Amicus Curiae Submission in the Case of *Defensoria del Pueblo v. Municipalidad de San Lorenzo*

A Submission from the Open Society Justice Initiative to the Supreme Court of Paraguay

February 2010

OPEN SOCIETY
JUSTICE INITIATIVE

Case No. 1054/2008

In the Matter of Constitutionality of the Court of Appeal Judgment in
Defensoria del Pueblo v. Municipalidad de San Lorenzo

WRITTEN COMMENTS OF THE OPEN SOCIETY JUSTICE INITIATIVE

Introduction and Statement of Interest

1. The Open Society Justice Initiative (the "Justice Initiative") provides this submission to assist the Supreme Court of Paraguay in its understanding of the laws and practices of other nations with respect to the right of access to state-held information, and in particular the disclosure of information about the remuneration and benefits enjoyed by government officials. This submission highlights the standards that best serve the goals and policies underlying access-to-information and government integrity regimes, while accommodating the privacy interests of government officials. It draws on relevant international and comparative law and practice from the Americas and other leading jurisdictions, regarding critical questions, including (i) whether a personal interest must be shown to justify access to government information, and (ii) how to balance transparency of officials' remuneration with their privacy rights.

2. The Justice Initiative, an operational program of the Open Society Institute, promotes rights-based law reform and strengthens legal capacity worldwide through hands-on technical assistance; litigation and legal advice; advocacy, research and reporting. The Justice Initiative works to secure accountability for international crimes; combat racial discrimination and statelessness; improve national-level pretrial justice; address abuses flowing from national security and counter-terrorism policies; expand freedom of information and expression; and pursue remedies for corruption arising from the exploitation of natural resources. Its staff are based in Abuja, Almaty, Amsterdam, Brussels, Budapest, Freetown,The Hague, London, Mexico City, New York, Paris, Phnom Penh and Washington, D.C.

3. The Justice Initiative has extensive experience in promoting the adoption and implementation of freedom of information laws in Latin America, Eastern Europe and elsewhere, and has also contributed to international standard-setting and monitoring of government transparency around the world. The Justice Initiative makes *amicus curiae* submissions to national and international courts and tribunals on significant questions of law where its thematically focused expertise may be of assistance.

4. In the field of freedom of expression and information, the Justice Initiative has provided *pro bono* representation before, or made *amicus curiae* submissions to, all three regional human rights systems and the UN Human Rights Committee. In particular, the Justice Initiative made *amicus curiae* submissions to both the Inter-American Commission (the "Inter-American Commission") and the Inter-American

Court of Human Rights (the "Inter-American Court") in the landmark case of *Claude Reyes et al v. Chile*.[1] It has also made *amicus curiae* submissions to the Constitutional Tribunal of Chile, in a 2007 case that resulted in the recognition of a constitutional right of access in that country;[2] and to the Constitutional Tribunal of Peru in a case that expanded public access to the assets declarations of Peruvian government officials.[3]

5. This submission will be limited to questions of international and comparative law and practice, and their relevance to the general issues of principle raised by this case. By way of context, the current dispute involves the refusal of the Municipality of San Lorenzo to provide Mr. Vargas Telles, a local resident, with information on the names, titles and salaries of municipal officials and consultants. The Municipality has argued that Mr. Vargas failed to indicate a legitimate interest in the information, and that in any event, the relevant information was protected by privacy laws. The Asunción Court of Appeals essentially agreed with the Municipality, finding in addition that the applicant had failed to show that he had suffered any harm from the denial of his information request.[4]

6. The Court of Appeals does not appear to have addressed the key question of whether the Paraguayan legal system recognizes a right of access to state-held information, and if so, what the status of that right is. The Defensoría del Pueblo, which has joined the case on behalf of Mr. Vargas Telles, argues that the Constitution and/or international treaties ratified by Paraguay guarantee such a right, and the Court of Appeals decision is therefore contrary to the constitution.[5]

7. This submission will address (i) the status of the right to information in Latin American and other regional and comparative law, including its close connection to the rights to freedom of expression and democratic participation; (ii) the effect of the *Claude Reyes* judgment on this case, both as to the fact that there is no need to show an interest in the information and as to the balancing of privacy rights; and (iii) comparative laws and practices on access to information concerning the identities and remuneration of officials at different levels.

A. The Right to Information is Well-Established in International and Comparative Law and Practice

8. The right of access to government information has been closely linked, from the outset, to the broader, fundamental right to receive and impart information and ideas, as well as the values of democratic oversight. These general principles are applicable

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[1] Judgment of September 19, 2006; available at: http://www.corteidh.or.cr/ docs/casos/articulos/seriec_ 151_ing.pdf.

[2] *In the Matter of Constitutionality of Article 13 of the Constitutional Organic Law on the General Bases of State Administration (No. 18.575) (Casas Cordero case)*, Judgment of August 9, 2007.

[3] *Casas Chardon v. Ministerio de Transportes y Comunicaciones y Otro*, Judgment of September 28, 2009.

[4] Judgment No. 78 of July 16, 2008.

[5] Appellant Motion of August 5, 2008.

throughout the world. Court decisions from Latin America support this right, as well as those from other jurisdictions.

1. General Principles

9. The Swedish Freedom of the Press Act of 1766, the world's first access to information law, provides that "[e]very Swedish citizen shall be entitled to have free access to official documents, in order to encourage the free exchange of opinion and the availability of comprehensive information."[6] The United Nations General Assembly decreed, in one of its first resolutions, that "[f]reedom of information is a fundamental human right and … the touchstone of all the freedoms to which the UN is consecrated."[7]

10. Courts around the world have similarly determined that the right to receive information, including information held by the government, is a central and separate element of freedom of expression. The European Court of Human Rights, for example, has repeatedly held that Article 10 of the European Convention guarantees not only the right of speakers to impart information and ideas, but equally so "the right of the public to be properly informed."[8] In a modern democracy, a significant part of the totality of public information a "properly informed" citizenry requires is in the hands of the state. That body of information is produced, collected and processed using public resources, and it ultimately belongs to the public. The government should be subject to a general obligation to make it available, save when a compelling public or private interest dictates otherwise.

