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# Implementing Right to Information A Case Study of Peru



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## Abbreviations and Acronyms

CAD	Informed Citizens (Ciudadanos al Día)
CCD	Democratic Constituent Congress
CGR	Office of the Comptroller General
CPP	Peruvian Press Council
DAR	Rights, Environment, and Natural Resources
DINI	National Intelligence Directorate
FONAFE	Financing of Government Business Activity
IDL	Legal Defense Institute (Instituto de Defensa Legal)
IPYS	Press and Society Institute (Instituto Prensa and Sociedad)
LPPD	Law on the Protection of Personal Data
LTAIP	Law on Transparency and Access to Public Information (Ley de Transparencia y Acceso a la Información Pública)
NM-C90	Nueva Mayoría–Cambio 90
OBSERVA	Social Oversight Observatory
OCI	Institutional Control Offices
ONGEI	National Government Office of Electronics and Computing
ONA	National Anticorruption Office
ONP	Office of Normalization of Social Benefits
OSCE	Agency for Oversight of Government Contracts
PCM	Office of the President of the Ministerial Cabinet
PLANMED	Office of Strategic Planning and Educational Quality Measurement
PROPUESTA	Citizen Proposal Group (Grupo Propuesta Ciudadana)
PSH	social empowerment programs
PUCP	Pontificia Universidad Católica del Perú
RLTAIP	LTAIP modified by Law N° 27927, adopted through Supreme Decree N° 043-2003-PCM, and regulated by Supreme Decree N° 072-2003-PCM.
RTI	right to information
RUB	Single Registry of Beneficiaries
SC	Coordination Secretariat
SEACE	Electronic System for Government Procurement and Contracts
SERVIR	National Civil Service Authority
SGP	Public Administration Secretariat
SIAF	Integrated Financial Administration System
SINA	Law of the National Intelligence System
SIS	Comprehensive Health Insurance System
TUPA	Single Ordered Text for Administrative Procedures
TUO	Single Modified Text
UMC	Ministry’s Education Quality Unit

## Preface

The number of countries that have passed Right to Information (RTI) legislation—laws guaranteeing citizens the right to access information about government—has risen dramatically in the last two decades, from approximately 13 to over 90, including many countries in Eastern Europe, Asia, Latin America, and most recently, Africa and the Middle East. Several of these countries face persistent governance problems.

Right-to-information (RTI) laws establish the right of citizens to access information about the functioning of their governments; they can also serve to operationalize rights that have been constitutionally guaranteed. Effective RTI legislation is an essential tool, empowering citizens to access information on public policy choices and decision-making processes, to understand entitlements regarding basic services, and to monitor government expenditures and performance, providing opportunities for more direct social accountability. Because a well-crafted RTI law provides citizens with the right to access government records without demonstrating any legal interest or standing, it can require a significant shift in the way state-society relationships are organized from need-to-know to right-to-know.

Most countries have only recently adopted RTI legislation, often after a difficult and contested process. As a result, a great deal of the research and analytical work that has been conducted in this area has focused on an analysis of the conditions and processes that lead to successful passage of legislation.

Studies about how laws are being implemented— if the necessary capacity and institutional measures for enabling people to exercise the right are in place and if access translates into higher-order goals like participation, accountability, and corruption control—are quite limited.

Case studies were prepared examining the experience of a number of countries that have passed RTI legislation within the last decade or so: Albania, India, Mexico, Moldova, Peru, Romania, Uganda, and the United Kingdom. Each country case study assesses four dimensions critical to the effective implementation of RTI legislation as follows:

- (1) The scope of the information that the law covers, which determines whether an RTI law can serve as the instrument of more transparent and accountable governance as envisaged by its advocates. Clearly, a law that leaves too many categories of information out of its purview, that does not adequately apply to all agencies impacting public welfare or using public resources, or that potentially contradicts with other regulations—like secrecy laws—will not be very effective.
- (2) Issues related to public sector capacity and incentives, additional key functions and demands within the public sector created by RTI, entities responsible for these functions, and various organizational models for fulfilling these functions.
- (3) Mechanisms for appeals and effective enforcement against the denial of information (whether it be an independent commission or the judiciary); the relative independence, capacity, and scope of powers of the appeals agency, and the ease of the appeals process; and the application of sanctions in the face of unwarranted or mute refusals, providing a credible environment.

(4) The capacity of civil society and media groups to apply the law to promote transparency and to monitor the application of the law, and a regulatory and political environment that enables these groups to operate effectively.

The in-depth research presented in these case studies was conducted to examine factors that promote the relative effectiveness of these four

key dimensions when implementing RTI reforms, including institutional norms, political realities, and economic concerns. An analysis was conducted to determine which models have the potential to work in different contexts and what lessons can be drawn from these experiences to help countries currently in the process of setting up RTI regimes.

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# 1. Introduction

The formal or express defense of the right to information (RTI) is relatively recent in Peru. It was first acknowledged as an autonomous fundamental right in the 1993 Constitution.<sup>1</sup> Almost a decade passed before this basic right was regulated by Law No. 27806 of August 3, 2002, the Law on Transparency and Access to Public Information or *Ley de Transparencia y Acceso a la Información Pública* (LTAIP) that went into effect in January 2003.

The law was then modified by Law No. 27927 on February 4, 2003, systematized through a single revised text, adopted through Supreme Decree No. 043-2003-PCM of April 24, 2003, and later developed through regulations set forth in Supreme Decree No. 072-2003-PCM on August 7, 2003 (RLTAIP). In addition, transparency and respect for RTI form part of the 29th governmental policy of the National Accord that was signed in July 2002 by representatives of the government, leading political groups, and civil society.<sup>2</sup>

More than eight years after the passage of LTAIP and its modifications, Peru has the legal framework and government political will, formally expressed in the National Accord, to guarantee the full exercise of RTI. A reasonable amount of time has passed, enabling the evaluation of the impact of this legislation in achieving increased transparency in government. It is not a question of establishing simple targets, because lack of government transparency and difficulties in exercising RTI are associated with broader cultural processes that go beyond problems related to the development and application of laws. The idea is to eliminate the *culture of secrecy*: the notion that government affairs should take place in secret without citizen involvement; this notion is based on the idea of a relationship between the state and citizens in which the citizens are viewed as

passive subjects who do not have the potential to participate in the government decision-making process except during elections. Although the law mandates transparent government action and upholds RTI, the practices of public entities tend to conflict with this.

The purpose of this report is to analyze, as broadly as possible, the different factors that favor or hinder the implementation of transparency and access to public information. This study attempts to provide a dynamic vision of the state of transparency and RTI in Peru by examining the legal framework and its application by public officials responsible for fulfilling the different obligations as set forth in the laws that regulate this fundamental right as well as individuals exercising this right, with an emphasis on results or impact achieved.

This study examines legal data, including laws, regulations, directives, and jurisprudence as well as literature on the subject, including press and academic articles, reports, working documents, and other sources. To complement this information, the author interviewed current and former officials and public servants as well as members of nongovernmental organizations that work in this area.

This report presents an overview of the key factors and trends that influence the effective implementation of RTI. It is divided into five sections. The second section reviews the process of adopting RTI legislation. The third section examines core issues in the discussion of legislation on RTI and transparency. The fourth part of the report looks at key actions adopted by the government to implement and comply with the legislation. Finally, the fifth section offers an analysis of the effective exercise of RTI.



