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# A&C – REVISTA DE DIREITO ADMINISTRATIVO & CONSTITUCIONAL

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## Access to public information in Argentina with particular reference to personal and institutional data protection

### *Acesso à informação pública na Argentina com especial referência à proteção de dados pessoais e institucionais*

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**Abstract:** The article presents the legal framework for the right of access to public information in Argentina, its exceptions and the protection of personal and institutional data, analyzing the National Bill of Access to Public Information and the case law of the Supreme Court of Argentina.

**Keywords:** Access to public information. Personal data protection. Institutional data protection. Public Administration. Argentine Republic.

**Resumo:** O artigo apresenta o regime jurídico do direito de acesso à informação pública na Argentina, suas exceções e a proteção de dados pessoais e institucionais, analisando a Lei Nacional de Acesso à Informação Pública e a jurisprudência da Corte Suprema de Justiça da Nação Argentina.

**Palavras-chave:** Acesso à informação pública. Proteção de dados pessoais. Proteção de dados institucionais. Administração Pública. República Argentina.

**Contents:** **1** Introduction – **2** Exceptions to the RAPI: configuration requirements – **3** Personal Data Protection – **4** Institutional Data Protection – **5** National Bill of Access to Public Information – **6** Case Law – **7** Final considerations

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## 1 Introduction

Right of access to public information (hereinafter, RAPI) appears as a precondition for the full exercise of the right to freedom of expression, due to the fact that it is a right particularly important for the consolidation, working, and conservation of democratic regimes.

On the one hand, RAPI is an essential requirement to guarantee transparency and an effective management of public affairs. On the other hand, free access to information is a means for citizens to exercise in an appropriate manner their political rights, in a representative and participatory democratic system.<sup>1</sup>

Unlike other countries where it appears as an essential right, in the Argentine Republic, it is considered a Human Right protected by our National Constitution and by International Human Rights Treaties with constitutional status<sup>2</sup> that has developed during the last decade. But this was not always like that: until 1994 constitutional amendment, it was only implied.<sup>3</sup> With this amendment, although the right is not included in our legal system as a law establishing the Argentine Government's obligation to provide information to citizens, the Government's obligation to facilitate the access to public information in particular cases is specifically established, in addition to the already mentioned Human Rights Instruments included in the Constitution. The right is implied in the National Constitution, but it is clearly stated in specific cases.

It is implied in the following Articles of the Constitution: (a) Article 1 establishes the republican form of government and one of its essential principles is the disclosure of information about governmental acts; (b) Article 14 clearly recognizes citizens' right to "*petition the authorities*", understanding "*petition*" in a broad sense, in compliance with current democratic principles, thus including the right to public information; (c) Article 33, already mentioned as "*implied rights*", establishes equality between implied rights and the ones clearly stated as such, whenever they stem from the republican form of government and popular sovereignty; (d) Article 38, in its third paragraph, talks about political parties; (e) Articles 39 and 40 describe the so-called "*participatory democracy*": popular initiative and referendum, would become ineffective or impossible to apply without the due exercise of access to information by citizens.<sup>4</sup>

<sup>1</sup> IACHR, in Advisory Opinion 5/85, said that "(...) freedom of expression is a value which lost could jeopardize a democratic society (...)".

<sup>2</sup> It is important to mention that the Argentine Republic "*gave treaties a constitutional status*" but they are not "*included*" in the Constitution, as it is often said. If they were "*included*", they could be amended through the constitutional amendment proceeding set forth in the Constitution. This situation is not possible in our legal system. Human Rights Treaties need a special proceeding set forth in the Constitution.

<sup>3</sup> In Article 33 of the Argentine Constitution, called by legal precedents and experts as "*implied rights*", still in force.

<sup>4</sup> Articles 38, 39, and 40 were included in 1994 constitutional amendment.

