



CENTRE FOR LAW
AND DEMOCRACY

Spain

**Comments on the Draft Law on
Transparency and Citizen Access to
Public Information**

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Introduction

These Comments contain an analysis by the Centre for Law and Democracy (CLD) of the Draft Law on Transparency and Citizen Access to Public Information (draft Law).¹ They aim to provide interested stakeholders with an assessment of the extent to which the draft Law conforms, and does not conform, to international standards and better comparative practice regarding the right to information. They provide recommendations for reform as relevant, with a view to helping to ensure that the law which is finally adopted gives effect, as fully as possible, to this fundamental right.

In a rather unfortunate signal for longer-term openness, the draft Law has still not been officially published by the Spanish government. Instead, the version analysed here was leaked to the media and civil society. This demonstrates that, instead of undertaking a full and open consultation around the adoption of this very important piece of legislation, the government intended to initiate the consultation with a fairly developed piece of legislation. This is inappropriate. Instead, the government should have prepared a policy document, setting out its intentions for the law, and have conducted some form of public consultation around that policy document. Hopefully there will now, at least, be a good faith period of consultation.

The draft Law has a number of strengths. The procedures it establishes for making requests for information are, for the most part, clear and fair, and in accordance with international standards. It includes an interesting rule to address failures to respond to requests, whereby if an individual confirms his or her application and a public authority fails to respond a second time, it is deemed to have accepted the request.²

At the same time, there are some significant problems with the draft Law. One is that the scope of the law is subject to major limitations, with respect to both the information and the public authorities covered. As regards the former, the draft Law excludes a wide range of information which is not destined to become part of the file, such as notes, opinions and emails. Furthermore, 'state secrets', whatever this may mean, are to be dealt with by other rules on access to information. In terms of public authorities, the draft Law would have only limited application to legislative and judicial bodies. Subject to constitutional rules preventing this, we believe more could be done to impose right to information obligations on these bodies. Finally,

¹ These Comments are based on an unofficial translation of the draft Law into English by Access Info Europe, an international organisation promoting the right to information based in Madrid. CLD apologises for any errors based on translation.

² There are also problems with this mechanism, as detailed below.

the regime of exceptions is significantly overbroad, both in terms of the scope of the exceptions and the weak nature of the harm required to engage them.

These Comments are based on international standards relating to the right to information, as reflected in the *RTI Legislation Rating Methodology*, prepared by CLD and Access Info Europe.³ They also reflect better practice in the laws of other democracies.⁴

1. Purpose and Scope

The preamble of the draft Law refers to several general benefits that flow from openness, including democracy and publicity of public affairs, as well as the aims of the law, including to improve access to public records. Article 1 additionally stipulates that the aims of the law are to define the right of access, to regulate procedures for the exercise of this right and to establish mechanism to ensure public transparency.

These are all worthy benefits and goals. At the same time, the substantive provisions of the draft Law do not really provide a useful interpretive framework for the law. To do this, the law would need to indicate the underlying social goals that it serves, such as combating corruption, fostering participation in public affairs, promoting the accountability of public authorities and so on. If these were elaborated in substantive provisions in the law, those tasked with its interpretation could refer to them for guidance as they went about this task.

Article 2 provides a definition of the types of information that are covered by the law. Article 2(1) defines ‘public information’ as all information, regardless of the form in which it is held, that has been elaborated or acquired by ‘public powers’ (‘poderes públicos’) in the exercise of their functions, and which is held by them. Article 2(2) adds to this information held by other bodies which provide public services or exercise administrative authority, as long as the information has been generated or obtained in the exercise of those public activities. This is, however, limited by Article 2(3), which excludes from this definition information that is in the process of being elaborated, which is scheduled for general publication, which

³ This document, published in September 2010, reflects a comprehensive analysis of international standards adopted both by global human rights mechanisms, such as the UN Special Rapporteur on Freedom of Opinion and Expression, and by regional mechanisms in Europe, Africa and Latin America. It is available at: http://www.law-democracy.org/wp-content/uploads/2010/09/Indicators.final_.pdf.

⁴ See, for example, Toby Mendel, *Freedom of Information: A Comparative Legal Survey, 2nd Edition* (2008, Paris, UNESCO), available in English, Spanish and other languages at: http://portal.unesco.org/ci/en/ev.php-URL_ID=26159&URL_DO=DO_TOPIC&URL_SECTION=201.html and Toby Mendel, *The Right to Information in Latin America: A Comparative Legal Survey* (2009, Quito, UNESCO), available in English and Spanish at: http://portal.unesco.org/ci/en/ev.php-URL_ID=28958&URL_DO=DO_TOPIC&URL_SECTION=201.html.

requires 'additional re-elaboration'. Article 2(3) also excludes information which is ancillary to but used to support public activities and which is not destined to become 'part of a file', with a number of examples given such as notes, drafts, opinions and internal communications.