## 2. Review of Legislation on Access to Public Information

The 1979 Peruvian Constitution did not expressly mention RTI; because of this, the right had to be inferred from the law recognizing the right to freedom of expression, and, specifically, to seek and receive information. Nevertheless, there were other legal references to RTI during the effective period of the 1979 Constitution, although they were insufficient, unsystematic, and limited to specific areas or topics.

One of these laws was the 1984 Organic Law of Municipalities, which regulated the participation of citizens in local government. In so doing, it established that one way to achieve participation was through the use of information that should make available by municipalities.<sup>3</sup> The regulations for the Law on Administrative Simplification, adopted by Supreme Decree No. 070-89-PCM on September 2, 1989, established that users had the right to access information about the public activities of government bodies that they were obligated to provide.<sup>4</sup>

Subsection (5) of Article 2 of the 1993 Constitution recognized RTI for the first time as an autonomous, fundamental right.<sup>5</sup> The initiative came from the official government party, Nueva Mayoría–Cambio 90 (NM-C90) and received support from other political groups represented in the Democratic Constituent Congress (CCD), particularly members its constitutional committee.

It is ironic that the political movement of the government responsible for the self-coup of April 1992 would be the one to propose the incorporation of RTI as an autonomous, fundamental right. One plausible explanation for this is that the government needed a constitution that would serve to legitimize the new administration and that responded in large measure to pressure from the Organization of American States.<sup>6</sup> The absence of legislation on RTI during the 1990s, at a time when the public

administration was characterized by serious acts of corruption,<sup>7</sup> suggests that the government included RTI in the 1993 Constitution solely for cosmetic reasons. The first bill to regulate RTI (draft bill of Law No. 3903-98-CR, submitted August 21, 1998) was not debated much.<sup>8</sup>

After the 1993 Constitution went into effect, another important piece of legislation adopted was the Single Modified Text of the Law on General Standards of Administrative Procedures. It was adopted by Supreme Decree No. 02-94.JUS on January 31, 1994; it circumscribed access to information contained in records on administrative procedures. Along these same lines was Law No. 27245, the Law on Fiscal Prudence and Transparency, adopted on December 27, 1999, which required full disclosure by government bodies of information associated with government fiscal policy; it also provided access to macroeconomic information.

Supreme Decree No. 018-2001-PCM was adopted on February 27, 2001 during the interim government<sup>9</sup> led by President Valentín Paniagua Corazao. The law regulated obligations for transparency and delivery of information by the government bodies mentioned in Legislative Decree No. 757. Basically, this new law established the obligation of these public entities to establish a special procedure to guarantee RTI. In March 2001, also during the Paniagua administration, Urgent Decree No. 035-2001 was enacted, establishing a series of rules to permit access of individuals to public financial information.

In April 2001, Law No. 27444, the Law on General Administrative Procedure, was adopted. Article 110 regulated the *right to petition* or the power of individuals to request information held by government bodies. In May 2001, the Paniagua administration enacted Supreme Decree No. 060-2001-PCM, which created the *Portal of the*

*Government of Peru*, a Web-based tool designed to develop an interactive information system for

citizens and which provides access to consolidated information on services and procedures of government entities. The *Portal of the Government of Peru* was the immediate predecessor of institutional Web sites for the publication of the proactive public disclosure obligations stipulated in LTAIP, such as the *Standard Transparency Portal*. These tools are discussed later in this report.

Another important norm is Law No. 27482, adopted on June 15, 2001, which regulates the publication of the Sworn Declaration of Income, Assets, and Revenue for government officials. Supreme Decree No. 080-2001-PCM of July 8, 2001, established regulations for the law, defining standard formats for declarations. These laws regulate Articles 40 and 41 of the Constitution, which establish proactive public disclosure obligations with respect to sworn declarations of assets and revenues for officials and public servants. Furthermore, through Supreme Decree No. 031-2002-PCM of May 8, 2002, the “General Policy Guidelines for the Development of the Electronic System for Government Procurement and Contracts” was adopted, establishing guidelines for the electronic system for government procurement and contracts (SEACE); this enabled access to information generated during government contracting procedures.

Despite the fact that it was formally recognized in the 1993 Constitution, Congress did not regulate RTI until 2002. Several factors contributed to the adoption of LTAIP (Law No. 27806, the Law on Transparency and Access to Public Information). The Peruvian Press Council (CPP)<sup>10</sup> and the Ombudsman’s Office<sup>11</sup> played key roles by signing an inter-institutional agreement, joining forces to promote the adoption of an information-access law. The CPP, with technical support from the Ombudsman’s Office and in the framework of its *Access to Government Information Project* that began in June 2000, organized a series of meetings to develop guidelines for drafting a law on access to public information and government transparency.<sup>12</sup>

Journalists and media directors, government opposition leaders, and public servants in general were invited to these meetings. The CPP had the

support of the British Council and the international NGO Article 19, helping to finance many of the activities and the participation of national and international experts. A key result from these meetings was the *Lima Principles* document of November 2000, which listed 10 principles of transparency and access to public information to guide legislation and government policies. In an effort to give the *Lima Principles* more institutional support, the document was signed by the OAS Special Rapporteur for Freedom of Expression at the time, Santiago Cantón, as well as by the former UN Special Rapporteur for Freedom of Expression, Abid Hussain.

While the CPP and the Ombudsman’s Office brought together representatives of the armed forces and the national police to participate in several work meetings, officials from both institutions were especially resistant to the idea of exercising RTI in the context of *national defense* and *domestic order*, respectively. For this reason, in April 2002, an addendum to the eighth principle of the *Lima Principles* was signed that developed the contents of the exception of *national security* in military, domestic order, intelligence, and government foreign affairs contexts.

Since its establishment, the Ombudsman’s Office has implemented, through its Bureau of Constitutional Affairs, the promotion and defense of freedom of expression and RTI. For example, in November 2000, in Ombudsman Report No. 48, the Ombudsman’s Office urged the Congress to pass a law to regulate RTI, as recognized in Subsection 5 of Article 2 of the Constitution, and proposed a set of guidelines to that end.<sup>13</sup> Also of note is the support provided by the Press and Society Institute (Instituto Prensa and Sociedad, IPYS—an organization of journalists) as well as by the Legal Defense Institute (Instituto de Defensa Legal, IDL—whose representatives actively participated in the preparation of the addendum to the *Lima Principles*). Both organizations

contributed by sharing their opinions and proposals at several of the work meetings.

the culture of secrecy from being able to take refuge in vague and imprecise laws.”<sup>17</sup>

A second factor that facilitated the adoption of Law No. 27806 was the context of recovery of

democratic institutions and the fight against corruption that began in late 2000. A video made public on September 14, 2000, showed a top Fujimori advisor bribing a congressman of the opposition to persuade him to join the government party. This proved fertile ground for the development of several initiatives enacted after 2000 to improve government transparency and guarantee RTI, as the previously mentioned laws indicate. These laws were the immediate predecessors of Law No. 27806.<sup>14</sup> Legislators of diverse political viewpoints supported RTI.<sup>15</sup>

Most of the draft legislation was submitted by representatives of the new government administration of the Perú Posible party (2001–06), which had made campaign promises to fight corruption. This objective was shared with the other Fujimori opposition groups, such as the APRA party, whose representatives developed draft bills. A multiparty group called the Congressional Working Group on Transparency of Government Action and Citizen Participation was formed in 2002.<sup>16</sup> This group reviewed and analyzed draft bills and prepared substitution text. In addition to the participation of the CPP and the Ombudsman’s Office, the working group convened the IPYS. The Ombudsman’s Office stated about the law:

“...it was the result of a unique effort of the Congress since it received and accepted suggestions for its preparation from a variety of institutions. At the level of civil society, for example, the Peruvian Press Council and the Press and Society Institute made key contributions. Likewise, the Ombudsman’s Office provided several reports and opinions on this issue to the Congress. All of this contributed to a law to promote citizen access to information and transparency in public bodies. To this end, many of its provisions attempted to go into great detail since the goal was to impede

The chairwoman of the Working Group, Ana Elena Townsend, demonstrated her commitment to the issue and encouraged broad-based participation of organizations interested in promoting the law. The working group took into account the consensus achieved at the work meetings organized by the CPP and incorporated many areas of agreement in the draft legislation that eventually became the LTAIP. After being approved by the Congressional Committee on the Constitution, Regulations and Constitutional Accusations, the bill was passed by Congress, becoming Law 27806, the Law on Transparency and Access to Public Information (LTAIP), on August 3, 2002; it went into effect in January 2003.

