

## "Freedom of Information. Three harmless words? The role of the media and access to information laws<sup>1</sup>

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### INTRODUCTION<sup>2</sup>

More than 90 countries have recognized the need for access to public information laws and have regulated its exercise. (Mendel, 2009). The approval of these regulations, however, has not exclusively been the product of the will of politicians. The recognition of this right has been promoted by non-governmental organizations (NGOs) that, in some cases, have managed to build wider alliances that include professionals working in journalism and academia (Puddephatt, 2009).

The pursuit of the participation of the press stems from access to public information law's promoters' need to counteract resistance from political leadership (Michener, 2005). This resistance leads the organizations to search for alliances with sectors that permit them to widen their advocacy campaigns and to gain more supporters. The manner in which these relationships have been built is not uniform, and the role of the press varies from case to case. According to Michener (2009b), the organizations that sought support from the press to extend the reach of their initiatives and to widen their mobilization base found that the press does not constitute a monolithic actor, rather that it is a group of businessmen, journalists and technical professionals who are not necessarily interested in promoting access to public information.

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<sup>2</sup> The title of this article has its origin in a paragraph from the memoirs of the former British Prime Minister Tony Blair, in which he expresses regret for having encouraged the access to information law in the UK: *"Freedom of Information. Three harmless words. I look at those words as I write them, and feel like shaking my head till it drops off my shoulders. You idiot. You naive, foolish, irresponsible nincompoop. There is really no description of stupidity, no matter how vivid, that is adequate. I quake at the imbecility of it. Once I appreciated the full enormity of the blunder, I used to say - more than a little unfairly - to any civil servant who would listen: Where was Sir Humphrey when I needed him? We had legislated in the first throes of power. How could you, knowing what you know have allowed us to do such a thing so utterly undermining of sensible government?"* Tony Blair, A Journey, Hutchinson, September 2010

In some cases, and under certain conditions, the press has played an important role in the recognition of the right to access to public information and in the adoption of access laws. Although this work does not analyze the impact of some relevant variables that may have had an effect in each case – like the role of international or multilateral organizations and international cooperation agencies<sup>3</sup>— it is important to consider them in the context in which the cases presented here developed.

This work analyzes the role of the press as an *agenda-setter* (Waisbord, 2008) and its contribution to the adoption of legislation on access to public information. It also examines the contribution of coalitions between different actors and sectors and the particular participation of actors in the field of journalism. As will be shown, the formation and composition of these coalitions has been heterogeneous in the international experience. In some cases, it has been the press that has identified the issue and promoted alliances with other actors, where as in other cases, it has been civil society organizations, for example, that have sought out actors in journalism.

After analyzing the role of the press in the creation of an access to public information agenda, this work will center on the use the press has made of the access to public information laws.

Finally, the paper presents the principal conclusions of the research that served as the basis of this document.<sup>4</sup>

## **1. ROLE OF THE PRESS IN THE DEFINITION OF AN ACCESS TO INFORMATION AGENDA**

### **1.1 The Press and Advocacy**

The press —journalists, executives or directors, journalistic organizations— have participated in different ways in the promotion of access to public information regulations. Some have shown a clear involvement in inserting the issue into the public agenda and in promoting international standards and legislation. In other cases- that are not the subject of this work – the press has acted to defend existing access to information laws from the threat of eventual reforms or reversals.

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<sup>3</sup> One element that should be considered is the advance of investigative journalism in the United States, which, in other places, such as in Mexico, served as a kind of inspiration for the renewal of journalistic work. The advance of the transparency and accountability agenda is another aspect that should be considered as the context for the involvement of the media in the promotion of access to public information, as well as the action of multilateral organizations in the Latin American region, such as the OAS Special Rapporteur for Freedom of Expression and organizations with regional or international relevance, like the Inter American Press Association, the Knight Center for Journalism in the Americas, the British Council, among others.

<sup>4</sup> The research was based on a qualitative methodology, which complemented the literature survey with opinions from key actors who were consulted for the research –see the list at the end of this paper. The research limited its analysis to the experiences of countries that have regulated the law, whether through laws passed by congress or by decree.

In Latin America, we found paradigmatic cases of participation by press associations in the establishment of a public agenda.<sup>5</sup> Instances of this include the action of Abraji in Brazil, the Peruvian Press Council (Consejo de la Prensa Peruana), Honduras's C-Libre, or the Fundación Chamorro in Nicaragua<sup>6</sup>. Likewise, Michener (2009a) has studied the results of the print media's participation in the legislation of that region. The author finds a correlation between the press's action in the promotion of these regulations and the strength of the legislations that are debated and passed. Michener analyzes three recent cases: Uruguay, where the newspaper *El País* published, on average, 2.3 articles per month linked to the issue, and where the press did not become a very active promoter of this legislative agenda; Chile, where over the span of 12 months the newspaper *El Mercurio* published an average of 7.8 articles per month on the topic, and where the press participated in key moments; and Guatemala, where the newspaper *Prensa Libre* published an average of 6.3 stories on access to public information. According to the author, the attention that the media devoted to the coverage of the issue had an effect on the strength of the law that was subsequently passed. Thus while Uruguay possesses a moderately weak law, Chile and Guatemala have relatively strong laws<sup>7</sup> (Michener, 2009b).

The case of the coalition that developed in Honduras to promote the access to information law<sup>8</sup>, Alliance 72 (Alianza 72), is interesting in that it had to work hard to counteract the opposition to the bill that had broken out with the support of some sectors of the press: for example the Honduras Private Sector Council (el Consejo del Sector Privado de Honduras), The Media Owners Association (la Asociación de Propietarios de Medios) and the Journalists Association (la Asociación de Periodistas)<sup>9</sup>. The coalition was led by a

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<sup>5</sup> Relevant cases are found not only in Latin America. One currently developing case at the time of this writing is the promotion of the access to information law in the Philippines, where the National Union of Journalists of the Philippines (NUJP) along with the Asian Institute of Journalism and Communication, Center for Community Journalism and Development, Center for Media Freedom and Responsibility, and the Philippine Center for Investigative Journalism are actively promoting the adoption of legislation on the issue. Another recent example can be noted in Ghana, where the Coalition for the Right to Information, which includes the Ghana Journalists Association, the National Media Commission, the Media Foundation for West Africa, religious organizations, NGOs and the Ghana Bar Association are demanding the quick adoption of an access to public information law.

<sup>6</sup> To visit the Abraji website: <<http://www.informacaopublica.org.br/>>. To visit the Consejo website: <<http://www.consejoprensaperuana.org.pe>>. To visit the C-Libre website: <<http://www.clibre.info/>>. The importance of the Fundación Chamorro's activity in the Nicaraguan press is fundamentally derived from its association with the Chamorro family, a last name that has been linked to journalistic activity for decades.

<sup>7</sup> The Guatemalan case is particularly interesting in that the Alliance between civil society organizations and the press was able to combat the lack of coverage the issue was receiving in the public agenda. One civil society organization—the local chapter of Transparency International, Citizen Action (Acción Ciudadana)—reached a consensus with *El Periódico* for a convenient policy of 2 for 1: for every paid advertisement it made, the organization received two extra free of charge (Michener, 2009b).

<sup>8</sup> This case is analyzed in Bellver, Mendiburu and Poli (2008).

<sup>9</sup> According to Ezequiel Santagada, lawyer for the Paraguayan Environmental Law and Economy Institute (Instituto de Derecho y Economía Ambiental de Paraguay <[www.idea.org.py](http://www.idea.org.py)>), a similar situation is occurring at the time of this writing in his own country, where the press is rejecting access to information laws. Santagada says that “the main newspaper of Paraguay, ABC Color, firmly opposes an access to information law. It is not actually the whole newspaper, rather its owner and director—Aldo Zuccolillo—and some of the journalists who work there. It is not the case of one of its principal columnists, Alcibiades González del Valle, who has written various columns in ABC in favor of the law. In 2006, Zuccolillo

group of journalists —who in 2001 formed C-Libre— and by 21 other social organizations.

The Peruvian Press Council (El Consejo de la Prensa Peruana) is another interesting example. The citizen education campaign to promote access to information conducted from 2001 to 2003 collected an approximate investment of a million dollars from media companies, the equivalent of 1,279 campaign advertisements. The passing of a national law did not halt their momentum. The Peruvian Press Council —along with other social organizations, both local and regional— actively promoted the establishment of international standards in the field and made concrete contributions to the drafting of the documents: “Chapultepec Declaration (Declaración de Chapultepec)”<sup>10</sup>, “The Lima Principles (Los principios de Lima)”<sup>11</sup> and “Socius: Guidelines for Access to Public Information (Socius: lineamientos para el acceso a la información pública)”<sup>12</sup>.

In these examples, the journalists and the affiliated associations have participated in the first stage of a political cycle: specifically one that aims to create a regulatory/legislative framework. Nonetheless, it is important to remember that the public political cycle does not work in a linear manner and that between stages there is constant feedback being generated. This is why, in order for a policy to sustain itself, it is necessary that the actors who propelled the regulation stay active and vigilant to avoid reversals in the legislative field once the law has already been passed. That is to say, the involvement of the press can also lend itself to subsequent stages after laws have been passed.

We have also found examples of involvement outside of Latin America. The Sunshine in Government Initiative (SGI)<sup>13</sup> —an initiative comprised of journalistic organizations such as the Associated Press, Association of Alternative Newsweeklies, National Association of Broadcasters, National Newspaper Association and the Society of Professional Journalists— has been undertaking lobbying activities in the United States Congress, like many other non governmental organizations, in a near-constant manner. In 2005 and 2006, they worked together with legislators to recognize the importance and value of news stories supported by information that had been made public in a non-authorized manner and on the requirements for classification of information. According to a consultation conducted with SGI Coordinator Rick Bloom, in 2007, they worked to pass amendments to the FOIA that permitted the incorporation of a series of procedural reforms, including the creation of an independent mediator to resolve controversies about the application of the access to public information legislation (Consultation with Bloom, 2010).

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waged a militant campaign and sabotaged the process driven by a group of organizations to approve the law. In fact, the same day that the bill was supposed to be discussed in the Senate, he published this editorial <<http://fw3.abc.com.py/2006-05-25/articulos/254443/proyectan-ley-para-que-jueces-sean-escuderos-de-los-funcionarios-publicos>>. More recently, in February of this year, he published the following <<http://www.abc.com.py/2010/02/10/nota/75243-Corrosivo-avance-del-socialismo-del-siglo-XXI/>>” (Consultation with Santagada, 2010).

<sup>10</sup> <<http://www.declaraciondechapultepec.org/v2/index.asp>>.

<sup>11</sup> <[http://transparencia-economica.mef.gob.pe/normas/Principios\\_Lima.php](http://transparencia-economica.mef.gob.pe/normas/Principios_Lima.php)>.

<sup>12</sup> <[http://www.cartercenter.org/resources/pdfs/peace/americas/regional\\_socius\\_addendum\\_spanish.pdf](http://www.cartercenter.org/resources/pdfs/peace/americas/regional_socius_addendum_spanish.pdf)>.

<sup>13</sup> <<http://www.sunshineingovernment.org/>>.

