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The Right to Access to Public Information in the Americas: Specialized Supervisory and Enforcement Bodies

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Special Rapporteur for Freedom of Expression of the Inter-American
Commission on Human Rights

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A. Introduction

1. The Office of the Special Rapporteur has reiterated that the right to access to information is an autonomous right protected under Article 13 of the American Convention. It is a fundamental right for the consolidation, operation, and preservation of democratic systems, and it plays an essential role in the exercise of rights.¹

2. The scope and content of this right has been developed extensively in the Inter-American System.² With respect to the matter, the Inter-American Court has recognized that freedom of thought and expression include “not only the right and freedom to express one’s own thoughts, but also the right and freedom to seek, receive and impart information and ideas of all kinds.” In this regard, it has also held that the right to access to information “protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the [American] Convention, the State is allowed to restrict access to the information in a specific case. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.”³

3. Given its significance in the consolidation, operation, and preservation of democratic systems, the right to access to information has been addressed by the OAS Member States at its General Assembly, which has given the Office of the Special Rapporteur its mandate to continue monitoring the issue, and has urged the States to “to respect and promote respect for everyone’s access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.”⁴ In this context, the adoption by OAS General Assembly of the Model Inter-American

¹ IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#) Chapter IV (the Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 1. Regarding the functions of the right to access to information, the UN, OSCE, and OAS Rapporteurs for Freedom of Expression stated in their Joint Declaration of 1999 that, “Implicit in freedom of expression is the public’s right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people’s participation in government would remain fragmented.” Similarly, in their Joint Declaration of 2004, they recognized “the fundamental importance of access to information to democratic participation, to holding governments accountable and to controlling corruption, as well as to personal dignity and business efficiency.” Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of American States (OAS).

² I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151; I/A Court H.R., *Case of Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219; IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (the Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009; IACHR. [2011 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011; IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework Regarding the Right to Access to Information. Second Edition](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011; IACHR. [2012 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Domestic Case Law on Freedom of Expression). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013.

³ I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paras. 76 & 77.

⁴ OAS General Assembly. [Resolution AG/RES. 1932 \(XXXIII-O/03\). Access to Public Information: Strengthening Democracy](#). June 10, 2003. *See also*, OAS General Assembly. [Resolution AG/RES. 2057 \(XXXIV-O/04\). Access to Public Information: Strengthening Democracy](#). June 8, 2004; OAS General Assembly. [Resolution AG/RES. 2121 \(XXXV-O/05\). Access to Public Information: Strengthening Democracy](#). June 7, 2005; OAS General Assembly. [Resolution AG/RES. 2252 \(XXXVI-O/06\). Access to Public Information: Strengthening Democracy](#). June 6, 2006; OAS General Assembly. [Resolution AG/RES. 2288 \(XXXVII-O/07\). Access to Public Information: Strengthening Democracy](#). June 5, 2007; OAS General Assembly. [Resolution AG/RES. 2418 \(XXXVIII-O/08\). Access to Public Information: Strengthening Democracy](#). June 3, 2008; OAS General Assembly. [Resolution AG/RES. 2514 \(XXXIX-O/09\). Access to Public Information: Strengthening Democracy](#). June 4, 2009; OAS General Assembly. [Resolution AG/RES. 2661 \(XLI-O/11\). Access to Public Information and Protection of Personal Data](#). June 7, 2011. The matter was also taken up at the Summit of the Americas. In the Declaration of Nuevo León, approved in 2004, the Heads of State expressed their commitment “to providing the legal and regulatory framework and the structures and conditions required to guarantee the right of access to information to our citizens,” recognizing that “Access to information held by the State, subject to constitutional and legal norms, including those on privacy and confidentiality, is an indispensable condition for citizen participation.” Special Summit of the Americas. [Declaration of Nuevo León](#). January 13, 2004. Additionally, in the Declaration of Commitment of Port of Spain, approved in 2009, the Heads of State agreed to continue “to enhance legal mechanisms for information sharing, and we will develop and implement policies that foster a culture of integrity and transparency within public and private offices and institutions,” seeking to ensure that “important progress is made in providing access for our citizens to public information,

Law on Access to Public Information and its Implementation Guide,⁵ in accordance with the international standards attained in the field, is of particular note. The Office of the Special Rapporteur was part of the group of experts appointed to discuss, edit, and finalize these documents adopted by the General Assembly.

4. Over the last decade, a significant number of the region's countries have passed laws on access to public information or enacted reforms to the existing legal framework for the defense of this right. In following this development and the express mandate from the General Assembly on this issue, the Office of the Special Rapporteur has drafted reports setting forth the inter-American standards and systematizing the inter-American case law and doctrine on access to information.⁶ In addition, this office has produced comparative studies of the content of the laws of different Member States and has systematized the decisions of the courts and specialized bodies that have promoted the standards on access to public information in the domestic legal system of each State.⁷

5. This chapter is a continuation of this practice, in fulfillment of the mandate of the Office of the Special Rapporteur to monitor the situation of the right to access to public information in the region and to highlight best practices in the field. As in other annual reports, this type of study aims to contribute to the positive dialogue between the OAS Member States and the bodies of the system, and to the promotion of the best legal and policy frameworks that exist.

6. In this report, the Office of the Special Rapporteur describes the regulatory framework and institutional design of some of the guarantor bodies established in the region to supervise and promote the implementation of the laws on access to public information and the adjudication of disputes related to the disclosure of information. This time, the Office of the Special Rapporteur presents a description of the most important aspects that characterize the guarantor bodies or specialized entities that handle matters concerning access to information in Brazil⁸, Canada, Chile, Colombia, El Salvador, United States, Honduras, Jamaica, Mexico, and Uruguay.⁹

particularly on government revenues, expenditures and budgets." Summit of the Americas. [Declaration of Commitment of Port of Spain](#). OEA/Ser.E. CA-V/DEC.1/09. April 19, 2009.

⁵ OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010. Arts. 51 y ss.

⁶ IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 51. December 30, 2009; IACHR. [2010 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (Access to Information on Human Rights Violations). OEA/Ser.L/V/II. Doc. 5. March 7, 2011.

⁷ IACHR. [2011 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011; IACHR. [2012 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right to Access to Information). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013; IACHR. [2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

⁸ In the region there are other agencies or entities responsible for implementing regulatory provisions regarding access to information that were not analyzed in this report. For example, Antigua y Barbuda (Information Commissioner and Integrity Commission); Argentina (Anti-Corruption Office [*Oficina Anticorrupción*] and the National Bureau for the Protection of Personal Data [*Dirección Nacional de Protección de Datos Personales*]); Bolivia (Ombudsman [*Defensoría del Pueblo*] and the Ministry for Institutional Transparency and Corruption Combating [*Ministerio para la Transparencia Institucional y Lucha contra la Corrupción*]); Ecuador (Ombudsman [*Defensoría del Pueblo*]); Nicaragua (Offices of Access to Information [*Oficinas de Acceso a la Información Pública*]); Panamá (National Authority of Transparency and Access to Information [*Autoridad Nacional de Transparencia y Acceso a la Información*]); Paraguay (Directorate of Access to Public Information [*Dirección de Acceso a la Información Pública*]); Perú (Ombudsman [*Defensoría del Pueblo*]); República Dominicana (Office of Free Access to Public Information [*Oficina de Libre Acceso a la Información Pública*] and the General Directorate of Ethics and Government Integrity [*Dirección General de Ética e Integridad Gubernamental*]); Trinidad y Tobago (Freedom of Information Unit and the Office of the Ombudsman of Trinidad and Tobago). See also, OAS. Department of International Law. Comparative Law Database. [Agencies of Promotion and enforcement of Access to Public Information by Country](#).

⁹ In drafting this report, the general regulatory frameworks on access to information were used as a reference, but the standards on other matters and the more specific regulatory provisions were not. The inter-American legal framework, the international standards on the right to access to information, and the case law of the Inter-American System and studies and relevant monitoring reports were also examined. This information allowed for the development of a questionnaire that was sent to some of the authorities at the institutions responsible for guaranteeing access to information in the countries under study, and another that was sent to civil society organizations involved in the promotion of the right to information in the region. The information submitted was systematized and analyzed for the preparation of this report.

B. The creation of specialized guarantor bodies and the proper implementation of the laws on access to information in the Inter-American System

7. The Office of the Special Rapporteur has asserted that a fundamental aspect of the proper implementation of the OAS Member States' regulatory frameworks pertaining to access to information lies in the establishment of a specialized administrative body created to oversee the enforcement of the law and to resolve the disputes that arise between the right to access to public information and the State's interest in protecting certain information on the basis of the limitations established by law.

8. Indeed, this office has on numerous occasions underscored the right of individuals to a remedy that is simple, easy to access and that its exercise only demands the fulfillment of basic requirements, effective, quick, free or have a low cost enough so as not to discourage request for information, and that allows them to challenge the decisions of public officials that deny the right of access to specific information or simply fail to answer the request.¹⁰

9. The Office of the Special Rapporteur has also stated that in order to fully satisfy society's needs of access to information and create a culture of transparency in the long term, the States not only must provide simple and prompt remedies free of charge in order to challenge denials of access to information, but also must properly implement the legal provisions on access to information. The Office of the Special Rapporteur has stated that this obligation entails at least the following types of actions: (a) design a plan for the implementation of access to public information and the respective budget; (b) adopt rules, policies, and practices that facilitate the proper preservation and administration of information; (c) educate and train the public servants responsible for satisfying the right to access to public information in each one of its facets; and (d) carry out systematic campaigns to disclose to the general public the existence and the means for exercising the right to access to information.¹¹

10. To develop these objectives and attain the effective satisfaction of this right, the Office of the Special Rapporteur has recognized that it is essential to create an autonomous and specialized supervisory body responsible for promoting the implementation of the laws on access to public information and for reviewing and adjudicating government denials of requests for information.¹² Comparative experience and practice have demonstrated the importance of having this type of independent and specialized authority within the different legal systems to prevent the dilution of efforts to enforce the laws on access to public information. The foregoing, of course, is without prejudice to the timely judicial oversight of decisions that deny access to information. In this respect, in order to strengthen the institutional supervisory structure for the implementation of laws on access to public information, the Office of the Special Rapporteur has urged the States to bring their laws into line with the highest standards on the matter, such as those recognized by the OAS General Assembly in Resolution AG/RES. 2607 (XL-O/ 10) adopting the "Model Inter-American Law on Access to Public Information."¹³

¹⁰ IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (the Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Paras. 26; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 205.

