger law is a good thing to have, but it is not just a thing in its own, it never is: democracy is a complicated system.

And what about Germany, for example?

I have to say that Germany is a very interesting case, because we have had a lot of resistance from the German government to recognize that the public has the right of access to information. It is part of German legal culture and a slightly "old-fashioned" attitude towards democracy. The idea is that the government knows what is best for the citizens, the government takes decisions in the interest of the citizens. And the representatives in the parliament are controlling what the government is doing and you don't really need more than that. That did work for a while. But now an information revolution is underway. 2018 is the year when half

of the world's population is connected to the Internet, so our expectations of the information we can have are radically different.

How does this change your work?

We find this very difficult to manage because of all the fake news floating around, but what we need to make sure is that people's expectations of access to information are met, when it comes to the government. Because if we do not get real information from the government, we are going to get fake information from people with political agendas. And that is very dangerous.

We have to have more transparency. And that is why we see the emergence of new global movements, like [Global Government Partnership](#), which is only 7 years old, a network of about 70 governments. Over the next 10-20 years, we will see even more radical changes.

Does the right of access to information sometimes conflict with privacy, for example?

I won't use the word "conflict". I think we need to put it in balance with privacy and I think it is possible to actually get this balance right. Sometimes it has to be case by case, because privacy is a very tricky problem. When we requested access to the travel expenses of the European Commissioners, the first response from the European Commission was that if they gave us the full documents, they would reveal the Commissioners' private details. But these are public figures, traveling on public business, spending public money. We have a right to know who went where when and whether they went on the ordinary airplane or took a private jet, whether they spent 200€ for a hotel or 1200€. And we have argued successfully against that.

What about the names of beneficiary owners of companies? They are private figures, but if we start seeing that companies have been created by mafia figures or corrupt politicians who have offshore accounts in Panama... Shouldn't we have the information about who owns the companies? So that investigative journalists can

do their work? The journalist who was recently **killed in Slovakia**, Ján Kuciak, might have been killed because of his access to information requests. He was looking at the role of the Italian mafia in Slovakia.

And what kind of information was he requesting?

He was requesting information from land registers, from the company register. In those cases it is clearly in public interest to know who these people are and what they are doing.

You work a lot with journalists, you even produced a **toolkit for them. Can you tell us about that?**

We help journalists all the time. We help journalists with their requests and appeals, help them to take cases to courts around Europe, we give advice—everything from training how to use this toolkit to actually using it for fighting to get information. Right now we are responding to the Ján Kuciak case with a campaign to protect the identities of journalists when they file requests. Journalist, human rights organizations, and whistleblowers all have the right to protect their identities and their investigation.

We talked about civil society and journalists using their right to know, but what about ordinary people? I know you have this platform, **AsktheEU, that allows everyone to send a question to EU institutions. Do private citizens really ask such questions?**

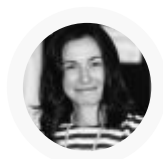
It depends on the country. In the UK, ordinary people use the right to access the information a lot, it is really impressive: there are 100,000 information requests. There is a website run by organization **My Society**, and it is very simple. In Spain it is really complicated to file a request, you have to supply your identity information, you have to have a digital signature, which very few people are using. Around the rest of Europe it is mixed: it is about the culture of asking and the ease of using the access of information law. At our *AsktheEU* platform the majority of users are from

civil society, some are journalists, some lawyers, some private citizens. We don't have very many requests, people feel very distant from Brussels.

We encourage citizens to use this right. The beautiful thing about the right of access to information is that we can actually ask and public authorities have an obligation to answer us. We also encourage journalists to say in their stories "this information was obtained using the right to access information." It is really important to remind the public about that and to make them aware of this right. Because when this right is threatened, they will be more ready to take part in the campaign to protect it.

References

1. ↑ Freedom of the Press Act of 1766 is the world's first law supporting freedom of the press and freedom of information.
<https://www.britannica.com/topic/Freedom-of-the-Press-Act-of-1766>



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