In addition, free access to public information is specifically guaranteed in two Articles of the Constitution:<sup>5</sup> (a) in Article 41, about environment;<sup>6</sup> (b) in Article 42, about consumers and users.<sup>7</sup>

Within the international scope, we find this right in the following Human Rights International Instruments: (a) Pact of San José, Costa Rica, Article 13, paragraph 1; (b) Universal Declaration of Human Rights, Article 19; and (c) International Covenant on Civil and Political Rights, Article 19, paragraph 2. In these instruments, we can find the right to receive information as well as its necessary counterpart to exercise this right, which is the right to freedom of expression.

At an infra-constitutional level, within the administrative scope (Public Administration) we find the Executive Order No. 1172/03<sup>8</sup> that regulates citizens' participation in Public Hearings, setting the general framework for its development and it also gives citizens the possibility to request public information to any administrative body. Alternatively, we have the Argentine Act of Free Access to Environmental Public Information (Argentine Law No. 25 831<sup>9</sup>) regulating the relevant parts of Article 41 of the National Constitution.<sup>10</sup>

As a summary in this introduction, we can see that since 1994 amendment, there has been a political willingness in Argentina to include this citizens' right in our legislation, considered the central foundation of the access to information held by the Government, the right that every individual has to know the way in which their leaders and public officials exercise their powers in order to strengthen democratic institutions, which, in the past but no so long ago, were devastated. Nowadays there is still a debt with democracy which Argentina seems to be trying to cancel.

## 2 Exceptions to the RAPI: configuration requirements

The general principle is access to information, which stems from the republican principle of government and which enjoys a Human Right status. This implies that all governmental information is considered public, meaning that it is the Government's duty to comply with the rule of disclosure of information regarding governmental acts. But, as every right, this is not absolute either; it has certain limitations to make it compatible with the rest of the privileges included in Argentine legislation.

<sup>5</sup> Both included in 1994 amendment.

<sup>6</sup> It reads: "(...) Authorities shall provide (...) environmental information and education (...)".

<sup>7</sup> It says: "Consumers and users of goods and services have the right (...) to correct and true information (...)".

<sup>8</sup> Official Gazette December 4, 2003.

<sup>9</sup> Official Gazette January 7, 2004.

<sup>10</sup> We can add to this group of rules and regulations the decree No. 30/2007 of the Argentine Supreme Court of Justice, which regulated the proceeding for public hearings in said court, which can be called with at least three of its members (simple majority). This decree constituted a positivization of a practice that the Argentine court would have been carrying out since time ago.

Nevertheless, exceptions shall not be considered as the general rule and, for all cases, we must understand that access to information is the rule and that secrecy is the exception, so the latter shall be considered in a restrictive way.

Likewise, domestic legislation should leave clear that non-disclosure of information can only be justified whenever disclosing such information actually jeopardizes goods protected with discretion. In this sense, discretion should last a reasonable period of time, after which said information must be made public.

Regarding exceptions and limitations to RAPI, the Inter-American Court, organization applying the American Convention – instrument with constitutional status –, has established the following:<sup>11</sup>

A) The principle of maximum disclosure establishes the presumption that all information is accessible, subject to a limited system of exceptions, which must have been established by law, serve an objective allowed under the American Convention, and be necessary in a democratic society, which in turn requires that they be intended to satisfy a compelling public interest.

B) The State has the burden of proof of demonstrating that limits to access to information are compatible with inter-American norms on freedom of expression.

C) In order to legitimately restrict the right to freedom of expression and thus the right of access to public information as an integral part of it, it is a requirement to comply with a tripartite test of proportionality in which the following requirements must be observed: (a) limitations shall be clearly defined by means of a law in a formal and material sense; (b) limitations shall follow objectives authorized by the American Convention, this is, that guarantee the respect of rights or reputation of individuals and/or protect national security, public order, public health or moral; and (c) limitations shall be necessary in a democratic society to achieve urgent objectives, directly proportional to the interest that gives rise to them and suitable for the achievement of said objectives.

At the same time, IACHR in Advisory Opinion 6/86 established that “*laws*” do not mean any legal regulation, but general legislative acts adopted by the legislative body laid down in the Constitution and democratically elected for that purpose, according to the procedures established in the Constitution of each country. The Court has also determined that laws establishing limitations have to be enacted “*for reasons of general interest*” towards common good as an integral part of public order in a democratic State.

