

**CIVIL SOCIETY INPUTS  
ACCESS TO INFORMATION ACT DRAFT TWO  
September – December 2004**

**I. Introduction**

- b. procedures for requesting and receiving information
- c. roles and responsibilities of the civil servants
- d. automatic publication
- e. exemptions
- f. appeals procedures and the role of the Ombudsman
- g. national coordinating agency or body

At the conclusion of each workshop, there was a report-back and plenary discussion of the group's findings. The Carter Center was tasked with the responsibility of compiling all of the comments received at the nine workshops, and providing a summary of the suggestions to the Presidential Anti-Corruption Delegation. Although impossible to include every idea that was mentioned or discussed, this document attempts to capture the most common themes and areas of coincidence among the departments.

In general, the civil society groups and organizations represented at the workshops agreed that access to information is a fundamental right, that it is a priority for Bolivia, and in addition to a specific statute legislating the right it also should be included as a right in the constitution. Although there were many recommendations for strengthening the draft law, or clarifying certain provisions, there was overall agreement that this draft law was a positive effort to provide the citizens of Bolivia with a right to information.

## **II. General comments**

In addition to the recommendations received relating to specific articles and provisions, there were four general comments regarding the draft law that emerged in each workshop.

1. At each workshop, concern was expressed regarding the quality of documentation in Bolivia, and the potential for Bolivians to use the information to benefit their lives. For example, comments were made as to the need for improved record-making so that the public documents are understandable and complete. In addition, there was general agreement that efforts should be made to provide information in all the main languages of Bolivia, rather than just Spanish. Suggestions from the workshops regarding affordable ways to provide such information included:

- All information which is to be published automatically could be translated into the three main languages, but specifically requested documents would be provided in the language in which they were originally created; or
- Information that clearly affects certain groups could be translated and provided in that group's language.

2. The law as presently drafted references many other pieces of legislation. It was suggested that the access to information law be a self-contained document, without reference to provisions in other statutes. There was concern that if one of the other laws were to change, or be amended in some way, this could adversely

affect the access to information law or change its nature and scope. In addition, participants felt that the draft transparency and access to information law was difficult to fully understand because of the myriad of references to other laws. It particularly was noted in the exemptions section. Finally, it was felt that the access to information law, once passed, should be the overriding legislation relating to information and superior to any other law that mentions or addresses the issue of access to information, and this should be clearly stated in the Act.

4. That there is insufficient detail with relation to the processing of information requests, retrieval of information, and provision.

3. Finally, there was general agreement among the participants for a need to reorganize and “clean up” the draft law. Although the comments indicated support for much of the substance of this draft law, the manner in which it is written and organized led to confusion. To resolve some of the duplication (or inconsistencies) and for ease in understanding and applying the law, the groups recommended placing all related issues together. For example, one group suggested that all provisions related to process be placed together, including the issue of costs and manner for requesting information, and that everything to do with civil servants (such as duties, responsibilities, and sanctions) be found together. Moreover, there should be a detailed review to ensure that the numbers are consecutive, that each title is appropriately numbered, and that where there are sections listed within articles, these are consistent and clearly delineated.

#### **IV. Summary of comments by article**

There was not sufficient time during the workshop



Additional comments included:

- a. section I of Article 6 states that any public document destruction is prohibited. The group agreed that this is untenable for the government and public servants, as some documents must be destroyed. It was understood that there is no government in the world that maintains and stores all documents produced. Rather a clear retention schedule should be developed that indicates what documents may be destroyed, when they may be destroyed, in what manner, and who has the authority to make the decision.
- b. The second paragraph of this section (note, missing the “II”) was confusing to the groups, as it appeared inconsistent with section I. Moreover, where there was a five year time period for maintenance of records in each office, one group felt that seven years was more appropriate.
- c. There was a suggestion that this article call for a system for classifying information.
- d. Finally, there was confusion over meaning of “prescripcion de valor administrativo” (see also Artículo 4).

### **Articles 7 - 9: Responsibility and Sanctions**

The issue of civil servant responsibilities, and potential sanctions, was one that was mentioned in each department as key to the ultimate success of the law. The participants were concerned that this area receives greater attention, as it is a potential vulnerability in the establishment of an effective transparency regime. Moreover, there almost was unanimity that this section should be reorganized to consistent with other related articles, and for ease of understanding and application.

- a. Some participants wanted to be certain that there were sufficient sanctions against civil servants who undermine or subvert the principles of openness, with many suggesting the inclusion of criminal sanctions particularly when civil servants knowingly destroy information inappropriately.
- b. One groups said that the penal code citation (Article 153 and 154 of the penal code) is incorrect.
- c. There was a suggestion that Articles 9 and 30 be placed together, or at a minimum that there is some relationship between these provisions. For example, one group asked for clarification on when civil servant inaction would be considered delay and when it would reach the level of obstruction?
- d. Moreover, there was a recommendation for more detail related to the specific responsibilities of the civil servants, for example, that they must respond to requests for documents that they are in charge of; when the document is not under their control, they must transfer the request to the appropriate institution, establishment of roadmaps etc. (please note: some of these responsibilities are already included in the law but since divided into many

separate sections, it was difficult to understand the breadth and specific role of civil servants).