The fact that some authorities on the application of access to information laws count ex journalists among their members may stem from the press's influence and participation in promoting these laws<sup>14</sup>. In Ireland, the work of the coalition of journalists, academics, lawyers and unions who drove the campaign “Let in the Light” was essential to the passing of an access law. This process led to the designation of a former journalist as the Irish Information Commissioner. Likewise, in Slovenia, Nataša Pirc —lawyer and journalist— was designated as the Information Commissioner. Being a journalist, says Pirc, lent an added value to her work, as it allowed her to possess a certain common language and closer proximity to the actors in the journalistic field (consultation with Pirc, 2010). An access to information commissioner in Canada was a journalist. Chris Graham, the current United Kingdom Information Commissioner, previously worked with the BBC<sup>15</sup>.

## **1.2 Case studies: Mexico and Argentina**

Thus far, we have mentioned some cases in which journalistic actors directly promoted access to public information laws. In order to illustrate the involvement of the press's effect on this issue in a more concrete manner, we will analyze the experiences of Mexico and Argentina.

### **Mexico**

The Mexican Transparency and Access to Governmental Information Law was unanimously passed in July 2002, in great measure due to the action of a coalition of academics, journalists and the media called Grupo Oaxaca (Luna Pla, 2009; Puddephatt, 2009). In the case of Mexico, it is clear that the participation of civil society, via the collaboration of academics and the written press, was essential to turning the recognition of a right into a national law. The press contributed to getting the issue on the public-political agenda and the generation of a favorable climate of opinion. However, the efforts of Grupo Oaxaca should be examined in light of a confluence of factors that Mexico was experiencing at the time. The shifting of political power, the opening of institutions and the entry of new actors into the Federal Executive Branch enabled completely new dialogue channels and collaborations between distinct sectors of society. In this context, the actions of the Executive Branch and the work of Grupo Oaxaca fostered and generated interdependences that led to the law's approval.

#### *Context and Precedents*

Prior to the passing of the legislation in 2002, Mexico had tried to regulate the right to access to public information on three occasions: 1977 —when it was included in article 6

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<sup>14</sup> On the basis of the data collected for this research, we cannot strictly conclude what has been the role of the press in such appointments.

<sup>15</sup> <[http://www.bbc.co.uk/blogs/opensecrets/2009/11/chris\\_graham\\_interview.html](http://www.bbc.co.uk/blogs/opensecrets/2009/11/chris_graham_interview.html)>.

of the constitution<sup>16</sup>—, 1981-82 and 1997. One factor that explains the failure to advance the agenda and the lack of involvement on the part of the press in these occasions is the complex relationship between the media and the government. Part of this relationship, according to Michener, was the dependency of some media on state subsidies to survive (Michener, 2005a). Some consulted experts emphasized the effect of the Institutional Revolutionary Party's (el Partido Revolucionario Institucional- PRI) control on parts of the media, as was the case with PIPSA, the company that sells newsprint paper. However, this is not the only reason why the agenda was unable to advance before 2002.

Firstly, the inclusion of the right to access to information in the constitutional reform of 1977 was intended more to guarantee that the parties had access to the media, rather than to protect the access to government documents. Secondly, the legislation of article 6 was intended to jointly regulate access to information and media activity, which ended up hindering the discussion of both issues.

One extremely important reason why the law was accepted in 2002, and not before, was the political-institutional context. The end of PRI's hegemony and the transfer of political power marked the end of an era in the country's political system and commenced a new period of democratic competence. Regarding the period inaugurated by the transfer of power, Transparency International's Eduardo Bohorquez says that:

“... It was a moment of fertility and the number of meetings that were held with public officials was incredible, some of who had great humility and a willingness to learn. It was the process of a great opening” (Interview with Bohorquez, 2010).<sup>17</sup>

Thus, it was not necessarily the subsidies that held the media captive, rather a political system in which different sectors (media, unions, organizations) were subject to State control. Roberto Rock, of El Universal, says that:

“To say that in the past they held back transparency matters doesn't correspond because it wasn't an issue. It's like asking if during a military dictatorship they talked about transparency. Well of course not!”<sup>18</sup> (Interview with Rock, 2010).

### *The Birth of Grupo Oaxaca*

The need for access to public information legislation had already been a subject of debate before the formation of Grupo Oaxaca, but in a unsuccessful manner (consultation with Sergio López Ayllon, of the Research and Economic Teaching Center - Centro de

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<sup>16</sup> “The manifestation of ideas will not be subjected to any judicial or administrative inquisition, except in the case of an attack on morality, the rights of third parties, provocation of any crime or disturbance of public order; the right to information will be guaranteed by the State (La manifestación de las ideas no será objeto de ninguna inquisición judicial o administrativa, sino en el caso de que ataque a la moral, los derechos de tercero, provoque algún delito o perturbe el orden público; el derecho a la información será garantizado por el Estado).”

<sup>17</sup> “...era un momento de fertilidad y era increíble la cantidad de reuniones que había con funcionarios, algunos con gran humildad y voluntad de aprender. Fue un proceso de gran apertura.”

<sup>18</sup> “... decir que en el pasado se frenaron cosas de transparencia no corresponde porque no era tema. Es como preguntar si en una dictadura militar se hablaba de transparencia. ¡Pues claro que no!”

Investigación y Docencia Económicas, 2010). Grupo Oaxaca combined the expertise of academics with the news power—mainly— of Grupo Reforma and El Universal<sup>19</sup>. According to those interviewed, the alliance between academics and the media was unprecedented<sup>20</sup>: until that moment relations between both sectors had been nonexistent or plagued by differences, but the need to do something in the context of the transfer of powers led them to work together. The relationship between these groups began in an almost haphazard fashion, remembers Ernesto Villanueva, of the Universidad Nacional Autónoma de México (UNAM):

“The son of (Luis Javier) Solana was my thesis student and he introduced me to his father and little by little we started talking and he spoke with Roberto Rock” (Interview with Villanueva, 2010).<sup>21</sup>

Rock remembers that the group of editors with whom he had been discussing the possibility of pushing the agenda had been feeding off the contributions of organizations like the Inter American Press Association (Sociedad Interamericana de Prensa - SIP) or the Committee to Protect Journalists (CPJ) and had considered the experience of the United States as a possible example. This group soon understood that in order to move forward with the push for a “Mexican FOIA” (for the US Freedom of Information Act), they needed to be able to count on the support of the academic world. The collaboration of specialists in the subject would be crucial in order to develop content that would allow them to advance the issue. Alejandro Junco, the Grupo Reforma director, placed the issue at the center of his agenda and of the talks with the aforementioned group of editors. Junco became a leader of the discussions that were beginning to emerge in the journalistic field (Interview Rock, 2010).

One of the media’s main incentives to lead the pro-legislation movement was a certain need for positioning and differentiation in the journalistic market. So says María Marván, the current commissioner of the Federal Institute for Access to Information and Protection of Data (Instituto Federal de Acceso a la Información y Protección de Datos - IFAD):

“Reforma was a young newspaper with a calling to do a more citizen-oriented newspaper, in the beginning political issues were not so important. It entered the market with a lot of force and its original concept was very well accepted: by 1998-99 it already was setting the agenda. El Universal, for its part, entered a period of *aggiornamento*, it’s a newspaper that is already 100 years old. They combined and found a way to distinguish themselves, to have their own place in

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<sup>19</sup> Grupo Reforma is a print media group that publishes nine newspapers in four Mexican cities. According to Wikipedia, the average daily circulation of these newspapers is 1.2 million. El Universal is a Mexican newspaper founded in 1916.

<sup>20</sup> The core group consisted of those who made up the Technical Commission. Among the academics — mainly in the area of law— were Ernesto Villanueva (UIA), Juan Francisco Escobedo (UIA), Jorge Islas (UNAM), Salvador Naba (Anahuac), Issa Luna and Miguel Carbonel. In the journalistic field, the leading participants were Alejandro Junco and Miguel Treviño (Grupo Reforma), Ricardo Rock and Luis Javier Solana (El Universal), Luis Salomón (El Informador de Guadalajara and represented the Asociación de Editores de los Estados), la Asociación Mexicana de Editores and Genaro Villamil (Jornada).

<sup>21</sup> “... el hijo de (Luis Javier) Solana era mi tesista y me presentó a su padre y poco a poco fuimos hablando y él habló con Roberto Rock (El Universal).”

the media system. The tendency of the governments to report information through the electronic media had made it so that the print media was left somewhat lagging behind”<sup>22</sup> (Interview with Marván, 2010).

Villanueva states something similar:

“The media identified in the transition a possibility to vindicate itself to society, to be part of and to be champions of change in a context of high uncertainty, when no one knew what was going to happen”<sup>23</sup> (Interview with Villanueva, 2010).

The group’s first steps were based on a wise decision: to promote only the federal access to public information law. The regulation of article 6 of the Constitution had been bogged down in the past by the comprehensiveness of the proposals, which aimed to regulate two different questions: media activity and the right to access to information. In comparison to the debates associated with the regulation of media activity, regulating the right to access to information appeared to be a less complex initiative and easier to carry out for the coalition’s first efforts. This meant the incipient group faced conflicts with two detractors: on one side, with the academics who specialized in communications issues, and who believed that the exclusive consideration of access to public information assumed a reductionist interpretation of the right to information; and on the other side, with the audiovisual media, who were attentive to the regulation of media activity.

When speaking of the media’s participation, one must not categorize or conceive of the media in a monolithic manner. On one hand, it is important to highlight the scant participation of the audiovisual media. Regarding this Rock remembers:

“We assumed that it wasn’t worth it to go speak with that part of the media because they didn’t do journalism. Now they are a bit more open but at that time there was no point talking to those in radio and television. It would be unfair to say they didn’t want to get involved; they were never invited.”<sup>24</sup>

Juan Francisco Escobedo, of the Universidad Iberoamericana (UIA) presents a different interpretation:

“ The audiovisual media representatives did not join in because they were coming from the experience of the frustrated deliberations on the Federal Radio and Television Law reforms, which they hadn’t been able to get off the ground since the 80s. The last failure, in 1987, had been an attempt to comprehensively

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<sup>22</sup> “Reforma era un periódico muy joven con una vocación de hacer un periódico más ciudadano, en el que al principio los temas de política no eran tan importantes. Entró al mercado con mucha fuerza y su propuesta original fue muy bien aceptada: para 1998-99 ya fijaba agenda. El Universal, por su parte, entra a un período de *aggiornamento*, es un periódico que ya tiene 100 años. Se combinan y encuentran una manera de singularizarse, de tener un lugar propio en el sistema de medios. La tendencia de los Gobiernos a informar a través de los medios electrónicos había hecho que los medios escritos se quedaran un poco rezagados.”

<sup>23</sup> “Los medios identifican en la transición la posibilidad de reivindicarse frente a la sociedad, de ser parte y abanderados del cambio en un contexto de alta incertidumbre donde no se sabía qué iba a suceder.”

<sup>24</sup> “Nosotros asumimos que no valía la pena ir a hablar con estos medios porque no hacen periodismo. Ahora son un poco más abiertos pero en esa época no tenía caso hablar con la radio y la televisión. Sería injusto decir que ellos no querían participar; nunca fueron invitados.”

legislate the issue (...) The unprecedented part was that [in 2002] the audiovisual media did not oppose it. Aztec TV and Televisa did not participate in it, but neither did they oppose it; on the contrary, they spoke about it and broadcast the issues and the debate when Grupo Oaxaca explained their views or took out an advertisement.”<sup>25</sup>

It is worth mentioning the resistance of some journalists who viewed the access to information bill as restrictive, in that it allowed for the classification and withholding of public documents. According to those interviewed, this was the publicly presented argument, when, in fact, the real fear in some journalistic sectors was that the law restricted the media’s privileged position to obtain information. This was not the resistance of one media group in particular; rather it appeared frequently but in isolation. Michener affirms:

“The right to information is often seen as a threat, especially when media ownership is concentrated and the media market is centralized. The idea of democratizing information generates little enthusiasm among some media professionals. A certain information jealousy tends to appear when journalists rely heavily on informal sources of information; the media professionals mistakenly believe that access laws will level the playing field and eliminate the personal benefits gained through the generation of contacts within the administration”<sup>26</sup> (Michener, 2009b: 2)<sup>27</sup>.