¹¹ IACHR. [2011 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 313-315.

¹² IACHR. [2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 50. December 31, 2013. Para. 9 and ss; IACHR. [2011 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 206-208. See also: Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 14.

¹³ IACHR. [2013 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter V (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 50. December 31, 2013. Para.35; OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010.

11. Indeed, the Model Inter-American Law on Access to Public Information and its Implementation Guide provide for the creation of an Information Commission responsible for the effective implementation of the law.¹⁴ In this respect, the Implementation Guide to the Model Law underscores the importance of having a supervisory body that is capable of creating uniform public information policies for all of the agencies subject to the law, and that also has the authority to coordinate the efforts of different departments, train human resources, raise public awareness, identify and disseminate best practices, advise public servants, and develop mechanisms to facilitate the management of requests for information.¹⁵

12. This Information Commission, in addition to implementing the law and public policies on transparency and access to information, must have the power to “review any information held by a public authority, including through on-site inspection.”¹⁶ Similarly, the review mechanisms must be independent of political influence, accessible to requesters without the need for legal representation, without overly formalistic requisites, timely and, preferably, specialized. The Implementation Guide provides that such body will operate more effectively if it has been created by law, is specialized, and has sufficient human and financial resources to perform its duties.

13. The Inter-American System’s promotion of the right to access to public information has changed the scenario for the right to access to information in the hemisphere. Many countries have enacted laws and policies on access and transparency: a total of 22 countries in the Americas have passed public information access laws, and to different extents have either created entities to develop and enforce this right or given existing bodies the power to protect and guarantee it.¹⁷

14. The variety of institutional designs is related to the degree of independence and autonomy of the agency, its composition and mechanisms for the appointment of its authorities, its powers or duties to guarantee access to information, the accessibility of its mechanisms, and its efficiency in settling disputes.

15. Indeed, as discussed in this report, in some States the laws provide for a specialized mechanism for the guarantee of the right to access to information before an autonomous, independent, and specialized administrative agency; in other places, the law provides for the creation of specialized

¹⁴ OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010. Art 52 and ss.

¹⁵ Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 14.

¹⁶ OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). June 8, 2010. Art 62.

¹⁷ Antigua y Barbuda. [Freedom of Information Act](#). November 5, 2004; Belize. [Freedom of Information Act](#), Chapter 13. Available for consultation at: <http://www.belize.gov.bz/web/lawadmin/index2.html>; Brazil. [Palácio do Planalto/Presidência da República. Lei 12.527](#). November 18, 2011; Canada. Government of Canada/Justice Laws Website. [Access to Information Act \(R.S.C., 1985, c. A-1\)](#); Chile. Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009; Colombia. Secretaría General del Senado. [Ley 1712 de 2014. Diario Oficial No. 49.084](#). March 6, 2014; Ecuador. [Ley No. 24. Ley Orgánica de Transparencia y Acceso a la Información Pública de Ecuador](#). Registro Oficial Suplemento 337. May 18, 2004; El Salvador. Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo N° 391. April 8, 2011; United States Department of Justice. [Freedom of Information Act, 5 U.S.C. § 552](#); Guatemala. Congreso de la República de Guatemala. [Ley de Acceso a la Información Pública de Guatemala. Decreto No. 57-2008](#). October 23, 2008; Guyana. OEA. [Access to Information Act](#). Act No. 21 de 2011. September 15, 2011; Honduras. Congreso Nacional/ Instituto de Acceso a la Información Pública. [Ley de Transparencia y Acceso a la Información Pública](#). Decreto Legislativo No. 170 -2006. Diario Oficial La Gaceta. December 30, 2006; Jamaica. Access to Information Unit. [Access to Information Act](#). Act No. 21-2002. July 22, 2002; México. Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental](#). June 11, 2002; Nicaragua. [Ley 621 de 2007. Ley de Acceso a la Información Pública](#). Published on La Gaceta No. 118 of July 22, 2007; Panamá. [Ley N° 6. Ley de Transparencia en la Gestión Pública](#). January 22, 2002; Panamá. OEA/Gobierno Nacional de Panamá. [Gaceta Oficial Digital No. 27275-A](#). April 26, 2013; Paraguay. Congreso Nacional/Biblioteca Archivo Central. [Ley No. 5.282. De libre acceso ciudadano a la información pública y transparencia Gubernamental](#). September 18, 2014; Perú. [Ley No. 27.806. Ley de Transparencia y Acceso a la Información Pública](#). Decreto Supremo No. 043-2003-PCM. April 22, 2003; República Dominicana. Comisión Nacional de Ética y Combate a la Corrupción. [Ley General de Libre Acceso a la Información Pública. No. 200-04](#). February 25, 2005; San Vicente y las Grenadinas. Freedom of Information Act, 2003. June 27, 2003. Available for consultation at: http://www.rti-rating.org/files/pdf/Saint_Vincent_and_the_Grenadines.pdf; Trinidad y Tobago. [The Freedom of Information Act, 2009. Act No. 26 of 1999](#). July 16, 1999; Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Published on Diario Oficial No. 27607 of November 7, 2008.

administrative agencies that do not issue binding decisions, or assign the defense of this right to authorities such as the Ombudsman of the People or Office of the Attorney General as part of their duties.¹⁸

16. In short, the countries of the Americas have begun to develop—slowly and laboriously—a community of public entities for the promotion and protection of access to public information.¹⁹ The paragraphs below provide descriptive information on the design and practices of several such supervisory bodies in the hemisphere, in terms of their features, powers, and duties that are considered key to the effective exercise and enforcement of the right to access to information, such as: the independence and autonomy of the bodies; their composition and mechanisms for the appointment and removal of their authorities; the duties they perform; the mechanisms they have developed to manage requests, monitor compliance with transparency obligations, compile statistics, and to classify and declassify information.

C. Independence and autonomy of specialized entities

17. The Implementation Guide for the Model Inter-American Law on Access to Public Information recognizes that independence is essential for the success of entities such as the Information Commission. In this regard, it states that “A series of factors may determine the real (or perceived) independence of this office and its officers, including the manner of selecting the Commissioners, their term limit and procedures for dismissal, from which branch of government they receive their powers and to whom they report, and the autonomy in budgeting.”²⁰

18. Indeed, the independence and autonomy of an entity can be evaluated according to both external and internal factors. The external factors concern the manner in which the body has been created and established or the way in which its mandate to supervise and enforce the access to information laws was granted. It concerns the characteristics conferred upon the body prior to its operation, at the time it was established or received its mandate. One of these aspects is the legal basis and operational autonomy conferred upon the entity. In this regard, the instruments of the Inter-American System provide that “Regardless of which system is selected, it is vital that the oversight body or unit enjoy a statutory mandate.”²¹

¹⁸ IACHR. [2011 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69. December 30, 2011. Para. 241.

¹⁹ The *Red de Transparencia y Acceso a la Información Pública (RTA)* is a network of bodies and agencies in Latin America and the Caribbean engaged in the supervision of transparency and the right to access to public information. Full members participating in RTA are: Bolivia’s Ministry for Institutional Transparency and Corruption Combating [*Ministerio para la Transparencia Institucional y Lucha contra la Corrupción*]; the Office of the Comptroller General of Brazil [*Controladoria-Geral da União*]; Council for Transparency of Chile [*Consejo para la Transparencia*]; the Ombudsman of Ecuador [*Defensoría del Pueblo*]; the Institute for Access to Public Information of El Salvador [*Instituto de Acceso a la Información Pública*]; Federal Institute for Access to Public Information and Data Protection of Mexico [*Instituto Federal de Acceso a la Información Pública y Protección de Datos*]; the Ombudsman of Peru [*Defensoría del Pueblo*]; and the Unit of Access to Public Information of Uruguay [*Unidad de Acceso a la Información Pública*]. Associate members: The Government of the Autonomous City of Buenos Aires, represented by the Undersecretariat of Public Affairs of Argentina [*Subsecretaría de Asuntos Públicos de Argentina*]; the Provincial Anti-Corruption and Transparency Directorate of the Public sector of the Ministry of Justice and Human Rights of Santa Fe, Argentina [*Dirección Provincial de Anticorrupción y Transparencia del sector Público del Ministerio de Justicia y Derechos Humanos de Santa Fe, Argentina*]; Undersecretary of Transparency and Corruption of El Salvador [*Subsecretaría de Transparencia y Anticorrupción*]; The Presidential Commission for Transparency and Guatemala’s Electronic Government [*Comisión Presidencial de Transparencia y Gobierno Electrónico de Guatemala*]; High Level Anti-Corruption Commission of the Presidency of Ministers of Peru [*Comisión de Alto Nivel Anticorrupción de la Presidencia de Ministros*]. Furthermore, participating as adherent members: the Secretary of Transparency of Colombia [*Secretaría de Transparencia*]; EUROsocial Regional Cooperation Program; and the Organization of American States. In 2014 they joined as new members: The Office of the Inspector General of Colombia [*La Procuraduría General de la Nación*], the Office of Human Rights Ombudsman of Guatemala [*Institución del Procurador de Derechos Humanos*] and the Institute of Access to Public Information of Honduras [*Instituto de Acceso a la Información Pública*]. Red de Transparencia y Acceso a la Información Pública. [Quiénes somos](#); Red de Transparencia y Acceso a la Información Pública. November 13, 2014. [Red de Transparencia y Acceso a la Información Pública, RTA: La agrupación de órganos garantes en materia de transparencia y acceso a la información se posiciona como la más importante de América Latina.](#)

²⁰ Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 20.

²¹ Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 14.

19. Among other external aspects to consider are the body's position within the organizational flow chart and its geographic coverage, the rules for the selection and removal of its authorities, and the existence of rival organizations—that is, organizations that may challenge the body's performance of its duties.