Although this law incorporated many of the criteria proposed by the CPP, IPYS, and the Ombudsman's Office as well as the agreements achieved by the Congressional Working Group on Transparency of Government Action, at the end of the legislative process, some restrictions were introduced that limited RTI. For example, a special procedure was established for requesting information from the armed forces and national police, and limitations were incorporated in the exceptions concerning national security. In September 2003, in response to this situation, the Ombudsman's Office filed a petition of unconstitutionality against those provisions. The Congress subsequently repealed them through Law No. 27927 of February 4, 2003. In March 2003, this action led the Constitutional Tribunal to declare that it had no grounds to issue a ruling in the case. As a result of this modification and in an effort to consolidate in a single text the reforms of Law No. 27927, the executive branch adopted, through Supreme Decree No. 043-2003-PCM of April 24, 2003, the Single Modified Text (TUO) of Law No. 27806.<sup>18</sup> On August 7, 2003, the regulations of the TUO of Law No. 27806 were adopted through Supreme Decree No. 072-2003-PCM in accordance with the mandate established in the first of the Transitory, Complementary and Final Provisions of the TUO of Law No. 27806.<sup>19</sup>

## 3. Key Issues Surrounding the Debate on Law No. 27806

This section briefly examines some of the issues raised during the debates about the passage of LTAIP. These issues continue to be subjects of discussion and disagreement.<sup>20</sup> The main content of LTAIP is provided in Annex 1.

### 3.1. Legal Provisions on Exceptions, Particularly Those Associated with National Security

A key aspect of all laws that attempt to recognize, develop, or guarantee RTI is the regime of exceptions that define the limits of the exercise of this fundamental right. An initial controversy emerged concerning the types or categories of exceptions that should be established. In the functioning of public bodies, several categories of exceptions existed, although there were no clear criteria for their existence. The following were often cited, among others: *secret*, *reserved*, *confidential*, *top secret*, and *highly confidential*. In some cases, these categories were recognized in sector regulations (in other words, by the same bodies that applied them).

There were early discussions about whether the number of categories should be maintained or reduced. It was finally decided that the categories should be reduced to the minimum possible because they limit the exercise of a fundamental right and the principle of transparency. It was agreed that only the following categories would remain: *secret*, *reserved*, and *confidential*.

Another area of discussion concerned the specific contents of each category. Initially, members of the armed forces and the national police rejected the idea that access would be permitted to information associated with any aspect of national security and domestic order. After several meetings organized by the CPP, members of the armed forces and national police were persuaded that they needed to demonstrate a willingness to be transparent in light of their negative public image that resulted from high-

ranking officials from these institutions the participating in the Fujimori government, and specifically, in cases of corruption.

This process led to the signing of an addendum to the eighth principle of the *Lima Principles* in April 2002; it included the exception of *national security* in the context of the military, domestic order, intelligence, and foreign affairs. The CPP, in cooperation with the Ombudsman's Office and IDL, made important contributions to this effort.

### 3.2. Time Limits for Responding to Requests for Information

Specialists, representatives of the Ombudsman's Office, and journalists who participated in the meetings organized by the CPP defended the establishment of short time limits for responding to requests to access information. But, in general, public officials preferred longer time limits, like the 30-work day deadline for concluding administrative procedures, in accordance with Law No. 27444, the Law of General Administrative Procedure.

Officials argued in favor of this last option, citing the difficulties involved in locating certain information in the institutional archives or in requesting the information from other areas; they also cited the large number of requests to be processed. In response to these arguments, representatives of the Ombudsman's Office and journalists claimed that delivering information long after it was requested could render it useless or untimely for those soliciting it. For this reason, they argued, short time limits should be established. They also pointed out that short deadlines could serve as positive incentives for improving information storage and organization as well as for improving internal information-flow procedures. They asserted that every request should be evaluated to determine if an extension to the time limit was justified and that this potential situation could be regulated. The final

bill set the regular deadline for responding to requests at seven working days; an exceptional deadline was established that provided five additional working days for cases requiring more time, as long as the individual requesting the information was notified before the regular deadline.

providing public services or specifically, if public information held by a company could be

### **3.3. Cost of Information Requests**

The cost of requests to access information was another disputed issue. Public servants participating at the meetings convened by the CPP defended the inclusion of items like paper for photocopying requested documents, the salaries of individuals assigned to respond to information requests, and, all general costs directly or indirectly related to reproducing requested information. There were two reasons given for this position: (1) it would discourage “excessive” or numerous requests; and (2) it would transfer the costs of requests to users. The government, it was asserted, while it was obligated to deliver information, was not obligated to finance requests for information from citizens; the Constitution should have stipulated that individuals requesting information would have to cover these costs.

For their part, experts, Public Ombudsman representatives and journalists argued that the disproportionate costs of these information requests would, in practice, impede or discourage the exercise of this fundamental right, transforming it into only a symbolic right. Therefore, the “cost” of the request that, in accordance with Article 2, Subsection 5 of the Constitution, should be assumed by the user, should also be restrictively interpreted. The cost should be limited to “cost of reproduction” of the information; it should not include other expenses normally assumed by the government, like salaries and infrastructure, as examples. Eventually, these criteria were adopted in LTAIP and its regulations.

### **3.4. Inclusion of Private Companies Providing Public Services in LTAIP**

Another controversial issue was whether or not LTAIP should apply to private companies

requested by the government bodies that regulate their activity (in other words, in an indirect manner). This led to a technical discussion about which methods were legally appropriate and which would result in the fewest future legal problems. Ultimately, it was decided that LTAIP should apply to these companies, but the exercise of RTI was limited to aspects of the company associated with the public services it provided, their rates, and their administrative operations. a reasonable limitation since it only refers to the areas of public interest that these private companies manage.

### **3.5. The Capacity to Fulfill Proactive Public Disclosure Obligations Through Web Sites**

The limited development of Web-based technology in local governments (the country has more than 1,800 local government administrations) led to a discussion regarding the pertinence of establishing a set of proactive disclosure obligations that had to be fulfilled through institutional Web sites. There was a problem both with a lack of Internet service and limited technical capabilities of staff to administer institutional Web sites. In response, it was proposed that public disclosure obligations via institutional portals should only be applicable to provincial governments (there are approximately 195 countrywide). However, it was decided that the obligation would apply to all local governments, although it was stipulated that the Web sites could be developed progressively.

Finally, a discussion ensued on the possibility of creating an oversight authority to ensure compliance with Law No. 27806, but this idea was discarded rapidly because citizens tend to reject the creation of new government institutions, concerned that they expand government bureaucracy. To avoid a lengthy debate that could endanger the adoption of LTAIP, it was decided not to make this measure a priority.

