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SPECIAL COLLECTION OF THE CASE LAW ON FREEDOM OF EXPRESSION

Transparency in the Spotlight: Global Case-law on Access to Public Information



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Global Case-law
on Access to Public Information

Credits

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I. Introduction

The right to access public information is one of the bases of democracy. It allows anyone to request and access any piece of information created or held by public authorities, promoting accountability and transparency. It is, in part, a manifestation of the right to freedom of expression, as it has been recognized in a wide range of international law instruments. Article 19 of the [Universal Declaration of Human Rights](#) (1948) and Article 19 of the [International Covenant on Civil and Political Rights](#) (1966) recognize that freedom of expression includes receiving information. At the regional level, Article 10 of the [European Convention on Human Rights](#) (1950) and Article 13 of the [American Convention on Human Rights](#) (1969) also recognize that the right to freedom of expression include accessing information. More recently, Article 9 of the [African Charter on Human and Peoples' Rights](#) (1981) recognized that every individual has the right to receive information as a stand-alone right.

International and domestic case-law, reports from the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, and different Constitutions and legislations around the globe have determined that access to information is a right in itself. In the last decades, access to information guarantees have been adopted by [135 UN Member States](#).

The importance of accessing public information cannot be underestimated. The United Nations has established that it is crucial for fulfilling the [2030 Sustainable Development Goals](#) (SDG). Target 16.6 of the SDG aims to develop transparent institutions, while Target 16.10 aspires to ensure public access to information at all levels.

Judges and specialized information agencies play a very important role in protecting such a right. In many countries, once authorities reject disclosing the information, the judiciary is in charge of ruling if this decision was legal and if the information in question had to be disclosed or not. Although the procedural rules vary greatly throughout the world, very interesting legal cases arise when a public institution refuses to grant access to a certain piece of information. As a result, it is possible to systematize part of the global case-law on access to public information, highlighting judicial decisions that have applied international human rights standards and expanded the scope of the right to access information while ordering the disclosure of said information. Such is the objective of this paper.

Human rights bodies, UN institutions, international and domestic courts, and different local laws have identified a series of standards or good practices related to the right to access public information. This paper presents case-law from around the world that follows such standards. We selected more than 100 emblematic cases where judges or specialized bodies granted access to the requested information and applied international human rights standards. They were added to *Columbia Global Freedom of Expression's* database.

This paper analyzes the best available case-law on access to public information. It delves into the specifics of each case while offering a comparative and reasoned perspective of its relevance, in the hope that future legal practitioners can apply these standards when facing similar cases. To do so, the text proceeds as follows. The second section briefly presents a land-mark case delivered by the Inter-American Court of Human Rights in 2006: *Claude Reyes et al. v. Chile*. The most basic standards that the countries of the region apply today were crystalized in that ruling. The third section expands on some of the basic human rights standards concerning access to public information and comments on different cases that exemplify each of them. After some of the standards are discussed, in the fourth section we present how global courts and specialized bodies have balanced the right to access public information with other human rights—such as privacy—or have granted access to information concerning certain topics—such as the environment or Covid-19.

A previous and partial version of this research was published with the aid of the UNESCO Office in Montevideo. It appeared as part of UNESCO's *Cuadernos de discusión de comunicación e información* under the title "[Síntesis de decisiones de acceso a la información pública en América Latina](#)." We would like to thank them for their continuous support.

II. Access to Public Information and the Inter-American Court of Human Rights

In 2006, the Inter-American Court of Human Rights (IACtHR) became the first international court to recognize the existence of the right to access public information as an autonomous right in the case *Claude Reyes et al. v. Chile*. This landmark case continues to be important today and therefore it is worthwhile to dwell on its origins, content, and scope.

The case stems from a request for information made by Marcel Claude Reyes, Sebastián Cox Urrejola and Arturo Longton Guerrero to the Chilean Foreign Investment Committee regarding an environmental project. The company Trillium planned to develop the Río Condor Project, a deforestation and forest resource exploitation project that could eventually affect the environment and impede Chile's sustainable development. The information was only partially provided to them without the State explaining why it did not allow the requesters access to all the information. Faced with the State's refusal, the requesters turned to the Chilean courts but were unable to obtain all the information they initially asked for. Therefore, they turned to the Inter-American Human Rights System.

In deciding the case, the Inter-American Court of Human Rights established that “in a democratic society it is indispensable that State authorities be governed by the principle of maximum disclosure, which establishes the presumption that all information is accessible, subject to a restricted system of exceptions.” Restrictions to the right to access public information, like limitations on human rights, must be previously established in a law to prevent arbitrariness, respond to an objective permitted by the American Convention on Human Rights and be necessary in a democratic society, i.e., be aimed at satisfying an imperative public interest. The State, according to the IACtHR, must “demonstrate that in establishing restrictions on access to information under its control it has complied with the above requirements.” Since the Chilean State did not comply with this burden of proof, the IACtHR declared that Chile had violated Article 13 of the American Convention on Human Rights and ordered the delivery of the information to the petitioners. It also ordered the State to adopt the necessary measures to guarantee the right to access information, including adapting its domestic law and training the State bodies, authorities, and agents in charge of responding to citizen's requests on the parameters established in the judgment. Following the judgment, Chile modified its legal framework to adequately regulate access to public information and created the Transparency Council, a state entity in charge of ensuring the guarantee of this right that has quasi-judicial powers.

A few years after *Claude Reyes*, the IACtHR reinforced its precedent and expanded the reach of the right to access public information. In 2010, in deciding the case *Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*, the Court recalled that the American Convention on Human Rights

(ACHR) “protects the right of every person to request access to information under the control of the State.” On that occasion, the Court reasoned that accessing information entails “the right of individuals to receive such information and the positive obligation of the State to provide it, so that the individual may have access to and know such information or receive a reasoned response when, for any reason permitted by the Convention, the State may limit access to it.”

After *Claude Reyes* and the cases that followed, almost every country of the region adapted its legal system and created adequate safeguards for the right to access public information. Taking into account the standards set in *Claude Reyes*, the Inter-American Juridical Committee created the [*Model Law on Access to Public Information*](#) in 2010 and the [*Model Law on Access to Public Information 2.0*](#) in 2020. While these common legal frameworks have allowed some countries of the region to adapt their legislation, recent case-law produced in Latin America still refers to *Claude Reyes* as the most important international decision to bear in mind when ruling a case concerning access to information.

III. Basic Human Rights Standards Concerning Access to Public Information

As outlined by the Inter-American Court of Human Rights, in a democratic society it is expected that the State authorities are governed by the principle of maximum disclosure. All information held by the authorities is public in principle, while secrecy is the exception. This is the most basic standard concerning the right to access public information. It is not the only one. In this section we present case-law from around the globe that details and expands on some of the most important human rights standards on the matter. We will analyze decisions concerning the principle of maximum disclosure, which entities have to disclose information, what happens if the information does not exist, what is the proportionality or harm test, and the special treatment of information related to human rights violations.

1. The principle of maximum disclosure

According to the principle of maximum disclosure, access to public information must be maximized, with a very limited regime of exceptions. To that extent, the general rule must be that all public information is accessible to the public, while only very exceptional and specific information may be withheld from disclosure. As the IACtHR puts it in *Gomes Lund*, this principle is fundamental in a democratic society because it “establishes the presumption that all information is accessible, subject to a restricted system of exceptions.” This principle is also known as the principle of maximum transparency.

Due to its capital importance for understanding the right to access information, courts and specialized bodies of countries with very different legal systems—from Chile to India—have applied the principle of maximum transparency as the main criterion for resolving cases related to access to public information. There are many cases in which the principle according to which transparency is the rule and secrecy the exception is the cornerstone of the decision. Some of these cases are developed in other sections of this document, but it is worth mentioning a few that are relevant in an illustrative way. This will allow the reader to get a grasp of the extent of the principle of maximum disclosure and its strength in a legal court.

