

# TO DISSEMINATE, TO SOLICIT AND TO RESTRICT: CONJUGATED VERBS IN ACCESS TO PUBLIC INFORMATION IN THE COUNTRIES OF THE SOUTHERN CONE

DIVULGAR, SOLICITAR E RESTRINGIR: OS VERBOS CONJUGADOS NO ACESSO À  
INFORMAÇÃO PÚBLICA NOS PAÍSES DO CONE SUL

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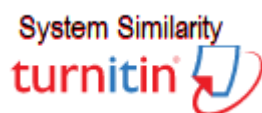
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**JITA:** BG. Information dissemination and diffusion.

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**ABSTRACT**

Deals with the study of access to public information in the context of the countries of the Southern Cone. From the study of the laws that treat the issue in five Southern Cone countries: Argentina, Brazil, Chile, Paraguay and Uruguay, the present work explore the characteristics and similarities from the legal texts with the theoretical guidelines of the access to public information defined by Braman (2004, 2006, 2011), Mendel (2009) and the Inter-American Model of the Access to Information Law (2012).

**KEYWORDS**

Access to information. Public information. Southern Cone. Access to information law.

**RESUMO**

Trata do estudo do acesso à informação pública no contexto dos países do Cone Sul. A partir do estudo das leis que disciplinam a questão em cinco países do Cone Sul: Argentina, Brasil, Chile, Paraguai e Uruguai, o presente trabalho investiga as características e a consonância dos textos legais com as diretrizes teóricas de acesso à informação pública preconizadas por Braman (2004, 2006, 2011), Mendel (2009) e o Modelo Interamericano de Lei de Acesso à Informação (2012). Os dados coletados permitem inferir que há um núcleo que sustenta o acesso à informação nesses países tendo como foco a divulgação, a solicitação e a restrição de informações como conceitos mais identificados com a literatura.

**PALAVRAS-CHAVE**

Acesso à informação. Lei de acesso à informação. Informação pública. Cone Sul.

## 1 Introduction

When talking about the constitution of a nation, some concepts come to mind, such as state, politics, and power. According to Bobbio; Matteucci and Pasquino (1995), the concept of politics necessarily touches on the idea of the power that, according to Higinio; Araújo and Scott (2008), directly relates to an imposing situation, which depends on means to be effective.

The economic, political, ideological powers and many others are the means available for the state to lead the society that forms it. According to Braman (2004), the use of information, as an instrument of politics, takes place in an environment of a clash between different ideological currents in search of the affirmation of precepts that the sides consider to be the correct ones for society. A propitious stage for this clash, democracy has faced several challenges to constitute itself as a form of government over the years, since according to Tocqueville (2010, p. 51), “democracy constitutes the social state, the law of the laws that determine the political right”.

Understood as partners, democracy and law intertwine to produce relations through egalitarian, crystalline policies and common application. One example of this is information policy, which deals with questions about the circulation, dissemination, and influence of information on social welfare, the maintenance of democracy and the maintenance of the universal right to information (FONSECA, 1999).

Designating far less a political regime than a model of society that corresponds to a type of mentality, it [democracy] is, in its very essence and always, under the sign of ambivalence. Rich in hope, democracy is for men a political promotion: in its slow-motion, it has marked the achievement of peoples' freedom and made it possible to recognize human rights. (GOYARD-FABRE, 2003, p.1).

To speak of politics and information is to deal, among other things, with the right to information, an idea widely advocated since the twentieth century with the further consolidation of democracy-centered government regimes and the construction of the ideals of democratic rule of law.

As enshrined in Article 19 of the Universal Declaration of Human Rights (1949), the right to information, although, according to Melo and Sathler (2005, p. 7), “still under the impact of dread”, was a later period. World War II is one of the obligations that governments have to make possible the promotion and protection of human rights and the freedoms of groups or individuals, and this is a right already universally recognized by regional human rights systems, such as the Organization of American States, the Council of Europe and the African Union (MALHEIRO, 2018).