11. Comparative doctrine and jurisprudence have established that the right to information is also a precondition for the exercise of the basic rights of political participation and representation, guaranteed inter alia by Article 23 of the American Convention on Human Rights, which secures the right of every citizen "to take part in the conduct of public affairs, directly or through freely chosen representatives." The Inter-American Court of Human Rights has held that "access to information held by the State may permit participation in public governance by virtue of the social oversight that can be exercised through such access."[9]

12. In a democracy, citizens exercise their self-governance rights not only through free and periodic elections, but also through a myriad of other fora and means of influencing and interacting with those responsible for setting public policies. Both direct and indirect participation, during or outside election periods, would be greatly undermined by the lack of a right of access to government information, and the resulting inability to follow government decision-making and monitor the integrity of government officials and operations. As the three specialized mandates on freedom of expression have noted,

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[6] Ch. 2, art. 1 (adopted in 1766 & 1949, amended in 1976).

[7] UN General Assembly Resolution 59(1) of 14 December 1946.

[8] *Sunday Times v. United Kingdom (no. 1)*, Judgment of April 26, 1979, para. 66.

[9] *Claude Reyes*, note 1 above, para. 86.

> [i]mplicit in the freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented.[10]

2. The Right to Information in The Law and Practice of The Americas

13. The recognition of a right of access to information held by public authorities is well supported by state practice and international law. The Inter-American human rights system is the most advanced in guaranteeing, at a regional level, the right of the public to access information in the hands of the government. The Inter-American Court of Human Rights acknowledged early on that the rights of listeners and receivers of information and ideas are on the same footing as the rights of the speaker: "For the average citizen it is at least as important to know the opinion of others or to have access to information generally as is the very right to impart his own opinion."[11] In 2000, the Inter-American Commission on Human Rights, the Court's auxiliary body, expressly recognized that "access to information held by the state is a fundamental right of every individual."[12]

14. In September 2006, upon referral of the *Claude Reyes* case by the Commission, the Inter-American Court issued a landmark judgment that confirmed and expanded upon the Commission's ruling in the following terms:

> … the Court finds that, by expressly stipulating the right to "seek" and "receive" "information," Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied. The delivery of information to an individual can, in turn, permit

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[10] Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OAS Special Rapporteur on Freedom of Expression and the OSCE Representative on Freedom of the Media, November 26, 1999. *See also* the 2004 Joint Declaration of the three mechanisms, adopted on December 6, 2004, which affirms that "[t]he right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation…."

[11] *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, November 13, 1985, para. 32.

[12] *Inter-American Declaration of Principles on Freedom of Expression*, adopted at the Commission's 108th regular session, October 19, 2000, para. 4. The Commission affirmed that position in the 2005 case of *Claude Reyes et al v. Chile*, holding that Article 13 of the American Convention on Human Rights, guaranteeing the right to freedom of expression, includes a right of access to public information, which "places a positive obligation on governments to provide such information to civil society." Case No. 12.108 *Claude Reyes et al v. Chile*, Commission Application of July 8, 2005, para 69.

> it to circulate in society, so that the latter can become acquainted with it, have access to it, and assess it….[13]

15. The Court underscored the "indispensable" presumption in a democratic society that "all information is accessible," subject only to restrictions that can be imposed, under paragraph 2 of Article 13, on a case-by-case basis.[14]

16. The recognition of a fundamental right of access to state information by the Inter-American Court is reflected in state practice and national jurisprudence, including extensively in the Americas. Some ninety countries and major territories around the world have adopted freedom of information laws (statutes) that provide for access to state-held information.[15] By 2010, when Indonesia's access law enters into force, more than 4.5 billion people will live in countries that provide in their domestic law for an enforceable right to obtain information from their governments.[16]

17. In the Americas, at least seventeen countries have nationwide access laws: Antigua and Barbuda, Belize, Canada, Chile, Colombia, the Dominican Republic, Ecuador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, Trinidad and Tobago, the United States of America, and Uruguay. Argentina and Bolivia have access decrees that apply to the national executive branch, while several other countries, including Brazil, are currently considering proposals to enact national freedom of information laws.[17]

18. Failure to guarantee an explicit right of access is now the clear exception in the region, and a right to information held by public authorities is the rule, as it is in the rest of the democratic world. The general consensus of governments in the Inter-American region on this issue is most clearly revealed by the successive annual resolutions of the General Assembly of the Organization of American States (OAS) on access to public information, which recognize states' obligation to "respect and promote respect for everyone's access to public information", itself deemed to be "a requisite for the very exercise of democracy."[18]

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[13] *Claude Reyes v. Chile,* note 5 supra, para. 77.

[14] *Ibid.*, para. 92. Article 13.2 of the American Convention allows restrictions to the right of freedom of expression "to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals."

[15] Roger Vleugels, *Overview of 90 FOIA Countries and Territories*, September 2009, at: http://right2info.org/resources/publications/Fringe%20Special%20-%2090%20FOIAs%20-%20sep%207%202009.pdf.

[16] This figure was reached by adding the population figures provided by Wikipedia for the 90 countries and territories in Roger Vleugels' overview, supra. Wikipedia, *List of Countries by Population,* http://en.wikipedia.org/wiki/List_of_countries_by_population.

[17] In some countries, such as Argentina and Mexico, provinces, municipalities and other sub-national entities have adopted acts that grant a general right of access to information in their possession. See, inter alia, "Report of the Office of the Special Rapporteur for Freedom of Expression," in *Annual Report of the Inter-American Commission on Human Rights* (2003), OEA/Ser.L/V/II.118, Doc. 70 rev. 2.

[18] In addition, the resolutions provide for the states' obligation to "promote the adoption of any necessary legislative or other types of provisions to ensure [the right's] recognition and effective application." See, among others, *Resolution 1932 (XXXIII-O/03) on Access to Public Information: Strengthening Democracy*,

19. Furthermore, several countries – including Colombia, Costa Rica, Mexico, Panama, Peru, and Venezuela[19] – have expressly incorporated the right of access to public information into their constitutional bills of rights, formally recognizing its essential role in the proper functioning of a democratic system. Even in the absence of explicit constitutional or statutory authorization, courts in at least three additional countries – Argentina, Chile and Costa Rica – have upheld a fundamental right of access to information as a corollary of freedom of expression and participation rights.