In Costa Rica, for example, the Constitutional Chamber of the Supreme Court of Justice has extensively interpreted the principle of maximum disclosure in cases involving environmental information. In 2018, it ordered the Ministry of Environment and Energy to provide a private party with [information on topographic profiles of mining activity](#) in a certain region. The Court based its decision on the fact that environmental information should be governed by the principle of maximum disclosure. It reached this conclusion after interpreting the right to access public information, Principle 10 of the [Rio Declaration on Environment and Development](#), the [Aarhus Convention](#),

and the content of the right to a healthy environment developed by the IACtHR in [Advisory Opinion OC-23/17](#). This precedent was cited and reaffirmed by the same Constitutional Chamber in 2021, in a decision in which it ordered the delivery of the protocols that governed to the [spray of pesticides in agricultural aviation](#) activities. The Supreme Court of Costa Rica uses the principle of maximum disclosure as the main argument to grant access to information held by the government.

The Constitutional Court of Peru has also recognized the importance of the principle of maximum disclosure. As it indicated in a [2010 decision](#), “it is a principle of constitutional relevance implicit in the model of the democratic and social rule of law and the republican formula of government.” It also held that “the implementation of the principle of transparency helps to combat corruption rates in the State and, at the same time, constitutes an effective tool against impunity by allowing the people to have access to the way in which the power is exercised.” The court ordered the delivery of certified copies of the technical file of an infrastructure work financed with public funds to the interested party.

Likewise, courts and specialized bodies in Argentina, Chile, Colombia, India, Mexico, and many others have used the principle of maximum disclosure to solve access to information cases. This principle is particularly important when there is not an adequate legal provision that determines the duties and obligations of the State concerning public information. Maximum disclosure serves as a general framework that allows determining if the government violated the petitioner’s right.

2. Who must disclose information? Private companies and non-traditional public bodies

The question of who is bound by access to information laws is fundamental for the guarantee of this right. Only those public or private institutions obliged by the principle of maximum disclosure will have to disclose their information. As a general rule, all public authorities from the executive, legislative and judicial branches must disclose information. But what about private companies that exercise public functions? Or private entities that benefit from public funding? Are they also required to follow the principle of maximum disclosure? Can they be considered public authorities or bodies? Most countries solve these questions in their national freedom of information or access to information laws. They determine which entities are covered by the legislation on transparency and access to information. However, judges and specialized agencies have taken it upon themselves to apply such legislation to non-conventional subjects or to private companies, sometimes expanding the reach of the national legislation.

For example, the Constitutional Chamber of the Supreme Court of Justice of Costa Rica established in 2011 that public entities and their organs, public companies and “private persons who permanently or temporarily exercise a public power or competence” are obligated to guarantee the right to access public information of any individual. For this reason, it ordered the Ministry of Labor and Social Security to provide the petitioner with a list of the persons that have been [sanctioned for failing to pay the minimum wage](#). In Peru, the Constitutional Court found that a

[company that provides the public electricity service](#) is also bound by the access to information legislation. Therefore, the Court ordered it to provide the information requested by the petitioners.

Determining if a state-owned company is a “public body” that must disclose information has been an important discussion in various countries. The High Court of Uganda held that [a company owned by the state is a government agent](#) and, therefore, agreements to which it is a party are public documents. The South African Supreme Court held that the definition of “public bodies” [includes state-owned companies that perform public functions](#). As a result, it determined that a state-owned iron company had to release records of meeting minutes. The Seoul High Court held that [the Korean Broadcasting System is a public institution](#) and had to disclose a tape that had never been broadcasted. In a landmark case, the Supreme Court of India ruled that [non-governmental organizations financed by the government had to disclose their information](#) because receiving substantial funding made them public authorities.

In Argentina, the Supreme Court of Justice has established that [entities exercising public functions](#) and [companies with majority public capital](#) are also public bodies and are subject to the obligations that come with it regarding disclosure. More recently, the Agency of Access to Public Information—a specialized body that promotes the right of access and solves cases—established that Telefónica de Argentina S.A., a [company that provides public telecommunications services](#), is a public authority and must disclose information according to the national transparency legislation. The Agency referred to the case law set forth by *Claude Reyes* and the Inter-American *Model Law on Access to Public Information*. The Agency ordered Telefónica de Argentina S.A. to provide the petitioners with information on the number of users to whom it provides its telephone and internet services in vulnerable neighborhoods of the country’s capital. In December 2021, the [judiciary confirmed the decision](#) of the specialized agency. In another case concerning telecommunications services, the Supreme Court of Uruguay held that disclosing information about the [number of subscribers to a television company](#) does not violate the right to privacy. The Court reasoned that the records of the number of subscribers to a cable TV service do not qualify as either sensitive or private information. Since the information involved a service that is publicly controlled and regulated, the company acted as a public body.

In South Africa, the South Gauteng High Court determined that the [2010 FIFA World Cup Organizing Committee](#) had to comply with the requests for access to its records as it was a public authority. The following year, the same Court reasoned that the information held by a [private supplier of electricity](#)—including its pricing formula and the start and end dates of its contracts—had to be disclosed to the public. According to the Court, as this information was key to an ongoing debate about energy, the public interest in accessing the information should prevail over the private party’s interests. Following a similar logic, the Tel-Aviv District Court ordered an [Israeli healthcare facility to disclose documents](#) concerning a donation from a private person. The Court held that disclosing the information was important because the public was entitled to know how public entities and private donors interacted.

Some national courts have determined that non-traditional government entities are public au-

thorities and cannot forget their transparency obligations. The Delhi High Court in India ruled that the [Export Promotion Council constituted a public authority](#) and was subject to the provisions of the Right to Information Act because it was significantly funded by the government. In 2018, the Federal High Court of Lagos, Nigeria, held that the [Nigerian Stock Exchange was a public institution](#) and ordered it to disclose the requested information. The following year, the Supreme Court of India held that [the Supreme Court itself is a public authority](#) and hence must comply with the Right to Information Act. In Russia, the Smolninsky District Court of St. Petersburg held that [housing companies have to disclose](#) information concerning their activities. In 2021, the Chilean Transparency Council determined that [public and private universities](#) must disclose information as long as they provide the public service of education. The Canadian Federal Court of Appeal held that a document from the [Canadian International Development Agency](#) involving a private corporation are not confidential information and should be disclosed.

Interpreting public interest as a reason that favors transparency, different courts have upheld that private companies are obligated to disclose information about their activities. The South African example is worth highlighting. The Western Cape High Court in Cape Town held that a [private company could not refuse access to a report](#) commissioned to investigate alleged irregularities. In a different case, the Supreme Court of Appeal upheld the right of the media and the public to [access companies' securities registers](#) as it was fundamental to inform the citizenry.

3. The obligation to produce or capture information

The right to access public information is not only about disclosing information held in public records. The most advanced national and international standards consider that it also creates the obligation to produce or capture information when it is fundamental to fulfill the government functions. When a compelled public body has to capture or systematize information to properly fulfill its functions, the non-existence of such information cannot be accepted. It must create or capture the information because it should have had it in the first place. In its [2013 annual report](#), the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACmHR) argued that the right to access public information “applies to information that is in the custody, administration or possession of the State; information that the State produces or is legally obligated to produce; information that is in the possession of those who exercise or administer public functions, services or funds, only with respect to such services, functions or funds; and information that the State captures, and that which it is obligated to collect in fulfillment of its functions.”

Peru's Constitutional Court was one of the pioneering courts in advancing this standard. In 2001, a citizen requested information on the travel expenses incurred by former President Fujimori between 1990 and 2000. Although the Presidency provided a list of expenses, it was incomplete and inaccurate in the petitioner's opinion. In analyzing the case, the Peruvian Constitutional Court found that “not only is the right to access information affected when its provision is denied without constitutionally legitimate reasons for doing so, but also when the information provided is

fragmentary, outdated, incomplete, inaccurate.” Public authorities must produce complete information, regardless of the difficulties that this entails. Subsequently, it ordered the executive branch to [provide detailed information on the expenses incurred by the former president in his travels](#).

In Costa Rica, the Constitutional Chamber of the Supreme Court of Justice ordered the Costa Rican Social Security Fund to produce and deliver in digital format information on the salaries of all public officials in the country between 1990 and 2013. The court determined that, considering the principle of maximum disclosure, the State should deliver information that it has the obligation to keep, [despite the difficulties that its search or systematization may involve](#). It clarified that “the digitization of public information requires a progressive adaptation according to the budgetary, technological and human resources possibilities of each Administration,” so that the State must make efforts to achieve it.