20. The internal characteristics are related to the actions taken by the organization once its members have been selected. From this perspective, the body's independence and autonomy will depend upon the budget it receives for its activities, the staff it has to perform its duties, and the degree of specialization of its staff.

1. Legal basis, legal personality, and operational autonomy

21. In Brazil, Public Information Access Law (Law No. 12527)²² was enacted in 2011 and the regulations thereto were issued by the Federal Government by decree on 2012.²³ Both the law and the regulations state that the Office of the Comptroller General (CGU) [*Controladoria-Geral da União*] is responsible for decisions on remedies and complaints, and for monitoring the implementation of the Public Information Access Law by the Federal Executive Branch.²⁴ The Office of the Comptroller General was created by Law No.10.683²⁵ on 2003 and is the body responsible for providing direct and immediate assistance to the President of the Republic on matters concerning the defense of public assets and increased transparency. The CGU's fundamental strategic areas include internal oversight; public hearings; inspection; the prevention and fight against corruption, and advocacy.²⁶

22. In Canada, the Office of the Information Commissioner²⁷ was created in 1983 with the enactment of the Access to Information Act.²⁸ The entity is headed by a Commissioner with federal jurisdiction and its goal is to assist individuals and organizations who believe that federal institutions have not respected their rights under the Act. The Information Commissioner is an "Agent of Parliament"²⁹, independent and reports directly to Parliament. The Office of the Information Commissioner investigates complaints about federal institutions' handling of access requests.³⁰

23. In Chile, Law 20285 on Access to Public Information created the Transparency Council [*Consejo para la Transparencia*]³¹ (CPLT) as "an autonomous public law entity, with its own legal personality and assets" (Art. 31) with the objective of "promoting transparency in government, overseeing compliance with the legal provisions on transparency and the public disclosure of information held by Government bodies, and guaranteeing the right to access to information" (Art.32).³²

²² Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). November 18, 2011.

²³ Brazil. Câmara dos Deputados. [Decreto 7.724](#). May 16, 2012.

²⁴ As will be explained below, the Access to Information Law also created a Mixed Committee with jurisdiction to decide appeals challenging decisions of the Office of the Comptroller General that deny access to information, and to rule on denials of requests to declassify information issued by the Ministers of State.

²⁵ Brazil. Palácio do Planalto/Presidência da República. [Lei 10.683](#). 28 de mayo de 2003. Law that establishes the creation of the Office of the Comptroller General [*Contraloría General de la Unión*].

²⁶ Brazil. Controladoria-Geral da União/ Presidência da República. [Institucional](#)

²⁷ Canadá. Office of the Information Commissioner of Canada. [Who we are](#)

²⁸ Canadá. Government of Canada/Justice Laws Website. [Access to Information Act. \(R.S.C., 1985, c. A-1\)](#).

²⁹ The "Agents of Parliament" oversee the activities of government in accordance with their specific mandate. Other agents deal with audits, lobbying, official languages, protection of personal information, elections and public sector integrity. Canada. Parliament of Canada. [Officers and Officials of Parliament](#).

³⁰ Canada. Office of the Information Commissioner of Canada. [What we do](#). Canadá. Office of the Information Commissioner of Canada. [Who we are](#).

³¹ Consejo para la Transparencia. [¿Qué es el Consejo para la Transparencia?](#).

³² Chile. Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009; Chile.

24. In Colombia, on March 6, 2014, the President of the Republic enacted the Transparency and Access to National Public Information Law.³³ The Transparency and Right to Access National Public Information Act [*Ley de Transparencia y del Derecho de Acceso a la Información Pública Nacional*] provides that the Public Ministry [*Ministerio Público*] headed by the Office of the Inspector General [*Procuraduría General de la Nación*] “is responsible for ensuring proper compliance with the obligations set forth in the law”, and assigns it specific functions to do so. Among these functions, the promotion of the awareness and application of the law; the imposition of disciplinary sanctions; the promotion of government transparency; and the issuance of reports, statistics, and papers regarding compliance with the law. According to the Law, the entities of the Public Ministry will create an “office with all necessary resources” to comply with its functions. On May 8, the Office of the Inspector General [*Procuraduría General de la Nación*], responsible for enforcing legal provisions, issued Resolution No. 146, which created the group responsible for ensuring compliance with the obligations stipulated in the Law.³⁴ On September 5, the Transparency and Access to Information Committee was created within the Public Ministry. Some of the functions of this Committee are: to coordinate actions and joint efforts of the Public Ministry in this issue; b) establish an action plan and annual goals for the compliance of the functions assigned to Public Ministry by law; c) monitor and evaluate compliance by the Public Ministry, as well as by those subject to the law³⁵.

25. In the case of El Salvador, the Public Information Access Act³⁶ created the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*]³⁷ as a “public institution with legal personality, its own assets, and administrative and financial autonomy” (Art. 51). According to the Act, the Institute is an independent entity that does not report to any State body, and has national jurisdiction that includes oversight over the three branches of government, “their offices, autonomous institutions, municipalities, and any other entity or body that manages public resources or government assets, or carries out acts of public administration in general” (Art. 7 and 58).

26. In the United States, following the 2007 amendment of the Freedom of Information Act (FOIA), the Office of Government Information Services (OGIS) was created as an independent office within the National Archives and Records Administration. This Office serves as a bridge between requesters and agencies. It is said to be “the Federal FOIA Ombudsman.” OGIS responsibilities include the review of policies and procedures of administrative agencies under the FOIA and the compliance with FOIA agencies. Moreover, OGIS can recommend policy changes to Congress and the President to improve the administration of FOIA. This Office may also offer mediation services to resolve disputes between persons making FOIA requests and agencies (non-exclusive alternative to litigation). In this sense, it may issue advisory opinions if mediation has not resolved the issue.³⁸ The OGIS Director reports to the Archivist of the United States and works with all of the administrative agencies of the Executive Branch.³⁹ Moreover, the United States also has the Office of Information Policy of the Department of Justice and the Office of Government Information Services. This Office⁴⁰ is responsible for developing guidance for Executive Branch agencies on the FOIA, for ensuring that the President’s FOIA Memorandum⁴¹ and the Attorney General’s FOIA Guidelines⁴² are fully implemented across the government, and for overseeing agency compliance with the law.⁴³

³³ Colombia. Secretaría General del Senado. [Ley 1712 de 2014. Diario Oficial No. 49.084](#). March 6, 2014. On September 2014, the Law took effect for all entities at the national level and will take effect on March 6, 2015 for regional authorities.

³⁴ Procuraduría General de la Nación. [Resolución 146](#). May 8, 2014. Colombia. Procuraduría General de la Nación. [Grupo de Transparencia y del Derecho de Acceso a la Información Pública Nacional](#).

³⁵ Procuraduría General de la Nación. [Resolución 282](#). September 5, 2014.

³⁶ Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo N° 391. April 8, 2011. The Act was approved by Decree 534 dated April 8, 2011 and became effective on May 8, 2011.

³⁷ El Salvador. [Instituto de Acceso a la Información Pública](#).

³⁸ United States. United States Department of Justice. [Freedom of Information Act, 5 U.S.C. § 552](#). Section (h)(1).

³⁹ United States. National Archives and Records Administration/ Office of Government Information Services. [About OGIS](#).

⁴⁰ United States. The United States Department of Justice/Office of the Information Policy. [About the Office](#).

⁴¹ United States. The United States Department of Justice. Presidential Documents. [Memorandum of January 21, 2009/Freedom of Information Act](#). January 26, 2009.

27. In Honduras, the Institute for Access to Public Information [*Instituto de Acceso a la Información Pública*] (IAIP) was created by the Transparency and Access to Public Information Act.⁴⁴ According to the Act, the Institute is “a decentralized government body with operational, decision-making, and budgetary independence, responsible for promoting and facilitating citizen access to public information, as well as regulating and supervising the procedures of the institutions subject to this law with respect to the protection, classification, and safekeeping of public information in accordance with this Act” (Art. 8). As a decentralized body, the Institute does not report to any other State entity. It has national jurisdiction and the authority to create or set up regional offices in places where there is a proven need for its operation.⁴⁵ Furthermore, on 2014 Presidential Office of Transparency, Modernization, and Reform of the State⁴⁶ [*Dirección Presidencial de Transparencia, Modernización y Reforma del Estado*] was created with the goal of strengthening transparency in institutions through a process of formulating and proposing policies and programs of transparency.⁴⁷ Moreover, according to the law for the Classification of Public Documents related to National Security of 2014, the National Council for Defense and Security⁴⁸ [*Consejo Nacional de Defensa y Seguridad*] is responsible for classifying as reserved, confidential, secret and top secret information regarding defense and national security.⁴⁹

28. In Mexico, the Federal Institute for Access to Information [*Instituto Federal de Acceso a la Información*] (IFAI) was created in 2003 by the Federal Transparency and Access to Government Information Act.⁵⁰ In 2010, the entity changed its name to the Federal Institute for Access to Public Information and Data Protection, with jurisdiction to also guarantee the right to the protection of personal data. In February 2014, a constitutional amendment on transparency was enacted which, both broadened and strengthened Mexico’s system for access to information and gave the Institute constitutional autonomy.⁵¹ One notable characteristic that the IFAI has its autonomy guaranteed in the Constitution. Article 6(A)(VIII) of the Constitution of the United Mexican States now states that “The Federation shall have an autonomous, specialized, impartial, collegial body that has its own legal personality and assets, full technical and management autonomy, decision-making power over budget execution, and the ability to determine its internal organization, that is responsible for enforcing the right to access to public information and the protection of personal data in the

⁴² United States. The United States Department of Justice. Office of the Attorney General. [Memorandum for Heads of Executive Departments and Agencies](#). March 19, 2009.

⁴³ United States. The United States Department of Justice/Office of the Information Policy. [Meet the director](#).

⁴⁴ Honduras. Congreso Nacional/ Instituto de Acceso a la Información Pública. [Ley de Transparencia y Acceso a la Información Pública](#). Decreto Legislativo No. 170 -2006. Diario Oficial La Gaceta. 30 de diciembre de 2006.

