

LAW

To adopt the “Transparency and Expeditious Procedure[s] for Access to Public Information Act,” in order to establish a public policy of access to public information; to order, organize, and establish simple, responsive, and economical procedural mechanisms for real access to public documents and information; to set forth principles and instruments guaranteeing access; to decree that Information Officers be designated in every government agency; and for other related purposes.

STATEMENT OF MOTIVES

In the context of federal agencies, the Freedom of Information Act (FOIA), 5 USC § 552, recognizes citizens’ right to information and establishes the periods of time the Government may take in responding to a request for public information. In Puerto Rico, however, that right is of a constitutional nature, as part of the right to freedom of expression. At present, we do not have any state regulations that establish a uniform procedure for obtaining the public information generated or held by government agencies. This despite the fact that the Supreme Court of Puerto Rico has repeatedly recognized the right to access to public information as a necessary corollary to the rights of freedom of expression, freedom of the press, and freedom of association explicitly set forth in Art. II, § 4 of the Constitution of Puerto Rico and the First Amendment of the Constitution of the United States of America. The premise underlying the relationship between access to public information and the right to freedom of expression is that if the citizenry is not duly informed about the way public administration is carried out, [that citizenry’s] freedom to express its satisfaction or dissatisfaction with the persons, [laws and] regulations, and processes that govern it, through the vote or by other means, is restricted. *Ortiz v Bauermeister*, 152 D.P.R. 161 (2000). “That inherently implies ensuring and facilitating for all citizens of our country the right to examine the contents of the files, reports, and documents that are gathered in the administration of government and that are held in the agencies of the State.” *Ibid.*, p. 175.

In Puerto Rico, when the citizenry and the media request public information, they are subject to discretionary processes in the courts, which are costly and can take months. Even though the right is contained in the Constitution, when there is no procedural mechanism for exercising that right there are frequent violations of it. The regulation by law of the rights set forth in the Constitution is normal, and often imperative. For example, the Constitution of Puerto Rico recognizes a right to unionization in the private sector and public corporations, and there are several state laws that regulate that right so that workers may exercise the right and forestall the

employer's discretion. The case is similar with other rights, such as free public education, fair compensation, the right to a speedy trial, the right to post bond, etc. With respect to the access to public information, it is vital to understand that the absence of a mechanism that removes the excessive discretion possessed today by the Government and judges will not foster transparency in public administration.

Given the foregoing, there is no doubt that in Puerto Rico there is a right to access to public information as a corollary to the right to the freedom of expression. That right to access to public information, however, depends on the fact that what is requested is truly public. To that effect, Article I [sic, for III] b, of the "Law [for the Administration] of Public Documents of Puerto Rico" provides that the character "public" will be applied to:

"any document that originates in, is held by or received by any agency of the Commonwealth of Puerto Rico in accordance with the law or with respect to the management of public affairs and in accordance with the provisions of Section 1002 of this title, [and is] caused to be permanently or temporarily preserved as evidence of the transactions or for its legal value. This includes those produced electronically that comply with the requirements established by laws or regulations."

Indeed, the Supreme Court has ruled that "in order to recognize the right to access to public information, it is necessary that that which is requested be classified as a public document." *Acevedo Hernández, Ex parte*, 191 DPR 410 (2014). Once a document is situated within one of the categories cited in the definition above, it is considered to be of a public nature, and therefore any citizen has the right to access it. However, our Supreme Court has found that that right is not absolute and must give way in cases of imperative public interest. *López Vives v Policía de Puerto Rico*, 118 D.P.R. 210 (1987); *Soto v Secretario de Justicia*, 112 D.P.R. 477 (1982). Thus, the Supreme Court has recognized instances in which the state may validly claim that documents or information is confidential, to wit: "(1) when a law so declares it; (2) when the communication is protected by one or more of the evidentiary privileges; (3) when revealing the information may injure the fundamental rights of third parties; (4) when at issue is the identity of a confidential source, Rule 32 of Evidence; and (5) when at issue is official information" in keeping with Rule 54 of Evidence. *Santiago v. Bobb y El Mundo, Inc.*, 117 DPR 153 (1986); *Angueira Navarro v Junta de Libertad Bajo Palabra*, 150 DPR 10 (2000).

