

Access to information and protection of personal data

Reports and Resolutions:

- CJI/RES.33 (LIX-O/01) *Right to information: access to and protection of information and personal data*
- CJI/RES.81 (LXV-O/04) *Right to information: access and protection of information and personal data*
- CJI/doc.162/04 *Right to information: access and protection of information and personal data*
(presented by Dr. Alonso Gómez Robledo)
- CJI/doc.232/06 rev.1 *Questionnaire for OAS Member States concerning legislation on access to information and protection of personal data in view of the possible drafting of a legal instrument*
(presented by Drs. Antonio Fidel Pérez and Jaime Aparicio)
- CJI/doc.25/00 rev.2 *Right to information: access to and protection of information and personal data in electronic form*", (Updated by the Office of International Law of the Department of International Legal Affairs of the report submitted by Dr. Jonathan T. Fried at the 57th regular session of the Inter-American Juridical Committee, CJI/doc.25/00 rev.1)
- CJI/doc.239/07 *Access to information: comment regarding the responses to the questionnaire sent by the Inter-American Juridical Committee to the OAS Member States (CJI/doc.232/06 rev.1, 17 Ag. 2006)*
(presented by Dr. Jaime Aparicio)

During the fifty-eighth regular session of the Inter-American Juridical Committee in Ottawa in March 2001, the Department of International Law presented the following documents for the use of the Inter-American Juridical Committee: DDI/doc.02/01, *Unofficial translation of Law 25326: Law on Protection of Personal Data, Argentina, in effect on November 2, 2000*; DDI/doc.03/01: *Unofficial translation of Criminal Code, Articles 153-157 bis, Argentina*; DDI/doc.04/01: *Right to information: access to and protection of information and personal data* (summary of the information contained in document CJI/doc.45/99, dated 16 August 1999); and DDI/doc.05/01: *Right to information: access to and protection of information and personal data* (summary of information contained in CJI/doc.25/00 rev.1, 9 August 2000).

In the course of its fifty-ninth regular session, held in Rio de Janeiro in August 2001, the Inter-American Juridical Committee adopted resolution CJI/RES.33 (LIX-O/01), *Right to information: access to and protection of information and personal data*, with the abstention of Dr. Carlos Manuel Vázquez. In that resolution, the Inter-American Juridical Committee reaffirmed its agreement with the general principles set forth in previous reports drafted by the rapporteur on the topic, Dr. Jonathan T. Fried, and resolved to review the possibility of undertaking additional work on the subject during the current regular session. Finally, it recommended to the Permanent Council that it urge member States to adopt national laws on the subject that would be consistent with the principles contained in the pertinent reports. At the same time, Dr. Jonathan T. Fried

asked the General Secretariat to forward the reports approved on the subject at previous sessions to the authorities directly involved in the different OAS member States.

The Inter-American Juridical Committee did not take up this topic at its LX and LXI regular sessions (Rio de Janeiro, February-March and August 2002).

At the 63rd regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2003), Dr. Alonso Gómez-Robledo proposed that the topic of access to governmental public information should be included in the Committee's agenda. The members of the Juridical Committee agreed to include the item as a follow-up item with the same title under which the item on the right to information was formerly listed in the agenda, that is, "Right to information: access to and protection of personal information and data", and appointed Dr. Gómez-Robledo as rapporteur.

This topic was not addressed at the 64th regular session of the Inter-American Juridical Committee (Rio de Janeiro, March 2004).

The General Assembly during its XXXIV regular session (Quito, June 2004), by resolution AG/RES.2042 (XXXIV-O/04), noted the importance of the inclusion of this topic in the agenda of the Inter-American Juridical Committee, and requested that an updated report on the matter is included in its next annual report.