⁴⁵ Honduras. La Gaceta/Instituto de Acceso a la Información Pública. [Reglamento de la Ley de Transparencia y Acceso a la Información Pública](#). March 6, 2008. Article 11.

⁴⁶ The Presidential Office of Transparency, Modernization, and Reform of the State was created by Executive Order PCM 001-2014 of February 3, 2014, as an administrative body within the Office of the President of the Republic, attached to the Office of the Minister of State in the Bureau of General Government Coordination, whose Director shall be appointed and removed at the will of the President of the Republic. Honduras. La Gaceta/Instituto Hondureño de Turismo. [Decreto Ejecutivo PCM-001-2014](#). February 22, 2014.

⁴⁷ Honduras. Secretaría de Coordinación General de Gobierno. [Dirección Presidencial de Transparencia, Modernización y Reforma del Estado](#).

⁴⁸ The National Council for Defense and Security is composed by: The President, who shall preside; President of the National Congress; the President of the Supreme Court; the General Prosecutor; The Secretary of State for Security; and Secretary of State in the Department of National Defense. Honduras. Poder Judicial de la República de Honduras. [Ley Especial del Consejo Nacional de Defensa y Seguridad](#). [Decreto No. 239-2011](#). Published on La Gaceta No 32.692 of December 12, 2011.

⁴⁹ Honduras. La Gaceta/Tribunal Superior de Cuentas. [Ley para la Clasificación de Documentos Públicos relacionados con la Seguridad Nacional](#). [Decreto No. 418-2013](#). Published on La Gaceta No 33.373 on March 7, 2014.

⁵⁰ México. Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental](#). June 11, 2002.

⁵¹ The enactment of the constitutional amendment created a legislative agenda for the drafting of a number of general laws (the General Transparency Act, the General Archives Act), as well as the amendment of the Federal Transparency and Access to Government Information Act and the Federal Law on the Protection of Personal Data Held by Private Parties. Until this legislation passes, the IFAI-OA must continue to carry out its duties in accordance with the existing law, that is, the law that provided for its creation in 2003. México. Diario Oficial de la Federación. [Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de transparencia](#). February 7, 2014.

possession of parties subject to the law and in the terms established by law.”⁵² The scope of the IFAI-OA’s purview is federal.

29. In the case of Jamaica, the Access to Information Unit—which operates within the Office of the Prime Minister—was established to monitor and guide the government in the implementation of the Access to Information Act passed in 2002.⁵³ The Unit provides guidance and training for government bodies on how to interpret and administer the Act; identifies and address difficult or problematic issues arising from implementation of the Act; provides policy recommendations on how best these problems may be addressed.⁵⁴ The work of this Unit is complemented by the actions undertaken by the Appeal Tribunal⁵⁵ created in December 2003 for the exclusive adjudication of claims alleging the denial of the right to information. The Access to Information Unit has been mandated to provide logistical and secretarial support to the Appeal Tribunal.⁵⁶

30. In Uruguay, the Law on the Right of Access to Public Information⁵⁷ also established a Public Information Access Unit [*Unidad de Acceso a la Información Pública*] (UAIP) within the Agency for the Development of e-Government Management and the Information and Knowledge Society [*Agencia para el Desarrollo del Gobierno de Gestión Electrónica y la Sociedad de la Información y del Conocimiento*] (AGESIC) responsible for monitoring compliance with the law.⁵⁸ Law 19.178⁵⁹ granted additional powers to the Unit regarding the authority to declassify information which the classification process does not comply with the provisions set forth in the regulations. The Public Information Access Unit is a decentralized body of the AGESIC, which operates within the sphere of the Office of the President of the Republic. The Unit has technical autonomy and is national in scope.

2. Budget

31. As stated previously, independence and autonomy can also be evaluated on the basis of its budget sovereignty. In this respect, the Implementation Guide to the Model Inter-American Law asserts that “[...] budget sovereignty is a significant component to overall independence and autonomy. If the Commission is vested with its own line item in the budget, it is less obliged to a specific ministry or agency for proposing and promoting its financial needs. In cases, for example, where an executive branch ministry must submit the Commission’s budget for legislative approval, there is an inherent dependency created with that ‘host’ agency. Fiscal autonomy is afforded in the Model Law by allowing the Commission to present its budget requirements directly to the legislature.”⁶⁰

⁵² México. Cámara de Diputados. H. Congreso de la Unión. [Constitución Política de los Estados Unidos Mexicanos](#). February 7, 2014; México. Diario Oficial de la Federación. [Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de transparencia](#). February 7, 2014.

⁵³ Jamaica. Access to Information Unit. [About Us](#); Jamaica. Access to Information Unit. [Access to Information Act](#). Act No. 21-2002. July 22, 2002.

⁵⁴ Jamaica. Access to Information Unit. [About Us](#); Jamaica. Jamaica Information Service. [Access to Information Unit](#).

⁵⁵ Jamaica. Access to Information Unit. [Access to Information \(Appeal Tribunal\) Rules, 2005](#).

⁵⁶ Jamaica. Ministry of Local Government & Community Development. [Access to Information/The Appel Tribunal & Secretariat](#).

⁵⁷ Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 18.381. Derecho de Acceso a la Información Pública](#). Published on the Diario Oficial No. 27607 November 7, 2008. Article 19.

⁵⁸ Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 19.178](#). December 18, 2013. Published on the Diario Oficial No. 28879 of January 18, 2014.

⁵⁹ Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Published on the Diario Oficial No. 27607 November 7, 2008.; Uruguay. Asamblea General de la República Oriental del Uruguay. Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 19.178. Derecho de Acceso a la Información Pública](#). December 18, 2013. Published on the Diario Oficial No. 28879 of January 18, 2014.; Uruguay. Unidad de Acceso a la Información Pública. [Quiénes somos](#).

⁶⁰ Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 21.

32. In this regard, in States like Canada,⁶¹ Chile,⁶² El Salvador,⁶³ Honduras,⁶⁴ and Mexico,⁶⁵ the law gives the specialized supervisory and enforcement agency in charge of overseeing the Access Law the authority to design, present, and manage its own budget. In the case of bodies that do not have such power, the manner in which they manage each fiscal year and negotiate their annual budgets will determine the degree of autonomy they enjoy. In some countries of the region like Brazil,⁶⁶ Colombia, and Uruguay,⁶⁷ the budget of the specialized supervisory and enforcement agency depends upon the State body to which it reports.

33. Having a sufficient budget is essential for the orderly management of the body and the discharge of its missions and duties. On this topic, the Implementation Guide states that “The ultimate risks of under-resourcing the program are a lack of credibility in the program and negative public perception of the transparency and openness of government. Lack of resources will also expose the public authority to complaints.” In this respect, the Guide recommends designing a budget that takes account of: the scope of the law, the expected demand of requests, an estimate of the staff requirements to cover this demand, the inclusion of activities designed to enhance the management of information, record-keeping and the use of technology, staff training and organizational capacity-building, and the stipulation of promotional activities.⁶⁸

3. Structure of the implementing authority and mechanisms for the appointment of authorities

34. As established in the Implementation Guide to the Model Inter-American Law, the selection process and the threshold assents for the appointment of authorities are key to the autonomy, political differentiation, and legitimacy of the body charged with ensuring access to information. Both the selection of

⁶¹ The 2014 annual budget of the Office of the Information Commissioner, which has budget autonomy, was \$11.2 million. The execution of the budget is examined annually by the chamber and monitored by the Treasury Board Secretariat. Canada. Office of the Information Commissioner of Canada. [Future-Oriented Statement of Operations](#).

⁶² The Transparency Council reportedly has an annual budget of US\$ 4,606,752. In addition, it reportedly has 117 staff members. Chile. Dirección de Presupuesto. Ley de presupuesto del Sector Público año 2014. [Ley No. 20.713. Publicada en el Diario Oficial del 18 de diciembre de 2013](#). P. 28; Information received from the Transparency Council in Chile. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶³ The Institute for Access to Public Information has its own assets and enjoys administrative and financial autonomy. The Institute reportedly had a budget of US\$ 885,565 for the 2014 fiscal year and a 35-person staff. El Salvador. Instituto de Acceso a la Información Pública. [Presupuesto 2014 Instituto de Acceso a la Información Pública](#); El Salvador. Instituto de Acceso a la Información Pública. [Memoria de Labores 2013-2014](#). September 29, 2014. Information received from the Institute for Access to Public Information in El Salvador. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁴ The Institute for Access to Public Information, which has budget autonomy, was reportedly allocated a budget of approximately US\$ 1,500,000 from the General Budget of the Republic for the 2014 fiscal year. The Institute is said to employ 55 public servants. Honduras. Secretaría de Finanzas/La Gaceta. [De los Ingresos de la Administración Pública. Decreto No. 360-2013](#). January 24, 2014; Information received from the Institute for Access to Public Information in Honduras. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁵ The budget allocated to the IFAI-OA for 2014 was approximately \$607 million Mexican pesos (approximately US\$ 44,792,254). The agency reportedly has 542 authorized staff positions. México. Instituto Federal de Acceso a la Información Pública y Protección de Datos. [11 Informe de Labores al H. Congreso de la Unión 2013](#); Information received from the IFAI-OA in Mexico. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁶ In 2014, the National Congress allocated a budget of \$ 810,492,921.00 reales (approximately US\$ 328,600,000) to the Office of the Comptroller General [*Controladoria-Geral da União*]. This sum was reportedly earmarked for the entire Office of the Comptroller General—which does not have budget autonomy—so it is impossible to identify precisely how much is designated for the implementation of the Information Access Law insofar as it does not have a specific item. Around 35 people work directly with the Information Access Law in the central body of the Office of the Comptroller General. Similarly, 64 staff members, who work in the regional units of the CGU, reportedly work on matters related to the Information Access Law as part of their activities. Brazil. Palácio do Planalto/Presidência da República. [Anexo I – Receita dos Orçamentos Fiscal e da Seguridade Social por Categoria Economica e Fonte](#); Information received from the Contraloría General de la Unión. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁷ The Public Information Access Unit reportedly has a budget and staff provided by the Agency for the Development of e-Government Management and the Information and Knowledge Society, to which it reports. Information received from the Public Information Access Unit in Uruguay Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁸ Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010.

authorities and the rules for their removal can help shield the body from political influence. The numerical composition, in the case of collegial bodies, and the duration of the mandate can also be factors in assessing the body's independence and autonomy.