The Constitutional Court of Hungary ruled that [the government is obligated to keep minutes of its sessions](#) and disclose them when requested. In another case concerning minutes, the Administrative Court of Sofia, in Bulgaria, held that [minutes of a meeting between the Presidents of Bulgaria and Russia must be disclosed](#) to the media.

Panama’s Supreme Court of Justice has also ordered the production of information in multiple cases. In 2010, for example, it protected the applicant’s right to access public information after the Ministry of Agricultural Development [refused to provide a copy of a file because it was archived](#), which made access to it cumbersome and there was no staff available to perform this task. In the court’s opinion, the difficulty in obtaining the information was not a valid argument to deny access. More recently, in 2020, the same court was faced with a case similar to the Peruvian case discussed above. A congressman asked the Transit and Land Transportation Authority for a complete list of cab quotas in each province, indicating the license plate number of the vehicle and its owner. The entity delivered an incomplete list, claiming that [it did not have all the information and that in any case systematizing it would be costly](#), so the applicant had to request it from other authorities. The Supreme Court of Justice of Panama found this response unsatisfactory. Hence, it granted five days to the Transit and Land Transportation Authority to provide the petitioner with the requested information in due form.

That same year, Mexico’s National Institute for Transparency, Access to Public Information and Protection of Personal Data (INAI) issued a resolution in which it interpreted the obligation to produce information in a novel way. The petitioner requested in Word (text) and MP3 (audio) format the executive’s labor policy for people with disabilities and the annual budgets of the three previous presidential terms—Vicente Fox, Felipe Calderón and Enrique Peña. The executive delivered part of the information and only did so in Word format (text). For the INAI, the response was incomplete and did not abide by the delivery modality chosen by the applicant: MP3 format (audio). For this reason, [it ordered delivering the requested information in MP3 format](#); not only as a guarantee of the petitioner’s right to access public information, but because this format allows visually impaired people to access and get a hold of public information. With-

out a doubt, this case should serve as a model for courts and specialized agencies that uphold information rights throughout the world.

The specialized bodies that protect the right to access information in Chile and Argentina have also ordered the production of information through their decisions. In 2022, for example, Chile's Transparency Council ordered the Civil Registry and Identification Service to provide the petitioner with [statistical information on the number of people who have changed their name and sex under the Gender Identity Law](#), issued the previous year. The Transparency Council dismissed the arguments of the entity for not producing the information inasmuch as it did not jeopardize the privacy of individuals nor was it information that, due to its legal functions, the entity did not have at its disposal. In 2018, Argentina's Agency for Access to Public Information determined that State authorities have a duty to produce, process and centralize necessary information for the design, execution and control of public policies. The above conclusion was reached after a civil rights association requested [information on mental health facilities](#) from the Ministry of Health and this entity failed to deliver complete information arguing that it did not have it.

4. Analyzing proportionality or harm

The right to access public information is subject to limitations. These must be exceptional and subject to restrictive interpretation. In addition, they must be expressly prescribed by law in a formal and material sense and be aimed at achieving one of the legitimate objectives pursued by international treaties, such as the American Convention on Human Rights or the European Convention on Human Rights. Restrictions on access to public information must also pass a proportionality test or harm test to be compatible with the standards set by the Inter-American Human Rights System. It must be demonstrated that: i) there is a relationship with the legitimate objectives that justify the limitation; ii) the disclosure of the information threatens to cause substantial, effective and tangible harm to such legitimate objective; and iii) the harm caused by the disclosure of the information should be greater than the public interest in accessing it. This harm test must be applied by the State and the courts have relied on it to decide countless cases.

Most of the decisions presented in this document use the harm test as a guiding criterion to adequately guarantee the right to access public information. However, some of them serve as illustrative examples of the relevance of the harm test. For example, Argentina's Agency for Access to Public Information found in 2018 that the Military House of the General Secretariat of the Presidency [had not demonstrated that the disclosure of the requested information would generate harm to protected interests](#), so it ordered its delivery. The case began when a civil society organization requested the records of access to the Presidential Quinta de Olivos between 2016 and 2018 that would account for the visits received by the President of the country. Although the Argentine government alleged that handing over the information, even anonymized, would put the security of the President at risk, the Agency considered that "the reasons for which the requested information is covered by the exception are not duly grounded (...) nor is it explained how it could put the security of the presidential family at risk." In short, the government failed

to produce a convincing harm test. For such reason, it ordered the delivery of the requested information.

This case echoes a 2007 decision from the District Court for the District of Columbia in the United States. The Court established that [White House Residence visitor records are agency records subject to disclosure](#) because such records are generated and maintained by the Secret Service, a governmental agency.

In Chile, both courts and the Transparency Council have relied on the inadequacy of the harm tests produced by the authorities to order the delivery of the requested information. In 2017, the Court of Appeals of Santiago considered that *Carabineros de Chile* (the Chilean Police Force) had not demonstrated in a satisfactory way that the delivery of information on the [expenses and suppliers of dissuasive elements used during public demonstrations](#) endangered national security. The Court was explicit in stating that it was not enough to assert that the information related to national security, it was necessary to show that its disclosure would produce a specific harm. In 2020, the specialized body reached a similar conclusion. In a case in which information was requested on the elements used by the *Carabineros de Chile* to control demonstrations, the Transparency Council mentioned that [arguing that its disclosure affects national security does not meet the standards](#) of the right to access public information. For the Council, the State “did not provide sufficient background information to suggest a present or probable injury;” that is, it did not exhaust the harm test, violating the right to access public information of the applicant.

In addition, the Supreme Court of Appeal of South Africa held that to justify a refusal to disclose information one party must show that the harm is probable. The Court found that a [confidentiality clause cannot protect a contract between a state company and a third party from disclosure](#) after the contract had been awarded because there is no harm. Following the same logic, in Nigeria, the Federal High Court held that [disclosing information about a contract](#) that had already been awarded was lawful. In another case concerning public contracts, the U.K. Information Tribunal held that exceptions to disclose a [contract between a public authority and a third-party contractor](#) can only be raised by the third party.

In 2001, the Nagoya District Court in Japan determined that the business information exemption [only applies when there is objective evidence indicating that disclosure would result in injury](#) to the rights of a business entity or individual. The Sofia City Court in Bulgaria reached a similar conclusion in a case concerning a contract for the procurement of software licenses. Although the Bulgarian Access to Public Information Act required the consent of third parties to disclose their information, the Court reasoned that even if consent was withheld, the government was obliged to [disclose the information in a way that would not harm the third party](#).

As these cases demonstrate, the extent to which accessing information can produce harm to private and public interests has been analyzed by many judicial authorities in different countries.

5. Information concerning human rights violations

As the principle of maximum disclosure indicates, there are (few) valid exceptions to total transparency. These exceptions usually can be upheld after conducting a proportionality test and balancing the colliding interests and/or rights in each specific case. These exceptions, in turn, are generally not applicable when the information is related to serious human rights violations. The IACtHR established in the case of *Myrna Mack Chang v. Guatemala* that when it comes to information concerning human rights violations “the authorities may not rely on mechanisms such as State secrecy or confidentiality of information, or on reasons of public interest or national security, to avoid providing the information requested by the judicial or administrative authorities.” Due in part to the repressive past of the region, Latin American courts and legislators have applied and expanded this standard as a way to guarantee non-recurrence and fight impunity.

The Mexicans have long debated these issues. In 2004, the former Federal Institute for Transparency and Access to Public Information (IFAI)—now INAI—held that the public prosecutor must [release information on the preliminary investigations regarding probable crimes of genocide](#) committed by government forces. In 2010, the same institution determined that the Mexican law allows disclosing otherwise protected documents [when they relate to serious violations of fundamental rights and/or crimes against humanity](#). This standard was also applied by the First Chamber of the Mexican Supreme Court of Justice in deciding whether information contained in preliminary investigations (an initial stage of the criminal investigation) was confidential. Although the Supreme Court recognized the validity of the confidentiality of this information because it protects the proper administration of justice, it established that in cases concerning serious human rights violations or crimes against humanity, [the public interest of the information outweighs the possible negative effects](#) that its disclosure could cause on the proper administration of justice. Specifically, it argued that “confidentiality cannot be alleged when the preliminary inquiry investigates facts constituting serious human rights violations or crimes against humanity.” It also established that “the public interest in keeping the preliminary investigation confidential is outweighed by the interest of society as a whole in knowing all the proceedings being carried out for the timely investigation, detention, trial and punishment of those responsible.” Therefore, it ordered the Public Prosecutor’s Office to allow access to the information and to grant certified copies of the preliminary investigation in the case of Rosendo Padilla Pacheco, in which the Inter-American Court had already determined the existence of serious human rights violations.