Freedom of information and related rights to information and access to information, as well as highly relevant human and fundamental rights, represent high-density democratic techniques in shaping human relations in a particular political and social community. At present, it is possible to bring together such rights and their inherent duties in a legal discipline that was eventually called Information Law. (SARLET; MOLINARO, 2016, p. 11).

The right to information based on a tripod - the right to inform, the right to be informed and the right to be informed - (CANOTILHO, 1992; WEICHERT, 2006) and constitutes an informative legal order. Access to information within a democratic society is a right focused on the pursuit of information and the possibility of receiving it, taking a leading role in the face of growing demands for popular participation and increased control of the actions of modern states.

The right to information, as a subjective human right, considers all the norms that regulate informative activities, thus, it is constituted as the legal knowledge that deals with studying, systematizing and ordering the legal instruments and institutions that incorporate and regulate this information. right. (ZAFFORE, 2000, p. 178).

Having the concept of transparency as one of the focal points (EIRÃO; SILVA; CAVALCANTE, 2014) and accountability<sup>1</sup> (ANGÉLICO, 2012), the right to information<sup>2</sup> represents the set of ideals in favor of actions and legal rules that allow the exposure of State actions and, at the same time, enable accountability to society. Although the right to information is already constituted in much of the world as a partner of other rights, such as expression and the human person (LIMA, 2015), there are still particularities to be observed to assert that there is a favorable environment for access and transparency of public information. Among these particularities are the three dimensions of information defined by Batista (2010) that directly interfere with access to information. According to the author, these dimensions are divided into:

Physical dimension: represented by the difficulty in physically accessing the document, caused mainly by the poor quality of the information organization.

Intellectual dimension: Transparency presupposes an individual's understanding of the document accessed. In this case, the language and format of the publication may make the right to information unfeasible.

Communication dimension: Due to the low efficiency of the public information flow or the excess of information, access and transparency are directly impaired.

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1 It expresses the duty of the State to state its acts in a clear and accessible manner to the citizen.

2 Although the right to information can be widely applied in various areas of knowledge, in this work it is confined to the context of government reporting.

In addition to the dimensions noted above, it is possible to bring to this group transparency and publicity, items present in the right of access to information in a global context (LIMA, 2015, our translation).

Broadly speaking, transparency, accountability, disclosure of information and citizen participation are the essential mechanisms for achieving the right to information and more precisely access to public information.

When we talk about the right of access to public information, the legitimate field for the discussion of information and its relationship with society, we talk about nothing but the right that all citizens have to know about the achievements, acts, and documents emanating from the State. (REYES, 2009, p. 179).

According to the Atlanta Declaration (2008, p. 2), information is a fundamental human right and all states must enact specific legislation to enforce access to information, known as access to information laws. Information, in turn, is the important item in the process of consolidating the transparency of public administration, a process that involves the means of production, storage, and communication of information, as well as its free and unrestricted access to citizens. Because of what stated in this statement, the growing number of policies aimed at access to public information created major challenges related to the organization, processing, and dissemination of information (CORRÊA, 2012).

Based on the premises presented above and having the laws of access to information, as the preferred and legitimate instruments in the realization of access to public information, the present work intends to propose a way of understanding the theme from three verbs: disseminate, request and restrict.

## 2 Access to Information Guidelines

According to the literature, the most applied way to understand how access to information is given, whether in one country or several, is the analysis of the instruments that discipline this issue, that is, specific laws dealing with information and its forms of disclosure and access. Studies by Paterson (2015); Birkinshaw, Varney (2011) and Rodrigues (2006) are examples of initiatives around the understanding of the phenomenon of access to public information from the use of legal texts on this topic. These types of research focus mainly on the study of three aspects: the obligation to inform, the promotion of a culture of access to information and how society may request certain information.

It is understood as an obligation to inform the duty of public agencies to periodically publish and keep updated the information targeted by public transparency, which is, related to the operation and control of the performance of public agencies and agents (MONTILLA MARTOS, 2016). The obligation to report is encompassed by the concept of active transparency, which refers to the set of proactive actions to be taken by the public administration to strengthen access to information.