However, when we are not dealing with one of the exceptional circumstances mentioned above, the State may not capriciously refuse to allow access to information in the hands of the Government. *Ortiz v Bauermeister, supra*; *Silva Iglesia v. Panel for the Independent Special Investigator*, 137 D.P.R. 821 (1995); *López Vives v Policía de Puerto Rico, supra*. "Therefore, that refusal must be justified and substantiated. Given

these circumstances, the State would be justified in restricting citizens' access to a document of a public nature." *Colón Cabrera v Caribbean Petroleum*, 170 D.P.R. 582 (2007).

On the other hand, the Supreme Court of Puerto Rico has recognized that the resort to mandamus is the current vehicle for requiring the Court to order the disclosure, inspection, and reproduction of public documents. Mandamus has been the appropriate resort for compelling compliance with a duty [legal obligation], as occurs when access to public information is requested. *Dávila v Superintendente de Elecciones*, 82 D.P.R. 264 (1960). However, this resource has been costly and time consuming. This, even with the right to go directly to the Court to insist upon a right. See *Ortiz v Special Independent Counsel Panel*, 155 D.P.R. 219 (2001). Among the determining factors for issuing the mandamus are the following: (1) the possible impact that the recourse may have on the public interests that may be involved; (2) to forestall undue intercessions into the procedures of the Executive Branch; and (3) the fact that the act does not lend itself to confusion or to prejudice of the rights of third parties. See *Noriega v Hernández Colón*, 135 D.P.R. 406 (1994).

It is clear, then, that since the early eighties the Supreme Court of Puerto Rico has unequivocally recognized that the right to access to public information is fundamental and constitutionally protected. This right is sustained by the democratic principle that citizens should know about, oversee, and pass judgment on the State's actions. In other words, the right to access to information is the right that enables the citizenry to demand government accountability with respect to governmental actions, which [i.e., accountability] is essential for achieving greater governmental transparency. In order for the citizenry to be able to fully exercise this right, it is the obligation of the Government of Puerto Rico to establish clear, economical, simple, and expeditious norms and procedures for access to public information. In addition, it is extremely important that the rules and regulations governing public information be founded on the principle of transparency in government administration.

Through the Plan for Puerto Rico, we have committed ourselves to guaranteeing and promoting transparency in governmental actions and to regulating fundamental right of access to public information in the Government of Puerto Rico. The objective of this Law is to ensure compliance with that commitment, foster an unequivocal culture of openness to the Government's actions, establish a proactive policy with respect to accountability to the citizenry, discourage acts of corruption or unethical actions, promote citizen participation, and institute clear, responsive, and economical rules, regulations, and principles for the full exercise of the right to access to public information. In turn, it is our intention that by implementing this law and the regulations stemming from it, the necessary uniformity may be achieved in all government agencies, which includes the Legislative Branch, the Judicial Branch, and the Executive Branch as well as all government agencies, public corporations, and

municipalities. Citizens need to recover their trust and deserve a transparent, responsible government able to oversee its own operations. The people of Puerto Rico need to receive clear, trustworthy information and to be kept abreast of the decisions made, as those decisions affect the development of communities and the future of Puerto Rican families.

Many administrations have promised transparency, but they have never been obligated to comply. This is one of the factors that have contributed to the deterioration of the people's trust and confidence in their government, as the government has become a complex bureaucratic structure with little transparency in its decisions. That is why for this administration it is extremely important to establish as a public policy and with the force of law the process to ensure the satisfactory exercise of the constitutional right of access to information, so that all public officials may understand that it is the government's obligation to inform and educate [citizens] about the principle and practice of government transparency. In order to implement this public policy, all government agencies are to designate from among their employees those to be Information Officers, who will be in charge of producing the public information requested in an expeditious manner so that it may be inspected, reproduced, or both, as requested. These Information Officers are to be trained in the scope of this Law and in the jurisprudence established by our Supreme Court in the area of access to public information.

Likewise, the processes for requesting information are to be governed by [the principle of] compliance. Public information must be delivered in the shortest time possible and immediately if it exists. Denying this right requires a legal explanation and an expeditious hearing, free of charge, before a court to question the government's action. Courts should also resolve these controversies expeditiously.