## 4. Implementation of Legislation on Transparency and Access to Public Information

This section examines the process for implementing legislation on transparency and access to public information. It first looks at the norms that complement the regime for access to information established in LTAIP. This section reviews the functions and duties of the different public entities that have responsibilities related to information access. Third, it examines the technical and organizational capacity of public bodies to manage information. Finally, this section discusses some key considerations for implementing the legislation, such as training of public servants.

### 4.1. Complementary Norms for Compliance with LTAIP

Complementary norms of LTAIP include both legal rules and regulations. Some of the main complementary norms are discussed in the two subsections below. More detailed information on these norms appears in Annex 2.

#### 4.1.1. Legal Rules

The first rules of note are compiled in the Code of Constitutional Procedure, adopted through Law No. 28237 of May 31, 2004, and which went into effect in December 2004. The Code of Constitutional Procedure regulates the action of *habeas data* to defend RTI in the justice system.<sup>21</sup> When an entity subject to LTAIP faces a RTI violation, the only administrative requirement to begin the review procedure is a written information request that includes a specific date and the refusal of the entity to provide the information or the lack of response to the request within the time limit established by law.

Additionally, the Code of Constitutional Procedure establishes a single time limit of 10 workdays to respond to information requests. Thus, it extends the regular deadline stipulated in



LTAIP by three workdays but eliminates the extraordinary deadline of an additional five workdays. However, despite the definition of this new time limit, the regular and extraordinary deadlines established in LTAIP are still frequently applied. In many cases, this is because the public servants responsible for responding to requests for information are unfamiliar with the Code of Constitutional Procedure.

Finally, one provision of the Code of Constitutional Procedure has not generated in practice the beneficial effects for the protection of RTI that were expected. In the case of *habeas data* proceedings, the provision calls for the elimination of mandatory legal representation. This norm was intended to help individuals whose RTI had not been respected by a government body defend their right of access in the justice system.

But, in practice, this has not occurred. According to IPYS, which has extensive experience making requests to and filing complaints against the government, filing an action of *habeas data* without a legal defense hurts the plaintiffs. This is because litigation requires a certain level of specialization in the application of procedural norms. Further, judges tend to require excessively bureaucratic procedures that are not common knowledge among citizens. Finally, government bodies are defended by public prosecutors, thereby generating a technical imbalance in the litigation, to the detriment of plaintiffs.<sup>22</sup>

Another important norm is Law No. 28664, Law of the National Intelligence System (SINA) along with the National Intelligence Directorate (DINI), adopted on January 4, 2006. One negative aspect of this law is that it establishes longer time limits than LTAIP for the declassification of information: 20 years for *secret* information, 15 years for *reserved* information, and 10 years for

*confidential* information. According to LTAIP, *secret* information is declassified after five years; *reserved* and *confidential* information are declassified after the reasons for their classification no longer exist. Therefore, intelligence information classified as *secret* can be made public only after four presidential terms have

passed; information classified as *reserved* or *confidential* can be kept from public access even after the reasons for their classification cease to exist, for 15 and 10 years, respectively. This is clearly a setback in terms of transparency of the military sector and represents a return to the inclination toward secrecy that has traditionally been present in this sector. The five-year time limit for categorizing information as *secret* in LTAIP does not prevent the extension of this exception past the deadline, as long as it is deemed justified; therefore, there is no reason for having modified this regime.<sup>23</sup>

A third key norm is Law No. 29091 of September 26, 2007 that modified Paragraph 38.3, Article 38 of Law No. 27444 (Law on General Administrative Procedure). It reiterates the proactive public disclosure obligations of entities subject to the law by mandating that public bodies must publish their management tools, guidelines, directives, and regulations on the *Portal of the Government of Peru* and on their own institutional Web sites, and they must specify that the information is of an official nature and worth. It also establishes that responsibility for publishing the information rests with the public servant in charge of the transparency portal. Moreover, it states that not fulfilling these functions is a serious offense punishable by dismissal. The law mandates that the Comptroller General of the Republic is responsible for the timely control over due compliance with public disclosure obligations.

Fourth is Legislative Decree No. 1031 of June 24, 2008, which aims to improve the efficiency of government business activities. The fifth of its Complementary, Transitory and Modifying Provisions regulates the concept of *trade secret*. According to Subsection 2 of Article 17 of the decree, a *trade secret* is a valid exception to RTI, which is covered by *confidential* information. While *trade secret* is defined in a law that regulates government business activity, it can also be applied to protect trade secrets of private companies, in accordance with LTAIP.

Finally, Law No. 29733, the Law on the Protection of Personal Data (LPPD), adopted on July 3, 2011, also deserves mentioning. Although this law refers to the fundamental right to protect

personal data recognized by the Constitution, it contains provisions that should be harmonized with LTAIP. For example, the income of public officials is considered *public* information in LTAIP but is *sensitive* information in LPPD. This difference has already generated discrepancies among government bodies as to whether or not the salaries of public servants are public information. In addition, the LPPD created the National Authority for the Protection of Personal Data, which has several functions associated with the implementation of and compliance with the law. The fact that no such mechanism exists for RTI could lead to the predominance of the right to protect information over RTI.

#### 4.1.2. Regulatory Norms

This subsection describes key general regulatory norms; in other words, ones that are applicable to all bodies subject to LTAIP. Many public entities have issued regulations and directives, but these are procedural or organic provisions about the general obligations of each entity. General regulatory norms include the following:

- Regulations of Law No. 29091, adopted through Supreme Decree No. 004-2008-PCM of January 18, 2008. This norm develops some aspects of the law that establish the obligation of government bodies to publish a variety of legal provisions on the Portal of the Government of Peru and on institutional Web sites.
- Regulatory norms adopted by the Office of the President of the Ministerial Cabinet (PCM):
- Ministerial Resolution No. 398-2008 of December 2, 2008, which adopted Directive No. 004-2008-PCM/SGP, *Guidelines for the Standardization of the Content of Transparency Portals of Public Entities*. This norm contributes by establishing guidelines to ensure that transparency portals are

developed and made available to citizens using standard formats and contents in order to eliminate the differences that existed that did not favor public access.

- Ministerial Resolution No. 126-2009-PCM of March 25, 2009, which adopted *Guidelines for*

*the Accessibility of Web Sites and Applications for Mobile Telephony*. This technical norm was designed to improve the accessibility of the Web sites of government bodies.

- Supreme Decree No. 063-2010-PCM of June 3, 2010, which approved the implementation of the *Standard Transparency Portal*.
- Ministerial Resolution No. 200-2010-PCM of June 24, 2010, which adopted Directive No. 001-2010-PCM/SGP, *“Guidelines for the Implementation of the Standard Transparency Portal in Public Entities.”*

These regulatory norms favor RTI in that they contribute to the increase in compliance with the proactive public disclosure obligations for entities subject to LTAIP. They also promote access to information through institutional Web sites.

Also of note is Ministerial Resolution No. 301-2009-PCM of July 9, 2009, which adopted Directive No. 003-2009-PCM/SGP, *Guidelines for the Report on Requests for Access to Information to Be Submitted to the Office of the President of the Ministerial Cabinet.* These guidelines seek to improve the collection and quality of information from government bodies to the PCM on processed and unprocessed requests to access information. This information serves as input for the executive branch office's annual report, which is submitted to Congress in accordance with Article 22.