20. Thus, in Argentina, the Supreme Court of Justice has ruled that Article 1 of the Constitution, which establishes a republican form of government, gives rise to an obligation of transparency because a republic requires that government actions be available to the public.[20] Furthermore, Article 75.22 of the Constitution ensures the domestic application of international human rights treaties, including the American Convention on Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the American Convention Against Corruption (ACAC). The Supreme Court has held that, in light of these provisions, there is a duty to ensure access to government information.[21]

21. The Constitutional Chamber of the Supreme Court of Costa Rica held in a 2002 case that the Central Bank's refusal to disclose a report of the International Monetary Fund, requested by a newspaper, violated the constitutional right to information "to the detriment of all Costa Rican citizens." The Court reasoned that

> the State must guarantee that information of a public character and importance is made known to the citizens, and, in order for this to be achieved, the State must encourage a climate of freedom of information. … In this way, the State … is the first to have an obligation to facilitate not only access to this information, but also its adequate disclosure and dissemination, and towards this aim, the State has the obligation to offer the necessary facilities and eliminate existing obstacles to its attainment.[22]

In reaching its decision, the Costa Rican Court relied emphatically on the symbiotic relationship between the right to information and the rights of democratic participation, arguing that "the right to information … implicates the citizens' participation in collective decision-making, which, to the extent that freedom of

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adopted on June 10, 2003; *Resolution 2057 (XXXIV-O/04) on Access to Public Information: Strengthening Democracy*, adopted on June 8, 2004; and *Resolution 2121 (XXXV-O/05) on Access to Public Information: Strengthening Democracy*, adopted on May 26, 2005.

[19] For links to each of these constitutional provisions, see: http://right2info.org/constitutional-protections-of-the-right-to.

[20] Acordada de la Corte Suprema de Justicia de la Nación No. 1/2004, Exp. 315/2004 Adm. Gral.

[21] *Ibid.* Corte Suprema de Justicia de la Nación, S.622.XXXIII "S.,V. c/ M., D.A. s/medidas precautorias" 3 April 2001, at 25.

[22] *Navarro Gutiérrez v. Lizano Fait*, Judgment of April 2, 2002, *as translated in* the 2003 Report of the Special Rapporteur for Freedom of Expression, p. 161. Article 30 of the Costa Rican Constitution guarantees, in somewhat narrower terms, a right of access to information on matters of public interest held by "administrative departments."

information is protected, guarantees the formation and existence of a free public opinion, which is the very pillar of a free and democratic society."[23]

22. Similarly, the Chilean Constitutional Tribunal held in 2007 that the right of access was protected by the Chilean constitution as an integral part of the broader right to freedom of expression and the constitutional principle of a democratic republic. In the words of the tribunal, the right of access is "an essential mechanism for [ensuring] the full effectiveness of the democratic regime" which promotes "the adequate exercise and protection of [other] fundamental rights."[24]

3. The Right to Information in Other Regional and Domestic Legal Systems

23. As noted, American states and the Inter-American system are not alone in recognizing a right to information. In the European context, the Council of Europe, which now numbers 47 states, adopted its first recommendation on the right of access more than twenty years ago.[25] In 2002, the Committee of Ministers of the Council of Europe adopted a new recommendation providing for a right to access official documents in the following terms:

> Member states should guarantee the right of everyone to have access, on request, to official documents held by the public authorities. This principle should apply without discrimination on any ground, including national origin.[26]

The preamble to this 2002 Recommendation notes that access to official documents "allows the public … to form a critical opinion on the state of the society in which they live and on the authorities that govern them," and enhances informed participation in public affairs.

24. In November 2008, the Council of Europe adopted the world's first dedicated treaty on access to information. Known as the Council of Europe Convention on Access to Official Documents,[27] it establishes a right to request "official documents," which are broadly defined as all information held by public authorities, in any form.[28] As noted, the right can be exercised by all persons, with no need to demonstrate a particular interest in the information requested.[29]

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[23] *Ibid.*, para. VI.

[24] *Casas Cordero* case, note 2 above.

[25] The 1981 recommendation provides that "[e]veryone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities …." *Recommendation (81) 19 on Access to Information Held by Public Authorities*, adopted by the Council of Ministers on November 25, 1981.

[26] *Recommendation (2002)2 on Access to Official Documents*, February 21, 2002, para. III (emphasis added).

[27] Council of Europe Treaty Series, No. 205, available at: http://conventions.coe.int/Treaty/EN/Treaties/Word/205.doc. It opened for signatures on June 18, 2009.

[28] Art. 2(b).

[29] Art. 4.1.

25. In the 27-member European Union, the Charter of Fundamental Rights grants a right of access to documents held by Union institutions to "[a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State."[30] The Charter is based on the constitutional traditions of the member states.[31] Inclusion of the right of access to information therein thus makes clear that this right has not only become ubiquitous, but is widely perceived as a basic right on the European continent. State practice confirms this conclusion: at least thirty-nine Council of Europe member states recognize a constitutional and/or statutory right of access to state-held information, and have adopted access to information laws to secure its practical implementation.[32] At least seventeen Council of Europe member states have granted the right of access constitutional status by including it in their bills of rights, or by imposing equivalent constitutional obligations upon public authorities.[33]

26. The jurisprudence of the European Court of Human Rights similarly reflects increasing endorsement of the public right to information. For many years, the European Court of Human Rights has recognized a right to state-held information under circumstances in which the denial of information affects the enjoyment of other Convention rights, such as the right to respect for private and family life (Article 8 ECHR). In *Guerra v. Italy*, the Court held that Article 8 imposed on the authorities a positive obligation to inform individuals living near a chemical factory about the risks of potentially devastating accidents. Failure to do so had left the applicants unable to assess the risks and make informed decisions about living near the hazardous facility.[34]

27. More recently, the European Court has gone even further by recognizing a separate right of access—as an element of the general Article 10 ECHR right to "receive and impart information and ideas"—which is independent of any other Convention right. In *Társaság a Szabadságjogokért (Hungarian Civil Liberties Union) v. Hungary*, the Court reviewed the refusal (on privacy grounds) of the Hungarian Constitutional

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[30] *Charter of Fundamental Rights of the European Union*, December 7, 2000, art. 42. The Charter became binding with the entry intro force of the Lisbon Treaty on December 1, 2009.

[31] See preamble to the Charter, at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

[32] *See* David Banisar, *Freedom of Information Around the World 2006: A Global Survey of Access to Government Records Laws*, at www.freedominfo.org. These laws provide for a general right to access state-held information or documents, as opposed to a right of access that depends upon a showing of a personal or legal interest in the relevant administrative process.

[33] This group represents a diverse mix of both new and older democracies; it includes: Albania, Bulgaria, the Czech Republic, Estonia, Finland, Greece, Hungary, Lithuania, Moldova, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, and Sweden. See http://right2info.org/constitutional-protections-of-the-right-to.