According to inter-American precedents, the mentioned objectives are the only ones authorized by the American Convention to restrict the right of access to information and their scope shall be clearly and accurately defined.

<sup>11</sup> Case “*Kimel Vs. Argentina*”, sentence of May 2, 2008. This sentence has particular relevance in this regard due to the fact that it is about the right to information/freedom of expression of facts taken place during the last military dictatorship in our country.

When analyzing a limitation to RAPI, we must take into account the balance between the different interests involved and the need of preserving the object and end of the American Convention, for the exceptions only apply when the existence of an essential damage to protected interests can be proved and when said damage is greater than the public interest to have access to such information. Likewise, it should be demonstrated that the protection of the legitimate objective by means of the limitation, cannot be reasonably achieved by a less restrictive means of access to the information.

### 3 Personal Data Protection

One of the limitations of the RAPI is the protection of personal data that belongs only to its owner, the disclosure of which could disproportionately affect a legitimate right such as right to privacy.

In fact, in principle, information related to an identified or identifiable individual is private. For example, information regarding the individual's ethnical or racial origin, or the one related to physical, moral, or emotional characteristics, their personal and family life, residence, telephone number, patrimony, ideology and political opinions, religious or philosophical beliefs or convictions, physical or mental health, sexual preferences, or any other information affecting their privacy.

Our National Constitution, in Article 43, describes a specific and immediate action to access personal data included in public records, or in private information banks aimed at providing reports.

Within the scope of Human Rights International Law, right of non-disclosure of personal data is protected by: (a) Article 12 of the Universal Declaration of Human Rights, on privacy protection; (b) Article 17 of the International Covenant on Civil and Political Rights, on respect to privacy, family, home or correspondence, and protection of honor and reputation; (c) Article 11 of the American Convention on Human Rights, on protection of honor and dignity.

Notwithstanding the action set forth in the Constitution, Argentine Law No. 25 326<sup>12</sup> regulates habeas data. Said law aims at the comprehensive protection of personal data included in files, records, data banks, or other technical means of data processing, either public or private, intended to provide reports, guarantee the right to honor and privacy of individuals, as well as the access to information about individuals or corporations, always protecting journalistic information sources.<sup>13</sup> In order for an institution to process individuals' data, the individual concerned shall give

<sup>12</sup> Official Gazette November 2, 2000.

<sup>13</sup> Argentine Habeas Data Act, Section 1.

free, express,<sup>14</sup> informed, and written<sup>15</sup> consent; otherwise, the processing shall be considered illegal.<sup>16</sup>

Consent won't be necessary whenever: (a) data are obtained from sources of unrestricted public access; (b) data are collected for the exercise of governmental powers or in accordance with a legal obligation; (c) they are lists which data is limited to a name, national ID document, tax ID or social security, occupation, date of birth, and address; (d) they arise from a contractual, scientific, or professional relationship of the data holder, and are necessary for their development and compliance; (e) they are related to operations carried out by financial institutions and to the information they receive from their clients according to provisions set forth by Argentine Financial Institutions Act, Section 39.<sup>17</sup>

Likewise, whenever personal data are requested, data owners shall be previously notified in an express and clear manner : (a) The purpose for which the data shall be treated, and who their addressees or type of addressees may be; (b) the existence of the relevant data file, register or bank, whether electronic or otherwise, and the identity and domicile of the person responsible therefor; (c) the compulsory or discretionary character of the answers to the questionnaire the person is presented with, particularly, in relation to the data connected with in the following Section; (d) the consequences of providing the data, of refusing to provide such data or of their inaccuracy; (e) the possibility the party concerned has to exercise the right of data access, rectification and suppression.<sup>18</sup>

In addition, any person may request information from the competent controlling Agency regarding the existence of data files, registers, bases or banks containing personal data, their purposes and the identity of the persons responsible therefor. The register kept for such purpose can be publicly consulted, free of charge.<sup>19</sup> In order to access said information, the following procedure shall be followed: 1. Data owners, once they have duly evidenced their identity, have the right to request and

<sup>14</sup> "(...) The mentioned consent given with other declarations, shall be expressly stated, after notice to whom requested it, of the information described in section 6 of this law (...)."