35. According to the Guide, "the Model Law calls for the selection of an odd number of Commissioners – such as five – in order to facilitate voting and to have a sufficient number of Commissioners to diminish potentials for political capture. [...]Once appointed, the term of office becomes a key consideration for continuing independence. Periods of appointment are in many respects a balancing act. If term limits are too short, then the Commissioner may be more concerned with pleasing those responsible for subsequent appointments than in serving the duties of his or her post. On the other hand, if terms are too long then officers may be less responsive to the shifting trends of openness and needs of all constituencies. At a minimum, the term of service should be longer than the term of the President or appointing body, thus reducing potential for politicization. The length of term is relevant not just to ensure sufficient independence, but also the functioning of the Commission. As previously noted, enforcing the right of access to information often necessitates some specialization, which takes time to acquire."⁶⁹

36. The rules for the removal of a commissioner are one of the most important elements in guaranteeing the continued independence of the Commission. According to the Implementation Guide, in general, "members of the enforcement body should only be suspended or removed 'for reasons of incapacity or behavior that renders them unfit to discharge their duties.'" Such reasons, as the Model Law provides,⁷⁰ may include a criminal conviction or an illness that affects the person's ability to perform his or her duties.

37. There are a variety of systems in the region for the appointment and composition of authorities for the monitoring of access to information. The Information Commissioner of Canada is appointed by the Governor in Council after consultation with the leader of every recognized party in the Senate and House of Commons and approval of the appointment by resolution of the Senate and House of Commons. The term of office is 7 years—longer than the duration of an administration—and can be renewed for one term. The Commissioner may be removed from office at any time by the decision of the Governor in Council in consultation with Parliament.⁷¹

38. In Chile, the four members of the Directive Council of the Transparency Council are appointed by the President of the Republic upon the assent of a two-thirds majority of the Senate. Their term of office is six years, and they can be reappointed for one additional term only (Art. 36). They can be removed by the Supreme Court at the request of the President of the Republic, a simple majority of the House of Representatives, or at the request of ten members of the House of Representatives (Art. 38).⁷²

39. In Mexico, the IFAI Commissioners are appointed by the Senate, following public consultation and nomination by the parliamentary groups, by a two-thirds majority vote of those members present. The President of the Republic may object to the appointment within ten business days. The commissioners' term of office is seven years, and they can be removed from their positions by means of impeachment.⁷³

40. In El Salvador, the Institute for Access to Public Information is managed by five commissioners selected by the President of the Republic from short lists of three candidates nominated by different sectors of society: duly registered business associations; duly registered professional associations;

⁶⁹ Permanent Council of the OAS. Committee on Political and Juridical Affairs. [Commentary and Guide for Implementation for the Model Inter-American Law on Access to Public Information](#). OEA/Ser.G. CP/CAJP-2841/10. April 23, 2010. P. 20.

⁷⁰ OAS General Assembly. [Resolution AG/RES. 2607 \(XL-O/10\). Model Inter-American Law on Access to Public Information](#). Article 12. June 8, 2010. Article 59.

⁷¹ Canadá. Government of Canada/Justice Laws Website. [Access to Information Act. \(R.S.C., 1985, c. A-1\)](#). Section 54.

⁷² Chile. Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009.

⁷³ México. Cámara de Diputados del H. Congreso de la Unión. [Constitución Política de los Estados Unidos Mexicanos](#). Article 6.

the University of El Salvador and private universities duly authorized; duly registered journalists associations; unions authorized by the Ministry of Labour and Social Welfare [*Ministerio de Trabajo y Previsión Social*]. According to the law, the candidates on the short lists are chosen via a “general assembly” convened by the Executive Branch. The commissioners’ term of office is 6 years, and they cannot be reelected.⁷⁴

41. In Honduras, the Institute for Access to Public Information is composed of three commissioners elected by the National Congress, through a two-thirds vote of its members. They have a five-year term of office. The members are elected from among candidates nominated by: the President of the Republic; the Attorney General of the Republic; the National Commissioner of Human Rights; National Convergence Forum [*Foro Nacional de Convergencia*]; and the Superior Court of Auditors [*Tribunal Superior de Cuentas*]. They have a mandate for 5 years and can only be replaced in the event of legal or physical impossibility, when their actions are incompatible with the nature of the Institute’s duties (Art. 9). The candidates for commissioner are interviewed at public hearings by a committee that includes all of the political parties represented in the National Congress, who present a short list of five candidates to the full session of the Legislative Chamber for the selection of the three commissioners who will head the entity.⁷⁵

42. Although the Access to Information Unit of Jamaica operates under the Office of the Prime Minister, the Appeal Tribunal is composed through a special selection mechanism. The five members of the Tribunal are appointed by the Governor-General after a series of consultations with the Prime Minister and the leader of the opposition in Parliament. The members of the Tribunal have a 5-year term of office and can be reelected. By law, the members of the Tribunal can be terminated by the Governor-General upon consultation with the Prime Minister and the leader of the opposition in Parliament. They may terminate the appointment of any member of the Tribunal who, among others, becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health; is convicted and sentenced to a term of imprisonment; is convicted of any offence involving dishonesty; or who fails to carry out the functions conferred or imposed on him by the Act.⁷⁶

43. Uruguay’s Public Information Access Unit is directed by a Executive Committee [*Consejo Ejecutivo*] conformed by has three members: the Executive Director of the Agency for the Development of e-Government Management and the Information and Knowledge Society [*Agencia para el Desarrollo del Gobierno de Gestión Electrónica y la Sociedad de la Información y del Conocimiento*] (AGESIC); and two persons appointed by the Executive Branch who can ensure independence of opinion, efficiency, objectivity, and impartiality. The appointed members rotate through the position of President of the Committee. The removal of the members is given by “ineptitude, omission, or the commission of an offense, in accordance with due process guarantees.” The authorities of the Executive Committee are appointed for four years, with the exception of the Executive Director of the AGESIC. The authorities may be reappointed (Art. 19).⁷⁷

D. Powers and duties to guarantee access to information

1. Authority to resolve disputes

44. The evaluation of the entity’s ability to guarantee access to information must consider whether they have specific—not ambiguous—duties and clear jurisdiction vis-à-vis the authority of other bodies. In the case of the guarantor bodies responsible for ensuring access to information, a key point of

⁷⁴ El Salvador. Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo N° 391. April 8, 2011. Article 53.

⁷⁵ Honduras. Congreso Nacional/ Instituto de Acceso a la Información Pública. [Ley de Transparencia y Acceso a la Información Pública](#). Decreto Legislativo No. 170 -2006. Diario Oficial La Gaceta. December 30, 2006; Information received from the Institute for Access to Public Information in Honduras. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁷⁶ Jamaica. Access to Information Unit. [Access to Information Act](#). Act No. 21-2002. July 22, 2002. Section 32.

⁷⁷ Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Publicada en el Diario Oficial No. 27607 de 7 de noviembre de 2008.

authority lies in their ability to resolve disputes regarding the provision of information through binding decisions. In this regard, the Inter-American Court has underscored that the State, “guarantee of the effectiveness of an appropriate administrative procedure for processing and deciding requests for information, which establishes time limits for taking a decision and providing information, and which is administered by duly trained officials.”⁷⁸

45. In Brazil, the Law on Access to Public Information and its regulations provide that the Office of the Comptroller General [Controladoria-Geral da União] (CGU) is responsible for decisions about appeals and complaints about access to information from the Federal Executive. Prior to going to the Comptroller, the applicant must go to the hierarchically higher authority to the one which refused the access to information. If the superior refuses the access to information, the applicant may appeal the decision to the supreme authority of the agency or entity. Subsequently, the applicant may appeal to the CGU and if it refuses the access to information, he/she may appeal to the Joint Committee on Revaluation of Information (see supra para. 56).⁷⁹

46. In Canada, the Information Commissioner’s powers include investigating claims (Section 30). For the discharge of this function, the Law grants the Commissioner the authority to summon and require the appearance of individuals before the entity to provide sworn statements or testimony and to produce documents or evidence that the Commissioner deems necessary for the complete investigation and examination of the claim, as well as the authority to access all necessary documents under the control of a government agency during an investigation (Section 36). As an ombudsperson, the Commissioner may not order a complaint to be resolved in a particular way, and therefore his/her recommendations are not binding, though she/he may refer a case to the Federal Court for resolution. After the investigation and the recommendations, any persona who has been refused access to information may apply to the Court directly (Section 41).⁸⁰

47. In Chile, the duties of the Transparency Council include monitoring compliance with the provisions of the Access to Information Act and assessing penalties in cases of their violation. The most relevant powers and duties granted to the Council by law include: adjudicating claims alleging government authorities’ refusal to disclose information, promoting transparency, training public servants, keeping statistics, and issuing general instructions on the implementation of transparency and access to information, as well as requiring that government agencies change their procedures and systems for serving the public (Art. 31).⁸¹ Its decisions are binding, although requesters and agencies can file complaints challenging the Council’s decisions to deny access to information before the Court of Appeals in their local jurisdiction (Art 28).⁸²

48. In Colombia, the Law does not assign the Public Ministry [*Ministerio Público*] or any other specialized entity with responsibility to settle disputes regarding denials of access to information. Article 28 of the Law provides that denials of information can be challenged by individuals through an administrative appeal [*recurso de reposición*] before the same authorities that adopted the decision. It also provides for judicial review in case of negative decisions. A court or competent administrative judge will handle the case if the reserve invoked to not grant information refers to security and national defense or international

⁷⁸ I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151. para. 163.

⁷⁹ Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). 18 de noviembre de 2011; Brazil. Câmara dos Deputados. [Decreto 7.724](#). May 16, 2012.