At its 65th regular session (Rio de Janeiro, August 2004), the Inter-American Juridical Committee examined document CJI/doc.162/04, *Right to information: access and protection of information and personal data*, presented by Dr. Alonso Gómez Robledo. The rapporteur of the topic underscored in the report the interdependence between rendering of accounts and transparency in implementing democracy. In general, his report is in line with the Mexican legal reality on the matter. On this subject, he referred basically to the resources of review in Mexico in the Federal Institute of Access to Public Information (IFAI), whose decisions are binding, definitive and not open to appeal for the decentralized departments or entities of the federal public administration. It is, however, not like that for private individuals, who filed an appeal before the federal courts through legal aid. The rapporteur also referred to the federal law on transparency and access to government public information in response to a growing demand for citizenship against corruption, and which is currently the only legal system for protecting personal data, and it collects the general guidelines of similar laws in the United States, Canada and Spain. The prime purposes of this law are to provide what a national or alien individual or company needs in order to be able to have access to information through efficient procedures. Also to favor rendering of accounts to citizens, which is fundamental. The rapporteur said that the powers under this law are the federal executive, judiciary and legislative, as well as autonomous constitutional powers. The general principle is that all federal government information is public, except for that which can be classified as reserved in the terms of the law. The rapporteur emphasized that *reserved information* is understood to be that the disclosure of which may jeopardize national defense or public security, principally, and other suppositions. This kind of information can be restricted for a maximum of 12 years. Information that is confidential, however, does not preclude in its character, unless it is particularly agreed to disclose such information, he said. The most general hypothesis is that which affects the privacy or intimacy of individuals, in other words, personal data. However, there is no law in Mexico as yet to regulate privacy. The rapporteur said that the results are interesting after one year of enforcing the federal law on transparency. Of the 36,803 requests for information received, more than 32,000 have been answered, that is 87%. It reflects that public administration has changed and that now it is obliged to expedite the

demands of its citizens. And it also reflects that the citizen participation is increasing. It is important for administration not to consider this a treaty, mentioned Dr. Gómez Robledo.

Lastly, the rapporteur said that the challenges in Mexico in this area are important, that is, to promote among the citizens the right to know information about government performance and the management of public funds, and instate a culture of transparency and rendering of accounts in public administration, wherein the public entities meet the demand of the citizens.

Next, some Juridical Committee members asked some questions or made comments to rapporteur Dr. Gómez Robledo about his report. Dr. Mauricio Herdocia stressed the fact that the topic of democracy was related to the topic of right to information. He also pointed out how the report addressed the right to protection of personal data, besides the right of access to information. He said that it was important to resume the works of Dr. Jonathan Fried, especially his August 2000 report, since the subject is to update what has already been discussed on the matter in the Juridical Committee.

Dr. Gómez Robledo agreed then to update Dr. Jonathan Fried's report to be included in the next *Annual Report of the Inter-American Juridical Committee*.

The Inter-American Juridical Committee decided to adopt resolution CJI/RES.81 (LXV-O/04) and thanked the rapporteur for his report presented and asked him for an update.

At its 66th session of the Inter-American Juridical Committee (Managua, February 28 – March 11, 2005), its Chairman reminded the assignment given to the rapporteur of the topic, Dr. Alonso Gómez Robledo, of bringing up to date the report presented by the former Committee member, Dr. Jonathan Fried, at the request of the political organs of the Organization.

At its 35th regular session (Fort Lauderdale, June 2005), in its resolution AG/RES.2069 (XXXV-O/05) "Observations and Recommendations on the Annual Report of the Inter-American Juridical Committee," the General Assembly noted the importance of the topic and requested that it include an updated report on the protection of personal data, based on comparative law, in its next annual report.

During its 67th regular session (Rio de Janeiro, August 2005), the Inter-American Juridical Committee did not consider this theme. Nevertheless, it was agreed to address a letter to Dr. Alonso Gómez-Robledo, rapporteur of the theme, asking him to consider sending to the Juridical Committee by a set date the final report on the theme of the right to information as requested by the General Assembly.

At its 68th regular session (Washington, D.C., March 2006), the Inter-American Juridical Committee appointed Drs. Antonio Fidel Pérez and Jaime Aparicio as rapporteurs on the subject.

The Inter-American Juridical Committee also acknowledged receipt of a report presented by the rapporteurs on the topic, Dr. Alonso Gómez Robledo, entitled "Protection of Personal Data in Mexico: the Case of the Federal Executive Branch," CJI/doc.217/06, and decided that the Chairman of the Committee would write a letter saying that the Committee had received the report but that, *prima facie*, it appeared not to fulfill the mandate requested at the previous session.

At its thirty-sixth regular session (Santo Domingo, June 2006), the OAS General Assembly adopted resolutions AG/RES. 2218 (XXXVI-O/06) and AG/RES. 2252 (XXXVI-

O/06), in which it asked the Inter-American Juridical Committee to include in its next annual report an updated report on the protection of personal data based on comparative law. It also asked the Committee to update the 2000 study entitled “Right to information: Access to and protection of information and personal data,” taking into account the differing views on the subject, to which end, with due support from the Secretariat, it was to prepare a new questionnaire on the subject and distribute it among the member States.

During the 69th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2006), the topic’s rapporteurs presented document CJI/doc.232/06, *Questionnaire for the OAS Member States Concerning Legislation on Access to Information and Protection of Personal Data in View of the Possible Drafting of a Legal Instrument*, in compliance with the General Assembly’s mandate.