[34] *Guerra and Others v. Italy*, Judgment of February 19, 1998. The Court found that similar positive obligations existed in *Gaskin v. United Kingdom*, Judgment of July 7, 1989 (involving refused access to case records to an adult who had been in the care of the local authorities as a child); and *McGinley and Egan v. United Kingdom*, Judgment of June 9, 1998 (involving refused access to records regarding the potential health hazards resulting from nuclear radiation tests to which the applicants had been exposed while serving in the British army).

Court to grant the applicant organization access to a copy of a petition filed by a member of Parliament in a case pending before that court. In deciding for the applicant under Article 10, the European Court noted the important role played by civil society watchdogs in creating "forums for public debate" and emphasized that any interference with the ability of such groups to obtain information of public interest must be subject to the "most careful scrutiny." The court emphasized that governments have an obligation "not to impede the flow of information" on matters of public concern. In the words of the court, it would be "fatal" for democratic openness "if public figures could censor the press and public debate" on the basis that the information sought was "private data which cannot be disclosed without consent."[35]

28. The European Court confirmed its finding of an independent right of access to government information in a second judgment against Hungary delivered in May 2009. In *Kenedi v. Hungary*, it held that the domestic authorities had violated the Article 10 right of the applicant, an expert in the history of secret services, to be granted access to certain original documentary sources of the Hungarian secret service. Access to such sources for legitimate historical research "was an essential element of the exercise of the applicant's right to freedom of expression."[36]

29. Numerous national courts in Europe and elsewhere have also upheld a right of access to information held by public authorities, whether as part of free speech and participation rights or as a stand-alone guarantee. Thus, the French *Conseil d'Etat* held in 2002 that the right of access to administrative documents is among "the fundamental guarantees granted to citizens for the exercise of their public liberties," in the meaning of Article 34 of the French Constitution.[37]

30. The Hungarian Constitutional Court ruled in 1992 that freedom of information is a fundamental right essential for citizen oversight:

> The publicity and accessibility of data of public interest is a fundamental right guaranteed by the Constitution …. Free access to information of public interest promotes democratic values in elected bodies, the executive power, and public administration by enabling people to check the lawfulness and efficiency of their operations. Because of the complexity of the civic sphere, the citizens' sway over administrative decisions and the management of public affairs cannot be effective unless public authorities are willing to disclose pertinent information.[38]

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[35] Judgment of April 14, 2009, paras 37-38.

[36] Judgment of May 26, 2009, para. 43.

[37] *Ullmann,* Judgment of April 29, 2002, No. 228830, para. 2. Constitutional Article 34 provides that "civic rights and the fundamental guarantees granted to citizens for the exercise of their public liberties" can only be regulated by an act (loi) of Parliament.

[38] Decision 32/1992 (V.29) AB, at 183-184 (*as translated by* the Office of the Hungarian Parliamentary Commissioner for Data Protection and Freedom of Information). In 1994, the Hungarian Court struck down a state secrets law, ruling that it imposed impermissible restrictions on the right to information. In so doing, the Court found that free access to data of public interest, including those held by the state, is one of the preconditions for the exercise of the right to free expression. Decision 34/1994 (VI.24) AB.

31. The Supreme Court of India addressed the issue as early as 1982 in a case involving the government's refusal to release intra-agency correspondence regarding transfers and dismissals of judges. Recognizing a "right to know which seems implicit in the right of free speech and expression," the Indian Court reasoned that,

> [w]here a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing. … No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of government. … The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State.[39]

32. The Constitutional Court of (South) Korea reached a similar conclusion in a 1989 case involving a municipal office's unjustified refusal to grant the applicant access to certain real estate records he had requested. The Korean Court argued that unhindered access to state-held information was essential to the "free formation of ideas," which is itself a pre-condition for the realization of genuine freedom of expression and communication.[40] This and subsequent freedom of information decisions of the Korean Court influenced the legislature to adopt in 1996 a comprehensive access to information law.[41]

33. As this overview of comparative and international law and practice shows, the right of access to information held by public authorities has become widely accepted in the democratic world, including in the Americas, as a basic political right.[42] Whether as part of traditional free expression guarantees or as an important entitlement in its own right, the right of access to information held by public authorities is perceived as an integral and imperative component of the broader right to democratic governance. Indeed, it has become untenable to argue that the public should <u>not</u> have a general right to know what their government knows and does, subject only to compelling exceptions.

B. The Effect of the *Claude Reyes* Judgment On This Case

34. This section will discuss (1) the direct effect of the *Claude Reyes* judgment of the Inter-American Court in Paraguay (2) the lack of a need to show a direct interest or harm suffered for exercising the right of access; and (3) the principles relevant to balancing the right of access with individual privacy.

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[39] *S.P. Gupta v. Union of India* [1982] AIR (SC) 149, at 232.

[40] *Forests Survey Inspection Request* Case, 1 KCCR 176 (September 4, 1989).

[41] Disclosure of Information by Public Agencies Act (no. 5242), December 31, 1996.

[42] See also Toby Mendel, *The Right to Information in Latin America: A Comparative Legal Survey* (UNESCO 2009), http://portal.unesco.org/ci/en/ev.php-URL_ID=28958&URL_DO=DO_TOPIC&URL_SECTION=201.html; also in Spanish: http://unesdoc.unesco.org/images/0018/001832/183273s.pdf.

1. Giving Effect to the Right of Access in the Paraguayan Legal System

35. In the case of *Claude Reyes* the Inter-American Court identified a new element of the Article 13 right to freedom of expression and information, which is a general rule of Inter-American human rights law, capable of direct and universal application. Under both the American Convention and the Paraguayan Constitution, this Court is bound by the holding of *Claude Reyes* and should apply it directly. In addition, the *Claude Reyes* ruling appears to be consistent with the national Constitution.

The decision can be directly applied

36. The new element of Article 13 identified by the Inter-American Court – namely, the basic right of general access to information held by public authorities – is capable of general, direct and immediate application by the authorities, including the judicial authorities, of all States parties to the Convention. As such, it is not tied to the facts of a particular case or the specificities of the domestic legal system or other circumstances of a single State party. The Inter-American Court being the ultimate authority in matters of interpretation of the American Convention,[43] its interpretation of the components of the rights guaranteed by Article 13 of the Convention is generally binding on all States parties.

37. Furthermore, Article 2 of the Convention requires States parties to adopt "such legislative or other measures as may be necessary to give effect" to the rights or freedoms recognized by the Convention (emphasis added). Under Article 25 of the Convention, States parties must also guarantee everyone's right to judicial protection vis-à-vis any "acts that violate [the] fundamental rights" recognized by domestic law or the Convention itself.