There are a number of problems with this definition of public information. First, is it limited to information that has been elaborated or acquired by public powers in the exercise of their functions. This might be abused by public authorities to argue that even though they hold certain information it is not related to the exercise of their functions. It would be preferable simply to include all information held by public authorities. Second, the definition appears to conflate elements of both the definition of a public authority and information covered. It would be preferable to separate out these two issues and to define them separately, to avoid confusion when officials assess what information is covered by the law.

Most important, however, is the massive exclusion represented by Article 2(3). It is well-established in international standards that the right of access applies to all information held by public bodies, subject only to the exceptions. Article 2(3) excludes a very significant range of information from the scope of the right of access, largely without justification. It is not uncommon to refuse requests for information that is about to be published, although there should be timelines associated with this (so that it only applies to information that will be published, for example, within 30 days). In some other cases, exceptions may apply, for example where disclosure of the document would undermine the free and frank provision of advice within government. Otherwise, it is not legitimate to exclude the information described in Article 2(3).

Additional Clause II establishes different rules for accessing certain categories of information. Pursuant to Additional Clause II(1), interested parties in administrative proceedings shall access information relating to those proceedings in accordance with the rules relating to them. Similarly, Additional Clause II(2) states that 'specific rules' will apply to a number of categories of information, including 'state secrets', the various registers (such as the civil register, the register of criminals, and so on) and other materials which have a specific regime of access. Furthermore, Additional Clause II(3) provides that the right to information law applies to environmental information, information destined for commercial reuse and information held in historical archives, unless the specific rules for accessing such information preclude this.

There is no problem with existing systems of rules granting access to information continuing to apply. However, they should be additional to the rules in the right to information law. In other words, requesters should have the option of using whichever system they prefer to access that information. Otherwise, there is a risk

that those wishing to obtain information may be forced to use systems which are less friendly to requesters than the right to information law.

There is, however, a particular problem with the reference to 'state secrets' in Additional Clause II(2). It is not clear what this means. Inasmuch as it refers to information which has been classified as a State secret, it is very problematical to exclude it from the rules in the right to information law. The category of classified information is unlike the various registers noted in the provision, inasmuch as it does not refer to a specific type of information but, instead, to an administrative procedure for rendering information secret. Indeed, a key purpose of a right to information law is to apply clear and fair rules to deciding what information may be withheld, rather than allowing officials simply to keep information secret through a classification procedure.

The main definition of the public authorities covered by the law is found in Article 9, which states that the procedure for making requests for information applies to information held by the public administration, and public law bodies which are dependent on or linked to the public administration, including universities, corporations and other bodies which provide public services or exercise administrative powers. The requesting procedure also applies to other 'public powers' not included in the definition above, but only in relation to their administrative functions.

Additional Clause I provides that the right of access applies to legislative and judicial bodies, including the Constitutional Court, the General Council of the Judicial Power and the Court of Accounts, according to their own norms. These norms shall be subject to the rules set out in Chapters I and II of the law, unless the rules expressly provide otherwise.

The main definition is, subject to the provisions of Additional Clause I, reasonably comprehensive. It would be preferable, however, for the bodies covered by the definition to be generally subject to the openness obligations in the law, including the rules on proactive disclosure in Article 3, rather than just the procedures for making requests, as is currently the case.

The right to information law should also apply to all bodies established by law, not just those which are dependent upon the public administration. Furthermore, inasmuch as this is not already the case, the law should apply to all bodies which are funded or controlled by public authorities, or which carry out public functions, to the extent of this funding, control or function.

The rule in Additional Clause I, which is very similar to the corresponding rules in the Mexican and Chilean right to information laws, appears to represent some sort of compromise between making these bodies fully subject to the rules on

transparency and respect for constitutional division of powers rules. The problem with this approach is, first, that these bodies may or may not actually establish clear rules on access to information, second, that any rules they do establish may or may not conform to international standards or better practice, and, third, that only the provisions of Chapters I and II presumptively apply to these bodies, to the exclusion of the procedural in Chapter III. It would be far preferable to cover all of these bodies by one central law, although we recognise that in some countries, the legislature may not have the constitutional power to impose transparency rules on the courts.

