Puerto Rico: Note on Proposed Amendments to the Access to Information Law

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On 2 January 2025, the Senate of Puerto Rico introduced Senate Bill 63 (Access to Information or ATI Bill), to amend Law 141-2019, the Transparency and Expedited Procedure for Access to Public Information Act (ATI Act).[1] The ATI Bill will, if adopted, introduce a small number of important legal changes to the way access to information will work in Puerto Rico.

This Note[2] outlines the key concerns of the Centre for Law and Democracy (CLD) with the ATI Bill. To accompany this Note, CLD has prepared an updated assessment of the legal framework for the right to information in Puerto Rico based on the respected RTI Rating methodology.[3] The changes introduced by the ATI Bill would reduce the score of Puerto Rico from 73 to 69 points out of a possible total of 150, dropping it from the equivalent of 94th

[1] Available in English at https://periodismoinvestigativo.com/wp-content/uploads//2023/05/Act.-No.-141-2019.pdf and in Spanish at https://estadisticas.pr/files/2022-06/"Ley%20de%20Transparencia%20y%20Procedimiento%20Expedito%20para%20el%20Acceso%20a%20la%20Información%20Pública"%20%5B141-2019%5D.pdf.

[3] Available at https://www.rti-rating.org. The RTI Rating is the leading global tool for assessing the legal framework for the right to access information held by public authorities, or the right to information. All 140 national laws around the world have been assessed on the RTI Rating, along with a number of sub-national laws (like the Puerto Rican law). The Rating for Puerto Rico is available on page 2 of the International and Subnational section of the RTI Rating website, https://www.rti-rating.org/international-institutions/.

position out of the 140 countries with right to information laws to 106th position.[4] This drop in score is disappointing and signals that Puerto Rico should not pass these amendments into law. Instead, the Government of Puerto Rico should pass amendments to Law 141-2019 which improve rather than weaken it.

Changes Which Reduce Puerto Rico's Score on the RTI Rating

All of the four points which Puerto Rico would lose on the RTI Rating by amending the ATI Bill fall into the category of requesting procedures, or the procedures for lodging and then processing requests for information. This is a somewhat technical, legal area in any right to information law, but it is also absolutely essential for it to set out user-friendly rules for requesters.

The first loss of a point is on Indicator 14, which looks at the information requesters are required to provide when making a request. The change here is to Article 6(2) of the ATI Act. Whereas previously it only required requesters to provide a postal or an email address, the "or" has been removed so that both are now required. This is unnecessary and places an additional burden on requesters, while it may also have unfortunate results, such as public authorities refusing to respond to requests from requesters who are not based in Puerto Rico.

The next loss of a point is on Indicator 15, which assesses how simple it is to lodge a request. A proposed change to Article 6(1) would require requesters to lodge ("notify") requests with the head of the public authority and provide a copy to the information officer, absent which the time limit for responding will not be engaged (i.e. the public authority does not need to process the request). This is not legitimate. Instead, public authorities should process any request they receive, however they receive it. At the very minimum, any request which is sent to the information officer should be processed. As an internal matter, the information officer can send it to the head of the public authority, although we advise against this since escalating requests in this way invariably increases the chances of them becoming politicised.

Indicator 20 refers to the idea that public authorities should respond to requests in the format preferred by the requester, such as by providing a physical or electronic copy of the record or an opportunity to inspect it, subject only to limited overrides (such as to protect the integrity of a record). The ATI Act currently has reasonably positive rules on this but the ATI Bill would, via amendments to Articles 5(3), 6(2), 7(4) and 8(2), completely remove any

[4] Note only countries are on the main Rating country page, so Puerto Rico is not listed there but on the accompanying International and Subnational section of the RTI Rating website.

requirement to respect format preferences indicated by a requester. Instead, amended section 7(4) simply provides that information officers comply with the Act if they provide information in one of a list of possible formats (with no reference to the preferences of the requester). While one item has been added to the list of formats in Article 7(4) – namely an opportunity to inspect the record – this is not a true addition, since this is already covered by Article 7(4)(a).

