

Introduction

By Eduardo Bertoni and Natalia Torres [1]

It is a well-known fact that legislation does not work alone, but in connection with a complex network of institutions, rules and participants. While international principles and standards are fundamental for promoting more effective legislation, thoroughly considering context is of the essence in ensuring statutory enforcement. Access to information is not an exception to this general rule. Many problems have been detected as a result of its implementation. Some of these problems derive from the letter of the statute itself; others from the disparities between the principles guaranteed by the rules and the organizational practice of the institutions that should open their doors to the people. Within this last group, one of the most frequent problems is the disregard for documentary management, a particularly neglected area within public administration that has been left behind in terms of the advancement of the right to know.

This document is the result of a project developed in 2012, by the Center for Studies on Freedom of Expression and Access to Information (Centro de Estudios en Libertad de Expresión y Acceso a la Información – CELE), with the support of the Open Society Foundations. Its main purpose was to identify the key policies that States should develop or promote to build information infrastructures that enable execution and enforcement of the right to know.

To further that purpose, and given our lack of knowledge of this field, we decided to establish an Advisory Council, which guided us on topics that we considered crucial –e.g. determining the areas to be studied for developing a comprehensive policy on public information, and solving the largest challenge of the project: being in contact with a community, and specifically those who have worked on promoting the right to access information, which are entirely alien to and distant from us. The assistance provided by Anne Perotin-Dumon, Iván Szekely and Juan Pablo Fasano was of the utmost importance for our progress in discovering a discipline that has a special relationship to information –our raw material-, a relation that is shared with the promoters of the right to know.

With the aid of the Advisory Council, we determined the areas our study should cover and we identified the advisors who would develop each area of research. The results of that research are those considerations which are presented in this document.

First, Mariana Nazar addresses certain basic concepts for coordinating the debate between the archival discipline and the supporters of the right to know: How is information defined, how is a document defined and what is an archive document. This paper embodies an invaluable historical analysis of the emergence of Archiving; it explains the characteristics of documentary appraisal, a process which is essential to all those who understand the value of public information. Mariana also examined the concepts of practical and legal accessibility, a fundamental discussion to bring the two areas closer.

Jorge Villagrán then leads us into a conceptual discussion about technology. His paper introduces the main elements that must be taken into account upon establishing an information system, dealing with the need to consider multiple disciplines that study technical, organizational and political matters in relation to the use of resulting databases. Further, Villagrán shares a “toolbox” for documentary management, showing that resources are not always a prerequisite to facilitating the organization and systematization of public information.

In addition, Anna Carla Ericastilla focuses on archivists' training as an activity that should be associated with the prevailing social needs that arise and in whose context archiving training will be carried out. Ericastilla shares with us a survey on archivists' training programs in Latin America to show the absence of specific consideration of the right to know in formal training programs, even though she identified training in some contents that could serve as basis for coordinating with the training on the right of access to information. Ericastilla focuses on the Guatemalan case, where the creation of an archivists' training program oriented towards addressing human rights reflects the possibility of adapting curricular programs to citizens' demands for public information.

Lastly, Julia Scarensi presents a survey on legislation regulating archive management in Latin America. This survey explains the legal situations in countries of the region and analyzes the documentary management provisions contained in statutes regulating the right to know in Latin America.

To conclude this research, a brief paper is also included with recommendations for policies to be considered during the implementation of an overarching policy on public information.

We expect that this research will contribute to the better implementation and insuring of the right of access to information. Many of the processes described in this text occurred as a result of the enforcement of various laws on the right of access to information enacted in Latin America during the last decade. That notwithstanding, the relation between the "implementation of the right of access to information" on the one hand and information management and modernization on the other hand has not been included in or addressed by ATI laws. We aspire to make this publication the initial step in connecting these two processes.

[1] Eduardo Bertoni is the director of the Center for Studies on Freedom of Expression and Access to Information (Centro de Estudios en Libertad de Expresión y Acceso a la Información - CELE) at the School of Law of University of Palermo. He was an executive director of the Due Process of Law Foundation, headquartered in the city of Washington, DC. From 2002 to 2005, Eduardo was the special rapporteur on freedom of expression of the Inter-American Commission on Human Rights (IACHR) at the Organization of American States (OAS).

Natalia Torres is a senior researcher on freedom of information at CELE. She earned a graduate degree in Political Science from the University of Buenos Aires and an MSc in Public Policies from University College London, United Kingdom. In her capacity as researcher, Natalia has served as advisor for various government agencies, multilateral organizations and civil society entities.