⁸⁰ Canadá. Government of Canada/Justice Laws Website. [Access to Information Act. \(R.S.C., 1985, c. A-1\)](#); Canadá. Office of the Information Commissioner of Canadá. [What we do](#). Information received from the Office of the Information Commissioner of Canadá. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁸¹ Chile. Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009.

⁸² Government agencies cannot file claims before the Court of Appeals when they have alleged, as a ground for the confidentiality of information based on article 21(1) (the disclosure of that information would adversely affect the proper discharge of their institutional duties). Biblioteca del Congreso Nacional de Chile. [Ley 20.285 sobre Acceso a la Información Pública](#). August 20, 2009.

relations. This authority within ten days has to decide as sole instance if it refuses or accepts, in whole or in part the request. A judge competent to review request for protection of constitutional rights [*juez de tutela*] will handle the other cases once the internal administrative appeal [*recurso de reposición*] is exhausted. The Office of the Inspector General [*Procuraduría General de la Nación*] is responsible, among other things, for ensuring proper compliance with the obligations set forth in the law, and in so doing, has the power to take preventive action; assess the disciplinary penalties provided for in this law; render disciplinary decisions, in cases involving the exercise of preferential power, in cases of infractions or misconduct derived from the right to access to information.⁸³

49. El Salvador's Institute for Access to Public Information also has the authority to hear and decide appeals for review filed by requesters, for which it takes binding decisions by a simple majority.⁸⁴ The Access to Information Act establishes that "private parties may challenge denials of their claims before the Administrative Disputes Division of the Supreme Court of Justice" (Art. 101). The salvadorian law is clear on the powers of the Institute to enforce the right to information, including in particular: the power to hear and decide appeals, render decisions in sanctions proceedings, and issue administrative sanctions; issue the pertinent precautionary measures in a reasoned decision; resolve disputes relating to the classification and declassification of confidential information, and hear proceedings initiated as a result of the Information Official's failure to respond (Arts. 58 and 75).⁸⁵

50. In the United States, the Office of Government Information Services mandate is to offer mediation services to resolve disputes between persons making FOIA requests and agencies. The goal is to identify issues that are ripe for partnership and explore ways to work together to prevent and resolve disputes as well as avoid litigation. The Office may issue advisory opinions if mediation has not resolved the issue.⁸⁶

51. The Institute for Access to Public Information of Honduras is authorized to resolve disputes related to access to public information. Its decisions are binding and can only be challenged through "the *amparo* in terms of the Constitutional Justice Law" [*recurso de amparo en los términos de la Ley de Justicia Constitucional*] (Art. 4[15] and 26). This entity also has broad powers related to the implementation of a culture of transparency, including in particular the power to: (a) create manuals and instructions on procedures for the classification, archiving, safekeeping, and protection of public information; (b) support the actions of the national archives with regard to the formation and protection of the Nation's document collections; (c) establish criteria and recommendations for the operation of the National Public Information System; and (d) conduct promotion and disclosure activities in connection with the right to access to public information (Art 11).⁸⁷

52. In Mexico, the IFAI has the power to hear and decide appeals for review filed by requesters. The Constitution states that IFAI's decisions are "binding, final and not subject to appeal by the entities under the Law." However, the Legal Adviser to the Government [*Consejero Jurídico del Gobierno*] "may appeal for review before the Supreme Court of Justice of the Nation in the terms established by law only in the case that such decisions may endanger national security under the law on the issue". IFAI has jurisdiction over matters decided by counterpart bodies at the state level, as well as over challenges of denials of information adjudicated by other autonomous constitutional bodies and the rest of the authorities of the Union, with the exception of the Federal Supreme Court. It is also authorized to participate in disputes regarding the

⁸³ Colombia. Secretaría General del Senado. [Ley 1712 de 2014. Diario Oficial No. 49.084](#). 6 de marzo de 2014. Article 27.

⁸⁴ El Salvador. Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo N° 391. April 8, 2011. Arts. 51, 52 & 58.

⁸⁵ El Salvador. Asamblea Legislativa de El Salvador. [Ley de Acceso a la Información Pública](#). Diario Oficial. Tomo N° 391. April 8, 2011.

⁸⁶ Unites States. Office of Government Information Services. [Building a Bridge Between FOIA requesters & Federal Agencies. 2014 Report for FY 2013](#).

⁸⁷ Honduras. Congreso Nacional/ Instituto de Acceso a la Información Pública. [Ley de Transparencia y Acceso a la Información Pública](#). Decreto Legislativo No, 170 -2006. Diario Oficial La Gaceta. December 30, 2006.

constitutionality of acts and regulations.⁸⁸ Moreover, IFAI has the power to: establish and review criteria for the classification, declassification, and safekeeping of secret and confidential information; assist the National Archives in the drafting and application of criteria for cataloging and preserving documents, as well as the organization of the archives of government offices and agencies; monitor, and in the event of noncompliance, make recommendations to government agencies to comply with the obligations of proactive transparency; guide and advise private parties with regard to requests for access to information; prepare access to information request forms, as well as forms for access to and the correction of personal data; hold training sessions for public servants on matters concerning access to information and the protection of personal data, and to draft and publish studies and research to disseminate and broaden knowledge of the laws on the issue (Art. 37)⁸⁹.

53. In Uruguay, the Executive Council of the Unit for Access to Public Information, by virtue of its authority to monitor compliance with the law, can issue resolution which may, in some case, instruct agencies under the law to disclose certain information. However, decisions are not binding⁹⁰. The Unit also has the following duties: (a) advise the Executive Branch with regard to compliance with the laws on access to public information; (b) oversee the implementation of the law at the respective government agencies; (c) coordinate with national authorities for the implementation of policies; (d) provide training to public servants at the agencies required to provide access to information; (e) promote educational and advertising campaigns to reaffirm the right to access to information as a fundamental right; (f) prepare an annual report for the Executive Branch on the status of access to information, and (g) report any conduct that violates the law to the competent authorities.⁹¹ In addition to these powers, Law 19.178 grants the UAIP the authority to declassify information whose classification process is inconsistent with the provisions of the laws in force.⁹²

2. Authority to classify and declassify information

54. The right to access to information, as a constituent element of the freedom of expression protected by the American Convention, is not an absolute right; it can be subject to limitations. Nevertheless, such limitations must be in strict conformity with the requirements derived from Article 13.2 of the American Convention—that is, they must be truly exceptional, clearly established by law, pursue legitimate aims, and be necessary to accomplish the aim pursued.⁹³

55. In their Joint Declaration of 2004, the UN, OAS and OSCE Special Rapporteurs summarized the requirements that limits to the right to access to information must meet, and addressed in greater depth some issues concerning “restricted” or “secret” information and the laws establishing those classifications, as well as the public servants legally required to maintain its confidentiality.⁹⁴ Among other things, they stated that “Certain information may legitimately be secret on grounds of national security or protection of other overriding interests,” but that “secrecy laws should define national security precisely and indicate clearly the criteria which should be used in determining whether or not information can be declared secret, so as to prevent abuse of the label ‘secret’ for purposes of preventing disclosure of information which is in the public

⁸⁸México. Cámara de Diputados. H. Congreso de la Unión. [Constitución Política de los Estados Unidos Mexicanos](#). Article 6.

⁸⁹ México. Cámara de Diputados del H. Congreso de la Unión. [Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental](#). June 11, 2002.

⁹⁰ Uruguay. Unidad de Acceso a la Información Pública. [Resoluciones](#); Information received by the Office of the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

⁹¹ Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Published on the Diario Oficial No. 27607 of November 7, 2008.

⁹² Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 19.178](#). 18 de diciembre de 2013. Published on the Diario Oficial of January 8, 2014.

⁹³ IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 45.

⁹⁴ IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (The Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 56.

interest,” and therefore, “secrecy laws should set out clearly which officials are entitled to classify documents as secret and should also set overall limits on the length of time documents may remain secret.”

56. For purposes of making the classification process more transparent, the bodies and agencies subject to Brazil’s Public Information Access Law must publish a list of classified and declassified information on their websites.⁹⁵ In order to facilitate information searches, the Office of the Comptroller General has compiled a list of agencies to which the law applies.⁹⁶ The Office of the Comptroller General, together with other bodies such as the Ministry of Communication of the Presidency of the Republic [*Secretaria de Comunicação da Presidência da República*], also created a guide for agencies on how to publish the list of classified and declassified information, and statistical reports regarding Access to Information Law on their websites.⁹⁷ In addition, the Public Information Access Law created a Mixed Committee for the Reassessment of Information responsible for deciding the “treatment and classification” of secret information in the federal government. Accordingly, the Mixed Committee has the authority to request clarification from the authorities responsible for classifying information as “top secret” or “secret,” and to request the content of the secret information in part or in whole; to review the classification of “top secret” and “secret” information on its own initiative or at the request of the interested party; and to extend the period of secrecy of information classified as “top secret,” provided that the extension is for a specific period of time. The Mixed Committee also has jurisdiction to decide appeals challenging decisions of the Office of the Comptroller General that deny access to information, and to rule on denials of requests to declassify information issued by the Ministers of State.⁹⁸

57. In Canada, the Office of the Information Commissioner does not have a statutory role in regard to classification and declassification of documents. Therefore, each institution is responsible for the classification and declassification of its own documents. The Office of the Information Commissioner has produced reference documents in order to guide employees in managing information.⁹⁹

58. In Mexico, the IFAI issued General Guidelines for the classification and declassification of information held by Federal Government agencies. These guidelines do not prevent the IFAI, in the exercise of its authority, “from ensuring that the classification adheres strictly to the provisions of the Federal Transparency and Access to Government Information Act, the Regulations thereto, these Guidelines, the specific classification criteria and, if appropriate, other legal provisions.”¹⁰⁰

59. In Uruguay, the Public Information Access Unit published a practice manual for the classification of information and held training sessions for parties subject to the respective laws.¹⁰¹ In addition, entities under the Law must submit each semester to the Unit an updated report containing the list of confidential information (Art.7).¹⁰² The 2013 amendment to Uruguay’s Access Law established, as an exception, the option for each agency to classify information at the time a request is handled. When such

⁹⁵ Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). November 18, 2011. Art. 30.