Finally, there is a loss of a point on Indicator 23, as the rules on extending the time limit for responding to a request have been changed. Article 7(2) now allows an extension to run to 20 business days instead of just 10. While the information officer does need to notify the requester of the reason for this, no conditions on such reasons are imposed by law, contrary to better practice. Common conditions here are that processing the request requires a search through a large number of documents or consultation with third parties.

Other Changes

Article 5(5) in the ATI Act indicates that requesters' personal information shall not be included in the monthly reports on requests which information officers are required to submit. This is obviously appropriate, algins with privacy and personal data protection rights, and is a practice which is followed around the world. For some reason, the ATI Bill proposes to remove this uncontroversial provision, thereby posing a threat to privacy interests. The RTI Rating does not assess privacy rights, hence no point is lost on the Rating due to this change, but it is, nonetheless, contrary to human rights guarantees.

The ATI Bill would amend the primary time limit for responding to requests in Article 7(1) from 10 to 20 business days. 10 business days is better practice, especially given that the ATI Act already envisages extensions to this time limit. The ATI Bill would also extend the time limit for responding to requests to regional offices from 15 business days to 30 business days. The ATI Act already lost one point on Indicator 22, which assesses original time limits, due to the 15-day time limit for requests to regional offices. Both of these extensions to the original time limits are unfortunate.

Article 7(3) has been amended to provide that information which is classified under a law or regulation in advance of a request for that information shall not be disclosed. The ATI Act already lost all four points on Indicator 28, about the overriding nature of the right to information law vis-à-vis other laws, but at least previously Article 12 had provided for the provision which was most favourable to a requester to prevail in case of conflict. With this amendment, the provision which is least favourable will prevail. This is clearly contrary to

the status of the right to information as a constitutionally protected as a human right in Puerto Rico. Laws which unduly restrict rights should be overridden by laws which elaborate on rights, as the ATI Act does, which is the exact opposite of the way Article 7(3) would operate under the ATI Bill.

Proposed amendments to Article 9(5) would eliminate the power to reduce the time limit of ten working days for public authorities to appear in court for just cause. This is unfortunate since, where there is just cause, these sorts of human rights cases should be dealt with as soon as possible. Proposed amendments would also clarify that the days referred to in that provision do not include days when a public authority is only operating partially or is in administrative recess. It is not entirely clear to us why a public authority would only be operating partially but, in such a case, it is clearly unreasonable to put off the processing of human rights matters, such as access to information, while other work is being done.

The proposed addition of a new Article 10 would impose a daily fine of up to $100, up to a total maximum of $18,000, on any public authority which failed to comply with a court order based on the appeal provisions found in Article 9 of the ATI Act. This is positive – the only provision in the ATI Bill which qualifies as such – but it is also not very significant. Courts have various tools at their disposal for enforcing their orders, respect for which is at the very heart of the notion of rule of law in a democracy. While it is positive that this provides for daily fines for refusals to implement court orders, which may not be a remedy which is always available to courts seeking to enforce orders, the level of the fine is also quite low for a public authority.

Recommendations

- Our primary recommendation is that, instead of introducing negative amendments, in the form of the ATI Bill, Puerto Rico should focus on strengthening its right to information law so as to create a strong legal framework guaranteeing this human right.
- Requesters should only be required to provide a single address for delivery of the information they are seeking, whether a physical or electronic address.
- Requesters should be able to lodge requests in a variety of ways, ideally through any official but at least simply with the relevant information officer. Any provisions relating to distribution of requests internally should be directed at officials of the public authority concerned, not requesters.

- Public authorities should be required to comply with requesters' preferences as to how they would like to receive the requested information. The only limits to this should be where that preference would pose a risk to the integrity of a record or impose an undue burden on the public authority.
- Public authorities should only be allowed to extend the original time limits for responding to requests under limited circumstances, such as where they need to search through a large number of records to find the requested information or to consult with third parties.
- The requirement for information officers not to disclose personal information of requesters when reporting on the requests they have received should be maintained.
- The original time limit for responding to requests should be maintained at ten working days and this should be extended to cover requests lodged at regional offices (as well as central ones).
- The addition to Article 7(3), providing that information which is classified under another law or regulation is secret, should be removed.
- The power currently found in Article 9(5) to shorten the ten-day time limit for public authorities to appear in court should be maintained.