Recommendations:

- The law should set out the underlying social goals which the openness it promotes should serve, to provide those tasked with interpreting the law with a solid basis for this exercise.
- The definition of public information should not be conditioned by the requirement that the information relates to the exercise of the functions of public authorities.
- Any exclusion of information due to be published should be subject to a time limit for the expected publication, for example of 30 days.
- Subject to the previous point, Article 2(3), excluding various categories of information, should be removed from the law.
- Where existing systems for accessing information apply, requesters should be able to use either those systems or the right to information law to access the relevant information.
- The reference to 'state secrets' in Additional Clause II(2) should be removed.
- All of the transparency obligations should apply to public authorities as defined in the law, not just the procedures for making requests for information.
- The law should apply to all bodies established by statute, as well as all bodies funded or controlled by public authorities, or carrying out public functions, to the extent of that funding, control or function.
- To the extent that this is constitutionally possible, the law should apply to the legislature and the judicial branches of government. At a minimum, the presumptive application of the right to information law to these bodies should include its procedural rules, as set out in Chapter III.

2. Requesting Procedures

Pursuant to Article 4, requesters do not have to justify their requests. This is reinforced by Article 10(4), which allows requesters to state the reason for their request, which may be relevant to the application of the public interest override (see

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below, under Exceptions) but this may never be demanded and the non-provision of reasons may never justify a refusal to provide access to the information.

Requests must be in writing and may be sent by any medium (Article 10). They should contain the identity of the requester, a description of the information sought, the preferred format for accessing the information, where relevant, and a contact address. There is no need for requesters to provide their identity as part of the request process. This is not required in better practice countries, while in some countries a requirement to identify oneself has led to differential treatment for certain types of requesters.

Article 12 provides for consultation where information which affects the rights or interests of third parties is requested, as defined by the exceptions set out in Articles 5 and 6. In such cases, the public authority must provide the third party with a copy of the request, with the identity of the requester removed, within 20 days, and the third party has another 20 days to make representations as to whether or not the information should be disclosed. In such cases, the normal timeline of 30 days for processing requests is suspended during the time spent waiting for a response from the third party. Both of these time lines are too long. It should certainly not take the public authority 20 days to refer the request to the third party, and it is not necessary to give that party 20 days to respond. It may be noted that, pursuant to Article 18(3), third parties are only given 10 days to intervene in appeals.

Article 13 provides for the transfer of requests where the information is held, or was created, by another public authority. In this case, pursuant to Article 14, the normal timeline for responding to requests is waived. There is no need for such a waiver and the request should still be processed within 30 days.

Article 14(2) provides for an interesting mechanism whereby in case a public authority fails to respond to a request within the stipulated timeframe, the requester is required to submit a 'confirmatory application' within ten days. Should he or she fail to do so, the request will be treated as withdrawn. Should he or she do so, however, and the public authority fail again to respond within 30 days, the request shall be deemed to have been granted. This is positive inasmuch as it effectively penalises public authorities which twice fail to respond to requests within the stipulated timeframe. It is unfortunate, however, inasmuch as it places a positive obligation on requesters to monitor the timeframes relating to their requests carefully and to reconfirm them within just ten days or be deemed to have withdrawn them.

Pursuant to Article 15(2), refusals to provide information must be 'motivated'. It would be useful to provide for a framework of rules regarding such motivations, for example that they must indicate the exact provision in the law which is being relied

upon to refuse access. Furthermore, requesters being denied access should be informed about their right of appeal.

Article 16(1) provides that access shall be granted in the form preferred unless, among other things, it is not possible to make a copy because of a lack of appropriate equipment or the modality of access 'could' affect intellectual property rights. Public bodies should normally have the relevant equipment to make copies of the information they hold and a lack of equipment should be seen as a highly exceptional situation. The standard for affecting intellectual property rights should be more stringent, only applying, for example where the form of access would be likely to harm such rights.

