

Main Administrative Criteria of the Access to Public Information Unit

2009-2019

INTRODUCTION

The Access to Public Information Unit (UAIP for its acronym in Spanish) is pleased to introduce the main Administrative Criteria it has been consolidating throughout the 2009 - 2019 period.

The UAIP has addressed several claims and inquiries during the reference period, processing approximately 623 files, which served as basis for the main administrative criteria that governs its actions.

This material intends to act as a guideline for government and non-government public organizations, as well as for those individuals who are keen on learning more about the Right of Access to Public Information from the control body's perspective.

In order to make the search easier, each mentioned sentence or resolution also contains a link which gives access to the complete text thereof.

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President Executive Committee
UAIP

APPLICABLE REGULATIONS

On October 17th, 2008, Law No. 18,381 on the Right of Access to Public Information was passed. Article 1 of such Law sets forth that its purpose is to promote the transparency of the administrative role of all public entities and to guarantee the fundamental right of people to have access to public information.

Later, on August 2nd, 2010, Regulatory Decree No. 232/010 of Law 18,381 was passed. Such Decree aims at regulating the application of the rule and the execution of procedures set forth in Law No. 18,381.

On December 27th, 2013, Law No. 19,178 was passed, which amended articles 9 and 21 of Law No. 18,381.

This is the applicable Law to the Right of Access to Public Information, based in our legislation on the subject.

It is worth mentioning that, regarding the information considered secret, the regulations that determine the secrecy of the information should be taken into account. For instance, Law No. 16,616 is mentioned, which rules the National Statistics System governed by statistical secret, Art. 47 of Law No. 14,306, which sets forth the secrecy the Taxing Administration shall keep regarding all the administrative or judicial matters and Art. 25 of Law No. 15,322, which determines the secret that should be kept by people in the financial intermediation business.

ABOUT THE ACCESS TO PUBLIC INFORMATION UNIT

The Unit of Access to Public Information (UAIP) is the control body created by Law No. 18,381 with the broadest technical autonomy.

Its objectives are detailed in article 21 of the rule, which sets forth that it shall perform all necessary actions in order to comply with its goals and other legal provisions.

The Unit is chaired by an Executive Board, made up by three members, one of them is AGESIC's Director and the remaining two were appointed by the Executive Branch.

On the other hand, it also has an Advisory Body made by a representative of the Legislative Branch who is not a legislator, a representative of the Judicial Branch, a representative of the Prosecutor General of the Nation, a representative of Academia and a representative of the Civil Society

The Legal Advisory includes legal practitioners specialized in the subject.

MAIN CRITERIA RESULTING FROM RESOLUTIONS AND RULINGS

The most relevant topics that have been addressed in the Access to Public Information Unit are mentioned below:

1 ACCESS TO PUBLIC INFORMATION

1.1 Exceptions

- 1.1.1 Reserved
- 1.1.2 Confidential
- 1.1.3 Secret
- 1.1.4 “Privileged Information” as an exception

1.2 Telephone communications as exception to the Access to Public Information

1.3 Access requests

- 1.3.1 Identification of requestor
- 1.3.2 Submission of Information
- 1.3.3 Submission of classified information upon the request of the Judicial Branch or the Contentious Administrative Court.
- 1.3.4 Access request submitted to an institution that is not within the scope of Law No. 18,381.
- 1.3.5 Admissibility of information requests made via email.
- 1.3.6 The request does not meet requirements of Law No. 18,381

1.4 Gratuitousness of requests for Public Information

1.5 Invocation of Law N° 18,381 and Principle of absence of ritualism

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2 RIGHT OF ACCESS TO PUBLIC INFORMATION

2.1 Abuse of process in terms of access

2.2 Non-existence of information Resolution N° 21/017

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3 PERSONAL DATA

4 ACCESS TO INFORMATION ON HUMAN RIGHTS

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5 PUBLIC OFFICERS

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5.2 Information in the preliminary summary investigation of the criminal procedure.

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7 REGULATED PARTIES

7.1 Application of Law No. 18,381 to Public Registries

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7.8 Preparation of public versions

8 FINANCIAL INFORMATION

8.1 Tax privacy

8.2 Tax liabilities

9 STATISTICAL INFORMATION

9.1 Statistical information for educational purposes

1. ACCESS TO PUBLIC INFORMATION

Article 4 of Law No. 18,381 sets forth the meaning of public information, indicating that it includes all information that is produced, obtained, in possession or is under the control of the regulated parties.