38. Domestic courts in the Americas have already invoked and applied the *Claude Reyes* precedent in domestic cases. Thus, an Argentine court of appeal relied extensively on *Claude Reyes* in finding that a federal agency should make public detailed information on the methodology it uses to calculate the national inflation index.[44]

Domestic law requires enforcement of the right of access to information

39. Enforcement of the right of access, as defined by the *Claude Reyes* judgment, appears also to be required by domestic law: under Paraguay's own Constitution, properly ratified international treaties are part of the "domestic positive law" and take precedence, in cases of conflict, over ordinary statutes and other domestic

[43] Statute of the Court, adopted by the General Assembly of the OAS at its Ninth Regular Session, held in La Paz Bolivia, October 1979 (Resolution No.448), art. 1.

[44] *ADC v. The Ministry of Economy*, Judgment of October 14, 2008 (Camara en lo Contencioso Administrativo Federal de Buenos Aires), pp. 13-14.

provisions.[45] Article 13 of the Convention, as interpreted by the Inter-American Court in unambiguous terms, is therefore directly binding on Paraguayan courts.

40. It is respectfully submitted that the combined effect of these provisions is such as to require this Court to recognize and enforce Mr. Vargas Telles' right of access to state-held information in terms comparable to, and consistent with, those of the *Claude Reyes* judgment of the Inter-American Court.

Applying the ruling does not breach the Constitution

41. To our knowledge, there is currently no statutory or other legal provision in Paraguay that expressly guarantees such a right of access. It appears, however, that recognizing a right of access, consistent with the Inter-American Court's jurisprudence, would <u>not</u> be incompatible with the text and spirit of the Paraguayan Constitution. To the contrary, Claude is fully consistent with the Constitution. Thus, Article 28 of the country's basic law guarantees "everyone's right to receive truthful, responsible and impartial information" and to have free access to "public sources of information." It is a generally accepted principle of international law that interpretation of domestic law should be, as far as possible, consistent with a country's obligations under international law.

42. The only interpretation of Article 28 that would be compatible with Inter-American jurisprudence, as well as the principles of a modern constitutional democracy and a government accountable to the people, is that data and records held by public authorities should be considered, in principle, as "public sources of information" within the meaning of that Article. As the European Court suggested in the *Társaság* case, by denying the public access to its own information, the government would be breaching its obligation "not to impede the flow of information" on matters of public concern.[46]

43. In addition, Article 117 of the Paraguayan Constitution guarantees the right of all citizens "to participate in public affairs, directly or through their representatives"—a formulation which is very similar to the equivalent guarantee in Article 23 of the American Convention. There is no question that the right of access to government information has become nowadays essential to one's ability to participate in public governance and to exercise "the social oversight" over government performance that the Inter-American Court referred to in *Claude Reyes*.[47]

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[45] Const. Art. 137. Paraguay has ratified the Convention and accepted the jurisdiction of the Inter-American Court as of August 18, 1989.

[46] See note 35 above.

[47] See note 9 and accompanying text above.

2. No need to show a direct interest

44. An issue of principle that has arisen in the current case is whether a person exercising the right of access to public information needs to show a personal interest in the requested information. Under international and comparative law, this is not required.

45. The Inter-American Court made clear in *Claude Reyes* that the requested information "should be provided without the need to prove direct interest or personal involvement."[48]

46. Other authority is in accord. The Council of Europe Convention on Access to Official Documents, which culminated some twenty years of European standard-setting in the field, similarly provides that "[a]n applicant for an official document shall not be obliged to give reasons for having access to the official document."[49] The overwhelming majority of the world's access to information laws also specify that the exercise of the right should not be conditioned upon a showing of any "legitimate" interest in the requested information.

47. It is, indeed, questionable whether a statute or other provision that requires a showing of personal interest can qualify as a right to information regime in the first place. It is clear from the findings of the Inter-American Court, the European Court, and other leading tribunals around the world that the right of access to state-held information is a component of the fundamental right to freedom of expression, or a separate basic right. Requesting a justification for the ability to exercise the right of access is therefore tantamount either to asking individuals to justify expressing their opinions freely, or to limiting the right of access to information on matters of public interest to certain people.

3. Balancing the right of access with individual privacy

48. Under Article 13.2 of the American Convention and the Court's jurisprudence, any restrictions on the right of access must meet that provision's three-part test: they must (i) be expressly established by law; (ii) respond to one of the purposes and interests enumerated therein; and (iii) be necessary in a democratic society. The last part of the test has been spelled out by the Court as follows:

> [restrictions] must be intended to satisfy a compelling public interest. … In other words, the restriction must be proportionate to the interest that justifies it and must be appropriate for accomplishing this legitimate purpose, interfering as little as possible with the effective exercise of the right.[50]

49. Applying these general principles to the right of access to information, the Court noted that "in a democratic society, it is essential that the State authorities are

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[48] Para. 77.

[49] Art. 4.1. Note that the Convention's definition of an "official document" includes all information held by a public authority, in whatever form it may be recorded.

[50] *Claude Reyes*, paras 89-91.

governed by the principle of maximum disclosure, which establishes the presumption that all information is accessible, subject to a limited system of exceptions."[51] The burden of proving that any restrictions meet these conditions rests on the State.[52]

50. It is not for us to comment on whether the denial of the information requested by Mr. Vargas Telles in this case was expressly authorized by Paraguayan law or not. We note that this question is contested by the parties.

51. With respect to the purpose of the restriction, the San Lorenzo Municipality argues that the information was denied in order to protect the municipal officials' right to privacy—which is arguably among the "rights of others" protected, in principle, by Article 13.2(a) of the Convention. It is less obvious, however, that, having agreed to join the public service or take senior political positions, government officials ought to have an expectation that information as basic as their identities and positions will be kept confidential. (The questions related to access to salary information are discussed in the next section.) Such information is routinely disclosed in democratic countries, which consider that the public has a right to know who is running the various levels of government, and in what capacity. The same applies generally to government consultants and other external actors who exercise government functions and/or are paid with public funds. It is therefore submitted that the Municipality's denial of information about the names and positions of its officials and contractors did not serve a legitimate purpose under Article 13.2 of the Convention.

52. It is, however, under the third part of the Convention test that the Municipality's non-disclosure of officials' names and titles faces the toughest challenge. The respondent must show that keeping such data out of public sight serves a state interest more compelling than allowing the governed to know who is governing them and in what capacity. That is, in our view, an impossible burden. An "undercover government" is inimical to the very notion of constitutional and representative democracy. The total denial, with little justification, of the applicant's request for such basic information appears clearly disproportionate and inconsistent with the principle of minimal encroachment upon rights. As noted in paragraph 27 above, the European Court of Human Rights rejected a claim that courts might refuse to disclose information of clear and significant public interest on the basis of the privacy rights of public officials.