Dr. Aparicio gave a report on the contents of the questionnaire the rapporteurs had drawn up, part one of which addressed the topic of information access and part two that of protecting personal data. The questionnaire’s basic structure, explained Dr. Aparicio, focused on the national laws of the member States, the basic rules governing information access and data protection, and the ways in which those provisions were implemented and enforced. He also explained that the questionnaire dealt with the national laws applicable to those areas in electronic format, and it asked for the identification of other sources of law that could be of use in drawing up a comparative study of legislation applicable to information access and personal data protection. Finally, the questionnaire asked the member States for their opinion on the possible adoption of an inter-American instrument on access to information and the protection of personal data.

At the end of Dr. Aparicio’s report, the members of the Juridical Committee conducted an extensive dialogue on the timetable and methodology of a study into information access and data protection, as well as on the questionnaire itself. In the latter regard, they made several important contributions to both the questionnaire’s text and its translation. The members then said it was important to emphasize that the ultimate goal of this undertaking was the possible drafting of an inter-American instrument on those two topics. They also offered suggestions on the note or letter of introduction with which the questionnaire was to be sent to the member States and proposed a number of changes to the text of the questionnaire with a view to emphasizing the possible future drafting of an inter-American instrument on access to information and the protection of personal data.

Following these considerations, the Juridical Committee approved the document and asked the General Secretariat to convey it to the Organization’s member States so that the Juridical Committee could proceed to study this question. The referred document is included at the end of the present sub-chapter.

The Chairman then reminded the Juridical Committee of the report on personal data protection prepared by Dr. Jonathan Fried and he asked the General Secretariat to update that study as it related to comparative legislation by November 15, 2006, for its subsequent conveyance to the rapporteurs.

During the 69th regular session of the Inter-American Juridical Committee (Rio de Janeiro, August 2006), the topic’s rapporteurs presented document CJI/doc.232/06 rev.1, “Questionnaire for the OAS Member States concerning Legislation on Access to Information and Protection of Personal Data in View of the Possible Drafting of a Legal Instrument”, in compliance with the General Assembly’s mandate.

The Juridical Committee approved the questionnaire and asked the Office of International Law to convey it to the Organization's Member States with a view to preparation of the Juridical Committee's study on the subject. The Office of International Law sent the questionnaire to the Member States on 13 September 2006.

The Chairman then reminded the Juridical Committee of the report on personal data protection prepared by Dr. Jonathan Fried and he asked the General Secretariat to update that study as it related to comparative legislation by November 15, 2006, for its subsequent conveyance to the rapporteurs.

On November 22, 2006, the Office of International Law sent document CJI/doc.25/00 rev.1 to the rapporteur for the topic, Dr. Jaime Aparicio. That document had been prepared by Dr. Jonathan Fried, and was duly updated as per the Inter-American Juridical Committee's request. Thus far, three responses have been received from the Member States answering the questionnaire prepared by the Juridical Committee. The countries that sent responses to the questionnaire were: Guatemala, Jamaica and Mexico. Those responses were duly circulated among the Committee members.

At its 70th regular session (San Salvador, February-March 2007), the Inter-American Juridical Committee welcomed Dr. Laura Neuman, Deputy Director for the Americas of the Carter Center of Nicaragua and an expert in access to information. Dr. Neuman informed the Committee of the Carter Center's project in this area, indicating that it is not limited to the Americas but embraces other continents. She stressed the importance of access to information, *habeas data*, and constitutional provisions, specifically mentioning aspects related to the Inter-American system and the OAS, as well as to other international organizations. She concluded her presentation by underlining the role that the Inter-American Juridical Committee could play in this area. The members of the Committee then spoke of transparency policies adopted in their respective countries.

During the same session Dr. Jaime Aparicio presented CJI/doc.239/07, "Access to information: comment regarding the responses to the questionnaire sent by the Inter-American Juridical Committee to the OAS Member States", summarizing the information received from Guatemala, Jamaica and Mexico.

Dr. Ricardo Seitenfus submitted an un-numbered document with the title "Notes on access to information in preparation for the 70th regular session of the Inter-American Juridical Committee: the case of Brazil", covering legislation and other measures on transparency taken by the government of that country. He also mentioned a bill currently before the Brazilian Congress that he would remit to the rapporteur so that it could be taken account in the next report.

Dr. Mauricio Herdocia Sacasa suggested that OAS Member States again be urged to answer the questionnaire. Dr. Eduardo Vio Grossi suggested that it might be a good idea for the Juridical Committee to try to break down the matter by area, identifying critical links with, for example, democracy, corruption, good governance, etc. He stated that access to information is related to the handing over of information, and posed a question: who has rights or obligations on either side of the equation in different situations? In his opinion, that is the crux of the matter. He suggested an effort be made to define, from a strictly legal standpoint, the subject possessing a right and the subject who has an obligation vis-à-vis that right, the limits of said right and obligation, and safeguard mechanisms.