Along the same lines, the Administrative Tribunal of Cundinamarca, in Colombia, had to determine whether the Joint Command of Special Operations of the Ministry of National Defense had properly denied access to [documents related to a military operation](#) where minors, who had been forcibly recruited by an illegal armed group, died. The court found that it is not acceptable to withhold information regarding cases of human rights violations or crimes against humanity, even when the withheld information is related to national security. Therefore, it ordered the partial release of the information contained in the intelligence reports that served as the basis for the operation, specifically the sections dealing with the presence of minors at the site of the bombing.

The same IACtHR clarified the standard it had set in *Myrna Mack Chang* when the information related to human rights violations is in the possession of a truth commission. In the case of *Omar Humberto Maldonado Vargas et al. vs. Chile* the Court determined that the refusal of the National Commission on Political Prisoners and Torture—also known as the Valech Commission—to provide information to a court on the torture of detainees was legitimate. The Inter-American Court found that the confidentiality of the information collected was provided for in the national legislation, was aimed at guaranteeing the success of the truth commission, was necessary to materialize the right to the truth by offering more guarantees to those who offered their testimony and was proportional in that the restriction on access to information was not disproportionate to the advantages obtained in terms of transitional justice. The Court determined that it was reasonable to restrict access to information if it advanced reconciliation and transition to democracy. This decision shows that even an exception such as the one related to information on human rights violations may have limits: the rights of the victims. The Chilean Transparency Council reached a similar decision when it [denied the release of a digital copy of the Valech Commission database](#), considering that the confidentiality of this information is aimed at protecting the rights of the victims of state repression.

Judges in the U.S. and South Africa have also applied the standard related to accessing information about human rights violations. In 2019, the District Court of the Southern District of New York held that the U.S. State Department and the Department of Defense had to disclose [documents related to the murder of a Saudi journalist](#) who was killed by Saudi operatives. In South Africa, the Supreme Court of Appeal held that [information about individuals suspected of apartheid-era economic crime could not be denied](#) to the petitioners without adequately analyzing the extent to which third-parties' rights are affected. For the Court, it is not enough to state that the information relates to information from a private person because it is information that could shed light onto human rights violations and has a greater public importance.

IV. Balancing Access to Public Information, Third-party rights, and/or other Legitimate State Interests

1. Information in judicial or administrative records

Judges and access to information specialized bodies in different countries have questioned whether the information contained in a judicial or administrative file is public information to which the public should have access. There are different rights or interests that might collide in such cases. The information contained in the judicial or administrative file can be considered as private because it concerns an individual or it can be related to the adequate functioning of the judicial system. One way or another, courts have had to balance the interests at play in each case to determine if the information should be disclosed. As a general rule, information contained in judicial or administrative records should be made accessible to the public.

In Costa Rica, the Constitutional Chamber of the Supreme Court of Justice had to determine whether citizens could have access to [documents contained in a judicial file](#) even though they were not part of the process. It questioned whether the argument of the Ministry of Health for not providing information about a clandestine garbage dump—that the document was in a file in possession of the Environmental Administrative Court and the applicant was not part of the process—met the standards of the right to access public information. In the Court's opinion, reasons such as these do not constitute valid arguments to deny access to the requested document, especially when it is a matter of public interest. In this sense, it ordered the delivery of the requested information to the journalist, although it did not rule out that there were reasonable grounds to deny access.

Judges from different latitudes have protected access to information included in court files. In Bulgaria, for instance, the [Administrative Court of Dobrich ordered the disclosure of information contained in a court file](#) because it was relevant to informing the public about a case concerning bribes. In the U.S., the [Court of Appeals for the Fourth Circuit](#) found that sealing the judicial records of a case concerning consumer rights violated the public's right to access information. Following a similar rationale, South Africa's Court of Appeal affirmed that [court records are public documents](#) that must be made available to the public.

Moreover, the Constitutional Court of Georgia ruled in 2019 that the provisions of the Law of Georgia on Personal Data Protection were [unconstitutional as they restricted access to the full text of court decisions](#). In Mexico, the IFAI—currently INAI—argued that the public prosecutor must [release a copy of the report](#) handed by the Special Prosecutor for Political Movements of the Past to the then President Vicente Fox, absent proof of how disclosure would harm ongoing investigations. In Canada, the [Ontario Superior Court of Justice declared unconstitutional](#) the provisions of a law that allowed public institutions to refuse access to administrative documents containing personal information.

Information contained in judicial or administrative records has also been disclosed to petitioners aiming to pursue research and/or to media outlets. The Supreme Court of Israel granted access to a daily newspaper to the [list of all cases pending before each and every district court](#) arguing that transparency would secure trust in the judicial system. In Mexico, the INAI determined that the General Public Prosecutor must [disclose information on the number and status of all preliminary investigations](#) formerly conducted by the Special Prosecutor for Social & Political Movements of the Past. The German Constitutional Court ruled that the District Court in Thuringia had violated the petitioner's rights by denying access to information concerning a [criminal proceeding](#). In another case featuring media organizations, the U.K. Court of Appeal [ordered the publication of a judgment](#) about the care proceedings of a child, whom the Court had held to have been the victim of physical and emotional abuse.

In the United States, the role of media organizations in disclosing judicial information is immense and deserves noting. In a 2014 case, a District Court granted the motion raised by a coalition of media organizations to [unseal classified evidence in the habeas case of Abu Dhiab v. Obama](#). The case included as evidence videos of Dhiab being subjected to forced cell extraction or forced feeding.

In El Salvador, judges have also discussed the reach of the limitation to the right to access public information based on the information being part of a court file. The Constitutional Chamber of the Supreme Court of Justice, echoing the Inter-American standards, determined in 2014 that the [information contained in the file of a criminal proceeding](#) is in principle public and only in exceptional cases can be classified. In the specific case, the Court determined that the criminal proceeding regarding acts of corruption carried out by a former president does not enjoy confidentiality and, therefore, the public has the right to access all documents. A few years later, the same Court granted access to information contained in a criminal proceeding, although under very different circumstances. In its ruling, the Constitutional Chamber determined that not [unsealing a criminal proceeding investigation of a mass murder](#) violated both the right to truth and the right to access public information. The Court referred to the intrinsic link between one and the other in that “the right to know the truth entails free access to objective information on facts that have violated fundamental rights, and on the temporal, personal, material and territorial circumstances surrounding them.” This means that the victims must be able to request and obtain information held by the State, even if it is contained in a criminal case file.

In 2011, the Mexican Supreme Court of Justice studied whether withholding information related to serious human rights violations contained in a stage of the criminal investigation was valid. The Supreme Court recognized that in theory it is possible to classify information contained in preliminary investigations to protect the proper administration of justice but determined that [in cases of serious human rights violations or crimes against humanity keeping information classified cannot be sustained](#). The public interest in knowing the information outweighed the need to protect the proper administration of justice. Two years later, in 2013, the Supreme Court slightly modified its jurisprudence and opened a little more the door to the transparency of preliminary

investigations. This time it determined that it was necessary to perform a proportionality test to establish whether access to information contained in judicial files could be limited even when the information was not related to human rights violations. The Court found that the rule according to which all documents contained in the preliminary inquiries are confidential was [disproportionate](#).

In turn, the INAI of Mexico determined that a petitioner was entitled to [receive a copy of the complete files concerning the investigations being carried out by the Prosecutor's Office](#) in a case with several victims. The petitioner requested several documents regarding the judicial proceedings about the accident on Mexico City's underground (Line 12) that happened on May 3, 2021, where 26 people died and 98 were injured. For the INAI, there is a “greater public interest in disclosing the names of the public servants or former public servants indicated as accused in the aforementioned investigation file.”