Finally, there are two specific, complementary regimes for applying the general principles of transparency and the list of exceptions. The first, a special regime regulated by Law No. 27482, adopted on June 15, 2001, calls for public disclosure of sworn declarations of income, assets, and revenues of public servants as well as access to these declarations. Furthermore, the regime of transparency and access to information on government contracts and procurement, established by Supreme Decree No. 031-2002-PCM (May 8, 2002), set guidelines for the development of SEACE (an electronic system of government procurement and contracts) and by Legislative Decree No. 1017, which adopted the Law on Government Contracts.

## 4.2. Entities and Officials Responsible for Complying with LTAIP

This subsection identifies the public officials and entities responsible for complying with the provisions of LTAIP and complementary norms, or those that, without having explicit legal responsibilities, have assumed this responsibility as part of their overall functions. Table 1 lists these entities and their functions.

### 4.2.1. Responsible Parties within the Entities Subject to LTAIP

LTAIP establishes various levels of responsibility:

- Individuals responsible for adopting the measures necessary to guarantee the exercise

of the RTI as part of their duties. This is the responsibility of the highest ranking official of the entity [RLTAIP paragraph (a), Article 3].

- Three employees<sup>24</sup> designated by the director of the entity [paragraphs (b) and (c) of Articles 3 and 5 of the RLTAIP] will be responsible for:
- Providing information [in other words, for responding to requests to access public information (Article 8 of LTAIP)].
- Resolving first appeals when the possibility of this is provided for and when the individual requesting information chooses this mechanism [RLTAIP, paragraph (e), Article 5].
- Managing portals [in other words, the employees responsible for fulfilling the proactive disclosure obligations of the entities (Article 5 of LTAIP)].

**Table 1. Entities and Officials Responsible for Ensuring Compliance with RTI Legislation**

Entities Official/s Responsible		Functions
Entity subject to LTAIP	Director of the entity	Adopts the measures necessary to guarantee the exercise of RTI in the entity.
	Three employees designated by the entity director (in the case of entities with decentralized offices, public servants can be appointed at each branch)	An employee responds to information requests. Another employee resolves the petitions for appeal when provided and in the case the party requesting the information chooses this mechanism. Another employee is responsible for the portal.
Office of the President of the Ministerial Cabinet	Public Administration Secretariat	Formulates, coordinates, supervises, and evaluates policies of access to public information, promotes government ethics, transparency, and citizen oversight.
	Coordination Secretariat	Collects from all public entities data on processed and unprocessed information requests, in accordance with LTAIP. Prepares the annual report to be submitted to Congress.
Ombudsman's Office	Bureau of Constitutional Affairs	Establishes institutional lines of action with respect to transparency and access to public information.
	Decentralization and Good Governance Program	Establishes institutional guidelines for responding to complaints concerning RTI. Prepares reports on transparency and RTI legislation.
	Program of Public Ethics, Corruption Prevention, and Public Policies	Raises awareness of and trains public servants and civil society in transparency and access to public information.
	Public Ombudsman's branch offices nationwide	Provides coaching and oversight in the decentralization process, with an emphasis on the incorporation of best governance practices in regional and municipal government administrations, including transparency and respect for RTI. Publishes periodic reports on compliance with proactive disclosure obligations of regional governments via their Web sites. Raises awareness of and trains public servants and civil society on transparency and access to public information. Monitors public policy and promotes ethics and the prevention of corruption in the public administration. Responds to complaints and consultations of citizens with respect to RTI. Raises awareness of and trains civil society and public servants.
Comptroller General of the Republic	Institutional control offices	Ensures compliance with the obligations established by LTAIP in accordance with the Annual Oversight Plan. Promotes the establishment of disciplinary measures against officials who fail to fulfill these obligations.

Source: Prepared by the author.

In accordance with the organization of each entity, the duties of the responsible parties stipulated by LTAIP include:<sup>25</sup>

- Receiving requests (physically, via the web, or both).
- Forwarding requests to pertinent parties, sending to the corresponding area, and searching for the information in the central archive or in external storage areas.
- Following up with requests (for example, with a computer notification system, by e-mail, or by telephone).
- Conduct pertinent consultations with the legal area if necessary.
- Delivering information to individuals requesting it (physically or through the web).
- Overseeing and updating the Web site.

As discussed at the Third National Conference on Access to Public Information (October 2010), most government bodies do not have internal policies to ensure compliance with the obligations stipulated in LTAIP for each entity (for example, a regime of internal responsibilities to respond to information requests). Internal policies are important because they help ensure that the obligations of the legislation on access to public information are adapted to the characteristics of each entity and promote their compliance within entities.

Although LTAIP stipulates that noncompliance with its contents constitutes a serious offense and may result in a criminal charge of abuse of authority, compliance ultimately depends on the director of the entity. An example of this is Mayoral Resolution No. 1364-2010-MPT of December 16, 2010, by which the Mayor of the Provincial Municipality of Trujillo suspended a municipal official for 30 days without pay for failing to respond in a timely fashion to a request of access to public information.<sup>26</sup>

Failure to comply with the obligations may result in different types of sanctions. Criminal sanctions have included the sentence handed down on September 17, 2008, by the Criminal Court of the Superior Court of Justice of Moquegua–Ilo (File No. 2007-328—Acum. 2007-398). The court ruled

that two officials of the Provincial Municipality of Ilo were criminally responsible for committing the offense of omission and delay of functions against the public administration, as defined in Article 377 of the Criminal Code,<sup>27</sup> for having responded to a request for information after the deadline and for having failed to deliver part of the information requested. However, the court ruled for a one-year suspended sentence, during which time the defendants had to abide by rules of conduct. The court also awarded civil damages to the plaintiff—the individual who requested the information—in the amount of 1,500 nuevos soles.<sup>28</sup> The ruling referred to the crime of omission, refusal, or delay of functions rather than to the crime of abuse of authority defined in Article 376 of the Criminal Code,<sup>29</sup> which Article 4 of LTAIP expressly stipulates is the applicable offense in the case of noncompliance with the obligations established in that law.

Administrative and criminal sanctions for RTI violations are not rules, however. Citizens affected by noncompliance have three channels for demanding restitution of their RTI (notwithstanding the administrative appeal which, after the Code of Constitutional Procedure went into effect, became optional for the affected party): (1) appeal to a superior of the employee that did not respond to the request; (2) file a complaint with the Ombudsman’s Office; and/or (3) file a legal suit through a constitutional action of *habeas data*. However, this requires reporting the incident and maintaining the complaint over time, which is generally an onerous task, especially in the case of the first two options. At any rate, even if these claims are accepted, their resolution will be limited to the parties involved and will not be applied as a general rule except in the case of legal proceedings that reach the Constitutional Tribunal and after this entity declares that its ruling is binding.

Moreover, in the case of an action of *habeas data*, an individual can only claim that his or her RTI was affected because his or her request for information had not been resolved. To lodge a complaint of noncompliance with proactive public disclosure obligations requires filing out a compliance petition, the processing of which implies a higher level of specialization than the

*habeas data* action, given that the requirements of this constitutional procedure, in addition to those of the Constitution and the Code of Constitutional Procedure, were developed by the jurisprudence of the Constitutional Tribunal.

#### **4.2.2. Office of the President of the Ministerial Cabinet**

PCM is the ministry responsible for coordinating the national and sectoral policies of the executive branch. It coordinates with the other branches of government, constitutional entities, regional governments, local governments, and civil society. The PCM's Public Administration Secretariat and Coordination Secretariat have RTI and proactive public disclosure obligations. Both secretariats report to the General Secretariat and are organized in technical teams to perform their assigned duties.