### *Making public policy*

In 2000, Vicente Fox was elected as President of the Republic. Fox came to power with 70% of the vote and an agenda that included transparency and fighting corruption among its priorities. Within the government’s technical teams, a group was formed of officials who had been working on the issue of access to information, like Sergio López Ayllón, María Teresa Gómez Mont —the then federal representative of the Partido Acción Nacional (PAN)—, Santiago Creel —then the Minister of the Interior (Secretario de Gobernación)—, and Francisco Barrio —then Minister for Civil Service (Secretario de la Función Pública)—, who struggled to help the President advance with this agenda. With

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<sup>25</sup> “Los representantes de los medios audiovisuales no se integraron porque venían de una experiencia frustrada de deliberaciones sobre las reformas a la Ley Federal de Radio y Televisión, que no habían cuajado desde los ochenta. El último fracaso, en 1987, había sido un intento de legislar comprensivamente sobre el tema (...) Lo inédito fue que los medios audiovisuales no se opusieron, ni TV Azteca ni Televisa participaron pero tampoco se opusieron; al contrario, hablaban y transmitían los temas y el debate cuando el Grupo Oaxaca opinaba o sacaba algún desplegado.”

<sup>26</sup> “El derecho a la información es a menudo visto como una amenaza, especialmente cuando la propiedad de los medios se encuentra concentrada y el mercado de los medios centralizado. La idea de democratizar la información genera poco entusiasmo entre algunos profesionales de los medios. Ciertos celos de información tienden a aparecer cuando los periodistas descansan fuertemente en fuentes de información informales; los profesionales de los medios erróneamente consideran que las leyes de acceso nivelarán el campo de juego y eliminarán las ventajas personales ganadas a través de la generación de contactos dentro de la administración.”

<sup>27</sup> Emilene Martínez, of the National Security Archives, recounts something similar in his interview about what occurred in Tabasco. There, the National Security Archives had to work hard to train journalists and dismiss suspicions about the possible consequences of a law that regulated access to information.

the President's support, they formed an inter-ministry team made up of Barrio, Creel, Eduardo Romero, Carlos Arce and Sergio López Ayllón. According to Michener (2008), the impossibility of creating a "truth commission" —that would investigate the PRI's past— repositioned the regulation of the right to information as one of the new administration's priorities. A first draft prepared by one of the agencies represented in the inter-ministry team was leaked, and became the catalyst for the formation of the Grupo Oaxaca. The rapprochement between the academics and journalists and the emerging coalition was solidified in a first written statement that denounced the weaknesses of the draft prepared by the Executive Branch. In this way, it was not only the coalition that introduced the issue; nor was it only the Executive Branch, rather it was the product of the interaction between the different political actors.

As a response to the bill prepared by the government, the Grupo Oaxaca drafted a series of principles that would be converted into its first ad, which would be published in 110 newspapers throughout the country<sup>28</sup>. The national seminar "Right to Information and Democratic Reform" was held in Oaxaca on May 23rd and 24th, 2001, with the participation of the Mexican Association of Newspaper Editors (la Asociación Mexicana de Editores de Periódicos), the Association of States Editors (la Asociación de Editores de los Estados), El Universal, Grupo Reforma, Universidad Iberoamericana and UNAM, among others. The meeting was the most formal expression of a series of agreements and the result of prior informal get-togethers between academics and members of the press. From that moment on, the group worked, coordinated, volunteered and organized within a kind of division of labor: the experts dedicated their time to consolidating a first draft, working on the content and the drafting of arguments for debates with other political actors; while the media dealt with the communications strategy and thought of how to present the issue so that it had more impact and generated a favorable climate of opinion.

The media helped increase the initiative's visibility through various actions. One of the most pronounced was the newspaper Reforma's inclusion of the column "Juan Citizen (Juan Ciudadano)." As Miguel Treviño of Grupo Reforma remembers it, even before the group was formed, Reforma had begun to publish a weekly column dedicated to promoting the access to information agenda. In this context, they held contests to involve citizens and organized events in different universities. A first open call to citizens was conducted in November, 2000, with the objective of allaying citizens' concerns regarding public affairs. The idea was to learn what citizens wanted to know. A second contest was held in 2001-02 and called "Answer 10 questions for a million pesos". The challenge was to take as a reference the Finance Ministry's budget expenditure bill and correctly answer simple questions such as "What will the federal government's total expenditure be in terms of personnel and offices abroad?" and "What will be the federal government's total expenditure on food subsidies?" To carry out this contest, the group allied itself with

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<sup>28</sup> This was possible given that, from the beginning, there was an agreement with two important newspaper associations: the Association of States Editors (la Asociación de Editores de los Estados- AEE), that brought together around a dozen newspapers, and the Association of Mexican Editors (Asociación Mexicana de Editores), with a membership of over 100 newspapers. In various crucial moments, they drew up advertisements that called on Congress to move forward with a law that had the minimum necessary requirements in terms of transparency. These advertisements were published as much by the newspapers in Mexico City as they were by members of the mentioned associations.

the Mexican chapter of Transparency International and with the Research and Economic Teaching Center (Centro de Investigación y Docencia Económicas - CIDE). The contest was never completed, which demonstrated that, given the complexity and opaque nature of the state information provided, it was difficult to answer even simple questions. Rock recalls the actions taken by El Universal:

“Between February and December of 2000, we published six or eight newspaper ads and editorials. We got the newspaper columnists together and explained to them what was happening, what the transparency law was. The number of articles on the issue was then growing. We put the issue on the agenda, what you call *agenda setting*. But that was our job.”<sup>29</sup>

The drafting and subsequent public presentation of their own bill had great relevance for the group’s members: some of those interviewed recall with satisfaction having put their knowledge to use to serve the creation of public policy and to feed the parliamentary debate; others interviewed mentioned this step as the moment in which the group transformed into a “political group.” When the bill consultation rounds convened by the Executive Branch began, it was clear that the media’s position was not merely that of the message’s relayer, but that of members committed to the agenda and with an interest in obtaining the law’s approval. After these consultation rounds, the President sent the bill to Congress in December, 2001, for debate and voting.

Grupo Oaxaca’s initiative gained the support of the opposition shortly after being admitted to Congress. The next step was to come to an agreement with the Executive Branch on the final version of the legislation. This was possible thanks to the fact that Sergio López Ayllón, who was in charge of the negotiations on the part of the President, was part of the same epistemic community<sup>30</sup> as members of Grupo Oaxaca (Michener, 2009b). The actors who participated in the drafting of the bills shared values and intellectual trajectories, which made it easier to reach a consensus. It is also worth mentioning the particular interaction between the political forces that arose from the parliamentary debate, which was heading irreversibly towards approving the law: Grupo Oaxaca at times acted in response to the Government’s actions. The group’s reactions fed the internal debate process and strengthened the groups promoting the bill within the government against those who were resisting it. The formation of these emerging parliamentary consensuses was making PRI—in those days, in its new oppositional role—more inclined to support the initiative, which increased the ruling party’s need to deepen the agenda.

In short, the right to access to information became a “politically correct” issue about which all public-political actors concurred. There was a general consensus between those involved about the importance of the issue; what was at stake instead was who would be

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<sup>29</sup> “Nosotros publicamos desde febrero hasta diciembre del 2000 unos seis u ocho desplegados y editoriales del periódico. Juntábamos a los columnistas del diario y les explicábamos lo que estaba pasando, lo que era la ley de transparencia. Entonces el número de notas sobre el tema fue creciendo. Pusimos el tema en la agenda, lo que ustedes llaman *agenda-setting*. Pero esa era nuestra tarea.”

<sup>30</sup> Michener employs Peter Hass’s definition of epistemic community: a network of experts or a group with authority in a determined area of public policy or field of expertise that share a set of beliefs and notions of validity.

the “champion,” who would win the initiative. In this context, Congress selected a strategy to identify the initiative as semi public, thus allowing members of civil society and journalism to participate in the legislative debates. The negotiations’ outcome is known: The Federal Transparency and Access to Governmental Information law was unanimously passed by Congress and ratified by President Fox in 2002.

Paradoxically, Marván remembers the aftermath of the passing of the law as one of the most significant periods in terms of the media’s advocacy. During the year of *vacatio legis* —the period of preparation before a law comes into effect— there were many debates about the degree of institutional autonomy that the IFAI would acquire, and the elected commissioners threatened to resign if the autonomy necessary to implement the legislation was not guaranteed. According to Maraván, the media’s actions were decisive for these debates; for example, the newspaper *Reforma* put an article about the possible resignation of the commissioners on its front page.

Although Grupo Oaxaca’s advocacy was vital, the success of the campaign owed more to a confluence of factors than to the sole actions of any group. After the law was passed, Grupo Oaxaca set itself up as the reference point from which to understand the debate and approval process. According to López Ayllón “the official history is not constructed by the government but rather by society”<sup>31</sup> (Interview with López Ayllón, 2010). This could explain why, despite the support of President Fox, who benefitted from the passing of the legislation and was able to position himself internationally, Fox did not exercise strong leadership during the process.

An important element to preserving the legitimacy that the group won in those days was their reluctance to take positions in the office that enforced the law. This issue generated much debate within the group but, eventually, all the members agreed that it would be better to abstain from holding any of those positions. The dissolution of the group appears to be very related to this issue: once the objective was achieved, the members returned to their respective jobs and roles, from which they would continue to advocate for the issue, but no longer in the form of collective action<sup>32</sup>.

Thus, the period in which the bill was drafted and passed seems to be characterized as one of great convergence and generosity on the part of the intervening actors, given the context of the transfer of power.

## Argentina

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<sup>31</sup> “La historia oficial no se construye desde el Gobierno sino desde la sociedad.”

<sup>32</sup> Una de las preguntas que surgen entre quienes han analizado el caso es por qué el Grupo no se ha reconstituido para defender la normativa frente a los retrocesos o amenazas que parece enfrentar en el contexto mexicano actual. Esta investigación entiende que la respuesta es justamente el mismo argumento esbozado sobre la clave de éxito del grupo: que se constituyó para un fin específico y renunció a desempeñar cualquier otro rol. Eso no significa que los actores hayan dejado de promover el tema, como veremos en la sección siguiente. Para un ejemplo del involucramiento de sus actores en la defensa del derecho, véase: <<http://www.scribd.com/doc/25236315/Editorial-El-Universal>>.

If the Mexican case shows how a coalition of academic experts with journalists and representatives of the media can successfully promote access to public information, the case of Argentina shows the limits of those collective efforts<sup>33</sup>.

In 2001, the Anticorruption Office (la Oficina Anticorrupción - OA), created by the Fernando De la Rúa government, initiated a participatory drafting process of regulations to debate, draft and reach an agreement on an access to information that would be sent from the President to Congress for its approval. After a year of meetings between politicians, legislators, academics, members of non-governmental organizations, journalists and media executives, the parties agreed to a draft that fulfilled international principles and standards.<sup>34</sup>

In 2002, after the crisis of late 2001, the Provisional President Eduardo Duhalde sent the bill to Congress for its legislative treatment and approval.