⁹⁶ Brazil. Acesso à Informação/Governo Federal. 19 de febrero de 2014. [Órgãos que publicaram página de informações classificadas e desclassificadas](#); Brazil. Acesso à Informação/Controladoria-Geral da União. [Relatório sobre a implementação da Lei No 12.527: Lei de Acesso à Informação](#). 2013.

⁹⁷ Brazil. Acesso à Informação/Governo Federal. [Guia para publicação do rol de informações classificadas e desclassificadas e de relatórios estatísticos sobre a Lei de Acesso à Informação](#). 2ª versão.

⁹⁸ Brazil. Palácio do Planalto/Presidência da República. [Lei 12.527](#). November 18, 2011. Art. 16(III), 17 y 35.

⁹⁹ Canada. Office of the Information Commissioner of Canada. [OIC'S Information Management \(IM\) Training Module](#). Information received from the Office of the Information Commissioner of Canada. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹⁰⁰ México. Instituto Federal de Acceso a la Información Pública y Protección de Datos Personales. [Lineamientos Generales para la clasificación y desclasificación de la información de las dependencias de la Administración Pública Federal](#). August 18, 2003.

¹⁰¹ Uruguay. Unidad de Acceso a la Información Pública. [Guía de Clasificación](#).

¹⁰² Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley N° 18.381. Derecho de Acceso a la Información Pública](#). Published on the Diario Oficial No. 27607 of November 7, 2008.

classification is made, it must be reported to the Unit, which will then “check” that action within a period of 5 days. Also, at all times, the Unit “will have access to classified information to assess the legality of their classification.”¹⁰³

E. Mechanisms for the management of requests: centralized/decentralized; online management

60. The bodies of the Inter-American System have reiterated that Article 13 of the American Convention establishes a positive obligation for the State to provide the requested information in a timely, complete, and accessible manner. Otherwise, the State must offer, within a reasonable time period, its legitimate reasons for impeding access.¹⁰⁴ On this point, this Office of the Special Rapporteur has stated that “In order to guarantee the true universality of the right to access,” the remedy available to request information must meet certain conditions. For example, “it must be a simple [remedy] that is easy for everyone to access and only demands basic requirements, like a reasonable method of identifying the requested information or providing the personal details necessary for the administration to turn over the requested information to the petitioner,” and it must be “free or have a cost low enough so as not to discourage requests for information.”¹⁰⁵

61. The Office of the Special Rapporteur observes that all requests for information in Brazil and their respective responses are reportedly processed through the Electronic System for Information Service (e-SIC).¹⁰⁶ The e-SIC system enables citizens to exercise their right by having a single entry point for requests, and provides them with the opportunity to follow up on requests, view responses, and file complaints. It also facilitates management for public servants, insofar as the system “makes it possible for the agencies and entities and for the CGU to support the implementation of the Law and produce statistics on compliance with the extraction of reports containing data on all of the requests for access to information and their respective follow-up.”¹⁰⁷

62. Canada has had an online system since 2013 for the management of information requests filed with federal government agencies. As reported, “To date, it is a pilot project that extends to 21 of the 250 institutions covered by the law, but which handle 80% of the requests received at the entire federal level.”¹⁰⁸

63. On October 1, 2012, the United States launched FOIAonline, a multi-agency web-application that enables the public to submit FOIA requests to participating agencies.¹⁰⁹ Moreover, the public can track the

¹⁰³ Uruguay. Asamblea General de la República Oriental del Uruguay. [Ley No. 19.178](#). 18 de diciembre de 2013. Published on the Diario Oficial of January 8, 2014.

¹⁰⁴ IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (the Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 24/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paras. 77; IACHR. Arguments before the Inter-American Court in the *Case of Claude Reyes et al.* Reprinted in: /A Court H.R., *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paras. para. 58 (a) & (b).

¹⁰⁵ IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (the Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. Para. 26.

¹⁰⁶ Brazil. E-SIC/ Sistema Eletrônico do Serviço de Informações ao Cidadão. [Manual do Cidadão](#).

¹⁰⁷ Brazil. E-SIC/ Sistema Eletrônico do Serviço de Informações ao Cidadão. [Manual e-SIC/Guia do SIC](#).

¹⁰⁸ Information received from the Office of the Information Commissioner of Canada. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. Canada. Treasury Board of Canada/Secretariat. [Access to Information and Privacy Online Request Pilot Project](#). Additional information about the initiative is available at: <http://www.tbs-sct.gc.ca/atip-airpp/tools/request-demanded-eng.asp>

¹⁰⁹ FOIAonline participating agencies include: Environmental Protection Agency; National Archives and Records Administration, Office of General Counsel; Department of Commerce (except U.S. Patent and Trademark Office); Merit Systems Protection Board; Federal Labor Relations Authority; U.S. Customs and Border Protection; U.S. Customs and Border Protection; Pension Benefit Guaranty Corporation; Department of the Navy (including Navy and Marine Corps); General Services Administration; Small Business Administration; U.S. Citizenship and Immigration Services (Only accepting requests for records that do not contain Personally Identifiable Information (PII)); Federal Communication Commission. United States. [FOIAonline](#).

progress of an agency's response to a request, search for information previously made available, and generate up-to-the-minute reports on FOIA processing.¹¹⁰

64. In Honduras, the Institute for Access to Public Information set up the Electronic Information System of Honduras (SIELHO). According to the information available, the SIELHO "is a mechanism designed to manage requests for information and receive appeals for review online. The system is responsible for redirecting citizen requests for information to the public information officers (OIP) of each institution, electronically regulating the process that the request follows; at the same time, it provides feedback to the requester on the status of the request for information. The SIELHO enables the public information officer (OIP) to monitor all of the requests pending response and to handle them in order of their deadlines."¹¹¹

65. With regard to request management mechanisms Mexico, the IFAI-OA implemented the INFOMEX system:¹¹² "a computer tool that allows citizens to exercise their rights to access to information and the protection of personal data held by the government, through an electronic system for the receipt and expedited handling of requests for information." According to the information received, "The main objectives of INFOMEX are as follows: to handle requests for access to information and personal data, as well as requests for the correction of such data, filed by citizens electronically through this medium; for citizens to be able to receive the information they request through this medium, to be able to monitor the status and processing of the requests, and to be able to file appeals for review through the same electronic medium in the event of the denial of a request for information. INFOMEX also makes it possible to view the responses of the Federal Government, using multiple filters such as date, status, and response type, by Federal Government office or entity."¹¹³

66. In Uruguay, requests are received in person or electronically. According to the information received, the Public Information Access Unit "is working on the E-access System that will centralize all requests for information filed in Uruguay in a single computer system, thus allowing it to monitor them in its capacity as the supervisory body."¹¹⁴

F. Mechanisms for the monitoring and enforcement of proactive transparency obligations

67. The right to access to information imposes upon the State the obligation to provide the public with the maximum amount of information on its own initiative, at least with respect to: (a) the structure, function, and operating and investment budget of the state; (b) the information needed for the exercise of other rights—for example, those pertaining to the satisfaction of social rights such as pensions, health, and education; (c) the availability of services, benefits, subsidies, or contracts of any kind; and (d) procedures for filing complaints or requests, if they exist. This information should be complete, understandable, available in accessible language, and up to date. Also, given that significant segments of the population do not have access to new technologies—and yet many of their rights can depend on having information about how to exercise them—the State must find efficient ways to meet its obligation of active transparency in these circumstances.¹¹⁵

¹¹⁰ United States. FOIAonline. [Frequently asked questions](#).

¹¹¹ Institute for Access to Public Information de Honduras. [Sistema De información Electrónico de Honduras \(SIELHO\)](#).

¹¹² México. [Sistema INFOMEX Gobierno Federal](#).

¹¹³ Information received from IFAI-OA in Mexico. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹¹⁴ Information received from the Public Information Access Unit in Uruguay. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹¹⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. [The Inter-American Legal Framework Regarding the Right to Access to Information, Second Edition](#). OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12. March 7, 2011. Para. 261, *et seq.*; IACHR. [2009 Annual Report. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter IV (the Right of Access to Information). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. para. 30-32.

68. The Model Inter-American Law on Access to Public Information clearly stated some of the State's obligations with regard to proactive transparency. The Model Law prescribes that "even in the absence of a specific request, public bodies should disseminate information about their functions on a routine and proactive basis and in a manner that assures that the information is accessible and understandable." In addition, Article 9 of the Model Law establishes the obligation to "[make] information available proactively so as to minimize the need for individuals to make requests for information." Article 12 of the Model Law specifies in detail the types of key information subject to proactive disclosure by a public authority.¹¹⁶

69. In this respect, the specialized entity responsible for overseeing and enforcing access to information laws must be capable of formulating consistent policies for all of the agencies subject to the regulations, and must have the authority to coordinate the efforts of different departments. Therefore, it must have the ability to monitor compliance with the obligation of proactive transparency.

70. With a view to enhancing transparency and facilitating information searches by citizens, the Federal Government of Brazil ordered all bodies and entities of the Executive Branch to disclose information of public interest in an organized and centralized manner in a specific section of their websites. To guide them in this task, the Office of the Comptroller General developed a manual containing guidelines on how to build an "Access to Information" section on their websites. This manual aims to provide consistency with details on the structure, nomenclature, and content of the information of public interest that government agencies and entities are required to publish under the Access to Information Act.¹¹⁷ In order to verify compliance with the manual's guidelines and the obligations of proactive transparency, the Office of the Comptroller General is conducting a survey of all of the agencies of the Federal Executive Branch to obtain information about their websites. The agencies that have not observed the provisions of the Law or the guidelines set forth in the manual have received letters with recommendations for proper compliance with their proactive transparency obligations. According to the information received, a Working Group has been formally established in Brazil and authorities responsible for monitoring compliance with the Access Law have been appointed in the agencies and bodies subject to the law.¹¹⁸

71. In Canada, the government institutions subject to the Access Law must report annually to Parliament regarding their compliance.¹¹⁹

72. Mexico's IFAI created the Transparency Portal, a system through which citizens have access to information relating to the transparency obligations of Federal Government agencies.¹²⁰ The IFAI also implemented ZOOM, a search engine of public information requests made to the Federal Government, of the answers provided, and the resolutions that IFAI issues, in addition to studies and opinions that support these resolutions.¹²¹

73. In Honduras, the Institute for Access to Public Information created the Office of Transparency Verification [*Gerencia de Verificación de Transparencia*] in 2013 aiming to corroborate the

¹¹⁶ OAS General Assembly. [Resolution AG/RES. 2607 \(XI-O/10\). Model Inter-American Law on Access to Public Information..](#) June 8, 2010. Article 12.