The main mission of the Public Administration Secretariat (SGP) is to coordinate and oversee the process of modernizing the public administration. Its tasks are related to the functioning and organization of the state, administrative simplification, ethics, and transparency in accordance with the norms of government modernization, rationalization, decentralization, internal control, and the government code of ethics. To fulfill these functions, it is divided into 12 thematic areas. The SGP is organized into four work groups or technical components: (1) modernization; (2) structure and operations; (3) administrative simplification; and (4) ethics and transparency.

The SGP inherited the ethics and transparency functions from the former National Anticorruption Office (ONA). The ONA was created through the Supreme Decree No. 085-2007-PCM of October 19, 2007. Its anticorruption functions included "developing measures to prevent corruption that especially affects access to public information, transparency, and citizen oversight."

The ONA was short-lived, closed through Supreme Decree No. 057-2008-PCM on August 15, 2008.<sup>30</sup> This decree modified the Regulations for the Organization and Functions of the PCM, specifically the articles that regulate the functions

of the Public Administration Secretariat. The SGP was charged with: "proposing norms and adopting directives on government functioning and organization, ethics, and transparency."

The SGP exercised this function in the framework of its *Ethics and Transparency* technical component. Specific SGP resources allocated to activities in transparency and access to information are very limited. From 2008–10, ethics and transparency functions were assigned to two SGP employees.<sup>31</sup> Their work focused on the promotion of regulatory norms on specific issues related to the proactive public disclosure obligations of the entities subject to LTAIP.<sup>32</sup>

The SGP, with technical assistance from the PCM's National Government Office of Electronics and Computing (ONGEI), developed the *Standard Transparency Portal*.<sup>33</sup> This portal is designed to resolve the problem of diverse formats, inadequate content, duplicate information, and outdated data on the institutional portals referred to in LTAIP. This is an effort to facilitate the ordered, rapid, and friendly access to the information that public entities are obligated to publish. The portal is an important tool for citizen access to a large volume of relevant information. Because the resources for this work were limited, the German cooperation agency, GTZ provided financial support for the design and development of the portal. The *Standard Transparency Portal* was designed based on the following criteria:

- Use of friendly, informative icons
- Use of clear language that can be easily understood by users
- Presentation of budget information with statistical graphs
- Inclusion of comprehensive information on government contracting
- Listing of government suppliers
- Inclusion of information on investment projects of government bodies<sup>34</sup>

The *Standard Transparency Portal* was implemented in two phases.<sup>35</sup> The SGP organized a program for the implementation of the *Standard Transparency Portal* to provide technical assistance to government bodies nationwide.<sup>36</sup> To this end, through October 2010, four technical

assistance meetings were held in central government offices to train 376 participants. Regional technical assistance meetings were also held in Cajamarca, Cañete, Ica, Lambayeque, La Libertad, Huancavelica, Junín, Moquegua, Tacna, Pasco, Huánuco, Piura, Tumbes, Amazonas, San Martín, Loreto, and Arequipa with a total of 633 participants. By October 2010, 13 ministries, 32 decentralized public agencies, 12 programs, 2 projects, 9 regional governments, and 8 local governments had implemented institutional Web sites.<sup>37</sup>

costs themselves, as was the case for the Puno regional government.

Although significant progress was made in achieving the objectives of the first phase, the implementation of the *Standard Transparency Portal* is now experiencing some difficulties.<sup>38</sup> In 2011, the change in municipal, regional, and central government officials affected the continuation of this process. Many local and regional government officials trained in the implementation of this tool are no longer in office.<sup>39</sup> Moreover, the two officials who launched and coached the implementation of this tool in the SGP are no longer employed at the PCM. Some experts interviewed for this report have identified problems with the integration and updating of some of the databases that provide input for the *Standard Transparency Portal*. Basically, a few government bodies are unwilling to share their databases or to permit other entities to use them.

The difficulties mentioned, in addition to others, like the lack of updated information on portals, largely reflect the lack of political will to implement the Standard Transparency Portal. In many cases, economic resources are not needed; what is lacking is a decision by the highest-ranking officials in each government body to fulfill the objectives that justified the creation of the institutional portals.

In addition to providing technical assistance with the *Standard Transparency Portal*, between 2009–10, the SGP attempted to train the national officials responsible and to build their RTI capacities. There are few available resources for these activities, however, for which reason the entities requesting the training had to cover the

The PCM's Coordination Secretariat (SC) is responsible for all functions associated with multisectoral action and relations with other government agencies. It is organized into four teams: (1) national policies; (2) multisectoral commissions; (3) regulations; and (4) transparency. This last team is responsible for "collecting information from all entities of the public administration on resolved and unresolved requests for information, in accordance with the Law on Transparency and Access to Public Information, and for preparing the annual report to be submitted to Congress."

To this end, it requires information on resolved and unresolved requests from all entities subject to LTAIP. This Secretariat is responsible for preparing the annual report that the PCM submits to Congress, in accordance with Article 22 of LTAIP. A later section of this document discusses these reports and other data to evaluate the exercise of RTI.

It is evident that neither the SGP nor the SC have the specific authority to oversee the level of governmental respect for RTI. Each exercises only limited functions in this regard: the establishment of technical standards through directives or guidelines; coordination, training, or coaching; and consultative functions, mostly regarding proactive public disclosure obligations. Moreover, these are third-level offices in the hierarchy of institutions that implement these (along with many other) activities in the context of limited human and economic resources available for achieving desired results.

#### **4.2.3. The Ombudsman's Office**

Since its founding, the Ombudsman's Office has worked to promote transparency and access to public information in the framework of its constitutional functions. The Ombudsman's Office played a key role in the preparation and adoption of LTAIP. In accordance with Articles 161 and 162 of the Constitution, and Article 1 of Law No. 26520 (Organic Law of the Ombudsman's Office), this institution is an autonomous constitutional body of persuasive control; in other words, its authority does not involve the use of coercion. Instead, it operates as a magistracy of persuasion.

The Ombudsman's Office has three broad areas of responsibility: (1) the defense of constitutional and fundamental rights of the individual and the community; (2) oversight of compliance with the functions of the government administration; and (3) adequate delivery of public services. To exercise these responsibilities, the Ombudsman's Office is organized into seven specialized bureaus<sup>40</sup> and seven thematic programs.<sup>41</sup> The Ombudsman's Office exercises these functions nationwide through 28 public defense offices and 10 service modules.

The Ombudsman's Office has several areas of responsibility, one of which is associated with RTI and government transparency implemented mainly through the Bureau of Constitutional Affairs; the Government Administration Bureau's Decentralization and Good Governance Program; and the Program for Public Ethics, Corruption Prevention, and Public Policies. In this area, the Ombudsman's Office performs the following functions:

- Receives citizen complaints of RTI violations.
- Publishes reports on specific aspects of legislation on transparency and access to information.<sup>42</sup>
- Prepares periodic reports on compliance with proactive public disclosure obligations by regional governments through their portals. These reports have been produced since January 2004 and, beginning in 2008, have included the supervision of the Web sites of local governments located in departmental capitals.<sup>43</sup>
- Raises awareness of and trains public servants and civil society in transparency and access to public information.<sup>44</sup>
- Monitors public policies on transparency and access to information, promotion of ethics in government, and prevention of government corruption.