53. The respondent's position also goes against the widely accepted principle of partial disclosure in the area of access to information. A common feature of access laws, it is defined as follows by the Council of Europe Convention: "If a limitation applies to some of the information in an official document, the public authority should nevertheless grant access to the remainder of the information it contains. Any omissions should be clearly indicated."[53] It does not appear that the respondent

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[51] *Ibid.*, para. 92 (emphasis added).

[52] *Ibid.*, para. 93.

[53] Art. 6.2.

Municipality even considered granting Mr. Vargas Telles access to any part of the information he requested.

C. Comparative Law and Practice on Access to Information about Public Officials' Salaries

54. The general principles on restrictions to the right of access also apply to non-disclosure of information about official salaries, whether on privacy or other grounds. This section will summarize comparative law and practice related to disclosure of data related to remuneration of officials, and whether they should be withheld in order to protect the officials' right to privacy, looking at the law and practice of six OAS member states, as well as eight additional countries in Africa, Asia, Europe and the Middle East.[54]

1. Overview

55. Promoting honesty in government and combating conflicts of interest and corruption are important goals of democratic nations. Two types of information disclosure regimes commonly are used to achieve these goals. The first is a general freedom of information regime, opening to public scrutiny government information about policies, regulation, expenditures, and all types of government activities. The second is a system involving the filing and subsequent public disclosure of financial information, including income, assets and liabilities, by government officials. Typically, these disclosure systems are much more onerous than the simple publication of the officials' salaries and other income by the state budget.

56. The principal goals of financial information disclosure systems are to combat unjust enrichment and conflicts of interest. There is strong evidence that income and asset disclosure has a measurable anti-corruption impact. For example, Latvia, which now has one of the most comprehensive financial disclosure systems in Europe, has experienced a significant decline in public perception of corruption (found by Transparency International and other expert groups to be the most relevant, measurable indicator of corruption). According to Transparency International's Corruption Perception Index, which measures perceptions of public sector corruption in 180 countries and territories, Latvia's score increased from 3.4 out of 10 in 1999 to 4.5 out of 10 in 2009.[55] Among other benefits, disclosure programs enhance the legitimacy of government in the eyes of the public and stimulate foreign direct investment by investors who are more willing to invest money and resources in such countries.

[54] Information on the laws and practices of many of the countries discussed in this section has been provided or supplemented by the experts named in the Acknowledgments page at the end of this brief.

[55] See http://media.transparency.org/imaps/cpi2009/.

57. There is now a growing trend toward requiring financial disclosure by government officials (and subsequent public disclosure) in order to combat corruption, foster public confidence in government, and encourage foreign investment.

58. In 1996, the Organization of American States adopted the Inter-American Convention Against Corruption (the "IACAC"), seeking to eradicate bribery and corruption in member states. The IACAC has been ratified by 33 of the 34 active states parties of the Organization of American States.[56] The IACAC requires each member state to proscribe "illicit enrichment," defined as "a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions."[57] States parties have agreed to consider "[s]ystems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registration public."[58] Article III, Paragraph 11 encourages access to the information in financial declarations by generally promoting participation of civil society and nongovernmental organizations in efforts to prevent corruption.

59. As a result of the proliferation of anticorruption regulations, more and more countries are screening public officials' income and assets with the aim of detecting unjustified wealth as an indicator of corrupt behavior.[59] Additionally, governments increasingly are making these disclosures public based on a widespread recognition that public disclosure helps boost confidence in government, while at the same time giving journalists and civil society groups a role in policing the accuracy of disclosures.[60] A recent survey of 148 countries eligible to receive World Bank support found that 104 countries now require that top officials declare their income and assets to an anticorruption body or other government entity, of which at least 33 require that the forms be published or made available to the public.[61] These include Paraguay, with Article 104 of the national Constitution requiring all public officials and employees to sign a sworn income and asset declaration shortly after assuming office and after stepping down. The declarations of senior officials must be made public.[62]

60. As noted, the scope of these financial disclosure regimes goes much further than disclosure of salaries and other income that officials receive from the public purse. They generally require disclosure and/or publication of the officials' income from

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[56] See http://www.oas.org/juridico/english/Sigs/b-58.html. Paraguay ratified the Convention in November 1996.

[57] Article IX.

[5858] Article III.4 (emphasis added).

[59] ABD/OECD Anti-Corruption Initiative for Asia and the Pacific, Anti-Corruption Policies in Asia and the Pacific: Progress in Legal and Institutional Reform in 25 Countries (2006).

[60] Richard E. Messick, "Regulating Conflict of Interest: International Experience with Asset Declaration and Disclosure," in *Managing Conflict of Interest to Prevent Corruption: Frameworks, Tools, and Instruments to Detect, Avoid and Manage Conflict of Interest in Asia-Pacific*. ADB/OECD Anti-Corruption Initiative for Asia and the Pacific (Manila, Philippines, 2007).

[61] *Ibid.*

[62] *Ibid.*

other, private sources, as well as the totality of their personal and family assets and liabilities. As such, their proliferation makes a particularly compelling case for the transparency of salaries and other remunerations received by government officials, at least above a certain level of seniority.

2. The Americas

61. In Brazil, there is no general legal requirement that salaries of government officials be made public. However, in June 2009, the Mayor of Sao Paolo, in furtherance of transparency measures implemented by the City, ordered the disclosure on a special website of the names, positions, and precise salaries of all of the 147,000 employees and other 15,000 persons contracted by the City. Two associations of civil servants challenged the City's decision on personal privacy and security grounds. On appeal, the Supreme Court of Brazil, after weighing the competing rights and interests involved, held that the public interest in the disclosure of the information at issue should prevail. The Court noted that the advent of the Internet has transformed the ability of the public to monitor social expenditure.[63]

62. In Canada, the federation and each of the thirteen provinces and territories have separate freedom of information and privacy laws. In general, however, information about salaries and benefits of government officials is publicly available in all of these jurisdictions, whether published proactively or upon request. Information about the salaries of (senior) government officials is available on the website of the Canadian Parliament,[64] whereas the salary ranges of federal public servants are available on the website of the Treasury Board, the federal government employer.[65] The salaries of the heads of Crown (state) agencies and corporations are also publicly available.