The Juridical Committee decided to maintain this item on its agenda, appointing Drs. Mauricio Herdocia Sacasa and Hyacinth Evadne Lindsay as co-rapporteurs to work with Dr. Jaime Aparicio. It was also decided to change the title of this topic to "Right to

Information". The IAJC also passed resolution CJI/RES.123 (LXX-O/07), "Right to Information", by which the Committee decided to take note of the initial conclusion that the completed questionnaires received to date indicate that there is a need to treat various matters separately. The right of citizens to have access to public information is one such area, access to and protection of personal data, especially electronic data, is another. The Juridical Committee also recognized that there is a relationship between access to information and strengthening of democracy, accountability of civil servants, and the crucial role transparency in public administration plays in combating corruption. It urged all Member States that have not done so to respond to the questionnaire, and asked the rapporteurs to submit an updated report to the next regular session taking into account any additional responses received. The Committee also asked the Office of International Law to submit to the Permanent Council an updated version of "Right to Information: access to and protection of information and personal data in electronic form" (CJI/doc.25/00 rev.2, 7 February 2007), which was requested by the General Assembly. On 19 March 2007, the Office of International Law delivered said report and resolution CJI/RES.123 (LXX-O/07) to the Permanent Council. The document was filed as CP/doc.4193/07, 22 March 2007, with the title "Note from the Inter-American Juridical Committee transmitting resolution CJI/RES.123 (LXX-O/07), "Right to Information and Report CJI/doc.25/00 rev.2, Right to Information: access to and protection of information and personal data in electronic format".

On 4 April 2007, the Office of International Law remitted to the members of the Inter-American Juridical Committee the 19 September 2006 judgment of the Inter-American Court of Human Rights in "Claude Reyes *et al.* v. Chile", concerning freedom of thought and expression, with the aim of contributing to the work of the Committee in this area.

At its 37th regular session (Panama, June 2007), the General Assembly of the OAS adopted resolutions AG/RES. 2265 (XXXVII-O/07) and AG/RES. 2288 (XXXVII-O/07) calling on the Inter-American Juridical Committee to include in its next annual report an updated report on protection of personal data to be based on comparative law.

At the 71st session of the Inter-American Juridical Committee (Rio de Janeiro, August 2007), Dr. Dante Negro, Director of the Office of International Law, gave a presentation on the subject and clarified that in its resolutions AG/RES. 2265 and AG/RES. 2288, both adopted in 2007, the General Assembly had given the Committee two mandates. One had already been accomplished, which is the updating of the document prepared by Dr. Jonathan Fried, former member of the Committee, titled "Right to Information: Access to and Protection of Information and Personal Data in Electronic Form." (CJI/doc. 25/00 rev.2) Dr. Dante Negro also reported that the resolution and report that the Juridical Committee approved at its previous regular session were also sent to the Permanent Council. Based on conversations with the Chair and Vice-Chair of the Juridical Committee, a meeting with Mr. Dario Soto, Deputy Director of the Trust for the Americas, an Organization-affiliated institution that is conducting a project with civil society on the subject of access to information, had been scheduled for this session.

Dr. Jaime Aparicio, rapporteur for the topic, was of the view that the States had not shown any interest in responding to the questionnaire that the Inter-American Juridical Committee had prepared. Hence, the Committee did not have sufficient information with which to prepare and present either a model law or draft convention. He recalled the meeting with Dr. Laura Neuman from the Carter Center, and thought the prudent course of action would be to wait for the meeting with Dr. Dario Soto of the Trust for the Americas, before deciding which mechanism to use to address this topic. Here, Dr. Dante Negro suggested that the Secretariat might address the Member States again, asking that they answer the questionnaire, since only Guatemala, Jamaica and Mexico had thus far done so.

Following an exchange of views on the topic, the view was that the Juridical Committee had already complied with the mandate to update the report, mentioned in resolution AG/RES. 2288 (XXXVII-O/07). At Dr. Aparicio's suggestion, the Committee decided that henceforth, the agenda topic titled "Right to Information" will be called "Access to Information and Protection of Personal Data". The Inter-American Juridical Committee also approved resolution CJI/RES.130 (LXXI-O/07), "Access to Information and Protection of Personal Data", wherein it instructed the rapporteurs to continue working on this topic in partnership with the organs of the OAS, institutions like Trust for the Americas, the Carter Center and the Alianza para la Libertad de Expresión e Información, in order to assemble a list of indicators and legal principles on the subject of access to information.