<sup>15</sup> "(...) Or by any other similar means, according to the circumstances (...)."

<sup>16</sup> Argentine Habeas Data Act, Section 5, Subsection 1.

<sup>17</sup> Argentine Law No. 21 526, Section 39: "(...) Secret. Institutions concerned in this law are not allowed to disclose the passive operations they carry out. The only exceptions to this duty are reports required by: (a) judges in judicial cases, subject to the appropriate laws; (b) the Central Bank of the Argentine Republic exercising its powers; (c) national, provincial, or municipal tax authorities subject to the following conditions: they must be about a specific responsible party; there must be a tax verification process taking place on behalf said responsible party, and must have been previously and formally requested. Regarding information requirements established by the Tax Administration Department, they shall not be subject to the first two conditions of this subsection; (d) the institutions concerned for special cases, after authorization provided by the Central Bank of the Argentine Republic (...). Institutions' personnel shall hold the information received in strict confidence.

<sup>18</sup> Argentine Habeas Data Act, Section 6.

<sup>19</sup> Argentine Habeas Data Act, Section 13.



obtain information on their personal data included in public data registers or banks, or in private registers or banks intended for the provision of reports; 2. The person responsible or user shall provide the requested information within ten calendar days of being demanded of such request. Upon expiration of the said term without such request being answered, or if the report is deemed insufficient, the proceeding to protect personal data or habeas data herein provided for shall be started; 3. The right of access dealt with in this Section may only be exercised free of charge within intervals no shorter than six months, unless a legitimate interest to do otherwise is shown; 4. In the event of death persons, their general heirs shall be entitled to exercise the right mentioned in this Section.<sup>20</sup>

Notwithstanding their right to request access to information, individuals have the right to rectify, update, or suppress their information: 1. Every person has the right to rectify, update, and when applicable, suppress or keep confidential his or her personal data included in a data bank; 2. The person responsible for or the user of the data bank, must proceed to rectify, suppress or update the personal data belonging to the affected party, by performing the operations necessary for such purpose within the maximum term of five business days of the complaint being received or the mistake or false information being noticed; 3. Noncompliance with such obligation within the term established in the preceding paragraph, will enable the interested party to bring, without any further proceedings, the action for the protection of personal data or habeas data contemplated in this Act; 4. In the event of a data communication or transfer the person responsible for or the user of the data bank must notify the recipient of such rectification or suppression within five business days of the data treatment being effected; 5. Such suppression must not be effected in the event it could cause harm to the rights or legitimate interests of third parties, or there existed a legal obligation to preserve such data; 6. During the process for the verification and rectification of the relevant mistake or falsehood in the information, the person responsible for or the user of the data bank must either block the access to the file, or indicate, when providing the information relating thereto, the circumstance that such information is subject to revision; 7. The personal data must be kept during the terms contemplated in the applicable provisions or, where appropriate, in the contractual relationships between the person responsible for or the user of the data bank and the data owner.<sup>21</sup>

There are exceptions to these rules, established by the law: 1. The persons responsible for, or the users of public data banks, by means of a well-grounded decision may deny the access to or the rectification or suppression of such data,

<sup>20</sup> Argentine Habeas Data Act, Section 14.