63. In Chile, the 2008 access to information law requires all state agencies and entities covered by it to "make permanently available to the public," through their websites, the list of their full-time personnel and other contractors, as well as their respective remuneration.[66] The information must be updated at least monthly.

64. In Mexico, Article 7 of the national access to information law[67] requires all public entities covered by the law to publish proactively and update regularly the directory of their public servants, as well as "the monthly remuneration received by each position." The information is generally available in practice.[68]

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[63] *SINESP and Others v. City of Sao Paolo*, Judgment of July 8, 2009.

[64] See http://www2.parl.gc.ca/Parlinfo/Lists/Salaries.aspx?Section=b571082f-7b2d-4d6a-b30a-b6025a9cbb98.

[65] See http://www.tbs-sct.gc.ca/tbs-sct/audience-auditoire/employee-employe-eng.asp.

[66] Act No. 20285 on Transparency of Public Function and Access to Information of the State Administration, art. 7(d).

[67] Federal Law on Transparency and Access to Public Governmental Information.

[68] See search engine for access to salary information: http://portaltransparencia.gob.mx/pot/remuneracionMensual/beginAPF.do?method=beginAPF.

65. In Peru, Article 40 of the Constitution requires periodic publication of the income earned by (senior) government officials in relation to their offices. Article 41 of the Constitution requires all public officials, including those who administer or manage government funds or organizations, to provide a sworn statement as to their income or assets acquired during their terms of service.[69] According to a recent opinion of the Peruvian Procuradora de la Administración (an administrative oversight body), the general public should have access to data concerning the salaries of public officials. The opinion established that the salary spreadsheets of each national agency should be public, including the salary level for each specific position. Access to such information is considered necessary to ensure government accountability and civic oversight.[70]

66. In September 2009, the Peruvian Constitutional Court confirmed that position in a habeas data case, holding that, in addition to the summaries of officials' asset declarations already publicly available, certain sections of the detailed asset declarations should also be disclosed upon request. These sections include the officials' "income and other benefits paid by the public sector" and any real estate and movable property interests recorded in a public register.[71]

67. In the United States of America, the vast majority of salaries for federal government officials are set by statute and therefore are a matter of public record. Judges, members of Congress, cabinet members, and senior executive branch officials are paid fixed salaries that are enacted and adjusted by law. Other executive branch employees are paid according to ranges or schedules that are also set by law; most are covered by the General Schedule, which provides pay ranges for career employees at all levels in the federal government. Basic leave and benefits for federal employees are also established by law, and the Office of Management and Budget publishes detailed information about benefits for executive branch officials.[72]

68. Similar laws and practices exist at the state level. Thus, in New York State, each government agency (state and local, including cities, villages, school districts, etc.) is required to maintain and make available "a record setting forth the name, public office address, title and salary of every officer or employee of the agency."[73] In addition, records indicating overtime pay or other stipends are also accessible by name of the employee.

69. The jurisprudence of U.S. federal and state courts has also confirmed these practices, including in relation to extensive financial disclosures by senior officials mandated by

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[69] See http://right2info.org/information-of-high-public-interest/asset-declarations#_ftn7#_ftn7.

[70] Ministerio Público, Procuradora de la Administración, Report No. C-128 of April 19, 2002.

[71] *Casas Chardon*, note 3 above.

[72] See, for example, United States Office of Personnel Management, *Presidential Transition Guide to Federal Human Resources Management*, June 2008; at http://www.chcoc.gov/Transmittals/Attachments/trans1300.pdf.

[73] Freedom of information law, sec. 87(3)(B), available at http://www.dos.state.ny.us/coog/foil2.html.

the federal Ethics Act.[74] In *Duplantier v. United States*,[75] the United States Court of Appeals for the Fifth Circuit (one level below the Supreme Court) reviewed a challenge against the Ethics Act by members of the federal judiciary, who argued that the disclosure requirements violated their privacy rights, adversely affected their family relationships, and exposed them to security risks.[76] The Circuit Court held that the public interest in an ethical government and public confidence therein "substantially outweighed" any individual interests affected by the disclosures. Public officials, the Court noted, have chosen to accept public office and "assume public responsibility," a fact which "puts some limits on the privacy that they may reasonably expect."[77]

3. Other jurisdictions

70. In Estonia, the Law Against Corruption mandates the proactive publication, by April 1 of each year, of the "remuneration of civil servants" for the previous calendar year, including the actual salary level.[78] The provision applies to senior and mid-level officials at both national and local levels.[79] There is general compliance with this provision in practice, without any significant privacy or other concerns having emerged.

71. In India, salaries of all officials and employees of all public authorities must be proactively disclosed under the 2005 Right to Information Act.[80] The law states clearly that the total remuneration payable to each official must be disclosed by every public authority and not centrally by one department. There is good compliance in practice, although some public authorities with very numerous staff disclose only salary bands (for example, the Indian Railways has a hundred thousand employees). Some agencies tend to disclose remuneration information only upon request, but there is a tendency toward greater proactive disclosure as well—including in regions with serious militant or organized crime problems.

72. In Ireland, the salary scales of many public officials – including civil servants, local government officials, and health service employees, at all levels – are proactively published as a matter of law, with limited exceptions.[81] Actual salary information is not proactively disclosed, but may be released, on a case-by-case basis, in response to

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[74] These required disclosures include the nature, source, and amount of income from any source (government or private), gifts and reimbursements, assets and liabilities, and transactions in real property and securities. 5 U.S.C. app. 4 § 102.

[75] 606 F.2d 654 (5th Cir. 1979).

[76] *Ibid.* at 669.

[77] *Ibid.* at 670.

[78] Art. 151.2.

[79] Art. 4.2.

[80] Sec. 4, at http://www.righttoinformation.gov.in/webactrti.htm.

[81] Freedom of Information Act (1996), as amended, sec. 6, at: http://www.irishstatutebook.ie/1997/en/act/pub/0013/sec0006.html#zza13y1997s6.

freedom of information (FOI) requests. In practice, FOI requests have been used to obtain access to the actual salaries paid to a range of officials and consultants, including senior university staff, consultants to the health service, and presenters working for the publicly funded television and radio stations. FOI requests have also been used to receive details of bonuses, overtime and pension payments made to various groups. The issue of privacy has been raised but as the personal information exemption in the Irish FOI Act is subject to a public interest override, the public interest in obtaining information on public expenditure can often trump the protection afforded by that exemption.[82]

73. In Israel, there is no general legal requirement for the publication of salaries of government employees, except for employees of government-funded entities. For the latter, publication of remuneration information is mandated by the Budget Basics Law.[83] As a matter of custom, however, all information about "employee costs," including salaries, subsidies, bonuses, pensions, and other benefits, is publicly available upon request. Information related to officials above a certain level of seniority is proactively published online. (The rationale for greater legally-mandated disclosure for government-funded entities is that these have greater autonomy and flexibility in determining salary levels for their employees.) The salaries of government employees who earn more than a certain amount (currently about US $6,000 monthly) are included in an annual report that is posted online.