Article 16(2) provides that access to information *in situ* shall be free and that the cost of access in cases where the information is held by archives, libraries and museums shall be specified by specific legislation. The draft Law is silent as to the cost of access where this is through other forms, such as the provision of copies or electronically. At a minimum it should stipulate that this may not exceed reasonable costs for duplicating and sending the information. It is, however, beneficial to provide for a central set of fee rules, to avoid a patchwork of fees across different public bodies. The draft Law also fails to provide for fee waivers in appropriate cases. Finally, it is not clear why archives, libraries and museums should not be subject to the same fee structures as other public bodies.⁵

Recommendations:

- Requesters should not be required to provide their identity.
- The timelines for referring requests to third parties and for those parties to make representations on the request should be shortened, for example to five and ten days, respectively.
- The 30-day timeline for processing requests should not be waived where a request is transferred to another public authority. At a minimum, a maximum period of extension in such cases, for example of five days, should be stipulated in the law.
- The Article 14(2) procedure should be retained, but requesters should not be deemed to have abandoned their requests where they fail to reconfirm them. At a minimum, the timeframe for this should be longer.
- Notification of a refusal to provide access to information should include the exact provision in the law being relied upon to justify this refusal, as well as information about the requesters right to appeal.
- The law should make it clear that not having the appropriate equipment to make a copy of information may only very exceptionally justify a refusal to provide a requester with a copy of the information.

⁵ It is legitimate to allow museums to charge fees for entrance, but this is different and if necessary, a specific rule on this could be added to the law.

- Refusal to grant access in the preferred form of access should be allowed only where this would be likely to harm an intellectual property right.
- The rules on fees should be substantially expanded to cover a wider range of forms of access and to include fee waivers in appropriate cases, for example for impecunious requesters and for requests in the public interest.
- Archives, libraries and museums should be subject to the same fees structures as other public bodies.

3. Duty to Publish

Article 3 provides that public bodies shall make available, preferably by electronic means, information which is 'highly relevant' to transparency, subject to the regime of exceptions. This shall include directives, instructions, circulars and notes/replies which relate to the interpretation of the law. Article 17(3)-(5) elaborate on this duty, stipulating that public authorities shall publish organigrams, guides on administrative procedures, available services and benefits, ministerial budgets and the data necessary to follow their execution, and information about the right of access and its procedures. Economical and statistical information that is 'particularly relevant' will be published in a periodic and foreseeable manner.

This represents a relatively modest commitment to the proactive disclosure of information, which falls well short of some of the more extensive obligations found in other right to information laws, such as those of India, Peru, Azerbaijan and Kyrgyzstan.

At the same time, placing excessively onerous proactive disclosure obligations on public authorities has in some countries lead to widespread breach of these rules, undermining respect for the law overall. One way of mitigating this problem is to increase proactive disclosure obligations over time. A practical method of doing this might be to grant the oversight body, the Spanish Agency for Data Protection and Access to Information, the power to extend these obligations over time. Or a system like that in place in the United Kingdom could be introduced, whereby each public body has to adopt a publication scheme, setting out the information it proposes to disseminate proactively, and the oversight body has to approve the scheme.

Recommendation:

- Consideration should be given to extending the scope of the proactive publication obligations in the law. As an alternative, the oversight body could be given the power to extend these obligations over time.

4. Exceptions and Refusals

The main provision on exceptions is Article 5, which provides that access may be refused where disclosure of the information ‘might result’ in harm to a number of interests, including, among other things, external relations, secrecy required by the decision-making process, the protection of constitutional rights, including professional secrecy, and the ‘legitimate’ interests of private individuals. These exceptions must be proportionate and apply unless there is an overriding public interest in disclosing the information.

One problem with this regime of exceptions is that the standard of harm – namely might result in harm – is too low; a better formulation would be that disclosure of the information would be likely to cause harm. Another problem is that several of the protected interests, including all of those listed above, are either too vague or too general. For example, external relations is potentially very broad. Most laws refer to information provided in confidence by another State, the disclosure of which would harm relations with that State. Similarly, it is not clear what is covered by the phrase ‘secrecy required by the decision-making process’. Officials may interpret this very broadly indeed. It would be better to list specific harms – such as undermining the free and frank provision of advice or the success of a policy through premature disclosure – which may justify overriding the right of access. Private individuals may have many ‘legitimate interests’ but better practice right to information laws list the specific interests which are deemed sufficiently important to warrant overriding the fundamental human right of access.

The relationship between the draft law and laws providing for secrecy is not clear. It may be that the right to information law would prevail, since it only appears to allow a refusal to disclose where the information falls within the scope of the exceptions it establishes. But it would be preferable to make this explicit in the law.