<sup>21</sup> Argentine Habeas Data Act, Section 16.

based on national defense, public order, and safety grounds or the protection of rights and interests of third parties; 2. The information about personal data may also be denied by the persons responsible for or users of public data banks when such information could hinder pending judicial or administrative proceedings relating to the compliance with tax or social security obligations, the performance of health and environment control functions, the investigation of crimes and the verification of administrative violations. The resolution so providing must be justified and notice thereof be given to the party concerned; 3. Notwithstanding the provisions of the foregoing paragraphs, access to the relevant records must be given at the time the affected party is to exercise his or her defense rights.<sup>22</sup>

In some cases, certain personal data kept by institutions, compelled by the right of access to the information, can be subject to advertising; cases in which the information is of public interest, for example, because it is about allocations of public expenditure or benefits provided by the Government to people that voluntarily have accessed them. In these cases, information is relevant for the exercise of social control and the effect over personal rights is not disproportionate, for beneficiaries know that information about public benefits must be known for the exercise of said control.

## 4 Institutional Data Protection

Given the public nature of institutional information, secrecy can only be justified by an interest also public in nature. In other words, the same argument supporting transparency is the one supporting secrecy. When disclosing information jeopardizes society and their members, discretion can be legal.

Another ground that justifies institutional data confidentiality is the effective operation of institutions that provide information. Thus, secrecy is only justified in cases where it is essential for the objective pursued and when such end is more valuable than transparency.

In this respect, following the rules established by Human Rights International Law<sup>23</sup> and the principle of the republican form of government, secrecy is compatible with the constitutional Rule of Law as long as certain general principles are observed, which shall govern every hypothesis including confidential information:

1. Access is the general rule, denial or secrecy is the exception. Every public information shall be available to who requests it, except when it refers to qualified

<sup>22</sup> Argentine Habeas Data Act, Section 17.

<sup>23</sup> It is worth mentioning the “Model Inter-American Law on Access to Public Information”, and a guide for its implementation, elaborated by the OAS, published on April 29, 2010, available at <[https://www.oas.org/dil/esp/CP-CAJP-2840-10\\_Corr1\\_esp.pdf](https://www.oas.org/dil/esp/CP-CAJP-2840-10_Corr1_esp.pdf)>, accessed on January 20, 2016.

confidential issues, where the Government or the institution holding the information must prove the need of confidentiality;

2. Exceptions shall be established by law. Otherwise, it shall be rendered unconstitutional whenever the right of access to information is violated;

3. Limitations shall relate to specific issues, be clearly stated in a national law of access to information, or in another law of equal status. Confidentiality of certain information can only be justified whenever it is based on the protection of national security and defense, intelligence, or public health. It shall also apply for cases of bank, financial, or fiscal secrecy, or when it relates to the protection of the privacy right and/or personal data according to the specific legislation for specific cases;

4. Confidentiality shall be limited in time in each specific case; otherwise, it shall automatically cease after the period set forth by the law in general;

It shall be mentioned that in every country that has a law of access to public information, it is established that confidentiality on specific information expires after a specific period of time.<sup>24</sup>

Even though in our country there is not a National Act of Access to Public Information yet,<sup>25</sup> it cannot be avoided the fact that there is a Bill that has obtained a preliminary approval in the Senate,<sup>26</sup> although it has now lost its parliamentary condition, for which Section 13 establishes a 10-year period to withhold information.

5. The last principle governing this issue is the one that holds that any withheld or confidential information, before being destroyed, has to be published. In fact, public data that have been deemed as “confidential” cannot be eliminated without having been made public before. This is a guarantee of revision of the public property, as a citizen’s control mechanism.

In Argentina, our Constitution does not establish the safeguarding of the State secret under no reason. The unquestioned principle is the disclosure and access. Nevertheless, it is clear that it is not possible to imagine a Government without a discretion scope in certain subjects. For that reason, what is prohibited, what is incompatible with democracy is not the secret itself, but the fact that said secret does not have as origin or foundation a law. It could be said that confidentiality is appropriate whenever there is a reason of defense, national security, or foreign policy; this is, in the cases provided for in the Constitution as emergency situations, and interpretation shall always be restrictive.

<sup>24</sup> For example: the Republic of Uruguay, in its Law No. 18 381 (2008), Section 11, establishes: “(...) Information previously classified as confidential, shall remain confidential for 15 years after its classification (...)”.

<sup>25</sup> Other countries of the region that do not have said law either are Bolivia and Venezuela.