Nowadays, with the possibility of using digital media, especially the Internet, active transparency has gained importance so that information is published, available and accessible to all. According to Feinberg (2004), the publication of public information on the Internet is a trend due to the lower use of paper media for its production and storage and has become a reality because of society's demand for more complex and in-depth information timely.

The promotion of the culture of access to information can be understood as a goal, a philosophy that needs to be incorporated in the legal norms on the subject (GRUMAN, 2012). According to Fuenmayor Espina (2004), it is not enough just to constitute access to information legally or legally, it should be promoted as a value within society so that the citizen understands what it is and knows the importance of this issue. Knowing and supervising the actions of public administration is not a concession, but a right that should be available to all.

The issue of access to public information is a broad action in society, which proposes some changes in the structure of information, especially regarding storage and availability. Briefly, to foster a culture of access to public information is to build paths for a new form of relationship between individuals, information, the state, and democracy. Although of high importance, materializing access to information is a long, slow and arduous process. In this principle, the concepts of education and citizenship go hand in hand with the construction of a culture of access not only as an obligation item for state agents but as an inalienable and irrevocable right for all citizens in a democratic regime.

Finally, how society may request certain information is one of the mandatory principles that must exist in the laws on access to information. Contained in the group called passive transparency, defined as the set of rules and conducts that the public administration must follow through a request for information under its custody (PORRAS RAMÍREZ, 2016), the declaration of mechanisms available to citizens to request information, terms, and forms of service and receipt of information must be contained in the access laws. Thus, the request for information constitutes a fundamental item for the right to information to be solidified and effective in society.

By observing these requirements: obligation to inform, promotion of a culture of access and State-society interaction in the request for information - from an empirical reality experienced in the laws of access to information - it is possible to recognize its relationship with Information Science. Studying issues relating to the right to access. In a quick analysis, it is possible to find similarities with the ideas proposed by Braman (2004, 2006, 2011), who talks about the disputes that exist in the process of building information policies, which necessarily touch on these three aspects. Similarly and more broadly, Mendel (2009) addressed these issues and put them together with others, naming them as guiding guidelines for building a government focused on the right to information.

In these guidelines, Mendel (2009) details how these items must be present in the legal text for effective promotion of access to public information. Result of the discussions provoked by these two authors and others more in the literature, added to the initiatives and the commitments assumed by the thirty-five governments that compose the Organization

**Chart 1.** Relationship between the guidelines proposed by Mendel (2009); Inter-American Model of Access to Information Law (2012) and Braman (2004, 2006, 2011).

Mendel (2009)	Inter-American Model on Access to Information Law (2012)	Braman (2004, 2006, 2011)	Guiding concept
Maximum disclosure	1. Access promotion measures.	1. Access to information.	Legislation should be guided by the principle of maximum disclosure, confidentiality should be an exception.
Obligation to publish	1. Access promotion measures. 2. Accessing information held by public authorities.	1. Format of the scheme. 2. Global information infrastructure.	Public bodies should be required to publish essential information.
Promotion of an open government	1. Access promotion measures.	1. Interaction of social processes.	Public agencies need to actively promote government openness <sup>3</sup> .
Limitation of information coverage	1. Access Exceptions. 2. Appeals. 3. Information Commission.	1. Regulatory mechanisms.	Exceptions must be clear and strictly defined and subject to rigorous "damage" and "public interest" testing.
Procedures that facilitate access	1. Information Commission. 2. Compliance measures and updating of the law. 3. Accessing information held by public authorities.	1. Policy precedence.	Requests for information should be processed promptly and fairly, with the possibility of independent examination in case of refusal.
Costs	1. Accessing information held by public authorities. 2. Compliance measures and updating of the law.	There is no correlation.	People should not be prevented from making requests for information because of the high costs involved.
Open Meetings	There is no correlation.	There is no correlation.	Meetings of public bodies should be open to the public.
A divulgação tem precedência	1. Compliance measures and updating of the law. 2. Transitional Measures.	1. What you see is not all you will receive.	Laws that do not support the idea of maximum disclosure should be reviewed or repealed.
Proteção para os denunciantes	1. Information commission.	1. Global information infrastructure.	Individuals who bring information about wrongdoing to the public - whistleblowers - need to be protected.