Our Government aspires to provide access to public information characterized by simple, responsive, economical, and rapid procedures that foster transparency. By requiring this, we promote accountability, citizen participation, and control in government administration. It is important that there be an atmosphere of respect, transparency, and effective communication between the citizenry and the government. Maintaining order is important, and the government's transparency even more so; citizens have the right to know how public funds are being managed and how the decisions that will affect the future of Puerto Rico and its residents are being made.

THE LEGISLATIVE ASSEMBLY OF PUERTO RICO HEREBY DECLARES:

Article 1.-Name

This Law shall be known as the "Transparency and Expeditious Procedure[s] for Access to Public Information Act."

Article 2.-Applicability

The provisions of this Law are applicable to the Government of Puerto Rico, by which it is to be understood the Legislative Branch, Judicial Branch, and Executive Branch, including in this all governmental agencies, public corporations, and municipalities. It shall also apply to third party custodians of public information or documents.

Article 3.-Public Policy

The public policy of the Government of Puerto Rico is established as follows:

- 1) The information and documentation produced by the government is presumed to be public and accessible to all persons.
- 2) The information and documentation produced by the government in its studies, transactions, and in the exercise of public authority, directly or delegated, is the patrimony and memory of the People of Puerto Rico.
- 3) The constitutional right to access to information requires government transparency.
- 4) All information and all documents that originate in, are held or received by any office of the Government, even if it/they are under the custody of a third party, are presumed to be public and should be accessible to the People and the press.
- 5) The right of access to public information is a pillar of the Constitution and a fundamental human right.
- 6) Access to public documentation and information must be responsive, economical, and expeditious.
- 7) Every person has the right to obtain public information and documentation, subject to applicable regulations and exceptions.
- 8) In the present Law, the Government of Puerto Rico establishes a policy of openness to information and documentation, which shall include the availability of technology and the advances necessary to exercise the right of those requesting information to access public information and documentation in a timely, objective, true, complete, reusable, and processable way and in accessible, unaltered, and intact formats.

Article 4.- Routine divulgation of information

In the Government of Puerto Rico, access to public information shall be facilitated and information on [the Government's] functioning, actions, and the results of its actions shall be divulged routinely via official websites and other means of communication. Government agencies have the duty to periodically, proactively, and in an up-to-date manner divulge, on their official website, information on their functioning and on the exercise and control of their delegated functions, as well as all public documentation that may be routinely produced by that agency/office. Personnel files or any information of that nature shall not be public information.

In addition, they shall establish adequate mechanisms for facilitating the accessibility, quality, and reutilization of information published electronically, as well as its identification and location.

Article 5.-Information Officers

Each of the government agencies or entities that comprise the Government of Puerto Rico shall, saving just cause, identify at least three (3) public servants from among their existing employees, of whom two (2) shall be career public servants. The employees identified shall be designated and certified as Information Officers in each of the government agencies. When the organizational structure, functional complexity, or size of the agency requires a larger or smaller number of Information Officers, that [increase or reduction] shall be justified in writing and reported to the Office of the Secretary of Public Affairs of the Office of the Governor, or an analogous office, which shall determine whether the request shall be granted or not. As for the Legislative Branch and the Judicial Branch, they must assign personnel they deem pertinent as Information Officers and establish the internal process they deem pertinent to evaluate the number of Offices to be designated.

The Information Officers must be trained in the contents of this Law, the regulations and applicable procedures, and their legal obligations as persons responsible for compliance with this Law. They shall, in turn, receive training in the jurisprudence established by the Supreme Court with respect to access to public information. They shall share the responsibility to ensure compliance with this Law with the official in charge of their government agency.

Information Officers shall have the obligation to receive requests for information, handle them, and facilitate access to the documents in the format requested within the terms [i.e., periods of time] established by this Law. The Information Officers shall record the requests for information in the order in which they are received and they shall be numbered, this number to be the reference element in any transaction or review

pertaining to the request. Similarly, the Officers must provide the necessary assistance to any citizen who wishes to make a request for information.

Information Officers shall, in addition, be the central contact within the government agency for receiving the requests for information and for assisting individuals requesting information. The foregoing shall not in any way limit citizens' and the press's options for requesting information from others of the agency's officials, including the government agency's Press Officer. The names and contact information of the Information Officers shall be available on the official websites of each of the government agencies, the Office of Management and Budget, and La Fortaleza, and shall likewise be available in a printed document in the integrated service centers across Puerto Rico.