While all of these activities significantly contribute to the upholding of RTI and proactive public disclosure obligations, the capacity of this institution to ensure ongoing compliance with LTAIP is inadequate for the following reasons: (1) it has several areas of responsibility and activities in addition to those associated with RTI and



transparency; (2) activities in the area of access to information and transparency focus on specific aspects of these issues and do not address them as a whole; (3) the maintenance, expansion, or strengthening of this work area depends on institutional priorities and/or the will of its directors, making them subject to change with new management; and (4) the office issues recommendations but does not have direct coercive authority even though it is authorized to promote constitutional proceedings.

Despite these limitations, the Ombudsman's Office has significant institutional advantages for promoting the implementation of and effective compliance with LTAIP. First, it enjoys a high level of legitimacy and credibility, enables it to convene broad sectors of the population as well as to form strategic partnerships with social organizations to defend rights and ensure that government bodies fulfill their duties.<sup>45</sup> In addition, the Ombudsman's Office operates in a decentralized manner in provincial offices and mobile units. This enables the institution to obtain information from the areas under its jurisdiction and to extend the impact of its activities throughout the country.

Finally, the successful exercise of persuasive authority (the *magistracy of persuasion*) by the Ombudsman's Office has enabled it to exercise leadership that is reflected in high levels of social acceptance. The persuasive, noncoercive nature of its decisions, far from being a disadvantage, significantly contribute to the achievement of its institutional objectives because they allow the office to exercise its influence in a variety of ways (through public declarations or reports, for example) in its efforts to promote good government practices and respect for fundamental rights.<sup>46</sup> Given these strengths, the Ombudsman's Office is called upon to play a key role in the implementation of and compliance with LTAIP.

#### **4.2.4. Office of the Comptroller General**

The Office of the Comptroller General (CGR) is the highest-ranking body of the National System for Government Control, which is responsible for overseeing the legality of the implementation of the public budget, public debt operations, and the acts of the government bodies under its jurisdiction. Each public body has an institutional

control office that reports to the CGR and that normally conducts government monitoring activities. The CGR oversees compliance with obligations derived from legislation on RTI and transparency in the Annual Control Plan.<sup>47</sup> The CGR attempts to balance its obligations to oversee transparency and RTI with its other legal obligations.<sup>48</sup>

Law No. 29091 mandates government bodies publish a series of management tools on their institutional Web sites and stipulates that the CGR is the institution responsible for supervising and controlling the *due* and *timely* compliance with the law. The law reinforces and defines proactive disclosure obligations, many of which were previously mentioned in LTAIP. This law is innovative in that it expressly appointed the CGR as the oversight body over compliance with these obligations. Based on this law, some experts on access to information and transparency have recommended that the CGR be assigned the function of monitoring or supervising compliance of government bodies with LTAIP. They understand that compliance with LTAIP directly contributes to the prevention of corruption and to the adequate use of public resources that, in accordance with the principle of legality, the CGR is responsible for overseeing. Thus, the CGR, through its institutional control offices (OCIs), oversees compliance of the obligations established by LTAIP and promotes the application of disciplinary measures against public servants who fail to comply with these obligations.

Nevertheless, there are two reasons why it is not plausible for the CGR to become the guarantor institution for compliance with LTAIP. First, the CGR focuses its institutional efforts on fulfilling its constitutional and legal mandate (on monitoring the legality of public spending). Second, through its OCIs, the CGR monitors government institutions that have limited human and material resources; therefore, the scope and intensity of monitoring mostly depends on the capabilities and resources of each OCI. If the CGR were to monitor compliance with LTAIP obligations, it would not have enough time or resources to fulfill its legal and constitutional mandate.

Further, many LTAIP obligations require periodic compliance and should be monitored accordingly. The CGR must also fulfill its supervisory obligations in Law No. 29091 and other oversight obligations established in laws that do not necessarily take into account its institutional capabilities. For example, Article 8 of Law No. 29060, the Law on Administrative Silence, establishes that the OCI of public bodies must oversee compliance with deadlines, requirements, and procedures to ensure that they are implemented in accordance with the corresponding Single Ordered Text for Administrative Procedures (TUPA). Likewise, the OCI are required to prepare and submit to the entity director a monthly report on the status of compliance with administrative procedures as well as on responsibilities identified for non-compliance with the Law on General Administrative Procedure, the Law on Administrative Silence, and on those associated with complaints by citizens. It is evident that fulfilling this obligation as well as those originating from RTI legislation would be beyond OCI capabilities.

In sum, although the CGR can contribute to efforts at ensuring compliance with LTAIP obligations, it can only continue to partially do so in a way that is subordinate to the fulfillment of core CGR functions. In addition, OCI human and material resource capabilities must be taken into account when planning annual oversight actions and activities.

#### **4.2.5. Debate on the Need for an Independent Administrative Authority to Oversee Compliance with LTAIP Obligations**

The capability restraints for collecting, administering, and disseminating information associated with the limitations of the archive system as well as the absence of an institution with the capacity or authority to ensure ongoing, full compliance with LTAIP obligations, affect the level of implementation and exercise of RTI.

Civil society leaders and experts participating in the Third National Conference on Access to Public Information<sup>49</sup> organized by the IPYS in October 2010 concluded that: “An autonomous/independent technical body is needed to promote and

guarantee government transparency and the right of access to public information. This body will also exercise advisory functions in the government.”<sup>50</sup>

During the Fourth National Conference on Access to Public Information (September 21–22, 2011), Dr. Eduardo Vega Luna, the Interim Ombudsman, called for the creation of an independent authority to guarantee and monitor compliance with LTAIP obligations. This proposal was well received at the conference during a thematic roundtable organized to discuss the proposal.<sup>51</sup> Roundtable participants justified the proposal based on the following considerations:

- This issue is a priority in the region (Mexico and Chile have made advances in this area)
- The PCM reports are inadequate
- Information management is poor

This authority should have the following characteristics:

- Autonomy, independence
- Technical specialization

This authority would have the following functions:

- Conduct research to improve public policy
- Supervise and ensure compliance with LTAIP
- Provide training in and promotion of RTI
- Resolve citizen complaints in administrative proceedings (to avoid taking the complaint to the justice system)
- Resolve consultations concerned with contradictions in the law
- Issue rulings in administrative proceedings
- Support archive management and administration

Participants also mentioned some challenges in achieving the objectives of the proposal. These included the need to generate the political will to create the authority, to have an adequate budget, and to determine the most appropriate institutional design (for example, whether it should be a collegiate body or a single office and what level of autonomy it should have) and its institutional position within the government structure. This debate demonstrates how the experience of implementing a law can build consensus concerning its modification with a view

to improving levels of compliance. While forming a specific oversight body for LTAIP was almost unanimously rejected during the debate prior to the law's adoption, there now appears to be significant agreement with respect to the advantages of an institution of this type.

### **4.3. Technical and Organizational Capability for Information Collection and Management (Archives)**

A professionally-managed archive system in all government bodies is essential for guaranteeing access of individuals to public information and compliance with proactive disclosure obligations. This system enables the systematic collection of information, its safe storage, and adequate management. It also ensures its accessibility by both government bodies and the public following established procedures and schedules.

To that end, LTAIP (Article 3) states that "Officials responsible for releasing information in their jurisdiction should plan for an adequate infrastructure as well as for the organization, systematization, and publishing of information referred to in this law."

Along these lines, the RLTAIP (Paragraph e) of Article 6 establishes that the official that creates, obtains, holds, or controls the information should "keep a continually updated, systematized archive of public information, in accordance with the time limits established by internal regulations of each body on the subject..." LTAIP (Article 19) expressly mandates the obligation of the government to "...create and maintain professional public records to ensure that the right to information can be exercised fully."