In the context of a serious institutional breakdown and an important crisis of representation, civil society organizations began to get involved in the push for a series of legislative initiatives, among which was the access to information bill. It was then that a number of civil society organizations began to act collectively to encourage discussion of the bill in the lower chamber of the Argentine congress<sup>35</sup>. The organizations that participated in this coalition were: The Association for Civil Rights (la Asociación por los Derechos Civiles - ADC), the Environmental and Natural Resources Foundation (la Fundación Ambiente y Recursos Naturales), The Legal and Social Studies Center (el Centro de Estudios Legales y Sociales - CELS), The Center for the Implementation of Public Policies for Equality and Growth (el Centro para la Implementación de Políticas Públicas para la Equidad y el Crecimiento - CIPPEC), the group Journalists (Periodistas)<sup>36</sup>, the Institute for Comparative Studies in Social and Criminal Sciences Institute (el Instituto de Estudios Comparados en Ciencias Penales y Sociales), and The Citizen's Branch Foundation (la Fundación Poder Ciudadano).

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<sup>33</sup> At the time of this paper's writing, The Congress of the Nation was again discussing bills to regulate the access to public information.

<sup>34</sup> This paper refers to international standards such as the principles developed by multilateral organizations and agencies to guide the drafting of access to information legislation. Among these principles, are the following documents: "The Johannesburg Principles on National Security, Freedom of Information and Access to Information" (published by Article 19, October 1995); "The Public's Right to Know: Principles on Freedom of Information Legislation" (Article 19, June 1999); "A Model Freedom of Information Law" (Article 19, July 2001); The Lima Principles (Los principios de Lima - Consejo de la Prensa Peruana, Lima, February, 2001);

<sup>35</sup> Argentina, like Mexico, has a bicameral congress, so in order to be passed, a bill must be approved by both chambers. If a bill is modified by one chamber, the bill must return to the chamber where it originated to be reconsidered, and requires a majority equal to or greater than that of the revising chamber in order to insist on the originally approved version.

<sup>36</sup> The Association for the Defense of Independent Journalism (La Asociación para la Defensa del Periodismo Independiente - Periodistas) was created in December 1995 in a context of increasing threats to the press and independent journalism. The murder of photojournalist José Luis Cabezas, on January 25, 1997, confirmed the reasoning for its founding. Journalists participated in the organization of two demonstrations that drew thousands of people to demand that the crime be investigated. The "Periodistas" association was a non-governmental organization independent of the media owners and workers' unions. It was made up of news directors, editors, columnists, writers and radio and television hosts.

During this first stage, the participation of the press was guided by the individual involvement of some journalists. Roberto Saba, former executive director of ADC, recalls:

“It seems to me that the press first got involved in promoting an access to information law on an individual basis. I remember that before they began to debate the OA draft bill, and even before they discussed the Buenos Aires City access to information bill<sup>37</sup>, I participated in a seminar organized by Freedom Forum in which they emphasized the importance of access to information for the practice of journalism and institutional transparency. I remember that of the seminar participants, those who provided the most arguments for the promotion of a law in Argentina were the journalists who had had the opportunity to use FOIA in the United States”<sup>38</sup> (Consultation with Saba, 2010).

In addition to this individual involvement, and unlike what happened in Mexico, at first the Argentinean press’s participation was through professional reporters’ organizations, like *Periodistas*. In this stage, the media coverage of the parliamentary debates was rather irregular. In May, 2003, after a group of experts participated as guests in the discussions of the Constitutional Affairs Committee (*la Comisión de Asuntos Constitucionales*), the President sent a bill to the Chamber of Deputies, which passed the bill with some minor changes to the original initiative. The bill was then turned back to the Senate for revision the same month Néstor Kirchner took office as President of the Nation, and the First Lady of the Republic became the head of the Constitutional Affairs Committee. The access to information bill did not receive attention that year from the Senate as that same commission, under the close watch of the organizations that made up the pro-access to information coalition, channeled their efforts into analyzing the bills that were considered vital to the ruling party’s agenda, such as the restructuring of the Supreme Court.

In 2004, the coalition of organizations supporting the bill went through some changes in its membership. Firstly, the organization *Periodistas* dissolved. Secondly, new civil society organizations joined, such as the Civil Association for Equality and Justice (*la Asociación Civil por la Igualdad y la Justicia - ACIJ*) and a new journalistic association,

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<sup>37</sup> The City of Buenos Aires Legislature approved law 104, which regulated the right to access to information, in 1998, long before the issue got to the national Congress. Roberto Saba actively participated in the promotion of a local level bill, along with the city legislator Marta Oyhanarte, who later would become the head of the Subsecretary for Institutional Reform and Strengthening of Democracy – the agency responsible for the implementation of decree 1172/03. The decree regulates the right to access to information from the national Executive Branch.

<sup>38</sup> “Me parece que el primer involucramiento de la prensa en la promoción de la ley de acceso a la información se dio de manera individual. Recuerdo que antes de que comenzara a debatirse el anteproyecto de la OA, e incluso antes de que se discutiera el proyecto de ley de acceso a la información de la ciudad de Buenos Aires, participé de un seminario organizado por el Freedom Forum en el que se destacó la relevancia del acceso a la información para el ejercicio del periodismo y la transparencia institucional. Recuerdo que de los participantes del seminario, los que aportaron mayores argumentos a favor de la promoción de una ley en la Argentina fueron los periodistas que habían tenido la oportunidad de hacer uso de la FOIA en Estados Unidos.”

the Argentinean Journalism Forum (el Foro del Periodismo Argentino - Fopea)<sup>39</sup>, which had been recently created.

But the most significant event in 2004 was when some media companies joined the campaign to promote the access law. The incorporation of the media companies came about due to a seminar organized by CIPPEC in the town of Lobos (Buenos Aires Province), where the objective was to provide an assessment of the news coverage of corruption cases and to devise a small action agenda for its improvement. Journalists, academics, and members of non-governmental organizations participated in the seminar, as well as representatives from two of the most important multimedia groups in the country: the Clarín Group and Telefé. The various sessions of the seminar referred to access to public information as part of the agenda that should move forward. Saba remembers of the seminar that:

“The purpose of the CIPPEC seminar was interesting because it allowed human rights organizations, transparency specialists, and representatives of journalism groups to guide agreements to improve news coverage of corruption cases. Although there wasn’t very much awareness about access to information, when they thought together about a possible work agenda, the issue arose almost naturally and all the participants agreed on identifying it as a priority.”<sup>40</sup> (Consultation with Saba, 2010).

The seminar brought the organizations that had been pushing access to public information closer together with the media companies. This relationship would prove to be fruitful for much of 2004. Although the news coverage was never very significant, the issue won a space in the print media’s agenda. The civil society organizations began to add representatives from the Argentinean Journalistic Entity Association (la Asociación de Entidades Periodísticas Argentinas - Adepa)<sup>41</sup> to their meetings and in this way multiplied the bill’s circulation. As a result of this strategy, they published advertisements<sup>42</sup> in the newspapers Clarín and La Nación. Eugenia Braguinsky, CIPPEC Transparency Division Coordinator, recalls:

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<sup>39</sup> Fopea is a group of media professionals and journalism professors who created a “space for reflection, dialogue and promoting quality in journalism.” See the forum’s website: <[www.fopea.org](http://www.fopea.org)>.

<sup>40</sup> “La propuesta del seminario de CIPPEC fue interesante porque permitió vehicular acuerdos para mejorar la cobertura informativa de casos de corrupción entre organizaciones de derechos humanos y especializadas en transparencia y los representantes de entidades periodísticas. Si bien no había tanta conciencia sobre el acceso a la información, cuando se pensó una posible agenda de trabajo conjunta el tema salió casi naturalmente y todos los participantes coincidieron en identificarlo como prioritario.”

<sup>41</sup> Adepa is an association of Argentinean journalistic entities, created in 1962 to fulfill the following objectives:

- “1) affirm the spiritual tradition of Argentinean journalism and safeguard the faithful fulfillment of the ethical standards of journalistic activity;
- ”2) defend freedom of expression in general and freedom of the press in particular, with the idea that without them it is not possible to have the authentic democracy to which we aspire;
- ”3) collaborate in the technical and cultural development of the Argentinean press; and
- ”4) strengthen links between men of the press in all of the Republic, developing the complimentary activities implicit in these assumptions.”

See the website <[www.adepa.org.ar](http://www.adepa.org.ar)>.

<sup>42</sup> By ad (“solicitada”) we mean the notices, announcements or paid advertising spaces (paid ads) that are intended to convey a particular message through the newspaper.

“The relationship of the NGOs with the media during the period in which they debated the access to information law bill in the Senate was, in general terms, good. The major national newspapers and television stations provided space for the organizations to disseminate their campaign in favor of a law that fulfilled certain requirements and minimal standards (those that guaranteed the effective exercise of the right). An example of this was the space designated on more than one occasion to publish ads addressed to senators”<sup>43</sup> (consultation with Braguinsky, 2010).

Saba emphasizes that they not only obtained advertising space from their coordination with the press, but that they also expanded news coverage of the issue:

“The coordination with the press made newspapers like Clarín and La Nación more receptive to the publication of opinion pieces on the issue, and it increased the news coverage linked to promoting access to information and the parliamentary debate”<sup>44</sup> (Consultation with Saba, 2010).

The coalition advanced and undertook the ultimately unsuccessful plan to design a advertisement. The planning of the advertisement illustrates the tension that can be generated in a coalition. The organizations had succeeded in getting the support of the advertising agency Young & Rubicam to design a first version that would be disseminated on the radio and television channels. However, the organizations could not agree on the content of the ad<sup>45</sup> and they squandered a unique opportunity to spread their message en masse.

That same year, when the Senate Constitutional Affairs Committee finally began to debate the bill, a breakdown in the relationship between the organizations and the media occurred. The Committee had called for experts and stakeholders in access to information to submit their views on the bill. Among those invited was the then head of Adepa, Lauro Laiño, who was consulted by Jorge Yoma — the national senator for the ruling Peronist party — about the scope of the proposed media legislation. Yoma thought that if the media was receiving advertising spots from the government, and these transactions could be considered as subsidies, then the media should be subject to the legislation, that is to say, that the media groups —without being public entities— would have to answer information requests just like the State. This situation led to the media companies —not the journalists— distancing themselves from the campaign and adopting a less prominent role in promoting the right, although they continued supporting the organizations in the

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<sup>43</sup> “La relación de las ONG con los medios durante el período en que se debatió el proyecto de ley de acceso a la información en el Senado de la Nación fue, en términos generales, buena. Los principales diarios nacionales y canales de televisión brindaron espacios para que las organizaciones difundieran su campaña a favor de que se sancionara una ley que cumpliera ciertos requisitos y estándares mínimos (los que garantizan el efectivo ejercicio del derecho). Un ejemplo de ello fueron los espacios cedidos en más de una oportunidad para publicar solicitadas dirigidas a los y las senadores y senadoras.”

<sup>44</sup> “La articulación con la prensa volvió a algunos periódicos como Clarín y La Nación más receptivos para la publicación de notas de opinión sobre el tema, y aumentó la cobertura de las noticias vinculadas con la promoción del acceso a la información y el debate parlamentario.”