Source: The authors.

As can be seen from Table 1, although each text uses a different nomenclature to define its ideas, there is a similarity between them in terms of access to information. By grouping all the concepts around nine information access guidelines, we arrive at the following set:

<sup>3</sup> The definition of essential information tends to differ according to the context, but it usually encompasses information on competence, structure, operation, expense recording, bidding procedures, and financial resources used by agencies.



1. **Maximum Disclosure:** Guideline advocating the idea that the law on access to information should be the catalyst and should ensure that no public information is hidden, except for information explicitly defined with a differentiated level of access.
2. **Obligation to Publish:** Guideline that states that all information produced or in custody should be published without the need for solicitation.
3. **Access promotion measures:** guidelines that state that the State has the function of materializing access to information, as well as promoting educational actions to formalize access as a citizen's right.
4. **Access Exceptions:** A guideline that defends the explicit declaration of those types of information that should suffer some kind of access restriction, the reasons and the duration of the access exception.
5. **Procedures that facilitate access:** Guideline on how the state should receive and respond to requests for access to information from society.
6. **Costs of access to information:** guideline that defines the questions regarding the existence or not of costs for request and access to information.
7. **Work routines:** guidelines related to access and dissemination of meetings held in the organs and decisions taken.
8. **The legal aspect of access to information:** guidelines related to the organization of the legal system on the issue.
9. **Whistleblower Protection:** Guideline related to whistleblower protections and the process of analyzing accusations of non-compliance with the access to information law.

Thus, with the nine guidelines in place, a question arises about their representativeness in the laws of access to information and whether there would be any preponderance of one guideline over another or those considered to be more important. Thus, in order to answer this question, a comparative analysis of the Southern Cone countries' access to information laws was started to find a possible answer.

### 3 The Southern Cone

Resulting from a regionalist identity view, the Southern Cone, formed by Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay (CERVO; RAPOPORT, 2015), is a grouping that serves to geographically designate those countries that occupy a specific portion of America. which, politically and economically, form the decision-making nucleus of Mercosur.

Coming from the Treaty of Asuncion, signed by Argentina, Brazil, Paraguay and Uruguay in 1991, Mercosur is the initiative to form the most prosperous regional bloc in



recent Latin American history (ARAÚJO, 2018). First created as a free trade space so that member countries could strengthen the circulation of goods among themselves, Mercosur, over the last 20 years of its existence, deepened this interaction beyond the economic area and thus produced changes. How these countries relate to neighboring countries, whether politically, culturally or socially. In the words of the then president of Brazil, José Sarney, at the time of the creation of Mercosur, it is clear to state:

We had an idea, to create a common market along the European lines. Economic, strategic, political and cultural integration and, in the future, the free movement of goods, services, capital, and labor. Our project was not rhetorical, but it should take firm steps to avoid setbacks. [...] Mercosur's future is to consolidate itself. There is no going back. (SARNEY, 2010, p. 20).

From the political, cultural or social changes generated, Mercosur now represents more than a mere bloc to foster the economy, creating an environment where there is a convergence of mutual interests in the conduct of the lives of the citizens involved.

With the gradual increase in the relationship between the countries, the bloc has gained importance as a trendsetter for South America. In all, twelve countries (Argentina, Brazil, Paraguay, Uruguay, Venezuela, Bolivia, Chile, Peru, Colombia, Ecuador, Guyana, and Suriname) are part of this block, either as a full member or as an associate state. In other words, talking about this bloc is dealing, according to the OAS, with more than 270 million inhabitants, a highly expressive number when trying to understand or characterize an identity of South American countries.