It is necessary to consider the principle of Maximum Public Dissemination that is included in Article 6 of Decree 232/010 and to bear in mind that the access to public information is always the rule and the restriction is the exception.

The exceptions are restrictively mentioned in the Law (articles 8, 9 and 10) and refer to the hypothesis of reserve, confidentiality, and secrecy.

Exceptions

There are several points to take into consideration when it comes to information classified as reserved.

Firstly, it is necessary to distinguish that the information may be reserved at the moment it is produced (this would be the rule) and may be reserved when a request is made before the regulated party.

When classifying information as reserved, article 9 of the Law should be taken into account, which stipulates the causes for classifying information as reserved. Besides, it is necessary to perform a damage test following the guidelines established in article 25 of Decree No. 232/010.

On the other hand, the justified resolution in which the reserve is declared shall include the term for which such information shall be reserved from public knowledge.

Regarding confidential information, this exception is governed by article 10 of Law no. 18,381.

In order to comply with the Principle of Maximum Disclosure, the Unit recommends the entities to make public versions and therefore, submit the information that is not part of the previously mentioned exceptions.

Criteria regarding the information exception defined as **secret**:

-[Ruling 5/014](#): Sets forth that the information requested is governed by



article 47 of the Tax Code, constituting the exception of article 8 of Law 18,381

-[Resolution 23/018](#): The information requested is within the scope of the secrecy implied in the preliminary criminal investigation stage and cannot be disclosed.

Remarkable criteria about **reserved information**:

-[Ruling 1/010](#): Upon ANCAP's enquiry about the classification of the information related to the Stock Syndication Agreement, it was determined that if the information is classified as reserved it may be challenged by any individual or legal entity and that in the case such information is classified as such it shall need to be through a justified resolution proving such nature as per article 9, paragraph E) of Law No. 18,381.

-[Ruling 2/011](#): it is about the **information that has to be classified in a particular manner and not generically**.

-[Ruling 17/013](#): Addresses the fact that all reserved information shall be classified as such by justified resolution. However, the use of resolutions as **matrix of criteria** to proceed to classify the information in each particular case is authorized.

-[Resolution 10/015](#): Upon the unjustified denial to submit information, classification is required to be made by virtue of the in force regulation.

Main criteria regarding **confidential information**:

-[Ruling 5/012](#): It stipulates that confidential information shall only be considered within the scope of article 10 of Law No. 18,381 if it is submitted as confidential to the regulated party. It is also required to indicate the application of the principle of severability in case of containing information that may be known and submitted.

-[Ruling 4/014](#): It makes reference to confidential information regarding personal data that requires previous informed consent. It also refers to the preparation of public versions.

-[Resolution 29/015](#): It determines that the generic clauses that establish an exception to the right of access to public information should be construed restrictively.

-[Ruling 1/019](#): The Law on Access to Public Information is not applicable to the procedures of an International Arbitration Board. Such Board has requested that the proceedings are kept in confidentiality so the application of a legal exception shall not apply and neither the submission of information.

-[Resolution 6/019](#): It stipulates that any information that enables the individualization of refugees or groups of refugees should be kept confidential, as per provisions of Law 18,076 of January 5th, 2007.

“Privileged information” as exception

-[Ruling 11/014](#): It indicates that the privileged information that is defined in article 6 of Stock Market Law No. 18,627 does not constitute new grounds for exception to access to public information.

Telephone Communications as exception to the Access to Information

-[Ruling 2/010](#): It stipulates that the information requested to the entity with regard to authorized telephone tapping may constitute one of the exceptions set forth in Law No. 18,381.

Access Requests

Identification of the requestor It makes reference to the requirements applicable to an access request.

-[Ruling 1/013](#): The term “Identification” of the requestor refers to the name, surname and identification card in the case of individuals. In the case of legal entities, these should prove the representation.

Submission of Information: Due to the number of cases in which public information is not submitted, this is one of the items that has the greatest number of rulings and resolutions.

-[Resolution 3/010](#): It resolves the submission of information, as well as considering that no response was provided to the requestor upon such request.

-[Ruling 14/013](#): It establishes that the Minutes of Meetings of Boards of Directors are public information and that if these contain secret, reserved or

confidential information, public versions should be made in order to have access to such information.

-[Resolution 20/015](#): It stipulates that the denial to submit information should be made through a resolution justified by the authority.

-[Resolution 9/018](#): Upon the claim for partial submission of information, it is resolved that the remaining information must be submitted, unless there is not.

-[Resolution 8/019](#): It indicates that the remaining information must be submitted regardless of its format.