2. Information related to the Police or the Armed Forces

The Police and the Armed Forces are bound by the right to access public information as any other public body. Although there are good reasons for national security and public order matters to be classified, secrecy on these issues tends to be generalized in many countries, thus favoring a culture of opacity and hindering state transparency in the defense sector. Many courts and specialized bodies have ordered the disclosure of information held by these institutions in an effort to increase public trust in this sector and end opacity.

In Colombia, the Constitutional Court has made notable efforts to make information related to security and defense available to the public. In 2007, for example, it established that the petitioners had the right to know the [names, institutional codes, lines of command and command units of members of the security forces](#) who had participated in allegedly irregular military operations. One of the arguments used by the Ministry of Defense to refuse disclosing the information was that to do so would be to acknowledge the responsibility of the agents in such irregular activities. However, the court ordered it to hand over the information and that if it considered it necessary it could “make an express clarification (...) that the disclosure of this information does not entail any suspicion, accusation or acknowledgement on the participation of such public servants in criminal activities.”

In 2010, the Colombian Constitutional Court expanded its jurisprudence on security information. In a similar case, it determined that the refusal of the National Police to provide information on the [identity of the agents who had been on duty](#) in the area where the forced disappearance of a person occurred violated the petitioner's right to access public information. For the Court, the possibility that revealing this information would put the personal safety of the police officers at risk was minimal, since these were persons residing in Bogotá—the country's capital city—and not in an area with public order concerns. Therefore, it ordered the release of the information as the right to access public information “has become an essential tool for the satisfaction of the right to truth of the victims of arbitrary actions and human rights violations, and to guarantee society's right to historical memory.”

In the United Kingdom, the Administrative Appeals Chamber ruled that [information concerning detention and interrogation policies should be disclosed](#) because it is of significant public interest. Following up on that argument, it determined that the public interest in accessing diplomatic assurances that detainees would not be tortured outweighs any harm that might flow from its disclosure. In a different international conflict setting, the Supreme Court of Israel determined that the [Ministry of Defense had to disclose](#) a document about the provision of food to the Gaza strip. Similarly, a Regional Court of Appeal in Hungary held that the Ministry of Defense had to disclose information concerning [Swedish investments in Hungarian companies](#).

In Chile, both judges and the specialized body on the right to access public information have ordered the armed forces to hand over information in their possession. In 2017, the Court of Appeals of Santiago had to consider, under the national security exception, whether information on the [expenses and suppliers of deterrents, tear gas bombs and rubber bullets](#) used by the state during demonstrations could not be released to the requester. *Carabineros de Chile* had refused to hand over the information arguing that it would jeopardize the fulfillment of its functions as it related to national security. For the Court, it was not enough to indicate that the information could affect national security, as it had to be proven that the publication of the information would produce a specific and determinable damage to constitutional interests. Given that the state had not adequately argued and had only mentioned that the release of the requested information would damage or cause detriment to the due fulfillment of the Carabineros' functions, without mentioning any antecedents to prove it, the Court ordered to disclose the information.

In 2020, Chile's Transparency Council cited the above precedent in a case that also discussed whether information related to the handling of social protests was classified. Specifically, it ordered *Carabineros de Chile* to provide information on the number of bombs or tear gas purchased and used in the last five years. For the Council, "to sustain that the disclosure of [information on the number of bombs and tear gas purchased and used](#) would affect or put at risk the Security of the Nation is not plausible, since the agency did not provide sufficient background information to suggest a present or probable affectation of the legal interests that are sought to be protected."

Furthermore, the Court of Appeals of Santiago has promoted transparency regarding defense and security beyond *Carabineros de Chile*. In 2021, it ordered the release of the qualifications and curriculum vitae of the former Commander in Chief of the Chilean Navy. It indicated that [résumés of former public officials are public](#) if they are in the possession of public authorities and are prepared with public budget. This rule does not change in the case of officials of the armed forces. According to the court, "the Chilean Navy only invoked generic allegations on the matter and failed to prove how—specifically—the delivery of the requested data could affect the colliding legal interests."

Tribunals in Guatemala, Russia, the United States and Argentina have also issued noteworthy decisions concerning information held and/or produced by the Police and Armed Forces. In the

Guatemalan case, the Constitutional Court established that the [documents on military operations carried out during the military dictatorship](#) of Efraín Ríos Montt are not covered by the national security reserve. The Court considered that the State failed to prove that these documents had the category of national security, which made it imperative to guarantee public access to them.

In Russia, the Kalininsky District Court of St. Petersburg held that [information regarding the declassification procedure](#) was of public interest and must be disclosed. In the U.S., the Michigan Court of Appeals found that the [names, addresses, and phone numbers of the donors of a Police Fund](#) were public information and, as such, should be released to the petitioner.

For its part, the Argentine Agency for Access to Public Information (AAIP) in 2021 had to decide whether the [information produced by the Ministry of Defense 50 years ago](#) was exempt from disclosure because it was covered by the national security exception. For the Agency, exceptions to access public information must have a limited duration, which must also be reasonable (usually 10 or 15 years, but up to a maximum of 30 years). Therefore, the AAIP found it “unreasonable to continue claiming a confidentiality exception without duly demonstrating what grounds exist today for such a situation to be maintained after more than 50 years have elapsed since its creation.” Accordingly, the Agency granted ten days to the Ministry of Defense to deliver the requested information, since the burden of proof corresponded to the state. The Ministry of Defense finally delivered the requested information.

In 2019, the Supreme Court of Justice of Argentina had to decide a very similar case. The applicant had requested access to the decrees issued between 1976 and 1983 by those who served as *de facto* presidents during the last military dictatorship in Argentina. The information had been [denied because it was classified as secret and reserved](#). Finally, the Court determined that the state’s conduct was illegitimate when it generically denied access to the decrees that, according to the petitioner, were linked to the right to the truth about the human rights violations committed during those years. Likewise, Mexico’s INAI ordered the Ministry of Defense to [deliver information regarding the anti-immigration operations](#) that had been carried out from 2018 to December 2021 in the south of the country, the number of operations deployed monthly and the number of migrants rescued in each.

Mexico’s experiences in granting access to information concerning police or security matters deserves a special commentary. In 2004, Mexico’s specialized body on access to public information, IFAI held that the [Secretariat of National Defense must fully disclose the files where conciliation was offered](#) to its personnel. That same year, the IFAI held that the Secretariat of National Defense must [release the name and ranks of military personnel detained in a military prison camp](#) during the 1970s. On the one hand, disclosing the information didn’t affect the rights of the former detainees. On the other hand, this information was of public nature. In a third case against the Secretariat of National Defense, the IFAI determined that it had to [release information concerning body armor purchased by the security forces](#).

Later on, the IFAI established that the Secretariat of National Defense had to inform [who or-](#)

[dered the withdrawal of a press release](#) regarding an alleged rape and murder by military personnel. It also held that authorities whose purpose is to defend national security must [disclose information about contracts for the provision of equipment and materials](#), clarifying that disclosing this type of information does not threaten national security. Before being restructured and renamed as INAI, the IFAI held that a [government agency cannot unilaterally re-classify information related to national security](#) and human rights previously cataloged as public in a prior decision. More recently, in 2015, the [Supreme Court of Mexico held that the criminalization of *halconeo* or “lookout” was unconstitutional](#).

International courts have also promoted transparency in the defense and security sector. Studying a case concerning classified information in Slovakia, the ECtHR held that the refusal of the national authorities to give the applicant [access to materials classified as top secret](#) violated the applicant’s rights, given that this information was key to contest that he had collaborated with repressive State Security agents. In another case, the ECtHR held that the Hungarian Ministry of the Interior’s refusal to [grant unrestricted access to documents regarding the functioning of the country’s security services during the 1960s](#) violated article 10 of the ECHR. The ECtHR upheld the right to access public information in two other cases dealing with the defense sector. First, it determined that the Serbian Intelligence Agency was obligated to [disclose information concerning the number of people it had electronically surveilled](#) in a given year. Second, it held that two Hungarian Police Departments were obliged to [disclose the names of their appointed public defenders](#); their refusal to do so was not necessary in a democratic society. The UN bodies have also established that the information about security must be made public. The UN Human Rights Committee, for example, determined that the Kyrgyz government violated the right to freedom of information by [not providing an NGO the data requested on the prison population in Kyrgyzstan](#).