<sup>45</sup> The disagreement about the content is anecdotal, but not all the organizations accepted Young & Rubicam’s advertisement proposal; some thought it did not reflect the message they wanted to convey.

coalition. The media companies continued giving space to coverage of the issue but they stopped expressing their support for the initiative.

Also in 2004, a few days before the deadline to issue its report on the bill, the Constitutional Affairs Committee, in plenary with three other committees in charge of issuing the report, presented a revised version of the bill that included various modifications to the original version. It extended the reach of the law to private entities and obligated anyone who possessed the vague concept of “information of general interest” to provide that information. That revised version was approved by the Senate in 2004 and sent to the Chamber of Deputies for ratification. This partial approval affected the participation of the press:

“The Senate’s approval of the bill froze the media’s involvement. I think it wasn’t only the subsidies that contributed to the media’s rift, but also the fear they had of the regulation being used to access journalistic sources, whose identities are protected”<sup>46</sup> (consultation with Saba, 2010).

Braguinsky coincides with Saba:

“This kind of strategic alliance with the media (with the media companies, not the journalists) was losing strength as the debate advanced in the Senate and then when it went back again to the Chamber of Deputies. I understand that they were influenced by these essential two questions: firstly, the point introduced by the ruling party about whether the media is or is not obligated to be subject to an access law. Although the [civil society] organizations maintained their original stance on this issue, the media companies began to take another position regarding the debate. One cannot say that they stopped supporting the approval of the law but, yes that the tacit alliance that existed suffered. Secondly, it also lost strength due to the very dynamic acquired by the legislative process. When the bill returned to the Chamber of Deputies with changes, none of the actors involved were convinced that this was the moment to discuss it. In this way, as the parliamentary year progressed and the reigning climate of the prior year dissolved, so too did the alliance that had been created between the NGOs and the media”<sup>47</sup> (consultation with Braguinsky, 2010).

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<sup>46</sup> “Creo que no solo el tema de los subsidios pesó en el alejamiento de los medios sino también en el temor que tenían de que la regulación fuera utilizada para acceder a la fuentes periodísticas, cuya identidad está protegida.”

<sup>47</sup> “Esta suerte de alianza estratégica con los medios (con las empresas de medios, no con los periodistas) fue perdiendo fuerza a medida que avanzaba el debate en el Senado y luego cuando pasó nuevamente a la Cámara de Diputados. Entiendo que influyeron en esto fundamentalmente dos cuestiones: en primer lugar, el punto introducido por el oficialismo sobre si los medios eran o no sujetos obligados de una ley de acceso. Si bien las organizaciones mantuvieron su postura original sobre este tema, las empresas de medios comenzaron a tomar otra postura frente al debate. No puede decirse que dejaron de apoyar la sanción de la ley pero sí que la alianza tácita que existía se resintió. En segundo lugar, perdió fuerzas también por la propia dinámica que adquirió el proceso del tratamiento legislativo. Cuando el proyecto con cambios volvió a diputados ninguno de los actores involucrados estaba convencido de que era el momento para tratarlo. De esta manera, a medida que pasaba el año parlamentario y se disolvía el clima reinante el año anterior, también lo hacía la alianza de ONG y la que habían armado estas con los medios.”

Already by 2005, a year of legislative elections, the bill had lost parliamentary status. While the bill that arrived at the Chamber of Deputies had the “ruling party stamp,” and while the ruling party was well supported by general society, the legislators did not want to pay the cost of dealing with a ruling party bill sent by the Senate in an electoral year, nor did they want to support a bill that they knew had many deficiencies. The bill has not been addressed since then. They are currently debating new bills in both chambers.

The case analysis demonstrates that the media involved itself in promoting an access to information agenda.<sup>48</sup> However, the result of this involvement was not the adoption of the legislation. It is difficult to attribute one sole cause to this disaster, but in comparison with the Mexican case, two factors were not present in the process of discussing the bill in Argentina. Firstly, the debates did not take place in the context of a transfer of political power, as described in the Mexican case. That is to say, they lacked a context of great renewal and the opening of the political system, a process that requires new initiatives. Secondly, the interaction between the actors did not generate convergences, rather it created antagonisms and extreme proposals that left some stakeholders out. It is not that the coalition broke, rather that the clashes with the ruling party became so antagonistic that it became impossible to negotiate to reach a consensus on the bill.

The result is known: at the time of this work’s writing, Argentina still lacks a national law that implements the right to access to public information. The lack of coordination between non-governmental organizations and the press in the current draft law discussions in Congress should not be read as coincidental. In a context of even greater polarization and confrontation between the press and the government, the organizations seem to have opted to undertake a campaign without the support of the media.

### **1.3 Lessons from the Mexican and Argentinean cases**

In the studied cases, the involvement of the media and its coordination with civil society organizations and/or academics proved to be beneficial, although the results obtained require examination of the specifics of each case. Although it could be argued that the coordination of civil society organizations with the media generally increases the possibility of obtaining a successful result, the Argentinean case shows that can only be achieved providing that attention is paid to the diversity of interests and eventual disagreements between the involved sectors. If the media’s participation is interpreted as a form of pressure to favor only itself, there may be negative reactions— mainly from the government — that could block the approval of access to information laws.

Likewise, while in the Mexican case the media had clear interests for joining the efforts to promote the legislation, such as the need for positioning and differentiation in the

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<sup>48</sup> In an interview, Michener says otherwise: “In Argentina, the newspaper Clarín, for example, is so big and has so many interests, and is involved in so many sectors of the economy, that access to information was not an important issue for them in 2004, and they did not support the bill during the 2000-04 campaign.” (“En la Argentina, para el diario Clarín, por ejemplo, que es tan grande, con tantos intereses, que tiene tantos sectores de la economía, el acceso a la información no era un tema importante en 2004, y no apoyaron el proyecto de ley cuando en el período 2000-04 se hizo la campaña.”) The interview is available at <http://www.periodismo-aip.org/opinion-detalle.php?id=31>.

journalistic field—, in the Argentinean case it is not so clear what led them to participate in the campaign. It could be conjectured that the events happening in other countries in the region had some influence on them, like Peru, where their peers were involved in promoting access to public information. It must also be acknowledged that the Inter American Press Association<sup>49</sup> was also then promoting this kind of legislation, which may have encouraged some of the media to join in, although without any clear benefit to be gained.

In conclusion, we can postulate that news coverage of these bills is essential to increase citizen awareness and thus have an effect on public authorities, but media participation can also have different and undesired results. This seems to be explained by the contextual questions. Thus CELS's Andrea Pochak believes that the events of the Argentinean case cannot be solely explained by the media's participation in the campaign:

“The media's involvement alone does not explain the advance nor the stalling of the access to public information bill”<sup>50</sup> (consultation with Pochak, 2010).

In the Mexican case, the transfer of power allowed the press and academics to participate and draft together a bill that was eventually signed into law. On the contrary, in the Argentinean case, in a context of increasing antagonism in the political system, the involvement of the media only accentuated the conflicting positions, intensifying the differences and impeding a legislative consensus.

Finally, another point of interest is the comparison of the role of the press in the coalitions formed to promote the legislation. While in Mexico some media executives, such as Alejandro Junco or Roberto Rock, greatly influenced the fate of the coalition and provided leadership, in Argentina the press had a collaborative role but one of lesser leadership.

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<sup>49</sup> As previously stated, international initiatives are not a subject of this study, but it is important to mention the possible influence these initiatives had at the local level. To see the importance of this issue in IAPA's agenda you can see their latest resolution on the matter: [http://www.sipiapa.com/v4/index.php?page=det\\_resolucion&asamblea=24&resid=347&idioma=sp](http://www.sipiapa.com/v4/index.php?page=det_resolucion&asamblea=24&resid=347&idioma=sp)

<sup>50</sup> “El involucramiento de los medios no explica por sí solo ni el avance ni el retroceso del proyecto de acceso a la información pública.”

## 2. THE USE OF ACCESS TO PUBLIC INFORMATION LAWS

### 2.1 Introduction

This study also leads us to ask several questions regarding journalists' use of access to information laws<sup>51</sup>: Why do journalists utilize this right and what factors can also discourage its usage? To what extent do journalists request information in comparison to other civilians? What kind of information is solicited and what stories does the media publish on the topic? What are the specific skills necessary for the use of the legislation and what has its contribution been to investigative journalism<sup>52</sup>? And finally, how has this legislation affected the relationship between journalists and the government? We will discuss all this later on.

#### 2.1.1 Motives and Incentives

According to the analyzed texts, the journalists that generally use access to information laws are those who have some support from their editors to carry out in depth research, or independent journalists for whom the issue has some particular importance for their own research agenda (Hayes, 2009). Journalists make use of this tool if they do not have any other way of obtaining the information: "Only if I couldn't get moles and scouts to talk", or when they need raw data or a particular piece of information (Bildstein 2004). In a recent study by the Constitution Unit of the University College London (United Kingdom), consulted journalists said they used the information law for its novelty; because the law gives them the explicit right to ask questions and receive answers; because the law is a vital tool for investigative journalism or for following stories over the long term, and because the law is useful for obtaining raw information that they would never have known about prior to the legislation (Holsen et ál., 2007). The journalists surveyed in this study all agreed that the ability to verify data or rumors and to contrast the official versions of certain phenomena were reasons for requesting information:

"I would say that day in, day out, journalists are using FOI to better understand how governments are making decisions, and whether the historical record conforms with what officials are saying. Sometimes that does turn negative, but only where there is gap between the documents' version of the truth and the officials' version of the truth. I always say documents are the key because they can't lie, or obfuscate, or spin" (consultation with Charles Davis, of the National Freedom of Information Coalition, 2010).

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<sup>51</sup> In this paper we have chosen not to discuss specific cases where stories were published based on information requests, rather we have opted to extract from these stories certain common patterns and lessons. In section 2.2 we mention the websites of some journalists or journalist associations where these stories can be consulted.

<sup>52</sup> It is important to highlight the extensive work of civil society organization that, with the support of international foundations, have promoted the exercise of the right to access to information and the use of access to information laws in the journalistic field. Just to mention a few exceptional cases, it is worth considering the work of The Association for Civil Rights (la Asociación por los Derechos Civiles- ADC), Access-Info, Article 19, Trust for the Americas, Knight Foundation, among others. These organizations' experiences promoting an access to information agenda are so diverse that they merit a separate study.

“Journalists tend to rely on documents to provide verification for what sources say. Government documents provide a limited privilege in the United States in libel suits, so it's best to have a court record or other government document to hang a story on, particularly if the story makes someone look bad” (consultation with David Cuillier, President of the Society of Professional Journalists’ Freedom of Information Committee, 2010).

Some of the journalists consulted identified the possibility of uncovering corruption scandals as another motive for using the access to information laws:

“I don't think the objective of most journalists is to "get" officials through documents. But a key role of journalists is to uncover corruption and hold government accountable. So as a result, a lot of document-based reporting uncovers scandals” (consultation with Cuillier, 2010).

“I think the majority of requests aim to reveal scandals or to bring to light compromising information about the government of the day. In this sense, you can say, that the result reinforces the negative image of the government. But, on the other hand, I think it is natural that they use this tool to obtain information that the government would otherwise refuse to hand over”<sup>53</sup> (consultation with Gabriel Sued, of the newspaper La Nación, 2010).

A consultation with journalists conducted by Carolina Pacheco Luna (2008) in México revealed why some journalists make limited use of the federal access to information law. 59% of those consulted who said they did not use the legislation explained they did not do so because “they did not need to,” because “they relied on other sources,” because “they used official information,” because “their superior had not asked them to” or because “it didn't interest them.”