Submission of classified information upon the request of the Judicial Branch or Contentious Administrative Court.

-[Ruling 6/017](#): The files requested by the Contentious Administrative Court shall be submitted in a complete manner, clearly identifying the information that was classified, so that the Contentious Administrative Court is able to consider all the set of facts to pronounce judgement, and at the same time, to adopt the corresponding protection measures.

Access request submitted to an institution that not within the scope of Law No. 18,381

-[Ruling 9/017](#): It stipulates that the request should have been made before the entity in charge of supervising the institution before which the request was submitted.

Admissibility of information requests made via email: It refers to the adopted criteria which stipulates that the requests made through email are valid.

-[Ruling 6/012](#): It sets forth that there is no legal impossibility to accept an access request made through electronic means.

-[Ruling 6/013](#): It indicates that if the request complies with requirements set forth in Law No. 18,381 it may be sent through electronic means.

The request does not meet provisions of Law N° 18,381: It refers to the case in which the request does not meet the necessary requirements to be considered a public information request as per the regulations.



-[Resolution 16/011](#): It indicates that the information requested is not within the scope of public information.

-[Resolution 17/011](#): It establishes that the information requested is not within the scope of public information.

-[Resolution 15/013](#): The requested made does not constitute a request to access public information.

-[Resolution 20/014](#): It resolves upon the non-existence of an access request for public information within the terms set forth in Law No. 18,381.

Gratuitousness of requests for Public Information

Articles 17, paragraph 2 of the Law and paragraph 12 of Decree 232/010, stipulate that the access to public information is always free of charge, without prejudice that the reproduction of any format shall be borne by the requestor. The entity is not allowed to obtain profit from the reproduction of the information in the selected format.

-[Resolution 33/010](#): Regarding the charge of the proceeding for accessing public information, it was resolved to indicate that it is free of charge.

-[Resolution 31/013](#): The entity requests a fee payment that does not comply with the provisions of Law No. 18,381.

-[Resolution 27/016](#): Regarding the collection of a fee to process the request, the entity was informed that it not required to pay for fees or stamps in order to file a request of access to public information.

Invocation of Law N° 18,381 and Principle of absence of ritualism: The principle of absence of ritualism is set forth in Article 8 of Decree 232/010: “The requirements and ritualism that may be a hindrance for the exercise of the right enshrined by the Law shall be removed from the procedures established for the access to public information”. This principle intends to avoid any hindrance that prevents exercising the access to public information.

-[Resolution 32/013](#): Upon a request that does not expressly invokes that it is made in accordance with Law no. 18.381, it is resolved to apply the principle of absence of ritualism.



Positive silence

Most claims made before the Unit are related to the hypothesis of Positive Silence. Article 15 of the Law sets forth that the term to respond the requests of access to public information is of 20 working days. This term may be extended for further 20 working days provided that there are justified reasons, and these are recorded in writing.

Many times, this term set forth by the Law to submit public information is not respected by the entities, which causes its incurrence in positive silence. This means that the information requested by the person must be submitted. Article 18 of Law No. 18,381 stipulates the penalty in case of silence by the administration upon a request of access to public information.

-[Resolution 10/010](#): It determines the submission of the information requested upon the expiration of the terms set forth in Law No. 18,381.

-[Resolution 10/011](#): Upon the expiration of the legal term, the submission of the information is resolved.

-[Resolution 28/018](#): Once the positive silence is constituted, the submission of the requested information is resolved.

2. RIGHT OF ACCESS TO PUBLIC INFORMATION

The right of access to public information is a human right, which exercise enables to know the information in possession the State. Besides, it is a good mechanism the citizens may use to exercise the control of public resources and to create spaces of citizen participation, so it is an essential pillar for the participative construction of democracy and to progress in the fight against corruption.

Abuse of process in terms of access

-[Ruling 5/017](#): It stipulates the criteria to consider what constitutes abuse of process in the requests of access to public information.

Non-existence of information

-[Resolution 21/017](#): It is resolved to file the proceedings considering the



grounds provided by the regulated party, which is article 14 of Law 18,381, limits of access to public information.

Search of Information before declaring its nonexistence

-[Resolution 18/016](#): It is urged that, upon the denial of submission of information based on the nonexistence thereof, a thorough search of the requested information made.

3. PERSONAL DATA

Our legal regulations also include Law No. 18,331 on Personal Data Protection and Habeas Data Action.

The two Units that are specialized in the subject, the Access to Public Information Unit (UAIP) and the Regulatory and Personal Data Protection Unit (URCDP, for its acronym in Spanish) decided to join efforts in order to harmonize both human rights.