The Information Officers shall file monthly reports on the number of requests received, the type[s] of information requested, and the status of the request. The requestor's personal information shall not be revealed. The reports shall be made public on the website of every government agency.

Article 6.-Requests

Any person may request public information by written request or electronically, without the need to prove any particular or legal interest. The Information Officer shall have the responsibility to notify all requestors of public information or documentation, by email, fax, or regular mail, that their request was received and the request's identification number.

The request for information must include: at least one address or email address at which to receive notifications, the format in which the requestor wishes to receive the information, and a description of the information he or she is requesting.

Article 7.- Time within which to make delivery of the public information, or make it accessible

Subject to the provisions of this Law, the Information Officers of a government agency must produce any public information for inspection, reproduction, or both, at the request of any requestor, within a period of not more than ten (10) working days. In the case of the Executive Branch, the Office at the central level of the government agency or entity must comply with the term indicated above. However, if the request is made directly at the level of a regional office of the government agency or entity, the term to deliver the information may not be more than fifteen (15) working days. In the previous case, the Information Officer at the regional level must diligently in a period of no more than forty-eight (48) hours inform via email at the central level the request received in order to determine the procedure to follow, as appropriate.

The term for delivering the information shall begin on the date the requestor sends his or her request for information to the government agency, as witnessed by the email, the postal service cancellation, or receipt of the fax. If the government agency does not answer within the established period, it shall be understood that the request has been denied and the requestor may have recourse to the courts. This period may be extended by a single term of ten (10) working days if the Information Officer notifies the requestor within the initial period as established and explains in the request the reason the Officer needs more time to deliver the information or documentation requested.

In all decisions to refuse to divulge public information, the legal basis or bases for the refusal to divulge the information in the specified time must be specified in writing.

Information Officers comply with the parameters of this Law if, in accordance with the requestor's preferences, they carry out one of the following actions:

- a) They make the information available to the requestor in the government agency's offices for [the requestor's] inspection and reproduction;
- b) They send the information to the requestor by email;
- c) They send a copy of the information by federal mail (First Class), so long as the requestor is willing to pay the postage and other related costs; or
- d) They provide the requestor with an internet address (URL) of a webpage with instructions for accessing the requested information.

Article 8.-Charges

As a general rule, the right of access to or inspection of a public document shall be permanent and free of charge. The issuance of simple or certified copies, recordings, and reproductions shall be subject to payment of reasonable fees and charges. The corresponding charges shall be established by regulation or administrative order. The term "reasonable" shall be understood to apply to payment of the direct costs of reproduction, the cost of mailing, and the fees expressly authorized by law. Despite the foregoing, any person who demonstrates indigence as governed by regulation or administrative order shall have the payment of fees or charges for the request for information waived. The Executive Branch, the Office of the Secretary for Public Affairs or analogous office shall establish uniform guidelines for the administrative regulations required for the faithful compliance with those provisions established in this Law. As for the Judicial Branch and the Legislative Branch, they will internally determine how they will create the uniform guidelines and the Code of Conduct indicated above.

The public information requested shall be delivered in the format requested and via the medium that the requestor has indicated, so long as doing so does not entail a cost greater than delivery on paper or in the format usually utilized by the government agency, and does not entail a risk to the integrity of the document. If delivery of the information requested entails an extraordinary cost, the government agency shall deliver the information in the format available or at a lesser cost. The government agency shall establish the manner of complying with the effective delivery of the information requested.

Article 9.- Special Recourse of Judicial Review before the Court of First Instance

Any person who has been notified by a government agency that the information requested will not be delivered or who has not received delivery of the information within the established period of time or its extension shall have the right to present, on his or her own or through legal representation, in the Court of First Instance of the Judicial Region of San Juan, a Special Recourse for Access to Public Information.

To file this recourse, the Judicial Branch shall create and make available to the public a simple form to complete. Filing the recourse shall not entail cancellation of stamps or fees. Likewise, save in specifically justified extraordinary circumstances, no citizen shall be required to hire an attorney to be able to file the recourse, and shall not be prevented from pursuing his or her case on his or her own. It is recommended that the Supreme Court establish a random process for selection of judges to hear these cases.