Article 6 is a relatively complicated provision which protects privacy interests. Article 6(1) notes that requests for personal data are covered by the law, unless the data relates to the requester, in which case data protection norms will apply. Pursuant to Article 6(2), sensitive data or information which ‘affects’ private life will not be released, unless the data subject has consented to this or it is authorised by law. Sensitive data is deemed to include data relating to ideology, union membership, religion, beliefs, racial origin, health and sexuality. Where a request is for personal data that is not of an ‘intimate’ nature and which does not affect private life, it will be granted if it is ‘directly related to the organisation, functioning and public activity’ of the public authority (Article 6(4)). Notwithstanding this, where there are ‘special circumstances’ which mean that the privacy interest prevails over the public interest in the information, the information will not be disclosed. Finally, Article 6(5) provides that subsequent use of personal data will be governed by the rules on data protection.

There are number of problems with this regime, which is overly sensitive to privacy and the expense of the right to information. First, the rigid list of types of sensitive data is both over- and under-inclusive. Whether the release of certain information unreasonably interferes with privacy is a matter of fact taking into account all of the circumstances. A member of parliament may have relied on his or her racial origin when running for office, in which case it is no longer private. Similarly, a campaigner for gay rights may have disclosed his or her sexual orientation in advocacy work, in which case it is again not private. On the other hand, the list of types of sensitive data is nowhere near complete. One's address, profession and number of children are all examples of information that might be private. A better approach would simply be to preclude disclosure of information where this would unreasonably interfere with privacy.

Second, if information is does not affect private life, it should be disclosed, regardless of whether it is deemed by the official processing the request to be 'directly related' to the work of the public authority. Information which is held by public authorities should always be subject to disclosure, absent a risk of harm to a protected interest. Officials cannot know what potentially public interest use a requester may need the information for.

Third, it may be noted that, unlike other protected interests, the privacy exception is not subject to a public interest override. And the draft Law does not exclude information relating to the public functions of officials from the definition of private information. Instead, there is a public interest override to render information secret in light of a prevailing privacy interest. Better practice right to information laws apply the public interest override in favour of disclosure to all exceptions, including the one in favour of privacy. Practically no laws apply a special public interest override to impose secrecy in the context of private data.

Article 8 establishes that exceptions apply only as long as this is provided for by law. This is positive but, for many of the exceptions, it is to be doubted that the law does establish overall time limits on secrecy. For example, the secrecy law, which dates from 1968, when General Franco was still in power, does not establish time limits but merely indicates who has the power to set such limits. It would be far preferable for the new law to set overall time limits on secrecy.

Requests may, pursuant to Article 11, be rejected and a motivated refusal provided where the information is covered by the regime of exceptions, where the public authority does not hold the information (unless it knows of another public authority which does, in which case the request shall be transferred to that other authority), or where the request is 'manifestly unreasonable' or repetitive. The phrase 'manifestly unreasonable' is rather vague; it would be preferable to use the term vexatious, which implies some sort of bad faith on the part of the requester.

Recommendations:

- The standard of harm for exceptions should be changed from ‘might’ cause harm to ‘would be likely’ to do so.
- The specific exceptions listed above should be amended so as to ensure that they are clear, specific and narrow, and relate to interests which warrant overriding the right of access.
- The right to information law should specify that in case of conflict between its provisions and those in a secrecy law, it prevails.
- The privacy exception should apply only when disclosure of the information would unreasonably interfere with a legitimate privacy interest. Where this is not the case, the information should be disclosed regardless of whether officials deem it to be directly related to the work of the public authority.
- The privacy exception should be subject to a public interest override in favour of disclosure, while the negative public interest override in favour of secrecy should be removed.
- The law should establish overall time limits beyond which information subject to exceptions to protect public interests is presumed to be open, for example of 15 years.
- Public authorities should be allowed to reject requests which are vexatious, rather than just ‘manifestly unreasonable’.

5. Appeals

Article 15(4) provides that decisions on requests for information are to be appealed through administrative procedures. Article 18 grants requesters and affected third parties the right to appeal against decisions on access made by a general administrative body and their subsidiary bodies to the Spanish Agency for Data Protection and Access to Information. This complaint is optional, presumably meaning that these individuals may also appeal directly to the courts. Such appeals must be lodged within thirty days of notification of a decision. A decision must be made within two months, and silence on the part of the Agency is a deemed rejection of the request.

We understand that the Agency is a reasonably independent body in the Spanish context, an important pre-condition for it being able to do its work properly. The Agency should have the power to issue binding decisions for the release of information by public authorities, as well as to rectify structural problems relating to the right to information.⁶

⁶ Such rules would be found mostly in Organic Law 15/1999 of 13 December of Protection of Data of Personal Character, as amended by the draft Law, and it is not clear exactly what powers the Agency would have under the new regime.

