

# Habeas Data, Transparency, and Democracy

Habeas Data as an instrument of free access to information on governance and public administration.

## Transparency and Democracy

One of the pillars of democracy is transparency in governance and public administration. Democracy entails, as an inherent right, the free access of citizens to the information that emanates from the public administration.

However, in authoritarian regimes and dictatorships, secrecy and reticence prevail on information in the hands of public officials, with an absolute absence of adequate legal mechanisms that protect the right of free access to information in the hands of government entities.

That is why, in any democracy, citizens must be guaranteed free access to information classified as public or of collective interest regarding governance and public administration.

## Right of access to information

The right of access to information on governance and public administration is based on the Political Constitution of the Republic of Panama. It establishes in article 43 that any person has the right to request information of public access or of collective interest found in databases or records managed by public servants, provided such access has not been restricted by written provision and by mandate of Law. Additionally, article 44 establishes that any person can bring forth a Habeas Data action to enforce the right of access to information that is public or of free



access, without the need of an attorney.

Law No. 6 of 2002, “Which dictates rules for transparency in public governance, establishes the Habeas Data action and dictates other provisions,” regulates the above referenced articles of the Constitution regarding requests for information of public access and the Habeas Data action in case the government official refuses to provide the information.

## Information considered to be of public access

Among information of public access, Law No. 6 of 2002 includes that which relates to all projects that are managed in the institution, the structure and execution of the budget, statistics and any other information related to the institutional budget, programs carried out by the institution, as well as information relating to the hiring and appointment of public servants, payroll, representation expenses, trip expenses, emoluments or payments for travel and others, of officials at any level and/or of other persons carrying out public functions.

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## Request of access to information

For purposes of requests for information of public access or collective interest, Law No. 6 of 2002 provides that such requests do not require any basis or motivation whatsoever, nor the need for an attorney.

The Law only requires that the request include the applicant's name, personal identity card number, address, and telephone number. For requests made by corporations, the registration information and personal information of their legal representative must be included.

Once the public official receives the request, he must reply in writing within 30 days. If the public official refuses to provide the information, he must do so through a motivated resolution stating the reasons that support his refusal their basis on the Law.

## Habeas Data

If the public official does not provide information of public access or collective interest that was requested, or he provides it insufficiently or inaccurately, the applicant may file a Habeas Data action before the courts of law without the need of an attorney.

If the public official who did not provide the information has authority and jurisdiction at the municipal or province level, the Superior Civil Tribunal of the area of the municipality or province has jurisdiction to resolve the habeas data. On the other hand, if the official has authority and jurisdiction in two (2) or more provinces, the Supreme Court of Justice, en Banc (Pleno), will have jurisdiction to decide the Habeas Data.

In conclusion, Habeas Data is an instrument made available to all citizens to obtain information of public character and of free access that officials have refused to provide. Thus, in furtherance of transparency, Habeas Data is a key right to undertake the efficient scrutiny of governance and public administration, which is undoubted in the best interests of democracy.



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