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**ACCESS TO INFORMATION:
COMMENT REGARDING THE RESPONSES TO THE QUESTIONNAIRE
SENT BY THE INTER-AMERICAN JURIDICAL COMMITTEE
TO THE OAS MEMBER STATES
(CJI/doc.232/06 rev.1, 17 August 2006)
(presented by Dr. Jaime Aparicio)**

The Members State of the Organization of American States received the questionnaire regarding the existing internal legislation in every country concerning access to information and the protection of personal data. The referred questionnaire was sent by the Office of International Law, at the request of the Inter-American Juridical Committee dated September 13, 2006. Only three member States remitted answers: Guatemala, México and Jamaica.

Below are the resumed contents of the answers received. It is important to state that, in the reports reference is made to two matters, which even if they are within the scope of the subject of access to information, they are of a different nature, and each requires a different and specialized treatment. One is the matter of the citizen's access to information that allows them to know the activities of public authorities, government functionaries, and the State expenses, contracts and purchases, so they may exercise social control over those expenses, and where the authorities must be legally obligated to put the information at the disposal of the people who require it in a timely and complete manner with the purpose of creating a culture of transparency. This subject has to do with improving democracy, the responsibility of the public functionaries and the importance of transparency in public management as a basis for the fight against corruption.

The other is the subject of access to and the protection of information and personal data that is in electronic format.

Reports:

Guatemala

The Guatemalan Mission to the OAS responded to the questionnaire sent by the OAS Office of International Law, on October 30, 2006. With reference to the matter of Access to Public Information, the norm is contained in Art. 30 of its Political Constitution and in three Laws of 2005 concerning: "Ley de Acceso a Información Pública y Clasificación y Desclasificación de Información Reservada"; "Clasificación y desclasificación de Asuntos Militares, Diplomáticos de Seguridad Nacionales y Confidenciales" y "Libre Acceso a la Información" ("Law of Access to Public Information and Classification and Declassification of Confidential Information"; "Classification and Declassification of Military, Diplomatic, National Security and Confidential Matters" and "Free Access to Information").

According to the regulations, access to public information exists. The offices of the Executive Power are obligated to publish information on each of the offices in electronic format. Also, the subject of transparency in state procurement, and national revenue, and others has been initiated. The access of more detailed public information by a civilian is only possible by means of an express request. Among the observation received, are the necessity to complement this legislation with the establishment of more detailed regulations and specification for cases that concern military secretes and contracts and purchases of the national army. The report mentions that there are no regulations for the Legislative and Judicial Powers.

Regarding the protection of personal data, there is only article 30 of the Constitution, which provides for the guarantee of confidentiality for data provided by citizens to private or government institutions. Specifically, there are legal precepts to protect the confidentiality of correspondence, communications and publications. The access to personal information by public organizations or entities can occur by means of previous authorization by a competent judge. There are no further legal dispositions to treat the matter of protection for personal data.

Jamaica

The Jamaican Mission to the OAS responded to the questionnaire sent by the OAS Office of International Law, on December 6, 2006. Jamaica has a legislation that aims to reinforce the fundamental principles of the constitutional democratic system that make government accountability transparent and promote citizen participation in decision-making. These precepts guarantee the public in general the right to access the information contained in documents, including their multimedia versions, which are in the possession of agencies, institutions or organizations of the Public Power, where the State has at least 50% participation.

Concerning materials, documents or others that are of a confidential character, Jamaica has legal provisions that treat the declassification of documents, especially when it involves documents of public interest, or there is previous authorization of the person who is subject of the information in question. In as much as the protection of personal information, the answers received from the Permanent Mission of Jamaica to the Organization of American States, do not provide details on that subject.

Mexico

The Mexican Mission to the OAS responded to the questionnaire sent by the OAS Office of International Law, on October 16, 2006. The matter of access to information in Mexico is treated by the Federal Law of Transparency and Access to Government Public Information (LAI- 2002). The dispositions of that Law only refer to the public information due to which it generates responsibilities for the public entities. That Law is of Federal application, thus the States have their own disposition for the matter.

Concerning the protection of data, the LAI Law establishes minimum rules and procedures to be followed regarding access, correction and protection of personal data and physical persons. In the private sector, there are dispositions for the protection of private citizen information that is applicable to sectors such as credit. Nonetheless, there is no uniform regulation for the matter of protection for personal data that could be applicable for the public, as well as the private sector, nor is there a single norm for the private sector, because the norms are fractioned into material, banking, stock market, etc.

The Senate of the Republic has approved the proposal to consider the right to the protection of personal data as an individual guarantee. This proposal must be considered by the Members of Parliament and by State legislatures.