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## **CASE STUDY: ASSESSMENT OF THE IMPLEMENTATION OF THE GENERAL REGULATION ON ACCESS TO PUBLIC INFORMATION OF THE NATIONAL EXECUTIVE BRANCH UNDERTAKEN WITH ASSISTANCE FROM THE PARTNERSHIP FOR TRANSPARENCY FUND**

### **Introduction**

In December 2003, President Néstor Kirchner issued Decree 1172/03 that regulates, among other things, the right to access public information of the National Executive Branch.<sup>1</sup> The General Regulation on Access to Public Information clearly establishes both the conditions by which anyone can access information produced or stored by the Argentine government and a set of responsibilities for government officials regarding the provision of information. The text of the Regulation upholds the principles and the minimum requirements of access to information laws in accordance with international standards.<sup>2</sup>

The Regulation also names the public entities responsible for the application and implementation of Decree 1172/03. While the Under-Secretary for Institutional Reform and Democratic Strengthening is established as the authority in charge of the application of the Decree, the Anticorruption Office is the agency that receives complaints in cases of non-compliance with the law. The authority in charge of the application of the Decree has been responsible for carrying out activities to disseminate and raise awareness about the Decree in the various agencies affected by the regulation. Although the Decree designates such an authority responsible for supervising and requiring compliance with the regulation, the actual implementation of the Regulation is left to each of the agencies in the National Public Administration. As the authority in charge of the application, the Under-Secretary establishes policies concerning the regulation, under which each office is responsible for the way in which it administers the information requests, how it receives and respond to them, and the

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<sup>1</sup> To read the text of Decree 1172/03, please visit [www.accesoalainformacion.org](http://www.accesoalainformacion.org) or [www.mejordemocracia.gov.ar](http://www.mejordemocracia.gov.ar). To access a practical guide to using Decree 1172/03, please visit [www.guiaciudadana.org](http://www.guiaciudadana.org)

<sup>2</sup> For more information on this topic, please consult the document "Minimum Requirements for an Access to Information Law" developed by civil society organizations during parliamentary debate of the Access to Information bill. Additionally, please consult the Lima Accord [www.consejoprensaperuana.org.pe](http://www.consejoprensaperuana.org.pe) and the Johannesburg Accords available at: [www.article19.org/docimages/511.htm](http://www.article19.org/docimages/511.htm)

way in which it improves the systemization, availability and preservation of the information in its control.

It is important to point out that the Decree does not establish whether it should be enforce in a centralized or decentralized way. The international experiences show that the way in which the regulation has been implemented is diverse and adjusted the local realities of the different countries. In some cases, the regulation is implemented by a central authority which establishes the general guidelines to its implementation in the different public agencies. In these cases, the public agencies receive process and answer the information requests and are responsible of the accomplishment of the legislation (FOIA in US). In other cases, the regulation establishes and creates an agency in charge of applying it (The IFAI in México). In other countries, the accomplishment of the law is oversees and supervises by institutions in charge of guaranteeing the right of access to information and solving the cases in where the right is being threatened. This role is played in some cases by public officers specially created by the regulations (Commissioners in UK and Australia) or by pre existent institutions as the ombudsman (Perú). While some countries had regulated the right focusing in the implementation others had focused in the control and follow up of the legislation. In some cases the regulation contemplates both activities (Decree in Argentina).

**The monitoring experience described in this document intends to analyze a system of access to public information where there is an authority in charge of the application but the implementation is decentralized. We want to warn about the *replicability* of this experience and also want to advise its adaptation to local political systems and specific regulation in order to design an effective tool of monitoring.**

## **Project Description**

The project aimed to monitor the implementation of and compliance with the General Regulation on Access to Public Information of the Executive Branch. Our intention was to strengthen governmental transparency through a collaborative effort with government agencies that allowed us to make recommendations and suggestions in order to improve the implementation of the Regulation and for an extensive and effective use of the right to access public information.

### *General Objective*

To build a monitoring system that produces useful, important and systematic information that will allow assessment of the degree of progress of such a governmental initiative -- identifying accomplishments, areas of neglect and results obtained.

### *Specific Objectives*

- To identify standards of quality based on the regulation's text and other theoretical and real antecedents that deal with this right.
- To develop indicators which allow the degree of fulfillment of the identified standards to be measured.
- To identify the conditions under which the Regulation is being implemented.

- To produce information about the offices useful to the agencies and the authority in charge of the application in order to detect if the regulation is being applied in an adequate, sufficient and satisfactory manner, indicating the strengths and weaknesses in each of the agencies.