Notification to the government agency of the recourse shall be made by the Court itself without cost. To do this, the Secretary of the Court of First Instance in which the recourse has been presented shall issue a notification to the government agency that has notified the requestor of its decision not to deliver the information or that has not delivered the information within the period established, requiring in writing that the agency appear and informing it that if it does not, it shall be accepting the allegations of the lawsuit and the remedy requested, according to this Law, shall proceed to be issued, with no further citations or hearings.

The recourse in question must be presented within the strict term of thirty (30) days, beginning on the date on which the government agency notified [the requestor] of its decision not to deliver the information requested or from the date on which the period expired for delivery, should there have been no answer.

The government agency notified of a recourse under this Law shall be obliged to respond by means of written notification within a period of ten (10) working days, except for just cause in which case it may not be a term less than five (5) working days ,

counted from the date of the notification issued for this purpose by the Secretary of the Court of First Instance. The Court shall use its discretion in shortening the established period of ten (10) days when it believes there is just cause for doing so in protection of the requestor's interests.

The Court shall be required to hold a hearing within a period of three (3) working days of receiving the government agency's response should [the Court] believe that the particular circumstances of the case and the information requested so require.

The Court shall be required to resolve the controversy in writing, via a resolution grounded in law, finding in favor of or against the request to produce public information within a period of ten (10) days from the date on which the government agency issued its response to the court or from the date of the hearing, should a hearing have been held.

Article 10.- Protection against reprisals

Any person who shall report any violation or attempted avoidance in complying with the obligations established by this Law, or who testifies in an administrative, legislative, or judicial proceeding, shall enjoy the broadest protection in his or her employment and against reprisals should he or she become the object of government or workplace persecution or harassment of any kind. The provisions of this Article complement any other protective provision for informants and confidential sources in force in our code of law and shall not be in detriment to their enforcement.

Any person who shall take reprisals of any kind, whether through government or workplace persecution or harassment, against an informant or witness relating to the provisions of this Article, shall be liable to be accused of a felony and if convicted shall be sanctioned with a fine of five thousand dollars (\$5,000) or imprisonment for a fixed term of three (3) years, or both, at the discretion of the Court. There shall be no statute of limitations on this crime.

Article 11.- Regulation

All government agencies of the Government of Puerto Rico shall amend or adopt any regulations, administrative orders, or circular letters that prescribe faithful compliance with this Law.

Article 12.- Interpretation Clause

The enumeration of rights in the foregoing shall not be understood restrictively, nor shall it presume the exclusion of other rights and procedures belonging to persons

requesting public information albeit not specifically mentioned, such as the recourse of traditional mandamus.

This Law shall be interpreted in the most liberal way, and most beneficial for the person requesting public information. Should there be a conflict between the provisions of this Law and any other legislation, that which shall prevail is that which is most favorable to the person requesting public information and documentation.

Article 13.- Transition Clause

The process that currently exists for citizens to request information in the Government Branches will remain in effect until the different Government Branches carry out the pertinent actions to implement the processes established herein. The Government Branches will have a period of six (6) months to complete all the necessary procedures to comply with the provisions of this Law.

Article 14.- Separability Clause

If any clause, paragraph, subparagraph, sentence, letter, article, provision, section, subsection, title, chapter, subchapter, item, or other part of this Law be voided or declared unconstitutional, the resolution, ruling, or sentence dictated to that effect shall not affect, prejudice, or invalidate the rest of this Law. The effect of said sentence shall be limited to the clause, paragraph, subparagraph, sentence, letter, article, provision, section, subsection, title, chapter, subchapter, item, or other part that has been voided or declared unconstitutional. If the application of any clause, paragraph, subparagraph, sentence, letter, article, provision, section, subsection, title, chapter, subchapter, item, or other part of this Law to a person or a circumstance be invalidated or declared unconstitutional, the resolution, ruling, or sentence to that effect shall not affect or invalidate the application of the remainder of this Law to those persons or circumstances in which it may be validly applied. It is the express and unequivocal intention of this Legislative Assembly that the courts shall enforce the provisions and application of this Law to the broadest extent possible, even should one or more of its parts be revoked, voided, invalidated, prejudiced, or declared unconstitutional, or even though its application to a person or circumstance be revoked, voided, invalidated, prejudiced, or declared unconstitutional. This Legislative Assembly would have passed this Law regardless of any determination of separability that the Court may come to.

Article 15.- Effectivity

This Law shall become effective immediately upon passage.