<sup>26</sup> Approved at the Session of September 29, 2010. It will be mentioned in the following section.

## 5 National Bill of Access to Public Information

It is worth mentioning that the already mentioned Bill includes a chapter about exceptions to access, as well as partly classified or confidential information. In the first place, it establishes as a general rule that the requested access to information can only be denied in the following cases: (1) whenever there is a disposition set forth by law; (2) if it is an industrial, trade, financial, scientific, or technical secrecy; and (3) when data are protected by professional secrecy. At the same time, it establishes that confidential information shall be digitalized and made public before being destroyed.

In the second place, it establishes the requirements for the governmental decision providing for the exceptions to the right of access to information. The requirements are the following: (1) identity and role of the person who makes the categorization; (2) reasons that justify it and the legal mandate that authorizes it; (3) institution that originated it; (4) period of time of the confidentiality condition; (5) finally, individualization of said information classified as confidential and available for public access.

Furthermore, within the scope of the Executive Power, applicable legislation requires that the decision has to be made with the approval of ministers and signed by the Minister of the area where the information belongs and by the Chief of Cabinet. Breach of this requirement shall render the exception null and void. For the rest of the branches of power, the resolution shall be adopted by the highest authority.

Discretion or confidentiality declaration cannot exceed a period of 10 years; after which the information shall be deemed public and free of access. Nevertheless, if the reasons for said decision are still valid, the period may be extended for 10 years more. However, once it has been made public, the information cannot be rendered confidential again.

## 6 Case Law

National Supreme Court of Justice (CSJN in its Spanish acronym), April 19, 2011, "*R. P., R. D. v. National Government – Intelligence Agency of the Government*"

Provisions established by Argentine Laws No. 25 326 and 25 520, and Argentine Executive Order No. 950/2002 confer the right to obtain any information that may exist at the Intelligence Agency of the Government about the person requesting it and that may be useful to obtain the corresponding pension benefit. But, in order for said right to become effective, the Agency is compelled to state whether it is in possession or not of the information requested. In case it is in possession of said information, the Agency can only deny its disclosure under Argentine Law No. 25 326, Section 17, Subsection 1 and 2 (well-founded decision based on the defense of the Nation, on public order and security, or on the protection of rights and interests of third parties).

CSJN, September 16, 1999, “Ganora, Mario F. and another”

Collecting information on personal data in possession of security agencies is regulated by the Action of Habeas Data, notwithstanding the fact that the disclosure of said information may affect national security, defense, foreign relations, or a criminal investigation, which shall be claimed in each case by the head of the corresponding institution.

The right conferred by National Constitution, Article 43, 3<sup>rd</sup> paragraph (habeas data) is only effectively preserved in so far as “public records or data banks” are understood as part of Governmental bodies, including, and in particular, confidential data (Judge Fayt vote).

CSJN, March 26, 2014 “*CIPPEC*”

Regarding access to public information there is an important legal and judicial consensus on the fact that entitlement to submit requests of access shall be understood in a broad sense, without requiring a qualified interest by the petitioner.

Thus, the information is deemed public, not belonging to the Government but to the Argentine Nation as a whole and, as a consequence, the only condition of being an Argentine citizen is enough to justify the petition. There would be no point in establishing transparency policies and guaranties regarding public information if the access to it is then hampered by formalities.

This is so because access to information is aimed at helping members of society to exercise their right to know, thus disclosing information cannot depend on demonstrating a legitimate interest or showing the reasons for requesting it.

An interpretation allowing the balanced coexistence of dispositions set forth by our national legislation regarding personal data and access to information, leads us to the conclusion that dispositions set forth by Argentine Law No. 25 326, Section 11 (establishing that the disclosure of said data depends on the existence of a legitimate interest) do not cover those cases related to personal information that is part of public management.

For that reason, the restriction contemplated in the rule must be understood as a limit to the flow of personal data among private or public persons that deal with the processing of said data, but it does not seem possible to extend these provisions to cases of public interest, as the one in this case, for that would mean to ignore or block the full enjoyment of a human right recognized both in our National Constitution and in the International Treaties signed by Argentina.