#### 4 Methodology

Based on the empirical basis of the normative texts of the Southern Cone countries - Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay - a set of five normative texts was reached. Then, we started to verify and analyze the existence and how there was a representation of the nine guidelines listed in this research. Table 2 presents the surveyed countries and their respective legal texts:

**Chart 2.** Countries surveyed and their access to information laws.

Country	Access to information laws
Argentina	Law nº 27.275, de 14 de September de 2016
Brazil	Law nº 12.527, de 18 de November de 2011
Chile	Law nº 20.285, de 11 de July de 2008
Paraguay	Law nº 5.282, de 18 de September de 2014.
Uruguay	Law nº 18.381, de 7 de October de 2008

Source: The authors.

It is noteworthy that Bolivia was not part of the analysis because it does not have a law on access to formal information since the topic is treated diffusely in other normative items. For data collection, the documentary research method was used to select the studied

normative. Also known as documentary analysis, this type of research tries to exhaust all the clues about certain information, that is, not being restricted to merely bibliographic documents (CELLARD, 2008). After documentary research, a comparative analysis was used to understand how access to information laws address guidelines. The comparative method in the social sciences is based on study and research, to broaden a particular view given to a document to allow for much greater observation beyond the individual record set in the documents.

For the consideration of the text, it was decided that the official sources of information of each country would provide the best conditions for further research. The websites of the Executive, Legislative and Judiciary Powers were considered as an official source.

For the classification of guidelines and based on Braman's ideas (2004, 2006, 2011); Mendel (2009) and the Inter-American Model for Access to Information Law (2012), a scoring system was developed with 45 (forty-five) indicators divided into 9 (nine) guidelines, so that it was possible to highlight the particular characteristics of the laws. The scoring system adopted a maximum score of 45 (forty-five) points, which represents the total score given to each of the nine guidelines. Each guideline had a total of five points, summed according to the respective indicators determined for each guideline.

The score followed the scale from 0 to 1 point, where 1 represented the maximum score when the existence of the guideline was verified and when the normative text found perfect mirroring and identification with the one recommended by the indicator. 0.5 point represented the existence of the guidelines and some similarity to the idea in the indicator. A score of 0 (zero), on the other hand, meant that the directive did not exist in the normative text. For scores below 1 point, the written justification was provided to demonstrate the reason for the point loss. Table 3 presents an example of the scoring system.

**Chart 3.** Scoring system example.

Guideline 1 Maximum disclosure	
Indicator	Scoring
1.1 Statement of disclosure as a principle in law.	0-1
1.2 Website for the dissemination of the law.	0-1
1.3 Definition of the type of information to be made available.	0-1
1.4 Statement of availability regardless of the information medium.	0-1
1.5 Statement of governing bodies.	0-1

Source: The authors.

## 5 Data Analysis

From the application of the comparative analysis of the access to information laws of the Southern Cone countries, it is possible to glimpse a support axis of the theme “Access to information” in the reality of these countries. The study identified that legal texts concentrate efforts, ie, have higher scores on four main guidelines: Guideline 1 (maximum disclosure), Guideline 3 (access promotion measures), Guideline 4 (access exceptions) and Guideline 5. (procedures that facilitate access). Table 4 presents the sum of points obtained by all countries in each guideline.

**Chart 4.** All countries score accumulated in each guideline.

Guideline	Total score in all countries	Maximum Score
Guideline 1: Maximum Disclosure	24,5	25
Guideline 4: Access Exceptions	21,5	25
Guideline 5: Procedures that facilitate access	19,5	25
Guideline 3: Access Promotion Measures	19	25
Guideline 2: Obligation to Publish	16	25
Guideline 6: Costs of Access to Information	15	25
Guideline 7: Work Routines	0,5	25
Guideline 8: Legal Aspect of Access to Information	13	25
Guideline 9: Protection of Complaint	1,5	25

Source: The authors.

As you can see, guidelines 1, 3, 4 and 5, detailed in Table 4 get a higher score compared to the others analyzed. Thus, it appears that the legislators of these countries have defined a set of main guidelines on the right of access to information, that is, the disclosure (Guideline 1), promotion (Guideline 3), confidentiality as an exception (Guideline 4) ) and facilitating access (Guideline 5) constitute the centrality of these laws.