Therefore, although from the perspective of access to public information all information in possession of the regulated parties is considered public at first, there are exceptions such as confidentiality in the case of personal data that require previous informed consent (article 10 paragraph II).

There are other cases in which the line is too thin, and it is not clear whether it is a matter of personal data or of access to public information.

The examples of cases solved by the UAIP may contribute and serve as guide:

-[Ruling 3/009](#): It indicates which data can be submitted and which cannot be submitted to third parties, when these are contained in an administrative record.

-[Ruling 7/013](#): Regarding the information about a public officer, it establishes the criterion to distinguish between the information that makes reference to the public position the worker holds and, on the other hand, the information that is part of the private and intimate life of the worker.

-[Ruling 2/016](#): With regard to the enquiry about information of medical doctors of the State Insurance Bank, it is resolved that the licenses of professionals must be submitted. However, it is stipulated that their domiciles shall not be submitted, except if the holder agrees to do so.

-[Ruling 15/016](#): It is established that the name and institutional email of



each worker individually considered is public information, but the disclosure of the data base of all public officers shall not take place, since it would imply treating it for a different purpose than that for which it was obtained.

4. ACCESS TO INFORMATION ON HUMAN RIGHTS

It is worth mentioning that Article 12 of Law 18,381 stipulates that none of the reserves established in the Law may be invoked when the request for information refers to the violation of human rights.

Unenforceability of the classification

-[Rulings 3/016 and 5/016](#): These make reference to the submission of information set forth in article 12 of Law No. 18,381.

-[Ruling 12/016](#): It determines parameters for the creation of public versions upon the request of information regarding human rights violations.

-[Ruling 1/018](#): Approval of a series of criteria of access considering the status of the user, prepared together with social organizations, organizations of human rights, of victims and their relatives, with the academia, association of archivists, as well as with public entities implied in the subject matter.

Specific legal authorization of the requestor

-[Resolution 8/016](#): The classification of the information that was made by the regulated party is not enforceable against the requestor that is the Secretariat for the Defence of Consumer (LIDECO for its acronym in Spanish), which should be submitted or classified as per provisions of Law No. 18,381 and its regulatory decree.

Right to be forgotten

-[Ruling 11/016](#): It is established that the publication of the resolution is part of the obligations of active transparency by virtue of the principle of severability and purpose. Therefore, the name, depending on the status of public officer or not of the involved party, may be disassociated.

5. PUBLIC OFFICERS

It is observed that the information requested about public officers is very varied. It is intended to know from their emoluments up to the emails they have. Although there is information about the workers that needs to be available in the web due to the obligations of Active Transparency, there are still certain doubts about what to submit upon a request of access to information, considering that there is information that makes part of the public position and other information that is part of the worker's private life.

-[Ruling 7/013](#): It is stipulated that the compensations for remaining on duty and the identification of the officers that receive them constitute public information.

-[Resolution 14/015](#): It is requested to disclose information regarding public officers related to their names, surnames and other identification data.

-[Resolution 41/016](#): It is resolved that the amounts received as retirement or pension of public officers is public information.

-[Resolution 11/019](#): Submission of information regarding travel allowances, official trips and expenses of corporate credit cards.

Disciplinary penalties-investigations

-[Ruling 11/013](#): The resolutions that refer to penalties to public officers may be reserved, when it could be considered that its disclosure diminishes the human dignity (paragraph D) article 9 of Law No. 18,381.

-[Ruling 8/014](#): The information included in an administrative summary proceeding, when the preparation phase has ended, is public a prior, except if it constitutes any of the legal exceptions.

Information in the preliminary summary investigation of the criminal procedure

-[Resolution 9/013](#): The information that is a preliminary summary investigation in a criminal justice court may not be submitted to the requestor, as the nature of the procedures requires keeping such information confidential and out of public knowledge. Once the preliminary summary investigation ends, provisions of Law no. 18,381 shall apply.



Public Contests

-[Resolution 4/019](#): It resolves upon the submission of information corresponding to public contest, distinguishing if the person was a contestant or not.

6. ACTIVE TRANSPARENCY

Article 5 of Law No. 18,381 stipulates the information all organizations should publish in their websites permanently, indicating it is the minimum information. Therefore, the law with its working allows entities to further publish the public information ex officio. Article 38 of the Regulatory Decree 232/010, Law No. 18,381, indicates the information needs to be disclosed by the regulated parties.

-[Resolution 28/010](#): The regulated party is indicated to publish in its website the internal regulations as per article 5 of the Law.