In summary, according to the consulted texts and experts, journalists use the information laws when they cannot obtain documents by other means, when they need to verify certain information, and when they are interested in obtaining “raw” or unprocessed information, or when they aim to reveal corruption cases or scandals in the political sphere.

### **2.1.2 Magnitude**

An important aspect of analyzing journalists’ use of access to information laws is to quantify the magnitude of requests made by journalists in comparison to those submitted by others. The results are not always consistent and systematic comparative studies do not exist. This section presents the main findings of studies carried out in different countries. It is important to distinguish between two kinds of measurements: firstly, those

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<sup>53</sup> “Creo que la mayor parte de los pedidos apunta a revelar escándalos o a sacar a la luz datos comprometedores para el Gobierno de turno. En ese sentido, puede decirse, por un lado, que el resultado es el refuerzo de la imagen negativa del Gobierno. Pero, por otro, creo que es natural que se use la herramienta para obtener información que, de otro modo, el Gobierno no aceptaría entregar.”

that try to identify the number of information requests made by journalists against the total number of requests made to public entities or particular governmental agencies—something that is usually reflected in the official statistics on the use of access to information laws—; secondly, the measurements that try to quantify the use of law by journalists in general.

In relation to the first kind of measurement, Attallah and Pyman conducted an interesting study on the use of the federal access to information law in Canada. Using official statistics, they discovered that between 1985 and 2000 around 10% of the information requests received by the Canadian government were made by journalists (Attallah and Pyman, 2002).

The Heritage Foundation studied 2,285 information requests made to four United States federal agencies during the first six months of 2001 and found that only 119 were made by journalists, that is to say, around 5% (Tapscott and Taylor, 2001). Something similar occurred in a study by the Coalition of Journalists for Open Government, which analyzed the 6,439 information requests made to six United States agencies in September, 2005, and found that journalists submitted only 6%. Although this is just a sample of government agencies, the coinciding percentages in both studies seem to reflect a proportionately low usage of this tool by US journalists in comparison to total requests made.

Regarding the second type of measurement, a poll of 55 journalists from the Society of Environmental Journalists based in the United States, found that two of every three didn't even bother to use the Freedom of Information Act (FOIA) (McClure, 2005). The study concluded that many of those interviewed demonstrated a profound ignorance regarding the tool. Many of those who did know about FOIA declared that they found it difficult to use, but that it was worth the effort. Journalists who used FOIA expressed that they found it difficult to track requests and that sometimes they even had difficulty identifying the officials responsible for responding to requests.

Rosenbaum (2004) conducted a similar study, analyzing the total number of requests made in Ireland from April 1998 to the end of 2000. Journalists made around 16% of the requests. The study showed that journalists generally tend to seek information from central government agencies rather than from local ones. Other citizens, the study found, are more likely to do the opposite.

Nigel Waters believes that journalists have made relatively little use of the access to information law in Australia (Snell, 1998). This is consistent with a study based on interviews with journalists from Tasmania, who stated they did not make an information request more than once a month (Bildstein, 2004).

In December, 2001, the Society of Professional Journalists (SPJ) conducted a survey of the stories published and broadcasted in 11 newspapers, one radio station and eight television channels in the United States in order to identify how many of them relied on public documents. Of 4,445 pieces analyzed, 19% of what was published in the print

media was based on public documents, while only 11% of the stories from the radio station and television channels made use of these resources. The study found that the documents used included court decisions, information regarding school evaluations, FBI documents, union contracts, health inspections, police reports, autopsy reports, and census information, among others (Marquand, 2001).

According to A. Roberts (2010), a study that assessed India's access to information law's first five years of implementation<sup>54</sup> found that journalists have not extensively used the right to information as a tool for investigative journalism. It also showed that the stories about the legislation that appear in the media primarily address the use of the law by other groups or social actors.

In Latin America, this question has not been studied in depth. The analysis of the Mexican and Argentinean cases, however, does reveal some data on the use of the legislation by journalists in both those countries. According to official IFAI information, from June, 2003, to July, 2010, the media made 12.2% of all submitted information requests in Mexico. In a consultation with Mexican journalists for a report by the William y Flora Hewlett Foundation (2006), the journalists said that the Federal Transparency and Access to Information law had had a relatively limited effect on journalism in general. They attributed this to the time it took to answer requests, which rarely suited journalistic needs; the relevance of the legislation for investigative journalism, which only constitutes a very small fraction of journalistic activity; and the lack of training for journalists. Nonetheless, according to a study conducted by Pacheco Luna (2008), one of every four journalists in the Federal District (Mexico City) has made an information request. In a sample of 424 journalists, 86% said they knew about the access to information law but only 41% stated they had used it.<sup>55</sup>

In Argentina, according to official information available on the website of the Chief of Staff (Jefatura de Gabinete de Ministros), of the requests made to the national government from the time decree 1172/03 (the decree that regulates access to information from the national Executive Branch) came into effect until 2008, only 4.68% of requests were submitted by journalists (SSRIFD, 2008). In a 2009 Fopea presentation made on the occasion of the OAS Special Rapporteur for Freedom of Expression's visit to Argentina, it was noted that although the percentage of information requests by journalists is low, it has been increasing. According to Fopea, and supported by official statistics, information requests by journalists increased from 23 in 2004 to 66 in 2006.

The studies show that only between 4% and 16% of information requests made to the government are from journalists. However, something that these studies do not ask is what magnitude of journalist information requests would be desirable. What should the

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<sup>54</sup> <<http://rti-assessment.org/>>.

<sup>55</sup> Journalists' high level of recognition of the access to information law can be explained by the widespread coverage of the legislation. The level of usage of the law, which is somewhat higher than what appears in the other data distributed throughout this section, is explained by the fact that this poll only consulted journalists from the Federal District, whose newspapers actively advocated for the legislation and are still working today to more widely promote the right.

ratio of requests submitted by journalists in relation to other applicants be? Osler (1999) believes that 10% of the requests that are submitted by journalists in Canada fail to meet the expectations set forth in the legislation, especially in relation to the importance of journalistic work. According to the author, it is not the access legislation that was overestimated, but rather the journalistic activity itself. The daily work of the news sector entails disseminating information that does not easily relate to the revelation of corruption or a scandal in public affairs. Investigative journalism is only one way of practicing journalism, but there are many other more routine forms that are not necessarily based on information requests, like interviews, or press conferences.

It is very difficult to establish what ratio of requests by journalists is desirable, or how many journalists should be active users of this tool. Additionally, there are the methodological difficulties in measurement. In some countries, like Mexico, it sometimes is impossible to verify the identity of applicants, and some journalists prefer to submit applications as citizens, which complicates the collection of statistics. But the studies discussed here seem to agree that journalists' usage of access to information legislation is low. In any case, even without a parameter to evaluate the magnitude of requests, we can affirm that journalists make a minor portion of total requests (in all cases less than 16%) and thus it is difficult to maintain that this tool has been designed "for them," as some officials have alleged. What we can corroborate with empirical analysis is that requests by journalists are more likely to become news stories, and to gain attention and importance in the public debate. This was exemplified in the scandal over the expenses of Members of Parliament in the United Kingdom. In this vein, perhaps they (the MPs) should read the statements by former English Prime Minister Tony Blair in his memoirs: *"The truth is that the FOI Act isn't used, for the most part, by 'the people'. It's used by journalists. For political leaders, it's like saying to someone who is hitting you over the head with a stick, 'Hey, try this instead', and handing them a mallet. The information is neither sought because the journalist is curious to know, nor given to bestow knowledge on 'the people'. It's used as a weapon."*<sup>56</sup>. In section 2.1.6 we analyze how access to public information laws affect the interaction between the press and the government and the tensions that this new tool can bring to the relationship between actors in the political system.

### 2.1.3 Types of Stories

Another aspect of great importance in order to understand journalists' use of access laws is to examine the content of the requests, that is to say, the kind of information sought and the types of stories written and published through the exercise of this right:

"The crucial point, however, is not how often journalists use the FOIA but what they do with the requests they do make" (Tapscott and Taylor, 2002).

In a specialized literature survey of the topic, we found that the type of stories vary considerably. For example, Rosenbaum (2004) identified the following issues as the most frequent content of the requests made by journalists in Ireland between 2003 and 2004:

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<sup>56</sup> <<http://www.cfoi.org.uk/blairarticle060910.html>>.

details of public spending; internal government communications that could reveal inconsistencies between ministries; communications and cases of discrepancies between the government and state agencies; internal warnings from the administration about organizational problems; and the use of statistical information in order to make comparisons, among others.

In the case of Canada, Attallah and Pyman (2002) found that the nature of the stories has changed over time. In the first stage of the law's implementation, the pieces were very specific or part of more extensive stories that belonged to the genre of investigative journalism. Later, they became more complex, based on more sophisticated questions and following-up on previous work. The stories have had varied "apparent intentions," such as exposing clientelism or showing inefficiency and the waste of resources, although in the majority of situations the requests and the stories aim to describe the work of governmental agencies.

In a conference organized by the Chilean Transparency Council (Consejo de la Transparencia de Chile) in April, 2010, The New York Times Vice President, David McCraw, recounted a series of cases in which the newspaper had used the US access to information law. These included requests about automobile accidents, disability pensions, overdue tax payments, the Iraq war, labor conditions, the treatment of prisoners at Guantánamo Bay, government officials' salaries and licenses to trade with Iran, among others.

Jeremy Hayes (2009) notes that in the first stage of the implementation of the United Kingdom's access to information law, many of the published articles reported on stories of low institutional importance (civil servants' salaries, for example), but the fact that the information was revealed by an information request gave it an element of importance. However, the author highlights that in the same period there were also some very substantive discoveries. These kinds of stories were consolidated as the implementation of the law advanced, and thus, had more institutional importance, such as the case regarding the expenses of Members of Parliament<sup>57</sup>.

An analysis of 602 UK journalistic articles from 2005 that utilized the British FOIA identified the following predominant topics: expenses and salaries; institutional rules, procedures and policies, and performance measurements (Holsen et al., 2007).

In Mexico, the Pacheco Luna consultation (2008: 8) identified the most important issues as "... those that refer to the budget sector (...), appointments and officials' salaries, consumer costs, travel allowances and food costs, tax distribution, destination of public resources, programs and investments in governmental works, costs incurred during international trips."

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<sup>57</sup> Heather Brooke is responsible for one of the cases that gained the most news coverage in England: in 2008 she won a case in the lower chamber of the Supreme Court to fully disclose members of parliament's expenses, information she had requested in 2004.

Those consulted highlighted the breadth of topics that could be the subject of information requests:

“Journalists and others use the main right to information law in the United States - - the FOIA -- to access documents that reveal undisclosed information about a broad range of topics of public interest, from nuclear safety and debate about whether lunchboxes containing lead are safe for children to analyses of detainee conditions and the conduct of the U.S. military and the treatment of war veterans seeking benefits the government promised” (consultation with Bloom, 2010).

“Mostly, FOIA is used to highlight something of great public interest in how the government operates, or more often to highlight something essential to the everyday lives of community residents, parents, neighbors, etc., such as drinking water contaminated with hazardous chemicals.” (consultation with Bloom, 2010).

“There are two kinds. Those published in the politics section generally tend to relate to the government’s use of public resources. Some examples of the predominant story topics include the distribution of social plans, employment surveys, the use of planes, and trip expenses. In the general news sections, the articles are most often related to environmental contamination and health issues”<sup>58</sup> (consultation with Sued, 2010).