It appears that the right to lodge an appeal with the Agency covers a range of failures to respect the procedures set out in the law, but it might be useful to specifically list these, including refusals to provide information, in whole or in part, breach of the timelines, charging excessive fees and not providing the information in the form requested.

Better practice right to information laws make it clear that, in case of a refusal to disclose information, the public authority bears the burden of justifying that refusal. This is consistent with the fact that the right of access is a human right, protected under international law.

Pursuant to Article 18(4), where a requester prevails in an appeal to the Agency, he or she will be provided access to the information, but only where the time limit for lodging a legal challenge to the Agency's decision has expired. Given the delay that will already have been occasioned by this time, it would be preferable to establish specific and short timelines for public authorities to lodge an appeal against a decision by the Agency.

Recommendations:

- To the extent that this is not already the case, the Agency should have binding powers to order public authorities to release information and to undertake structural measures to remedy failures to implement the right to information.
- The law should specifically list the types of failures that might form the basis of an appeal to the Agency.
- The law should specify that, in case of a refusal to disclose, the public authority bears the burden of justifying that refusal.
- Special, shorter, timelines should be established for public authorities to lodge legal appeals against decision of the Agency.

6. Sanctions and Protections

The draft Law does not make any direct reference to either sanctions or protections. Better practice right to information laws impose sanctions on officials who wilfully obstruct the right of access in various ways, such as by destroying information without authority, refusing to disclose information or refusing to cooperate with the oversight body. Additional Clause V(2) of the draft Law does contain a reference to the power of the Agency to 'exercise disciplinary powers' in accordance with provisions in the data protection law. It seems unlikely that these powers cover the sorts of obstruction noted above, given that the data protection law is not primarily about access to information.

Better practice laws also provide protection for officials who release information pursuant to the law in good faith, regardless of whether or not the information might be covered by an exception. Such protection is necessary to give officials, most of whom are used to operating in a strong culture of secrecy, the confidence to apply reasonable interpretations of the law and to release information in accordance with it. Absent such protections, officials often continue to be overly restrictive with respect to public access to information.

Finally, whistleblowers, individuals who release information in the reasonable belief that it discloses evidence of wrongdoing, should also be protected against sanction. In many countries, there is a specific law to protect such individuals. If this is not the case in Spain, basic provisions to protect whistleblowers should be added to the right to information law.

Recommendations:

- To the extent that this is not already the case, the law should provide for sanctions for officials who wilfully obstruct access to information.
- Officials who release information in good faith pursuant to the right to information law should be protected against sanction.
- To the extent that such protection is not already provided for by Spanish law, basic protections for whistleblowers against sanction should be added to the right to information law.

7. Promotional Measures

Pursuant to Article 17(1), public authorities must undertake a number of promotional measures. They must engage in awareness-raising activities among citizens, train their staff and establish clear rules for managing information so as to facilitate the location and provision of this information to the public.

Additional Clause V(2) provides a long list of functions of the Spanish Agency for Data Protection and Access to Information, including generally to ensure compliance with the legislation, to issue instructions to ensure implementation of the law, to process appeals, to raise awareness among the public, to require those responsible for providing information to adopt the necessary measures to ensure proper implementation of the rules, to exercise disciplinary measures, and to submit an annual report to the Ministers of Presidency and Justice.

These are all useful provisions. The rules on managing information, however, fail to establish an adequate system for this, which involves setting and implementing minimum record management standards. It would be useful to require a central body, perhaps the Agency or the Agency working with the archival body, to set

binding minimum standards, and to monitor the application of those standards and impose sanctions on those who fail to respect them.

In many countries, public authorities are required to report to the oversight body in some detail annually on the measures they have taken to implement the law, including the manner of processing requests (for example, indicating how many were received, what the outcomes were, how many times each exception was relied upon, how many appeals were lodged, etc.). This greatly facilitates the tracking of implementation of the right to information law, as well as the production of the annual report by the Agency. Pursuant to the draft Law, public authorities are under a general obligation to cooperate with the Agency, but it might be useful to impose a specific obligation regarding reporting.

Better practice right to information laws require all public authorities to appoint a dedicated official (an information officer) who is responsible for ensuring that the authority meets its obligations under the law, including by acting as a central point for receiving and processing requests for information.

Recommendations:

- Consideration should be given to establishing a proper record management system in the law, giving a central body the power to set binding minimum record management standards.
- Consideration should be given to specifically requiring public authorities to provide a detailed annual report to the Agency on measures they have taken to implement the law.
- Public authorities should be required to appoint dedicated officials to act as central points of responsibility for implementation of the law.