3. Information concerning government expenditure

Through their decisions, the judiciary and the specialized agencies on the right to access public information have disclosed information related to the state budget and the destination of public funds. In Peru, the Constitutional Court established, even before the IACtHR issued *Claude Reyes*, that the right to access public information obliges the State to provide information on the [expenses and work agendas of public officials](#). Following such a precedent, the Supreme Court of Ayacucho in Peru held that the city must [disclose information related to the travel expenses of public officials](#) in accordance with the principles of publicity and the right to access information. In Argentina, the Supreme Court of Justice has approached the issue from another perspective. In 2012 it had to establish whether the [budget spent on advertisement](#) of a non-traditional public entity should be delivered to the petitioners. For the court, the National Institute of Social Services for Retirees and Pensioners of Argentina had to provide the information under the principle of maximum disclosure, which also covers institutions that provide services of public interest and exercise functions delegated by the state.

In Kenya, the High Court in Nairobi ruled over a similar case concerning government adver-

tisement. After a Kenyan NGO requested details about [a state-founded publicity campaign](#), the High Court determined that the citizenry had a right to receive information and ordered its disclosure. Likewise, in Ghana the High Court of Accra ordered the [disclosure of documents concerning an advertisement campaign](#) that included branding buses with photos former presidents.

In 2015, the Federal Contentious Administrative Chamber of Argentina condemned the Ministry of Justice and Human Rights for refusing to [provide information on the budget and salaries of the personnel](#) affected by a territorial development program, considering that the applicant had no legitimate interest in it. After analyzing the Inter-American standards and national jurisprudence, the Court ordered the Ministry of Justice to provide the requested budget information. This Court reached the same decision in a similar case that same year. Some civil society organizations had requested [information on the employees, payroll, and budget allocations of the Chamber of Deputies](#). After the State refused to hand over part of the information, the Federal Contentious Administrative Chamber ordered that the information must be disclosed in full.

The Argentine Supreme Court ordered a corporation with majority state-owned capital to provide a [copy of an investment project signed with a foreign company](#) for the joint exploitation of hydrocarbons on Argentine soil. The Court considered that the company was a subject bound by the right to access public information since the executive branch exercised a majority participation in the capital and in the formation of corporate decisions. Furthermore, it considered that the mere assertion that providing the information would jeopardize commercial secrets was not sufficient.

In Brazil, the Superior Court of Justice has also strengthened state transparency through its rulings on budgetary issues. In 2012, it ordered the Ministry of the Secretariat of Social Communication of the Presidency of the Republic to provide information on [spending on official advertising](#). For the court, this information was of clear public interest, which prevails over the possible reservations and exceptions alleged by the Presidency. A few years before, in 2009, the Supreme Court of Brazil held that [the House of Representatives had to disclose information](#) about work-related expenses of its members because it was public information. The U.K. High Court arrived at a similar decision in 2008. It determined that data regarding the [expenses of Members of Parliament should be disclosed](#) to the requesters.

While some courts have focused on public expenditure, others have analyzed if public income information is also protected by the right to access information. For instance, the Court of Appeals of Puerto Rico determined that the public had the right to know which [hedge fund companies bought bonds from the government](#).

The Constitutional Chamber of the Supreme Court of El Salvador has not lagged behind. In 2014, it ruled that the Legislative Assembly had violated a requester's right to access public information by failing to provide him with [copies of the authorizations for the purchase of works of art, Christmas gifts and alcoholic beverages](#) in 2012, failing to provide him with a list of the goods purchased along with their invoices, and failing to report on the origin of the funds to acquire such

goods. In addition, in a 2017 ruling that highlights that it is important for judges to ensure that the state bodies comply their rulings, it found that the Presidency had only partially complied with the delivery of [information on the President's international trips and expenses](#) on protocol activities, ordered in a previous ruling. Therefore, it reiterated that it should deliver the requested information and inform the Court once it had done so.

In the European context, tribunals have upheld the right to access public information concerning expenditure and budget. In 2014, the ECtHR held that Romania violated the ECHR for not granting a journalist [access to public information concerning the use of public funds](#). Likewise, the European Court of Justice held that the [European Parliament must disclose audit reports](#) concerning the assistance allowance given to Members of the European Parliament each year, including information regarding how the allowance system works and if/how it has been abused by Members of the Parliament.

4. Documents containing private information of public servants

The right to access public information constantly collides with the rights to privacy and data protection of public servants. It is essential to adequately balance the public interest associated with disclosing the information and the damage it could cause to these rights. The proper interpretation of both legitimate interests has led judges and access to information guarantor bodies in several countries to release information on the salaries, background, and names of public servants. These decisions have informed public policy recommendations made, for instance, by the Inter-American Juridical Committee.

In Argentina, the Federal Administration of Public Revenues refused to hand over the employment records and administrative file of one of its officials. Faced with this refusal, the Supreme Court of Justice of the Nation had to resolve one of the most common questions in these cases: whether the information was confidential simply because it contained personal data. In the court's opinion, the disclosure of the information, as it does not include sensitive data, [does not violate the right to privacy or affect the honor](#) of the public servant, and therefore the requested information should be provided.

In Chile, the Transparency Council ordered the delivery of [the names and academic degrees of professors hired in the departments of economics, law and engineering](#) of Chilean universities in 2021. The guarantor body considered that "there is a clear public interest in the information requested, since it is related to important instances in higher education, such as the accreditation process, and consequently, the application for free university tuition." The Council's decision covers both public and private universities, as they provide a public service. Information regarding education has also been disclosed by the ECtHR and the Calcutta High Court in India. In May 2020, the ECtHR found that Ukraine had to disclose [part of the official CVs of candidates for Parliament](#) because refusing to do so violated the requester's right of access to public information. Almost a decade earlier, in August 2011, the Calcutta High Court ordered the Central Board of

Secondary Education to grant [access to the petitioner's answer sheet in an examination](#) conducted by this public authority.

In another recent resolution, the Chilean Transparency Council ordered the Undersecretariat of Public Health to inform the petitioner of the names of those attending the working meetings of the *Mesa COVID*, a consultative body informally created to advise the central government on epidemiological policy decisions. The Council considered that there is a clear public interest in [making transparent the reasons that have motivated the adoption of health measures](#) and the “work carried out by inter-ministerial technical advisory bodies such as the one consulted, its members and the agreements adopted.” The Chilean case resembles a 1997 case ruled by the Supreme Court of Canada. The petitioner requested the Department of Finance to deliver information documenting if employees signed-in on weekends. The court determined that an employee's request for [information regarding employee sign-in logs](#) had to be disclosed because it did not constitute personal information. The information related to public officials' work has also been analyzed by judges in the United States. In 2017, the California Supreme Court held that [emails and text messages sent and received by public officials in their personal accounts](#) had to be disclosed when they related to public businesses.

Furthermore, the judiciary has repeatedly determined in different countries that the salary of public servants is public information that must be provided to the public. In Guatemala, the Constitutional Court ruled over a lawsuit against the article of the transparency law that established that the [salaries, per diems and fees earned by public officials](#) was public information. In the plaintiff's opinion, this information should not be public because it violated the right to privacy of civil servants. On the other hand, the Court considered that this type of information is of “public interest due to its origin, which is the national treasury, formed from the tax burden absorbed by citizens for the financial support of the State.”

The Constitutional Court of the Dominican Republic reached a similar conclusion in 2012. It considered that the [names and salaries of public officials constitute public information](#) to which individuals must have access, to think otherwise “would deprive the citizenry of an essential mechanism for the control of corruption in the Public Administration.” The Supreme Court of Justice of Paraguay also established that the public has the right to know the [salary of public officials](#). In an earlier case, the Supreme Court of Paraguay granted access to the Ombudsman to the [financial information pertaining to a number of public officials working for the municipality](#) of San Lorenzo with a similar rationale.