74. In Latvia, the salaries, bonuses and other forms of remuneration of public officials are made public proactively and/or upon request. Access to such information is mandated by the laws on freedom of information and prevention of official conflicts of interest. For the most part it is possible to find such information in the officials' periodic asset declarations. The public nature of such data has been also mandated by a 1999 decision of the Latvian Constitutional Court, which ruled that remuneration in public service, regardless of its legal form, cannot be considered as private or confidential information. [84]

75. In Slovenia, all information about public expenditure – including the salaries, bonuses and subsidies received by all government officials, public servants and consultants, at the national and local level – is public.[85] In practice, all entities funded by the state budget are required to forward the relevant salary information to the ministry responsible for the public sector wage system. The ministry collects and publishes the data online, providing the titles but not the actual names of the officials.

[82] *Ibid.*, sec. (2)(d)(ii), at http://www.irishstatutebook.ie/1997/en/act/pub/0013/sec0008.html.

[83] Arts. 33a-33c. This law applies to government-controlled companies, companies controlled by local authorities, and companies or legal entities that receive more than 25 percent of their funding from the state, among others.

[84] Decision On the Conformity of the Cabinet of Ministers Regulation No.46/1997 "On Government Agreements" with the Law on Information Accessibility (1998).

[85] The Public Sector Wage System Act, Art. 38, provides as follows: "Wages in the public sector shall be public, and information on the position, title or function, basic wage, bonuses and performance-related pay, with the exception of the bonus for the active employment period, shall be publicly accessible."

However, actual remuneration information for any given official must be, and is generally, provided to any member of the public who files an FOI request. The Information Commissioner of Slovenia has issued several decisions related to public expenditure disclosures, including orders for the publication of salaries of "public service contractors," which are subject to the Act on Access to Information of Public Character.[86] In addition, the Commissioner ordered the Slovenian National Television to disclose information about the salaries of its management and ten best paid reporters.[87]

76. In South Africa, information on the remuneration of senior public servants – from a local magistrate to the President of the Republic – is proactively published by the Office of the President. Under the Promotion of Access to Information Act, the privacy exemption does not apply to records related to serving or former public officials, and their remuneration and salary scales.[88] A Remunerations Commission (known as the RemCom), established by Section 219 of the Constitution, makes general recommendation to the President regarding public service salaries; those recommendations are published in the Government Gazette as public documents.[89]

77. In the United Kingdom, the Information Commissioner requires public authorities to proactively publish some information about staff costs in their publication schemes. Thus, local authorities must publish their organisational structures and indicate, for most posts, levels of pay, but not necessarily individual, salaries.[90] Salary information which is not routinely released may be requested under the British FOI Act. The Information Commissioner has published a guidance document on when salaries should be disclosed in response to FOI requests.[91] According to this document, more senior staff who are responsible for major policy and financial initiatives can expect greater scrutiny of their pay than more junior employees. Other factors in favor of disclosure that should be considered include "legitimate concerns about corruption or mismanagement."[92]

78. Regarding privacy concerns, section 40(2) of the FOI Act provides an exemption where the disclosure of personal information, including salary information, about an identifiable individual would breach the Data Protection Act (1988). In one case involving a British Broadcasting Corporation (BBC) executive, the Information

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86 Art. 1(1).

87 Information supplied by Natasa Pirc, Information Commissioner of Slovenia.

88 Sections 34 and 63(2)(f).

89 See http://www.remcommission.gov.za/about_remcom.php.

90 Information Commissioner's Office (ICO), *Definition document for the Model Publication Scheme for principal local authorities*, at: http://www.ico.gov.uk/what_we_cover/freedom_of_information/publication_schemes/definition_document_local_government.aspx.

91 Available at: http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/salaries_v1.pdf.

92 *Ibid.*

Commissioner determined that the BBC should disclose the salary band of the Controller of Continuing Drama, but not his exact salary, which was individually negotiated. The Commissioner found that the legitimate public interest outweighed the intrusion of disclosing the salary band but not the additional intrusion of disclosing an exact salary.[93]

79. In conclusion, the countries covered above include both established and new democracies, with different legal systems and political cultures, and varying levels of economic development. Some of these countries, such as many in Europe and Latin America, have traditionally had strong protections for personal privacy; others, like Brazil, Mexico, South Africa and parts of India, experience significant personal safety problems. What these countries have in common is a statutory, and often a constitutional, commitment to democratic accountability and the public's right to have access to information held by their governments, subject only to narrowly drawn exceptions where necessary to protect important state interests or personal rights. In that vein, they all provide extensive access to remuneration information about officials at different levels of government, including local officials. Often such information is provided proactively through official websites and other means. At the very least, they make public data about the salary ranges of most, if not all, government officials and employees, as well as the actual salaries of senior officials.

CONCLUSION

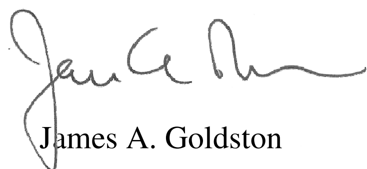
80. This submission has shown that the right of access to government information – including to data about the remuneration of government officials – is well-established in international and comparative law and practice. Courts and lawmakers throughout the democratic world have determined that the right to receive government information is a basic political right, and, like the right to impart information and ideas, an actual prerequisite for the meaningful exercise of other fundamental rights in a modern democracy.

81. Furthermore, there is a clear trend in the democratic world to consider free access to financial disclosure records as essential to ensuring the integrity and credibility of the government. Such public access is a justifiable and responsible restriction on the rights of those officials to maintain the privacy of their financial information— especially in relation to any income they receive from the public purse. Assuming public office and shouldering public trust require that this privacy interest give some way to public accountability.

82. We respectfully urge this Court to take cognizance of the important principles that accompany the administration of access to information and are embodied in anticorruption laws. Doing so will highlight this Court's recognition of the

[93] ICO decision notice FS50070465, March 2008.

importance of access to information as a foundation for honest and open democratic government.



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