The interviews and the literature analyzed reveal that journalists use the law for a variety of issues. But regardless of the subject that inspires the reporting, it requires skills and strategies to formulate the request in a clear manner in order to have a better chance of obtaining information. We will discuss this in the following sections. .

#### **2.1.4 Skills and Strategies**

The literature in the field reveals a consensus regarding the importance not only of knowing about the legislation, but also the need to know how to use it (Rosenbaum, 2004; Attallah y Pyman, 2002; Bildstein, 2004). Journalists require adequate skills and strategies to access the desired information. This issue has not only been recognized in the literature, but also by journalistic organizations that, to a greater or lesser degree, have conducted training courses for their members and for the general public<sup>59</sup>.

Submitting information requests requires technical competence but also, as Edwards states, personal traits like “patience, tenacity and organization”<sup>60</sup> (Edwards, 2008: 1). One essential point is trying to eliminate the prejudices that exist about government and the need to undertake the task with realistic expectations about what can be achieved: “...we

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<sup>58</sup> “Hay de dos tipos. Las que se publican en las secciones de política tienen que ver, en general, con el uso de recursos públicos por parte del Gobierno. Reparto de planes sociales, contratación de encuestas, uso de aviones, gastos de viajes son algunos de los ejemplos de las notas predominantes. En las secciones de información general, hay, más que nada, artículos relacionados con la contaminación ambiental y con temas de salud.”

<sup>59</sup> In section 2.2.1, we will analyze journalist organization’s actions to disseminate the use of the tool within their field.

<sup>60</sup> “Paciencia, tenacidad y organización.”

need to begin from scratch, stop journalists from being afraid of writing a formal notice and [teach them] to penetrate the bureaucratic barriers that surround any government office”<sup>61</sup> (consultation with Sued, 2010).

From the moment in which an information request is drafted, there are many questions that must be addressed:

“Understand what information is available for disclosure under the law and what exceptions, if any, exist. Understand that government agencies are under resource constraints and many requests may be pending ahead of yours. And if you understand what can legally be disclosed, pursue access to the documents you seek through every administrative option possible, and consider legal action to disgorge the information. Often only the serious threat of litigation will prompt an agency to pay attention to your request” (Consultation with Bloom, 2010).

But journalists’ ability to make information requests must be situated within the context in which they perform their daily work. In the case of Argentina, Fopea’s Andrés D’Alessandro notes the economic variables that affect the ability of journalists to develop their skills:

“I think there is an underlying problem in newsrooms, which has been a long-term issue, but is now in one of its worst states of crisis, regarding the hyperactivity of journalists in their daily tasks. This derives from a serious lack of time to fully develop their work on a medium and long-term scale, which involves [needing] sufficient time to wait for a response on information requests from the corresponding authorities”<sup>62</sup> (consultation with D’Alessandro, 2010).

Regarding the strategies used by journalists, in some cases they conduct research prior to the formulation and submission of the request. Moreover, they generally have to make more than one request in order to get what they’re looking for (Bildstein, 2004). As Rosenbaum states: “You have to kiss a lot of FOI requests before you get your prince” (Rosenbaum, 2004: 7). The strategy is to present a series of requests, hoping that at least one of them is answered on time and provides some information of interest. One interesting fact, presented by Attallah and Pyman (2002), is the ratio of requests made to stories published. According to their interviews with Canadian journalists, this ratio can vary from 4 to 1 to 10 to 1.

Hayes (2009) describes a series of strategies that journalists generally use to request and access sought after information. One primary strategy is that of the *fly fisherman* who knows precisely what information he seeks and drafts his request with great skill in order to obtain it. Regarding this strategy, Edwards states:

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<sup>61</sup> “... hace falta empezar desde cero, sacarle a los periodistas el miedo a redactar una nota formal y a penetrar en las barreras burocráticas que suelen rodear a cualquier administración pública.”

<sup>62</sup> “Creo que hay un problema de base en las redacciones, que es un tema tradicional, al que ahora además se agrega uno de los peores costados de la crisis, en relación con la hiperactividad que tienen los periodistas en sus tareas cotidianas, que deriva en una gran falta de tiempo para realizar trabajos de fondo, de mediano o largo plazo, que involucren el tiempo necesario para esperar una respuesta por parte de las autoridades correspondientes al pedido de información realizado.”

“To make a successful information request it is key to know where the bones are buried, or at least, to have an idea of where the uncomfortable truths are hidden. (...) It is probably better to fish for specific information rather than to cast a net for a whole school of documents”<sup>63</sup>(Edwards, 2010a).

A second strategy is similar to the use of the fisherman’s net; the journalist makes a general request linked to an issue to see what kind of information the authorities will provide. While at first glance one might think that the first strategy would produce better results, according to Hayes’s analysis, the second strategy can be more successful in that it obscures the central motive for the request. This can avoid reluctance on the part of the officials to provide information. In any of these cases, Hayes notes, it is important to have a hypothesis before making the request in order to ask pertinent questions that will later allow for the construction of a story.

An interesting case is that of British journalist Matthew Davis, who created the agency DataNews. According to Hayes (2009), Davis is not interested in formulating “the key question” that points to the heart of a government conspiracy, rather his strategy is to identify a number of issues which could be studied in more depth and provide context with information requests. In this way, Davis utilizes his instinct to identify issues and formulate questions like any other journalist. The difference is that he has found the access law to be a valuable tool with which to expand his work as an independent journalist, in that it allows him to construct his own research agenda, without depending on government contacts. Davis has turned his skill of formulating requests into an enterprise: his agency literally sells stories to various media organizations, many of them local, who are interested in conducting research based on information requests.

### **2.1.5 Obstacles to the use of access laws**

The opportunities presented to journalists by access laws are frequently challenged by obstacles that impede the development of the laws’ potential. These obstacles can be of various natures: from delays or bureaucratic complications in responding to requests, particularly when there are time pressures to publish the material, to the lack of editorial support in this area, due to the costs that obtaining the information entails. Broadly speaking, we can identify three kinds of obstacles: those derived from the design of legislation (vague or broad exceptions); those related to the law’s implementation (particularly delays in releasing information), and the lack of incentives in the journalistic work environment. This section will examine these obstacles.

Regarding problems with the legislation itself, one disincentive for journalists to use the law is the establishment of broad or vague exceptions used to deny information (Holsen et ál., 2007; Hayes, 2009). Although this obstacle equally affects all applicants, it is necessary to evaluate if these exceptions are more widely applied to requests made by journalists. It can generally be said that the closer one gets to power, the more obstacles

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<sup>63</sup> “Para realizar un pedido de información exitoso es clave conocer dónde son enterrados los huesos, o al menos, tener una idea de dónde son escondidas las verdades incómodas.(...) probablemente sea mejor ir a la pesca de una información específica que arrojar una red en busca de una cardumen de documentos.”

one encounters (Hayes, 2009). In Cuillier's opinion, the increased use of exceptions and the concept of "secrets" are a serious problem for journalists (consultation with Cuillier, 2010). This tendency has been analyzed by the Reporters Committee for Freedom of the Press, which studies US legislation, judicial decisions and policies that aim to strengthen individual privacy and state secrets at the expense of access to public information (LaFleur, 2003). From this study, we can conclude that the use of exceptions has been more frequent in United States policy in recent years.

There are two identifiable obstacles that derive from the legislation's implementation: one, the establishment of fees, and two, the delay in the provision of information. In some cases, it has been noted that the charging of fees has been a deterrent to submitting requests (Bildstein, 2004; Bloom, 2010). However, the literature makes it clear that delays are the main obstacles, especially because the time schedule in which the government processes and responds to information requests does not coincide with journalistic time constraints (Susman, 2005; Attallah and Pyman, 2002; Roberts, 2002; Roberts, 2005; Holsen et al.; 2007; Osler, 1999; Bildstein, 2004; Edwards, 2010a).

The delays in responding are generally related to a lack of resources to process requests, the complexity of answering some requests, the need to consult other government agencies, the lack of incentives to respond in a timely manner, or the impossibility of finding the information (Susman, 2005). A National Security Archive study found that in the United States there are information requests that have been delayed for over a decade. (NSA, 2003).

However, not all delays can be explained by organizational deficiencies; political reasons have also been identified for why journalists often wait so long for responses. Alasdair Roberts (2002) conducted a study on 2,120 information requests received by the Canadian Human Resources Department from 1999 to 2001, in order to examine the different procedural treatment of information requests. The study found that the way in which legislation is implemented and understood by government officials affects how the information requests are treated. According to the study, the delays occur because of the involvement of higher up authorities and the need to contemplate the political and personal relations angles when deciding whether or not to disclose the information. The study discovered that requests from journalists and political parties require more time to be responded to and are more likely to be deemed refusal (Roberts, 2002). It is no wonder that the requests that receive differential treatment require more time to process and to respond to, as this is already the area in which the mechanisms to implement the law are the weakest. This feature is not exclusive to the Canadian case, but rather is true of almost all systems: the authorities in charge of implementing the legislation generally have to focus on where to utilize their resources in order to comply with the legislation. The delays are undoubtedly the lesser cases of non-fulfillment.

In another article, Roberts (2005) describes the steps that a request must go through if it has been "amber lighted" by a Canadian agency, that is, if it has been identified as "sensitive," which is common with requests submitted by journalists. A sensitive request is sent to the minister's office and to the communications department. These two work

together with the office that possesses the information to develop a “media strategy” and a key message that should be emphasized by the department spokesperson. The document to be released and the media strategy are sent to the minister for approval, and only then can they be made available to the applicant. (Roberts, 2005).

The delays are a significant obstacle to the journalists’ ability to employ this right because by challenging time constraints, they jeopardize the journalistic utility of the information and its political relevance. In any case, officials can minimize the “disruptive” effects of the laws by the use of delay, thus utilizing their ability to control the publication date of certain information and “freezing” the information’s newsworthiness (Roberts, 2005; Hayes, 2009). An example of this manipulation occurred in Israel, where, according to the story of one of the activists who belongs to the FOIANet network:

“What eventually happened was that the Knesset handed the tapes to us the day before yesterday at 2pm, and then at 7pm sent a message to all reporters that the tapes are available for them at the spokesperson's office. Since the major news broadcasts in the three TV channels are at 8, this on the one hand didn't leave it just for Channel2 (where the requesting journalist reports), but gave them the advantage of preparing a more comprehensive, better edited, presented and analyzed report of the affair”.

While it may be that journalists have to wait longer than other applicants to have their requests answered, journalists generally receive more information than other kinds of applicants, and occasionally receive some kinds of positive differential treatment (OSJI, 2006). As D’Alessandro tells it:

“I think that if a citizen identifies himself as a journalist he may have more luck than another citizen who does not identify himself as such, even if he is a journalist”<sup>64</sup> (consultation with D’Alessandro, 2010).

In a similar vein, Sued states:

“I think journalists’ requests receive differential treatment, given that the department in charge of the response knows that behind the request is the power of the press. A poorly answered request can cost them a negative story in a newspaper”<sup>65</sup> (consultation with Sued, 2010).

In either case, the implementation of the legislation is characterized by a differential treatment of information requests, according to the kind of applicant. This situation can be detrimental to journalists, while putting others in a place of comparative advantage. Journalists and experts agree that, in practice, the exercise of the right to access creates an adversarial relationship between journalists and government officials, which can lead to requests for special treatment for journalists, but can also work against them:

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<sup>64</sup> “Creo que si un ciudadano se identifica como periodista puede tener más suerte que otro ciudadano que no se identifique como tal, aunque sea periodista.”