In a much more limited ruling, the Supreme Administrative Court of Bulgaria determined that [tax data could be made public](#) if the authority storing it sought the consent of the third party involved. Such a standard does not fully promote transparency because the disclosure of public information should not be limited by the consent of private parties.

In Chile, the Transparency Council recently established that the [salaries of public officials](#)

[and their functions are of public nature](#), so that the public bodies cannot deny access to such information. In a landmark case, the High Court of Kenya ordered the Armed Forces to disclose the [salaries of military personnel](#) to a former Commander that requested the information. The Court reasoned that the salaries of public officials were not confidential information. The same rationale was used by the Federal High Court of Nigeria when it ordered the National Assembly of Nigeria to [disclose details of the salaries of the Members of Parliament](#). A few weeks later, that same Court determined that the [salaries of officials at the Central Bank of Nigeria should be disclosed](#). In the U.K., the Supreme Court ruled that [the pay scales of a local council in Scotland must be disclosed](#).

With a similar logic, in Mexico, the INAI ordered the Attorney General's Office to report on the complaints received against the then Undersecretary of Prevention and Health Promotion of the Mexican Ministry of Health. For the Agency, [information related to investigations and complaints against public officials must be disclosed to the public](#). Likewise, it established that the National Autonomous University of Mexico must provide the petitioner with information on the complaints of sexual harassment, sexual abuse or sexual aggression against one of its professors. The INAI, as well as many other courts, reached this conclusion after analyzing that the information was of public interest. The same argument—public interest—has been used by the Upper Tribunal of the Administrative Appeals Chamber in the U.K. to determine that [advocacy correspondence between the heir to the British throne and other public officials is not reserved](#). Such correspondence affects public policy and therefore there is a strong public interest on its disclosure.

Judges and specialized bodies have repeatedly held that asset declarations of public servants should be made public. In 2013, the Liberia Information Commissioner held that [asset declarations of elected public servants must be disclosed](#). Previously, the Peruvian Constitutional Tribunal held that [senior public officials must disclose asset declarations concerning their income](#) and other benefits paid by the public sector, as well as their real estate interests. The Constitutional Court of Chile issued a very similar ruling in 2009. It contended that constitutional amendments providing [unrestricted public access to asset declarations of public officials](#) were constitutional and did not conflict with the right to privacy. In India, the High Court of Delhi produced a ruling with a mixed outcome. On the one hand, it determined that [asset declarations of Supreme Court judges should be disclosed if there is a public interest in such disclosure](#). However, the Court established that whenever there is a request to disclose an asset declaration, the authority should consult the judge and balance transparency and privacy rights. As we have already outlined, asking private persons to allow disclosure is not a practice that must be followed.

Finally, judges in India and the United Kingdom have determined that the official correspondence of public servants should be made public. The Indian Supreme Court ordered the government to [disclose the correspondence between three high-ranking officials](#) on a public interest matter. The U.K. Information Tribunal held that [information exchanged between government officials and lobbyists is of public nature](#) and must be disclosed. Finally, the Supreme Court of the U.K. held that the government had to [disclose Prince of Wales' communications](#) with different government officials.

5. Decisions concerning information related to public policies

The right to access public information has also made the implementation and evaluation of public policies more transparent, which strengthens democracy, increases state effectiveness, and prevents corruption. In Colombia, the Constitutional Court had to decide whether the Administrative Unit for the Attention and Integral Reparation of Victims had violated a mother's right to access public information by refusing to provide her with the [reasons why her son was not recognized as a victim of the armed conflict](#). In the Court's opinion, the state had no reason to deny such information since its disclosure was essential to know how public policies work.

Developing on the right to know, a District Court in St. Petersburg, Russia, held that [consumer product standards had to be displayed](#) on governmental websites. In Argentina, the Supreme Court determined that [citizens have the right to know who the beneficiaries of social assistance from the State are](#). In this case, the Center for the Implementation of Public Policies for Equity and Growth (CIPPEC) had requested access to the list of beneficiaries held by the Ministry of Social Development. Following the previous precedent, the Argentine Agency for Access to Information ordered the release of the list of individuals and legal [entities that benefited from the reimbursement regime for exports made in certain ports](#). Argentinian courts have also ordered the [disclosure of information concerning public education](#).

The Constitutional Chamber of the Supreme Court of Costa Rica has also recognized the intrinsic relationship between access to public information and citizen control over public policies. In 2017, it had to rule on the refusal of the State to hand over [information related to concessions made by the state](#) in the Maritime Terrestrial Zone of Santa Cruz. The Court considered that the refusal to deliver the information had violated the applicant's right to access public information as it was public information and of interest to the citizens. In Uruguay, the Court of Appeals ordered the release of [information regarding the public education policy](#). It urged the National Administration for Public Education to deliver information on the number of students enrolled, withdrawn, promoted and failed in each educational institution nationwide in 2011 and 2012. In Chile, the Transparency Council ordered the Municipality of Yungay to disclose its [public policies on street harassment](#), environment, social programs in the health emergency and sports. In India, the Supreme Court ordered the Reserve Bank of India to [provide information about various private banks](#) that are supervised by it.

The Constitutional Court of Ecuador has also ruled on the implementation of social public policies at the national level. In a case in which information was requested on the [disability cards issued by the Ministry of Health](#), it ordered this entity to provide complete information on the authorities involved in the disability qualification process, the cards issued disaggregated by qualification unit and date of delivery, the comprehensive assessment made in each case and the cards issued during the health emergency. The above information was to be used by the Ombudsman's Office to carry out a comprehensive evaluation of public health and social protection policies.

Two cases related to the public health service in the U.K should be noted. First, the European Court of Human Rights found that the U.K. military violated the ECHR for not having an [effective procedure for accessing medical records](#). Second, the U.K. First-Tier Tribunal held that a Transitional Risk Register relating to changes to the country’s National Health System should be disclosed. The Court reasoned that [the public interest in public health policy](#) outweighs the possible reasons for non-disclosure.

The importance of transparent public policies is such that in the Philippines, before the existence of a Freedom of Information Law, the Supreme Court held that the Constitution created the duty to grant [access to information concerning government policies](#). Correspondingly, the High Court of Justice ruled that a [government agency must disclose reports that analyze the viability](#) of an identity card program. Public policy and transparency are intertwined in such a way that the European Court of Justice held that the Council of the European Union infringed European regulations by refusing to [disclose the identity of Member State delegations making policy proposals](#).

6. Information related to the Covid-19 pandemic

During and after the pandemic, tribunals from all over the world analyzed cases concerning public policy around Covid-19. Access to information was restricted in some countries, but in others it proved to be a vaccine against corruption and arbitrariness. Even international organizations saw the importance of transparency in times of crisis. The Inter-American Commission on Human Rights (IACmHR) issued in April 2021 a [resolution](#) setting the standards that States must comply with when it comes to information related to Covid-19 vaccines. According to the IACmHR, “States should proactively disclose data related to registries, studies, vaccination plans and, in general, information related to the acquisition, importation, distribution, prioritization and application of vaccines.”

Some judges responded promptly to the citizenry’s need for transparency. In July 2020, the High Court of Manipur ordered the government to share with the public [information detailing how it had responded to the Covid-19 crisis](#). In April 2020, the Supreme Federal Court of Brazil suspended a Provisional Measure issued by President Jair Bolsonaro that [suspended the deadlines for public bodies to respond to information requests](#). This Provisional Measure severely restricted the right to access public information.

In line with the resolution delivered by the IACmHR, Chile’s Transparency Council protected the right to access public information of a person who requested a copy of the contracts signed by the state to purchase vaccines. The Council determined that the requested information was of public interest as it facilitates social control of the national vaccination program and strengthens confidence in the process. Therefore, it ordered [the delivery of the contracts signed by the Ministry of Health with pharmaceutical companies](#) for the acquisition of vaccines against Covid-19; reserving the information related to the cost structure and the logistics or distribution of the product in question. This guarantor body was consistent in its determination and reiterated such a standard in

multiple cases. The Court of Appeals of Santiago confirmed the Council’s resolution in December 2021. It considered that the confidentiality clauses that the State had agreed with the pharmaceutical companies [did not comply with constitutional or legal regulations](#). It also agreed that the partial publicity of the contracts “strengthens public confidence in the vaccination process, thus encouraging greater participation in the voluntary national vaccination plan, for the benefit and in the interest of the entire population.”