¹¹⁷ Brazil. Acesso à informação/Governo Federal. [Guia para Criação da Seção de Acesso à Informação nos sítios eletrônicos dos Órgãos e Entidades Federais](#). 2ª versão.

¹¹⁸ Brazil. Acesso à informação/Governo Federal/Controladoria-Geral da Uniao. [Lei No.12.527:Lei de acesso a Informação. Poder Executivo Federal 2011-2012](#). Pag. 13; Brazil. Palácio do Planato/Presidência da República. [Lei 12.527](#). November 18, 2011. Art. 40.

¹¹⁹ Canadá. Treasury Board of Canada/Secretariat. [Access to Information Manual](#). Information received from the Office of the Information Commissioner of Canada. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression. Canada.

¹²⁰ México. Instituto Federal de Acceso a la Información y Protección de Datos. [Lineamientos que habrán de observar las dependencias y entidades de la Administración Pública Federal para la publicación de las obligaciones de transparencia señaladas en el artículo 7 de la Ley Federal de Transparencia y Acceso a la Información Pública](#). Second Edition. November 1, 2006; México. Instituto Federal de Acceso a la Información y Protección de Datos. [Portal de Obligaciones de Transparencia](#).

¹²¹ México. Instituto Federal de Acceso a la Información y Protección de Datos. [Zoom](#). Buscador de Solicitudes de Información y Recursos de Revisión.

information that the institutions under the Law have to publish on their transparency portals [*portales de transparencia*]. This Office produces annual reports evaluating the compliance of government agencies in accordance with the transparency evaluation methodology design that was approved by the full session of the Commissioners of the Institute. According to the methodology, the transparency portal must have at least the following five main components: “Organic Structure and Services; Planning and Accountability; Finances; Citizen Participation and Oversight. Within this framework, the agencies subject to regulation have been classified according to their interest in or commitment to observing the LTAIP [Transparency and Access to Public Information Act].”¹²²

74. An external audit was conducted of Uruguay’s Public Information Access Unit that applied a matrix specially designed by the Unit for the periodic assessment of progress made by the regulated agencies in their compliance with the provisions of the Access Law. With this matrix, the Unit will perform audits on a regular basis.¹²³ Decree 484/2009¹²⁴ issued by the Executive Branch established that all agencies subject to the law have the right to conduct self-evaluations in order to report on their compliance with the obligations of proactive transparency.

G. Mechanisms for centralized statistical monitoring

75. In Mexico, the IFAI-OA compiles and publishes statistics on various topics, which are largely reprinted in its annual report. The themes addressed include: the 20 agencies with the greatest number of requests for information; the most common subjects of requests for information; the geographic location of the requesters; the number of requesters per year according to the reported age of the requester; percentage of requests received by gender; the number of requests per year according to the requester’s reported occupation, among other subjects.¹²⁵

76. Uruguay’s Public Information Access Unit presents its statistics in its annual report. These data refer to the number of compliance forms and confidentiality request forms filed, the number of decisions and opinions issued and their subject matters, and statistics on compliance with the law. To meet this objective, all of the agencies subject to the law must submit a report to the UAIP with data on requests received and procedures followed during the prior year.¹²⁶

77. In Brazil, according to the information received, the Office of the Comptroller General publishes statistical reports on the Internet with daily data updates on requests for information and appeals, based on the data extracted from e-SIC. These reports include the consolidated data from the entire Federal Executive Branch, as well as data specific to bodies or entities registered in the system, without the need to log in to e-SIC.¹²⁷

¹²² Honduras. Instituto de Acceso a la Información Pública. Gerencia de Verificación de Transparencia. [Resumen Ejecutivo-Verificación de la información de oficio-Portales de Transparencia-Instituciones Obligadas](#); Information received from the Institute for Access to Public Information in Honduras. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹²³ Information received from the Public Information Access Unit in Uruguay. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹²⁴ Uruguay. Agencia de Gobierno Electrónico y Sociedad de Información/Presidencia de la República. [Decreto No. 484/009](#). November 3, 2009.

¹²⁵ México. Instituto Federal de Acceso a la Información y Protección de Datos. [Estadísticas e Indicadores](#). Information received from the IFAI in Mexico. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹²⁶ Information received from the Public Information Access Unit in Uruguay. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

¹²⁷ Information received from the Office of the Comptroller General in Brazil. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

H. Conclusions and Recommendations

78. Over the past decade 22 countries of the hemisphere have enacted laws to guarantee the effective exercise of the right to access to public information; this reality is largely result of the promotion that the Inter-American Human Rights System has given to the protection and implementation of the right of access to public information. In general, the regulatory frameworks, adopted by different States, are in line with the standards developed by inter-American doctrine and caselaw.

79. The main conclusion that can be drawn from the study is the growing consensus in the OAS Member States, in recognizing the right to information as one of the pillars of the consolidation of established and robust democratic systems through citizen participation. This was expressed fundamentally in the enactment of laws on access to public information following the standards developed by the interamerican doctrine and caselaw.

80. In order to implement and enforce the laws on access to information in an efficient, suitable and adequate manner, several countries in the region have created supervisory institutional mechanisms, which demonstrates a concern to promote a culture of transparency in the long term. The existence of such mechanisms is vital both to effectively implement the access to information laws and to satisfy the public's need for a simple and effective remedy for review the denial of information.

81. The information gathered in this report leads to the conclusion that the institutions created in the region to ensure the implementation and enforcement of the right of access to information, inroads in each one of the States very painstakingly, which requires significant efforts from authorities to consolidate their space of autonomy and develop the ability to fulfill their mission .

82. As seen in this report, these bodies are not uniform in their designs and features, and not all meet the inter-America standards for independence, autonomy and power to resolve disputes. A number of countries have set up specialized bodies to implement the right to information with autonomy and independence. In other cases, commissioners have been appointed or specialized units were created and located within preexisting bodies (Public Ministry, Comptroller, the National Archives or Parliament). A third group of states have chosen to establish authorities or expert committees on the right to information, but under the aegis of the Executive branch or other body controlled by it.

83. Among the supervisory bodies that were designed with independence and autonomy within the government structure, we can also find differences due to the factors that makes them independent (process of selection and appointment of the commissioners, dismissal or termination of the mandate, budgetary sovereignty, etc.) A recent constitutional amendment positioned the IFAI as one of the most important bodies among those created in the region for the enforcement of access to public information, granting it autonomy and independence with a constitutional status within the political organization of the federation. However, Chile, Canada, Honduras, and El Salvador have established bodies with varying degrees of autonomy and independence in relation to the factors that can determine the real (or perceived) independence of these offices.

84. A critical issue in the institutional designs studied lies in the powers granted by law to these bodies to resolve disputes and if they have the power to order agencies under the Law to grant access to information intended to be held in reserve. Only a minority of the cases studied have the power to issue binding resolutions for authorities under the Law, as advised by international standards to provide accessible and affordable appeal to the applicant. The IFAI in Mexico the Transparency Council of Chile, the Institute for Access to Public Information in El Salvador and the Institute for Access to Public Information of Honduras can issue binding resolutions but not final; this has allowed agencies under the Law to challenge the decisions of those bodies in court, thereby delaying the disclosure of the requested information.

85. In the cases of Canada, United States and Uruguay the supervisory bodies overseeing access to information can only issue recommendations, for the government bodies who denied access to information to review their decisions. In these cases, the requesters who wish to enforce their right to information may

avail themselves of the judiciary, with all of the attending costs.

86. The rest of the designs studied must be examined individually. Brazil delegated the duties of implementing and monitoring compliance with the law to a pre-existing body with sufficient authority, independent from the Executive Branch, and federal in scope. In case of dispute the regulation on access to information established a complex mechanism that requires prior presentation of a petition for review before the agency under the law, and then he may appeal to his superior. If the superior refuses the access to information, the applicant may appeal the decision to the supreme authority of the agency or entity. Subsequently, the applicant may appeal to the Office of the Comptroller General [*Controladoria-Geral da União*] and if it refuses the access to information, he/she may appeal to the Joint Committee on Revaluation of Information.

87. A similar case is that of Colombia, which by law assigned the implementation of decisions on access to public information to the Office of the Inspector General [*Procuraduría General de la Nación*] of Colombia, a pre-existing agency with the power to sanction public official and within which a Working Group was established for the application of the Access to Information Act. However, when there is a dispute between a person requesting information and an agency under the Law, applicants should go to the courts to seek protection of their rights.

88. In light of the issues presented on this report, the countries of the region may continue to make progress in their obligation to implement a culture of transparency and guarantee the right to access to information. It is therefore essential to persist in building robust supervisory bodies with sufficient power to give life and meaning to the mandates of transparency of access to information laws and align State practice to international case law.

89. The Office of the Special Rapporteur reiterates the importance that bodies responsible of defending the right to information have a budget and allocation of human resources to fulfill their important assigned mission. Without resources or staff, is very difficult to fulfill all the functions assigned to these agencies, such as the promotion of the regulation, exercise control over the rest of the state organization and resolve appeals with the speed necessary to guarantee the right to access to information.

90. The Office of the Special Rapporteur hopes that this report will be of use to the States and to civil society, to get to know the legal frameworks and institutional practices developed in the region to build supervisory bodies that grant the protection and defence of the right to access to information, capable of implementing systematic transparency policies and of resolving disputes between citizens and government agencies to access information of public interest. In this regard, this report is expected to be useful to bring the regulatory frameworks into line with the highest relevant standards and inspire those states that have not yet adopted laws to defend the right of access to information.