## Project design

The proposed monitoring system aimed to evaluate **four dimensions** that were considered crucial for successful implementation. The variables considered are the following:

1. *Application conditions:* The monitoring aimed to identify the conditions under which the Decree was applied. This point was fundamental because it was necessary to consider the preexisting situations in order to carry out a performance evaluation of the agencies and of the activities implemented by them. This aspect acquired particular importance if we want to carry out cross-evaluations among different agencies. If we want to evaluate the law's impact on the organizational reality, we must first understand the starting point.
2. *Implementation Activities:* This dimension aimed to understand the preparation activities developed by each of the agencies before the Regulation took effect. It also studied the actions implemented once it was in effect, in order to guarantee an effective use of the right of access to information.
3. *Pathways for receiving requests and providing information:* The field experience demonstrated that this aspect was critical in order to describe and evaluate the impact of the new law on the organizational realities. Using this dimension, we evaluated the performance of the correspondence reception desks of the various agencies and the degree of involvement and participation of the liaisons and officials responsible for the access to information in the processing of requests and providing information. In addition, we considered alternative pathways such as the receiving requests via email and providing information using the agencies' institutional web pages.
4. *Impact:* In addition, the monitoring system aimed to identify the main results of the regulation's implementation. Our intention in this dimension was to observe the agencies' response to requests made between the time the law took effect and the first assessment.

One of the crucial decisions in the phase of design of the methodology was **selection of agencies to be analyzed**. Many criteria were considered in the selection process, but at the end and once we decided that the methodology would have a qualitative focus, we reconsidered the selection criteria and asked the agencies for their voluntary participation in the project. As a result of that, the Secretary General of the Presidency and the Ministries of Labor, Education, Federal Planning and Foreign Affairs expressed their desire to collaborate on this project.

The following **monitoring activities** were conducted:

*In depth Interviews:* the main part of the investigation consisted of collecting key information from public officials as liaisons and/or officials responsible for access appointed by each of

the agencies, with the directors of the correspondence reception desks or offices and with directors of the areas of systems or data processing. At the same time, we also interviewed *heavy users*, i.e. frequent users of the right of access to information, which could have made requests to the analyzed agencies between the time the Regulation took effect and the first assessment.

*Collection of data:* In order to obtain information about the extent of the regulation's impact, we asked the liaisons and/or officials responsible for access about the requests received between the time the Regulation took effect and the first assessment. We also collected data about the regulation's implementation such as matrices of information, administrative resolutions and forms, among other things.

*Participant Investigation:* a *Mystery Citizen* acts as anyone who would be able to approach a ministry to request information. To carry out this activity, we formed a team of volunteers that were trained about the right of access to information in general and specifically with regards to Decree 1172/03 and received instructions that allowed the activity to be homogenous.

## **Impact**

The project produced three reports with the evaluation of the monitored agencies and particular recommendations to improve the implementation and accomplishment of the Decree. Even when the recommendations had been adapted in some cases, one of the main achievements was giving visibility to the existence of a conflict between the Decree and previous regulations such as the Administrative Procedure Act. Many of the public officers interviewed considered that the Decree was a regulation that should be subordinated to the above mention law which implied an enormous set back in the recognition of the right to access public information. While the Decree establishes that any person could ask for information, the Administrative Procedure Act demands the demonstration of an affected individual right or interest and a justification at any time some kind of information contained in a public file is requested.

This situation was pointed out by the monitoring experience and, as a consequence, the authority in charge of the application elaborated a document where they state the criteria of interpretation of any eventual conflict, therefore empowering the Decree *vis a vis* other regulations.

## **Main conclusions and recommendations**

Most of the conclusions and recommendations formulated in the reports were elaborated from the particular situations and scenarios where the Decree takes places within the Executive Branch. However, we believe that some of them could be useful or interesting to be considered in other contexts.

One of the first general observations that arose from the work performed is the influence of certain organizational qualities on the correct and efficient application of the Decree.

Firstly, among the analyzed units we could distinguish two types of organisms, with respect to the kind of services that they provide, the sort of competence they enjoy and/or the kind of relation they possess with the citizenship. On the one hand, we found organisms that provide

services to the community in which the citizenship establishes “user / consumer” relationships, such as the cases of the Labor and Education Ministries or the consular section of the Foreign Affairs Ministry. On the other hand, we identified organisms that possess a more technical profile and that are of, perhaps, more political interest for citizens that enjoy a regular and / or “professional” relation with the State, such as journalists or NGO representatives. In this second group we found the Secretary General of the Presidency, the Federal Planning Ministry and the section of the Foreign Affairs Ministry that does not relate with consular issues. We also discovered that the first group of organisms presents organizational features linked to a certain history in the interaction with the citizenship and the provision of information, while the second group does not have particular areas designated to the interaction with the public and to systematically provide information of its specific activities.