The Argentinian case is similar. The Agency for Access to Public Information ordered the Ministry of Health to provide the petitioner with a [copy of the agreement signed between the Argentine Republic and the Russian Federation for the arrival of the Sputnik V vaccine](#) in the country. When analyzing the Ministry’s argument, that the State had signed confidentiality clauses that prevented their disclosure, the Agency determined that “the response provided by the government (...) is not a good practice in terms of access to information.”

Similar was the conclusion reached by the Administrative Tribunal of Cundinamarca in Colombia when ruling on the [disclosure of confidentiality clauses in Covid-19 vaccine contracts](#). In its ruling, the court cited the Argentinian case mentioned above. The requested public authorities refused to provide the information arguing that the confidentiality clauses imposed the confidentiality of the entire contract, and since the clauses were part of the contract, they were also reserved. The Court considered that “this was a kind of fallacy *ad ignorantiam* and *petitio principii*” insofar as the state’s argumentation was circular. It also analyzed the possible impact on the vaccination policy derived from the disclosure of the contracts and found that “empirical evidence shows that the release of information on the acquisition of vaccines has not had negative consequences, and on the contrary, allows better practices, controlled and informed opinions, so that it increases trust and transparency.” Therefore, it ordered the delivery of the information to the petitioners.

In Ecuador, the Constitutional Court ordered the Ministry of Public Health to provide the Ombudsman’s Office with information on the number of Covid-19 vaccines received in “phase 0”, the list of persons vaccinated in this phase and the vaccination protocol used at the time. The Court established that the [information on the number of vaccines acquired](#) “does not fall within the sphere that could be considered confidential information, nor could it be considered reserved because it does not affect national security in any way.” Similarly, the Transparency Council in Chile ordered the Undersecretariat of Public Health to provide the [data on confirmed Covid-19 infections](#) between March 2020 and September 2021, disaggregated by location and age. Also, the Supreme Court of Justice from Uruguay granted access to information regarding the [number of people who died in the country](#) that previously had received a vaccine against Covid-19.

It is worth highlighting three other cases decided by the specialized bodies of Argentina and Mexico. In July 2020, the Argentine Agency for Access to Information established that [documents related to public contracts during the health emergency](#) (which in many countries followed abbreviated procurement procedures) were not exempt from social control as citizens could access them. For this guarantor body, “it is clear the public interest of the community in having access to

information related to the processing of public procurement, particularly in the case of exceptional and simplified selection processes carried out in the framework of the current health emergency.”

Mexico’s INAI determined that citizens have the right to receive reliable and truthful information from the state, especially when it comes to public health. After a public official of the Ministry of Health stated that there is no scientific evidence to support that face masks have the ability to prevent the spread of Covid-19, a citizen requested from the public entity the [public documents and scientific research to support such statement](#). In view of the incomplete response issued by the Ministry of Health, the INAI ordered to adequately search for the requested information and provide the citizens with quality information supporting the statements made by public officials in the exercise of their duties. In another resolution, the INAI established that the [information on the number of vaccines that Mexico had delivered to other countries could not be considered classified](#) neither for national security matters, nor because it could affect international negotiations, so it ordered its disclosure.

7. Environmental information

As noted earlier, the first international ruling recognizing access to information as a human right—delivered by the IACtHR—concerned environmental information. It is not a coincidence. Access to information serves as a means to exercise other human rights and to protect the environment. The Aarhus Convention and the Escazú Agreement show that accessing environmental information is paramount for climate justice. Judges and courts in Africa, Latin America, Europe and Asia have promoted transparency in the environmental sector.

Before the IACtHR’s ruling in 2006, some national courts had ordered the disclosure of information concerning agriculture and environmental projects. In 1989, the Constitutional Court of South Korea became one of the first Courts to recognize the existence of the right to know or access public information. The Court determined that the requester had the [right to access information related to land use](#). That same year, the Supreme Court of the Philippines ruled that information concerning the construction of a [petrochemical plant](#) had to be disclosed because it was a public interest project. In 1995, a High Court in South Africa determined that the government must release information on [the construction of a steel mill](#) that, apparently, could cause environmental harm. Another South African Court granted in 2005 [access to information about genetically modified crops](#).

More recently, in 2015, the ECtHR determined that Bulgaria had violated article 10 of the ECHR for not providing the petitioner information about the [public policy concerning stray animals](#). That year, the Sri Lanka Supreme Court ruled that [information related to the development of a public beach area](#) had to be disclosed to the petitioners, even when the right to access public information is not explicitly recognized in the Constitution. On a different topic, the High Court of Ireland determined that a report containing a [cost-benefit analysis for the creation of a high-speed broadband service was environmental information](#) according to EU regulations and therefore should be disclosed.

Notwithstanding the importance of the case *Claude Reyes v. Chile*, other international tribunals have upheld the right to access environmental information more recently. The European Court of Justice, in a case concerning the objection of a Member State to disclose documents sent to the European Commission about the [examination of an industrial project](#), concluded that the General Court of the Court of Justice of the European Union has a duty to consult disputed documents to assess if the refusal is lawful. This Tribunal determined too that the European Commission's arguments to refuse [access to information about the pesticide glyphosate](#) were not valid. Finally, the European Court of Human Rights ruled that Austria had violated the ECHR for refusing to provide [information on transfers of agricultural land ownership](#) to the NGO that requested it.

8. Democratic processes and elections

Access to information is a key element in democracies. It is instrumental to achieve participation in public affairs and control the government. Different courts have solved cases concerning some of the basis of democracy: its rules and elections. Since at least 2002, courts all over the world have granted access to information related to candidates and the election process. In India, for instance, the Supreme Court ordered the Election Commission to obtain and disclose to the public [information about the candidates running for office](#), such as their assets and educational background. Building on this precedent, the following year, the same Supreme Court of India held that the Constitution includes a right to [obtain information about the candidates](#) running for office because it promotes voting in an informed way. In Mexico, the Federal Electoral Tribunal held that the right to access information included accessing [information about the political parties](#).

The Superior Court of Justice in Ontario ordered the disclosure of electronic records of [electoral campaign contributions](#) received by politicians. In a similar case, the South African Constitutional Court held that the right to access information and the right to vote obliged political parties and independent candidates to release and preserve [information detailing private funding received](#).

Tribunals have also disclosed information related to the activities of members of Congress or Parliament. Costa Rica's Constitutional Chamber of the Supreme Court [deemed unconstitutional a law](#) that determined that the debates of the Legislative Assembly were secret. The Supreme Court of Appeal of South Africa held that the government had to provide the public with the [report made by two judges analyzing the 2002 elections](#) in Zimbabwe. In addition, in November 2015, the Higher Administrative Court in Germany ordered the German Parliament to [release the list of lobbyists who had been issued permanent entry passes](#).

A 2020 case ruled by the African Court on Human and Peoples' Rights illustrates the close relationship between access to information and democracy. The government of Benin amended the Beninese Constitution without the prior consultation of the Beninese society or establishing any recourse that allowed the civil society to participate. As a result, the Court held that even if the amending law was approved following the required formalities, [citizens must have access to public information and be allowed to participate in democratic processes](#).

9. Government resolutions, opinions, or laws

The public has the right to be informed on what the government does. The judiciary has been fundamental in granting the citizenry access to laws, resolutions and/or agreements that impact day-to-day life. In 1990, the Supreme Court of Israel held that [Parliamentary agreements](#) should be made public because they are made by “public functionaries chosen by the electors to carry out legislative and government functions.” In another early case, the Constitutional Court of Hungary held that [local governments had to allow access to the proceedings and decisions of their bodies](#), thus deeming unconstitutional a legal provision that allow municipalities to reserve their meetings.

Legal opinions have also been disclosed by courts in national and international settings. The European Court of Justice found that a [legal opinion given to the Council had to be disclosed](#) because it was of public interest and the Council failed to provide a reasonable explanation detailing how disclosure would affect third-party rights. In a similar case in the United States, the Second Circuit Court of Appeals ordered the Department of Justice to provide a media outlet and an NGO a [legal analysis that justified targeted killings](#) away from the battlefield in Yemen.

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