An even more microscopic analysis of the representativeness of these guidelines in the legal texts shows that individually they are better scored in each law when compared to the scores of the other guidelines. Table 5 provides an overview of each country's individual score.

**Chart 5.** Country Score by Guideline.

Guideline	Country/Score				
	Argentina	Brazil	Chile	Paraguay	Uruguay
Guideline 1: Maximum Disclosure	5	5	5	4,5	5
Guideline 2: Obligation to Publish	4,5	4,5	3	2	2

Guideline 3: Access Promotion Measures	3	5	5	2	4
Guideline 4: Access Exceptions	4	5	5	2,5	5
Guideline 5: Procedures that facilitate access	4	4	4	4,5	3
Guideline 6: Costs of Access to Information	3	4	3	2	3
Guideline 7: Work Routines	0	0,5	0	0	0
Guideline 8: Legal Aspect of Access to Information	4	3	2	1	3
Guideline 9: Protection of Complaint	0	0	0	0	1,5

Source: The authors.

Some authors (FROHMANN, 1995; PINTO, 2001; PINHEIRO, 2014; SILVA AND TOMAÉL, 2012) point out that, gradually, discussions about access to public information began to focus on some aspects as a necessary form of defense of the theme before State actions. That is, to ensure at the same time the strengthening and expansion of access to information as a right, some guidelines were chosen as fundamental to its existence.

Although there are not exactly the number of guidelines considered mandatory, in studies on access to information, there are already some notes in the sense that those related to active and passive transparency are the most determinant for an information access environment. Considering that Guidelines 1 and 3 refer to active transparency and Guidelines 4 and 5 to passive transparency, it can be seen that, by quantitatively analyzing the representativeness of these guidelines in the access to information laws, it can be seen that they can be considered as the predominant point in the access to information laws analyzed.

Such guidelines - Maximum Disclosure (Guideline 1), Access Promotion Measures (Guideline 3), Access Exceptions (Guideline 4), and Procedures that Facilitate Access (Guideline 5), can be understood and organized from three concepts: Disclosure/promotion (Guideline 1 and 3), solicitation (Guideline 5) and restriction (Guideline 4). The data analysis allows us to infer that these three concepts form the basis that organizes the issue of access to information in the reality of Southern Cone countries.

## 6 Conclusion

During the development of the research, it was found that in the Southern Cone countries, except for Bolivia, as the country does not have an access to information law, the understanding of what is the right of access to information necessarily involves the use of key concepts identified and classified in this research: disclosure (Guideline 1), promotion (Guideline 3), solicitation (Guideline 5) and restriction of access (Guideline 4). Here configured as a triad (disclosure / promotion-request-restriction).

The triad of access to information: disclosure / promotion, represented here by the actions of the public entity, which actively make available the information generated or under its custody, is characterized as the creation of everything. The request, represented by the ways and means by which the citizen can obtain information from the public administration at any time, is characterized as the principle of maintenance. In turn, the restriction of access, which is represented by the obligation of public entities to state explicitly the reasons for a denial of access or because certain information has some restriction, is characterized here as destruction.

Briefly, disclosing, soliciting and restricting are verbs commonly combined in terms of access and the right to information. These verbs form the center of the issues surrounding the subject of access to public information for Southern Cone countries. These countries, which are often struck by conflict and instability within their democratic regimes, have access to information laws consistent with international practice on the transparency of public information. Also, the countries studied further demonstrate that the guarantee of the right to information is still a developing process and that there are barriers and especially cultural changes that make access to information widely available to society.

Returning to the idea of Bobbio (1996), who stated that freedom is not taken or granted forever, access to information is one of the items that will be in constant discussion both for its expansion and its delimitation. Their survival will depend primarily on the maintenance of democratic institutions, the creation of existing and up-to-date legal safeguards, and ultimately on the firm and organized action of society to sustain and strengthen this concept as an irrevocable good of the individual.

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