

## Spain

### Report claims right of access to information is not fully recognised

In October 2008, Access Info Europe published a report on access to information requests filed in Spain, in relation to Spanish law and the practices of public administrations, and to a set of principles drawn from international standards. It argues that the right of access to public information is "precariously" regulated in Spain, with "defects and gaps" that represent real obstacles for citizens to know "what public administrations do with their money" or how decisions that affect them are made. Drawing on 41 wide-ranging requests submitted to different administrations, professional bodies enjoying public funding or companies carrying out public functions, the report notes how the legislation in force makes it easy for a public institution that is unwilling to provide a document or piece of information to find a legal basis not to do so, without even having to resort to the exceptions provided for in the relevant law. In 78% of cases, the requested information was not supplied (43% were answered by informing the applicant that they were denied, or by not supplying the information, and 35% were met by administrative silence), whereas 22% were answered by supplying the information sought. Eleven appeals were filed, three of which resulted in the information being disclosed. The report by lawyer Eva Moraga concludes that the right of access to public information is not fully recognised in Spain, and it is something largely unknown of among the citizenry and professional groups for which it is especially relevant such as politicians and journalists. It includes a set of recommendations calling for the approval of a specific access to information law that takes international standards and principles in this field into account.

The information requests that were did not receive a reply included those concerning the meetings of the minister for public works with external interest groups, those concerning IFEMA's (Madrid Fairs Institution) contracts with the construction company Grupo Sacyr, reports by the Basque government's Revenue Department to replace IT programmes with free software programmes, and information on the budget envisaged for training courses in Spanish prison facilities. In many of the 43% of applications that were answered without providing, or granting access to, the requested information, denials were deemed to have been based on arguments that do not comply with internationally recognised principles in the field of access to information. The requested administrations sometimes justify their refusals on the basis of the legislation that is in force, whereas in other cases, they employ peculiar interpretations of the law, which, the report argues, are based on the absence of a culture of transparency and access in the Spanish public administration.

On the basis of nine principle on access drawn up by the Coalición pro Acceso, an alliance of associations campaigning for the right of access in Spain, the report looks at the study's results in relation to the following criteria: the general principle of publicity; that anyone can request and receive information; that all information be accessible unless covered by exceptions envisaged in a specific law; that the right of access applies to all public administrations, institutions and powers, including private bodies performing public functions or using public funding; that applicants must not explain why they want the information nor what they intend to do with it; that the administration must reply in a clear and prompt manner; and that the entire process must be simple and the administration must provide full information about it.

The absence of an access to information law is highlighted, noting that the applicable law, the Ley de Procedimiento Administrativo (Law on Administrative Procedure), no. 30 of 26 November 1992, does not include a general principle of publicity of all information held by public administrations. Moreover, the relevant article (37.1) is described as imposing "a hurdles race", requiring that three conditions be met simultaneously, namely

that the document be part of a file found in an administrative archive, that the file be part of a procedure, and that this procedure be completed. To illustrate the problem of the absence of a general principle of publicity, the author refers to a refusal of access to four pieces of information from the defence ministry. Although the four requests were very different, including the number of buildings of its property that were sold in 2007, the number of Spanish soldiers treated for post-conflict traumas, the number of complaints filed by members of the armed forces for gender discrimination and the number of armed forces personnel who suffered amputations or were given leave for medical reasons as a result of accidents in Iraq or Afghanistan since 2001, a single answer was provided, that this information "is not a subject pertaining to administrative information". Thus, any kind of information can be denied without reference to a legal basis, apparently indicating that "the ministry of defence considers that any information it holds has a character of official secret and is beyond public scrutiny".

Furthermore, the report notes that it is difficult to establish what an "administrative file" is, except for the case of local councils, for which it is defined as "the ordered collection of documents and interventions that serve as precedents and the basis for future resolutions, as well as the proceedings for its implementation". This excludes information held by public authorities that is "relevant and useful to form public opinion that is not part" of such a file from access, as acknowledged by the former spokeswoman of the governing PSOE party in the parliament's public administration commission, Elisenda Malaret. The ministry of culture refused a request a request for the annual reports of SGAE (Sociedad General de Autores y Editores), the Spanish association of authors and editors, concerning the use that is made of the money it receives from the fee that is paid on editorial and musical products, on the basis that it was not part of "an administrative file", in spite of its public interest. The fact that the proceedings to which an administrative file containing a requested document must be "finished", also comes in for scrutiny, as the report notes that a case in which information about buildings rented by the justice ministry in the Madrid region, and the prices of rent, were requested was refused on grounds that the rent contracts were not finished. This justification would entail that no information shall be provided with regards to contracts that are in force, involving expenditure from public funds, thus strengthening the trend of non-disclosure and lack of accountability.

Shortcomings are also noted with regards to the principle of "all public information being accessible" unless covered by exceptions provided for in law (with examples including an initial refusal by the interior ministry to provide data on the number of immigrants expelled from Spain, and the Court of Accounts' initial refusal to grant access to documentation about concentration camps and forced labour units during the Civil War, a position that was later changed after an appeal). A further obstacle involves the requirement of identifying a specific document in relation to access requests, and the ruling out of generic requests concerning a given subject. Other aspects that make enquiries for information more complicated, are replies that ask whether someone is qualified to request it, or what use will be made of the information if supplied, both of which are practices that run contrary to the principles of anyone having access to public information and of not having to justify their interest in requesting it. The lack of a deadline within which requests for information must be answered is another issue that is highlighted (unless the submission of the request is the start of an administrative procedure, in which case a three-month deadline would be applicable), particularly in light of the fact that 35% of the requests did not receive any reply whatsoever, nor even an acknowledgement of the request having been received. Amid other concerns such as non-citizens being excluded from the right of access, the lack of information provided to applicants and the interpretation of this right by Spanish legislation as "a struggle in which the administration must defend the information that it holds, always and with strength, against those who dare to ask for it", an example is cited in which the mayor of Madrid's office returned a request without even opening it, marking the envelope with the word "Refused".

The report recommends, primarily, that an access to information law be introduced in Spain that takes international standards in this field into account. Spain is one of only four countries that do not have an access to information law, in a European context. It should establish a system in which the principle of publicity prevails, whereby anyone is qualified to request information, the administration has a duty to reply to all requests in clear and simple language, and reasonably quickly, and with information provided to applicants about the process.

"Cuando lo público no es público. Por qué se necesita una ley de acceso a la información pública en España?", Eva Moraga, Access Info Europe, October 2008, pp.24, available at: <http://www.access-info.org/>

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