-[Resolution 15/011](#): The regulated party is suggested to publish in its website the information regarding the advertisement services hired and its expenses.

-[Ruling 13/014](#): Upon the inquiry made to the Unit, it was indicated that the information that the regulated party was not going to publish in its website does not contravene the provisions of article 5 of the Law.

-[Ruling 2/018](#): If the organizational charge established by law does not correspond to the real one, it is recommended that the regulated subject publishes the organization chart that effectively reflects the operation of the entity.

-[Resolution 8/018](#): By virtue of paragraph 14 of article 38 of Decree 232/010, it is indicated , that the expenses paid for travel allowance need to be published proactively.

Submission of compliance form

-[Resolution 40/016](#): Upon the claim that expressed that the compliance form included misleading information, it was resolved that the Regulated Party must submit the form in a correct manner, as per provisions of article 7 of the law.



Submission of annual report

-[Resolution 12/016](#): Upon the noncompliance with the stipulations of article 7 of Law No. 18,381, the regulated party is urged to present the Annual Report about the Compliance Status of the Obligations Prescribed by the Law, as amended and updated.

-[Resolution 20/016](#): The regulated party is required to submit the annual report within the term set forth by article 7 of Law No. 18,381.

7. REGULATED PARTIES

All public entities, whether governmental or not, are considered Regulated Parties by virtue of Law No. 18,381.

Application of Law No. 18,381 to Public Registries

-[Ruling 4/013](#): It is resolved that Law No. 18,381 is not applicable to information of the Public Registries under the Casinos General Bureau.

-[Resolution 30/019](#): There is no contravention as Organic Registry Law No. 16,871 is applied.

Law No. 18,381 as a mechanism to access a file in which the person is part

-[Resolution 19/014](#): It was resolved that Law No. 18.381 may invoked as an instrument to access to an administrative file in which the requestor is an interested party.

Municipalities as Regulated Parties

-[Resolution 1/013](#): It indicates that a municipality needs to comply, in the specific case, with provisions of article 9 and 15 of Law No. 18,381.

Access to information in bidding procedures

-[Ruling 7/017](#): It resolves upon the inadmissibility of classifying as confidential certain information submitted within the frame of a bidding process.

-[Resolution 17/016](#): It is resolved that the information connected to the payroll of the hired staff and to the contributions made is information that may be classified as confidential.



Public information Law No. 17,555

-[Resolution 20/013](#): It is resolved that the requested information is public as per provisions of article 26 of Law of Economic Reactivation No. 17,555.

Existence of contravention

-[Resolution 16/013](#): It was resolved that there is no contravention in the publication of an administrative file in a blog.

-[Resolution 4/015](#): It is resolved that there is no contravention to Law No. 18,381 since the entity is not obliged to produce the requested information.

-[Resolution 19/019](#): It is resolved that the regulated party complied with the established legal terms, so it does not constitute contravention.

Systemization and production of information

-[Resolution 13/013](#): In case an entity does not have the requested information, it is not obliged to furnish or submit such information.

-[Resolution 15/015](#): It is resolved that information should be submitted to the requestor, even if such information is not systematized.

-[Resolution 3/018](#): The regulated party is urged to submit the missing information and in case such information is out of its reach, the party must express the non-existence of the information.

Creation of public versions

-[Resolution 29/010](#): The regulated party is requested to make public versions based on article 7 of Decree No. 232/010.

-[Ruling 14/013](#): In case the information has sections that need to be published and other that do not, access should be given to the former through the creation of public versions.

-[Ruling 2/019](#): It is suggested that in the creation of public versions, only data that identifies or enables to identify the contributors is deleted.



8. FINANCIAL INFORMATION

Regarding financial information, it is worth noting that most enquiries and requests refer to Tax Privacy and cases of tax liabilities.

Tax Privacy

-[Resolution 12/017](#): The regulated party must submit the complete personal information requested, since it is a request for personal data and the request cannot be denied based on provisions of tax privacy.

-[Resolution 20/018](#): It is resolved that the information requested is of personal nature and that it does correspond to invoke Tax Privacy.

Tax liabilities

-[Ruling 5/014](#): The information purpose of the enquiry is within the scope of the fiscal privacy, thus considered as an exception to the access to public information.

9. STATISTICAL INFORMATION

Statistical information with educational purposes

-[Ruling 4/016](#): It is stipulated that the statistical information attached to the enquiry is public and may be used freely for educational purposes, dissociating the names of the medical doctors mentioned in it.