### **Article 10 is missing**

### **Article 11: Basic Measures**

Participants suggested including specific time periods for the completion of each task, such as the organization and publication of information, and in particular a time limit for the establishment of necessary regulations.

## **Title Two: Transparency in Public Administration: Websites**

### **Article 13: Minimum Content of Websites**

This section was highly praised. A few suggestions from the working groups included adding information about salaries; changing the word “resultados” to “informes” in section 8; and including on the website the name of the person responsible for its management. In general, the groups wanted to ensure that the websites were easy for both the government to maintain, and for citizens to navigate and use.

## **Title Three: Access to Public Sector Information**

### **Article 14: Refusal of Access**

The clear statement that no request for information shall be denied based on race, sex, language etc. is unique and extremely important. During the plenary discussion, this section was highly regarded.

### **Article 15: Impossibility**

In reviewing this section, the participants voiced some confusion over what would be considered the “conditions” by which the public authority would not be able to satisfy a request. It was unclear whether this would only entail those cases whereby the agency does not have control of the document, or if it could it be expanded to include cases where the agency determines it would be too resource intensive to provide the information. If not clarified, it was suggested that this article could be applied in a manner contradictory to the principles of access to information.

Moreover, the group felt that it is insufficient to simply notify the solicitor that the agency does not have the information. Rather, the public servant should be charged with assisting the requestor in identifying the appropriate agency or transferring the request on the applicant’s behalf.

## **Article 16: Public Access to Information**

There appears the potential for contradiction within this article. One section seems to

the Habeas Data section, as creates confusion with the right to public information (versus personal information). Finally, there was a more general debate regarding the appropriate  
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including the Ombudsman as an entity that can receive information classified as secret, reserved or confidential.

### **Article 31: National Coordinating Agency**

Although there was some consensus on the need for a national coordinating body (only one group thought that the responsibility for coordinating the operation of the law should be decentralized), there was little agreement among the departments on the way in which it should be established and operate. The various comments included:

- supportive for a national coordinator to ensure an effective system, but that also need to have a responsible person designated for each institution
- suggestion of a coordinating agency in each department and a national entity that would oversee these departmental bodies
- that there is a need for a national coordinator, and that the Ombudsman could be tasked with this responsibility

### **Title 4: Del Procedimiento should be renumbered to “Title 5”**

#### **Article 32: Initiating the Process**

This section received more attention from the participants than almost any other, and interestingly there was great uniformity among the groups around the nation.

- a. the groups suggested that 20 days plus an additional 20 days is too long of a time period for providing the requested information. In general, there was consensus for an initial 20 day time period plus a maximum extension of 10 days; and that the extension for additional time would only apply when the agency provides an explanation for the delay.
- b. the groups agreed that there should be clear sanctions specified for failure to provide the requested information in a timely manner.
- c. there was general enthusiasm for specialized information officers, but felt that this section would benefit from a more detailed description of their responsibilities.
- d. this article should include provisions that mandate assistance for certain groups, taking into account the idiosyncrasies of different communities.
- e. person requesting information should be allowed to do so either in writing or orally, including via the telephone.

#### **Article 33: Negative Administrative Silence**

The working groups that reviewed this section felt that it should be renamed something more generic to indicate that this article addresses all appeals and that it should be expanded to include more detail regarding the appeals mechanisms. Moreover, they recommended that all the various reasons for appeals should be included, such as denial of information, inappropriate costs etc. Beyond that point, there were a variety of suggestions relating to appeals mechanisms. Some of these ideas are listed below:

Defensor del Pueblo receive all appeals; but if Ombudsman becomes responsible for adjudicating appeals there will need to be a modification in the Ombudsman Act, and the provision of additional resources

Creation of new administrative body to hear appeals in the first instance, and then continued denials could be appealed to the courts

Time limit for responding to appeals should be 30 days

The appeals process should be decentralized, not just one body in urban area

One group said that the defensor del pueblo should not hear appeals as can not engage against the private sector and would alter its original attributes too much

Administrative rout with right to appeal

Include a provision in the section that costs for appeal should be covered by the entity that did not answer or to act appropriately

In the coming weeks, we shall send a matrix with all of the comments from each department.

The Carter Center wishes to thank all of the participants and organizers of these events, and to express our gratitude for the trust instilled upon us to organize and summarize the many comments and innovative suggestions and recommendations. It is our hope that these inputs, if appropriately incorporated into the draft access to information law, will serve to strengthen the bill and to increase its effectiveness and utility for all Bolivians.

The Carter Center  
January, 2005