In short, the fact that the requested information of public registers involves data of third parties, is not a decisive reason to demand the petitioner a qualified interest, where the only rule regulating access to public information for the Executive Power clearly discards said possibility.

Furthermore, even if the case of Argentine Law No. 25 326, section 11 could apply in the terms pretended by the petitioner, the truth is that, considering that the right of access to information symbolizes a legitimate interest held by each member of society, the petition submitted by the petitioner could not be disregarded applying the already mentioned rule.

It is evident that a petition of this nature is not aimed at an intrusive investigation of the private life defined in our National Constitution, Article 19, on the particular situation of individuals that receive said benefits (Cases: 306:1892), but rather, it pursues a public interest of outstanding importance: the collection of the necessary information to control the decision of the relevant officials when assigning a benefit. It must comply with the requirements of the different programs of social benefits that use public funds to that end.

As a result, we cannot admit denial justified on the need of protecting the privacy of beneficiaries because when it is not related with sensible personal data which disclosure is prohibited, it ignores the public interest that constitutes the main aspect of the request for information, which doesn't seem to be aimed at the satisfaction of curiosity about petitioners' private lives, but rather its objective is to effectively control the way in which officials apply a social policy.

Accordingly, it shall be mentioned that Government's justification to limit the petitioner's right of access to such information, based on the need to guarantee beneficiaries' privacy as a way of protecting them from future and possible discrimination acts by third parties, is completely dogmatic. For that reason, it is necessary to make some specifications on the matter.

In effect, in the first place, this reference considers, in an abstract and tentative way, a risk that, if confirmed, would not constitute a necessary, direct, or immediate consequence of the access itself to this information, but rather, it would possibly arise from independent conducts of third parties.

In the second place, this position takes this risk as a certain fact when, indeed, it is not obvious that providing this information is necessarily detrimental for the vulnerable receiving these benefits. Said perspective, falling into a sort of welfare state, suggests in an unjustified manner that, precisely, guaranteeing the control of public acts in this subject will allow the verification of the criteria used to provide these benefits and, if an arbitrary act or unequal treatment is proved, it will be possible to resort to the corresponding legal remedies to protect individuals' rights.

Finally, it is necessary to mention that the specific circumstances of the case, in which different governmental bodies have adopted opposite positions with regard to the scope of the right of access to public information, evidence the urgent need for a national law regulating this important subject.

IACHR case “*Claude Reyes et al. v. Chile*”, Judgment of September 19, 2006

The IACHR first ruled on the interpretation of Article 13 of the ACHR in 2001 cases.<sup>27</sup> Since then, it has ruled on 13 more cases, but in 2006, in the case “*Claude Reyes*”, the Inter-American Court of Human Rights changed the interpretation of Article 13 of the ACHR: it did not consider it any more as “freedom of expression”, but rather as “right to information”.<sup>28</sup> It recognized the important role of the RAPI both as a private right of every individual, described in the word “*seek*”, and as a positive obligation of the Government to guarantee the right to “*receive*” the information requested (according to paragraphs 75-77).

## 7 Final considerations

Certainly, the RAPI is an important part of the cornerstones of the republican form of government and the disclosure of public policies.

As it is at the same level of other Human Rights, it has to be interpreted as such and said interpretation shall be made in accordance with the republican principle of government and with current democratic principles. Thus, it must be considered in the broadest possible sense – as a rule – and every restriction shall then pass the reasonableness and proportionality tests established by the enforcement body of the American Convention.

In this way, the basis of access to information held by the Government consists in the right every individual has to know the way in which their authorities and public officials carry out their duties.

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<sup>27</sup> “*Olmedo Bustos et al. Vs. Chile*” on February 5, 2001 and “*Ivcher Bronstein vs. Perú*” on February 6, 2001.

<sup>28</sup> Although in Advisory Opinion 5/85 it already anticipated the following: “Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. (...) It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free (...)”, paragraph 70.