<sup>65</sup> “Creo que los pedidos de periodistas reciben tratamiento diferencial, dado que las dependencias a cargo de la respuesta saben que detrás de ese pedido está el poder de la prensa. Un pedido mal respondido puede valerle una nota negativa en un diario.”

“Journalists have no special access to information under the U.S. FOIA law compared with any member of the public, although requests from news media (defined under statute to include certain bloggers as well as "traditional" media sources) can qualify for a waiver of certain search fees” (consultation with Bloom, 2010).

“There is some evidence in the UK that the government does treat requests from journalists differently, leading to suspicions that the release of information is managed to avoid political embarrassment.” (consultation with Hayes, 2010).

Lastly, some obstacles are related not to the legislation or its implementation, but rather the organizational environment in which journalists work. The fact that journalists receive little support from within the media to research stories based on information requests may influence their low usage of the laws. Bildstein (2004) notes that half the journalists interviewed in Tasmania stated that they did not feel incentivized by their editors or publishers to submit information requests under the current access to information law. Moreover, half of those interviewed declared that it would be important to have an editor who worked exclusively on access to information, although they believed this would be an unviable practice due to a lack of resources.

#### **2.1.6 The effects of access laws on the relationship between the press and the government**

Another important element is how the journalistic use of access to information laws affects relations between the government and the press, and how that relationship in turn affects the right's wider recognition. Cuillier states:

“My gut tells me that access to information laws create more of an adversarial relationship and more friction between journalists and government officials. The bureaucracy and red tape is one point of contention. Then, too often battles erupt over whether a document is legally subject to disclosure. The arguments focus on the exemption, statutory reading, case law, etc. Lawyers get involved and the process gets mired in legal fortification ” (consultation with Cuillier, 2010).

Journalists' use of access to information laws can affect the relationship between journalists and officials, and the way in which journalists make use of the legislation can, in turn, influence its implementation and the government's compliance. Snell (2002) describes a series of situations that can arise from journalists' use of the law. Firstly, there is the law's usage as a tool to measure the consistency between the authorities' statements and public information. But there are also potential actions that can be taken by the government in response to journalist information requests. One possible result is that the use of the legislation alters the “exclusives” that some officials reserve for particular journalists who are more aligned with their politics. There can also be situations in which officials “pull the fire alarm,” with the intention of deflecting a journalist's attention from certain requested information. Something similar, but in the opposite sense, is when officials “fan the flames” to encourage the disclosure of information and the publication of stories that undermine political adversaries or previous

administrations. In some cases, officials can take preventative actions, like circulating information or facts linked to a journalist's request prior to officially disclosing the information, in order to temper the impact of the story's publication. Another strategy is to make public certain information when there is another story that is consuming all of the press's attention, so that the impact of the revealed information is diluted. Finally, "information laundering" occurs when "good news" is divulged at the same time as sensitive information is disclosed.

One of the points that generates a certain friction between journalists and government officials is the designation of the tool as being used exclusively by journalists. One can interpret the previously quoted comment by Tony Blair along these lines. Hayes (2009) mentions that some English officials have come to see the costs of journalist requests in economic terms. The author also notes that some officials claim that occasionally journalists make information requests and if the provided information is not "newsworthy" - that is, useful for writing a story - it is not used. The officials claim that this is irresponsible usage and that it creates unnecessary government expenses.

The analysis of the Irish case shows that, on some occasions, journalists' employment of access laws leads to, or encourages, setbacks in the regulation. The introduction of the 2003 legislative amendment—that makes it more difficult to access certain information—seems to have coincided with the official perception that the press should be utilizing the legislation in a more responsible manner (Rosenbaum, 2004). According to the National Union of Journalists, the introduced modifications—especially a fee scheme for information applications—has made the system more bureaucratic and has disincentivated the exercise of the right to access to public information (Rosenbaum, 2004).

Likewise, Rosenbaum (2004) notes that the UK Communications Department, the Navy and the Natural Resources Department announced that they would begin to upload summaries of all pending information requests to their websites. This would allow journalists to view requests made by their colleagues, devaluing their "scoop."

This relationship between the press and the government regarding access to information also has consequences for how citizens perceive the progress in the field. In a study conducted between 2005 and 2008, Hazell and Worthy (2009) analyzed a sample of 1,114 articles published in the British press on access to information cases and held a series of interviews with information applicants. In the study they found that:

“...only 3% of the stories increased the reader's confidence in the government; more than half the articles – some 58% - reduced his confidence in the government, while more than a third – some 39% - had no effect, as they were about reoccurring questions or information requests that were already known”<sup>66</sup> (Hazell and Worthy, 2009: 5).

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<sup>66</sup> “... solo el 3% de las historias incrementaron la confianza del lector en el Gobierno; más de la mitad de los artículos —un 58%— redujo la confianza en el Gobierno; mientras que más de un tercio —un 39%— no tuvo efectos, ya que se trataba de cuestiones recurrentes o pedidos de información ya conocidos.”

According to the authors, this is because the stories that gain prominence in the media are those that are linked to government resistance to provide information, or those that reveal negative situations of bad governance. In general terms, the authors interpret this situation as part of a wider set of questions about the tensions between the press and government agencies, which are indicative of their relationship: the government feels that information is distorted by the press, and the press feels that there is no information that is not fed or manipulated by the government (Hazell and Worthy, 2009).

## **2.2 Lessons learnt**

We have seen that the journalistic use of information laws can alter the relationship between the government and the press, and that this relationship can in turn affect the progress (or setback) of the recognition of the right.

One point that seems to emerge from the literature is that journalists make little use of access to information laws, or at least less than expected. Although, as we previously stated, without an objective reference to what would be a desirable level, any estimate is relative. The requests submitted by journalists in the different countries studied represent between 5% and 16% of the total requests made to public institutions (Attallah and Pyman, 2002; Tapscott and Taylor, 2001; Rosenbaum, 2004; McClure, 2005; Bildstein, 2004; Holsen et al., 2007; Osler, 1999; Roberts, 2010). According to Osler (1999), these results should be put in perspective. Firstly, there is the fact that investigative journalism (to which these requests can contribute) constitutes only a portion of journalistic activity. Secondly, the impact that this small portion of requests can have on public opinion, in comparison to requests by non-journalists, should be considered.

The motivations for journalists to use these laws vary, but the literature identifies some predominant ones: having the support of editors (Hayes, 2009) and a lack of access to information by other means (Bildstein, 2004; consultation with D'Alessandro, 2010). Regarding the types of stories written using information requests and the kind of information solicited, the literature surveyed shows that journalists have covered a wide range of problems and that there is not one single issue that has been of special interest to them (Marquand, 2001; Attallah and Pyman, 2002; Holsen et al., 2007; Hayes, 2010; Davis, 2010). Two articles identified a certain evolution in the kinds of stories told by journalists over time, or better said, in the time since the law was passed (Hayes, 2009; Attallah and Pyman, 2002). According to these authors, if in the first stage the stories were only characterized by being based on information requests, in the second stage the stories have become more complex and reflect greater prior research.

Likewise, there is a consensus in the literature surveyed about the importance of not only knowing about the law, but also of having the skills and strategies necessary to execute the right to access to public information more successfully (Rosenbaum, 2004; Attallah and Pyman, 2002; Bildstein, 2004).

We can also conclude from our research that journalists' use of information laws can be impeded or disincentivized by factors like the delay in responding to applications

(Susman, 2005; Attallah and Pyman, 2002; Roberts, 2002 and 2005; Holsen et ál., 2007; Osler, 1999; Bildstein, 2004; Edwards, 2010a), the establishment of broad or vague exceptions in the legislation or a reoccurring usage of the same ones to deny information (Holsen et ál., 2007; Hayes, 2009), or a lack of incentives in the work environment.

Finally, it is important to underline that there exists an interrelation between the use and the promotion of the legislation. Each time that journalists exercise the right and publish a story, they broadcast the existence of the law. Thus they show the law's potential and encouraging imitation by their peers and by all citizens who are interested in knowing what their representatives do in their name. In this sense, "the best way for journalists to promote the right to information is by example" (Consultation with Hayes, 2010).

### 3. CONCLUSIONS

This paper seeks to contribute to the understanding of the role of the press in promoting the access to public information. As we have seen, access to information and journalism interact, relate and feed off of one another. At least four types of relationships between access to information and the press can be distinguished. Firstly, in conceptual terms, freedom of expression and information are two sides of the same coin, or phenomenon. The second relationship is of a more strategic nature: in its role as *agenda-setter*, the press has the ability to transmit en masse to citizens the importance of access to public information and the ways in which it can be practiced. Thirdly, access to information is an essential tool for journalism, as it allows journalists to work with an agenda that is independent from the established one presented by public agencies. It also permits them to improve the quality of news coverage. Lastly, there is a pragmatic relationship in that journalists' use of access to public information laws can verify the implementation and effectiveness of the legislation.

The approval of more than 90 access to information laws around the world provides an important context from which to identify examples where the press played a significant role. In some of the experiences, journalists participated in coalitions created to promote the bills. The Mexican case stands out for the actions of Grupo Oaxaca, which successfully promoted the passing of the Federal Transparency and Access to Governmental Information law. In clear contrast, the press's participation in the promotion of the bill in Argentina did not achieve the same result, and the failed 2004 parliamentary debate functioned as a deterrent to attempting to push the legislation through again, up until now, when various bills are being debated in Congress.

Regarding how journalism has used these laws, a first point to highlight is that journalists use access to information laws less than expected. As we mentioned, the requests submitted by journalists represent between 5% and 16% of the total requests made to public institutions. These levels should be looked at in relation to the totality of journalistic activity, of which investigative journalism is only a portion. It should also be looked at in relation to the impact this quantity of requests can make on the public opinion, compared to the requests made by other kinds of applicants.

A second element to analyze is the motivations for journalists to use the law. The support of editors and the inability to access the information by other means can act as strong incentives for use of the legislation. Nonetheless, obstacles exist that can disincentivize it, including the delay in responding to requests, the establishment of very broad or vague legislation or the reoccurring use of the same ones to deny information, and/or the charging of fees to provide information.

Regarding the types of stories written based on information requests or the kinds of information solicited, journalists have covered a wide range of problems, but there is not one single identifiable issue that has been of special interest to them. Nonetheless, there has been a certain evolution in the kinds of stories that are told by journalists, which over time have gained a greater level of complexity. There is also a consensus on the importance of not only knowing about the law, but also having the adequate skills and strategies to successfully practice access to public information.

It is also certain that the journalistic use of access to information laws can alter relations between the government and the press, and that this in turn can affect the progression (or the reversal) of the recognition of the right. The implementation of these laws, when it fulfills the promise of providing greater transparency and openness in public institutions, inevitably generates tension and resistance. The effective exercise of this right by journalists facilitates the progression of the opening of institutions—as in the case of the Members of British Parliament’s expenses— through debates in the public opinion about what should be considered public information. The tensions with government officials and the resistance of politicians are to be expected.

Finally, although it is believed that the link between the press and access to information is strong and almost “natural,” this research indicates that this relationship is not always present nor always generates the expected benefits. However, it is important to remember the institutional importance of the press in democracies in general, and in promoting the right to access to information and its effective exercise in particular. Journalists and the media perform a key role that should be recognized.

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