The dimension that cuts across the different organisms is the degree of preservation, systematization and computerization of the existed information. Indeed, the management of the information is very dissimilar among the monitored agencies. While some organisms take the lead in respect of the degree of modernization, such as the Foreign Affairs and Federal Planning<sup>3</sup> Ministries, there are other organisms that at the moment of the enactment of the Decree lacked a system for handling files, such as the Secretary General of the Presidency.

These two dimensions, the kind of link with the citizenship and the degree of development in the management of information conformed divergent initial conditions for the monitored agencies. It is worth noting that while the first of the dimensions configures structural conditions, the second dimension is an administrative issue which can be improved in order to better ensure the implementation of the Decree. As a result of the state of the art of these two dimensions, the organisms were forced to adopt, to different degrees, complementary implementation actions directed towards correcting the deficiencies identified in the initial steps.

The initial application conditions previously described do not entirely determine the success of the implementation of the Decree. Other issues, such as those that are linked with the implementation activities performed by the agencies, contextual questions (like the degree of difficulty of the request performed) and systemic matters<sup>4</sup>, operate upon the success of the implementation.

On this behalf in advisable:

- To implement actions that allows a faster and efficient processing of the files or internal notes. Those organizations with systems of internal connectivity among different areas had showed to be more efficient in the processing of the request and interaction between different areas.
- To enter the request of information in the files system with a special number or code in order to be easily detected and process according to the times set in the regulation. It is advisable to program the system in order to set alarms that help the public officers to be

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<sup>3</sup> *The Federal Planning Ministry uses the systems developed by the Economy Ministry.*

<sup>4</sup> *For systemic aspects we refer to those questions linked to general system installed by the Decree and that transcend one organism in particular, such as the terms established, the consult mechanisms to outside actors like the application authority, the lack of diffusion of the Decree, etc.*

aware of the days ahead to present the answer to the requesters. The follow up of the provision of information requires the accurate preservation and archive of the requests received and answered in order to allow evaluations of the performance of each of the organisms.

- It is fundamental to register the date when the request is received and to certified that date with a stamp in a copy of the request for the petitioner. It is also vital to communicate in all the cases the time extension request and that this situation is extraordinary and should be justified. It is important to leave constancy of all the communication sent to the requesters. If those communications are sent via postal mail it is vital to keep the constancy of sending.

- It is advisable to develop permanent actions of awareness with the employees that works in the receptions or front desk, to install posters of the regulations and to improve the institutional signs of the internal areas.

- Elaborate a handbook of procedures to allow the standardization of the pathways and the internal diffusion of the regulation.

- As the *general desk of entry* opens the mail and plays an important role identifying the request it is important to work actively with them through training courses to help them in this task.

In the cases where the regulation establishes an authority in charge of the application it is advisable to implement actions to help a uniform application of the regulation in the different agencies obliged to provide public information. On this regard, is advisable that these entities promote:

- the establishment of uniform criteria of what constitute a information request in order to help the agencies to distinguish this procedure from others.

- the institutionalization of the actions of technical assistance to the organism in the resolution of cases. This action is important in order to a gradual creation of administrative jurisprudence.

- the application of sanctions in cases where the violation of the regulation were proved in order to create incentives to the accurate accomplishment of the legislation.

- the development of communications campaigns to broader spread the regulation and promote its use and exercise by the citizenship.

### Main lessons

- The election of a collaborative strategy allowed us a broader and better access to the information in the monitored agencies and also contributed to build a relation of trust with the public officers in charge of the implementation of the Decree within the organizations.
- The design of a qualitative methodology allowed us not only to verify the accomplishment of the Decree but also explain why the information was provided in some cases and not in others.
- The possibility of access the organizational realities helped us to get in contact in a more accurate way with the impact of the regulation in the internal pathways and the adaptations needed to a proper implementation. This information is very valuable because it enrich the debates over legislations regarding access to information and help to a better understanding and incidence of the civil society organizations.
- **The project helped us to advance in the conversion of the right of access to information in its consideration as a subject of public policy.** This conversion implies the recognition of the legislation as a very important step from where it is needed to progress. This experience allowed us to move forward into new areas of problems more related to political and organizational aspects.

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*The opinions of the authors do not necessary reflect those of CIPPEC concerning the subject matter analyzed.*

CIPPEC is an organization that strives to create an efficient, democratic, and just State to improve the quality of life for all Argentine citizens. It focuses its efforts on analyzing and promoting public policies that encourage equity and growth in Argentina. Our challenge is to turn sound ideas into concrete actions in the areas of Education, Politics, Fiscal Policy, Health, Transparency, and Justice.

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