The National Archive System is composed of the General Archive of the Nation, the Regional Archives, and the Public Archives.<sup>52</sup> In accordance with legislation,<sup>53</sup> the bodies of the National Archive System are interconnected (with regional and public archive systems) in an effort to structurally, legally, and operationally integrate the archives of existing government bodies nationwide. This system, which was created in 1991 prior to RTI legislation, brings together

public bodies and institutions responsible for the defense, conservation, organization, and services of the "the Nation's Documental Heritage" by applying archive principles, standards, and techniques.

Paradoxically, despite the existence of archive standards and institutions, in practice, there is no archive system that meets LTAIP requirements. According to a top official of the National Archive System:

"The archives are the main input of government activity. To the extent that these are organized, they make this information accessible to citizens. Unfortunately, most of the archives of the institutions are simply document or paper warehouses, where information is stored together without prior selection and is exposed to flooding, neglect and loss. They do not take into account that archives hold the memory of the country and each institution in particular" (...)

The situation is almost chaotic. In this scenario, it is very difficult to fully comply with the law" (...)

The work of the archives is practically invisible for the government. The prevailing disorder is the ideal breeding ground for corruption. This policy of abandoning the archives raises suspicions about authorities who have no interest in maintaining an organized system since it allows them to avoid control and being held accountable. We should promote the reassessment of the task of archiving."<sup>54</sup>

Two cases reported by the press dramatically illustrate the words of this official of the General Archive of the Nation. In January 2009, more than 800 boxes containing some 41,000 documents from the Ministry of Health's central archive "disappeared."<sup>55</sup> In addition, the press reported on the destruction of credit information (5,000 credit portfolios) belonging to the government-run development bank (Banco de Fomento—BANMAT) in a sanitary landfill of Lima<sup>56</sup> at the end

of the government of former President Alan García.

The General Archive of the Nation issued a public statement concerning the latter case, citing archive legislation and announcing that it will launch an investigation.<sup>57</sup> As the IPYS stated in a public declaration on the BANMAT case, "... similar acts are recurring in the context of the change from one administration to another, at the different levels of government."<sup>58</sup> These cases reveal the absence of the professionally-managed archive system mandated by the law.

In a context such as the one described above, it is difficult to collect, manage, and disseminate information. This undoubtedly affects the capacity of public bodies to provide timely information, especially information produced or generated during previous government administrations.

There are several reasons for this situation. First, public servants do not have an *archive* culture; rather, they have a *storage* culture with respect to government information. In addition, given the limited resources allocated to the General Archive of the Nation to conduct its oversight and technical training duties, it has a limited capacity to comply with legislation concerning archives.

This situation should be addressed and efforts should be made to adequately implement institutional archives in all public bodies. This requires the modification or adoption of archive standards to respond to the current needs and characteristics of the Peruvian government, given that many of the standards regulating the National Archive System were drafted before LTAIP went into effect. This effort also requires the adaptation or harmonization of legislation on archives with the legislation on transparency and access to public information. One conclusion of the aforementioned conference was that "the strengthening of the National Archive System is encouraged so that it can function effectively as a specialized administrative system throughout the government."<sup>59</sup>

Another factor is that the digitization of information, which increases the capacity for its

conservation and dissemination, is limited to specific institutions and contexts. The government has little experience in the delivery of digitalized information. The lack of technical assistance on the topic and the costs entailed in undertaking a technological process of that magnitude largely explain this deficit.

While the initiative of some government bodies to digitize information is positive, this process also involves certain risks if it is not done in an organized and/or coordinated manner throughout the government. For example, there is a risk of not selecting a technology that ensures the possibility of accessing the information in the future because of technological changes in the field. Additionally, there is a risk that each government body will choose different and therefore incompatible technologies. For this reason, these entities should take better advantage of new information technologies for transparency and for upholding RTI.<sup>60</sup>

This section presents some key considerations for the effective implementation of legislation on access to information, such as the promotion of the effective exercise of RTI, the appointment and training of the officials responsible, and the allocation of specific budget funds. Additionally, it briefly examines the implementation of legislation on information access in the education, health and social development sectors,<sup>61</sup> as well as in government contracting. The analysis of this implementation process uncovers many of the pending challenges for the effective exercise of RTI in Peru.

#### **4.3.1. Mass Dissemination of the Contents of LTAIP and Promotion of the Exercise of the Right to Information**

LTAIP went into effect in a government and social context characterized by a culture of secrecy and after a political regime opposed to public disclosure of its actions and public access to information on governmental management or political control issues.

Raising public awareness about the contents of LTAIP and broadly promoting the exercise of RTI are ways for the government to support a process to implement this law. Nevertheless, since LTAIP

went into effect, no national campaign has been launched to disseminate its contents. This affects the implementation of LTAIP to the extent that there is considerable ignorance about the law and a lack of awareness of the scope of RTI. In the conclusions of the First National Conference on Access to Public Information, this problem was already noted:

“In society, the problem is similar. Lacking a national policy to promote transparency, civil organizations have tried to assume this task, with the limitations that this entails. In the conference discussion, it became clear that only a small group of professionals and journalists have used Law 27806, although with only relative success.”<sup>62</sup>

It is telling that a similar conclusion was made two years later at the Third National Conference on Access to Public Information, although on this occasion participants specified that these efforts should include both citizens and public servants:

“Training/dissemination on the content, scope and limits of the right of access to public information are needed, both for all public servants (not only the officials responsible) and for citizens (requests that are not considered in the exercise of the right of access to information or voluminous requests).”<sup>63</sup>

This situation is inconsistent with the inclusion of transparency and RTI as the 29th government policy of the National Accord, as mentioned earlier in this report. It is also inconsistent with Subsection 2 of Article 3 of LTAIP, according to which “the government shall adopt basic measures that guarantee and promote transparency in the actions of public entities.”

In this context, the efforts of the Ombudsman’s Office deserve special mention. Despite its limited resources, the office has disseminated information on the contents, scope, and limits of RTI as well as government public disclosure obligations among the population and public servants.<sup>64</sup> The annual reports of the Ombudsman’s Office to Congress describe these

information campaigns, work meetings, workshops, and other dissemination activities to promote RTI.<sup>65</sup> While commendable, these efforts by the Ombudsman’s Office are still insufficient.

### 4.3.2. Training of the Public Officials Responsible

LTAIP establishes the designation of a public official responsible for responding to requests for information and another to comply with proactive disclosure obligations through institutional portals. The goal of appointing these public servants is not only for citizens to have a visible interlocutor in government bodies for the exercise of their RTI but also to have officials with a certain level of specialization in the content, scope, and limits of RTI.

Clearly, this implied that the officials responsible would receive training on RTI to guarantee—or at least create the conditions for—the adequate exercise of their functions. In addition, the second Complementary Provision of the RLTAIP defines this obligation by establishing that: “the entities will promote the dissemination of the application of the Law and of these Regulations among personnel with a view to optimizing their implementation.”

However, just as in the area of dissemination and promotion, the government lacks a policy for training the officials responsible for complying with LTAIP obligations. At the First National Conference of Access to Public Information, this issue was emphasized when it was concluded that: “The event served to bring to light the demand of public servants of every government entity, or from a coordinating agency of the government, to design and implement a standardized, effective and ongoing training strategy for all levels of personnel, to enable them to learn about and comply with constitutional and legal mandates to promote transparency.”<sup>66</sup>

At the Second National Conference on Access to Public Information, participants again stressed the need to train the responsible officials of government companies as well as all public servants who possess public information: “The standards pertaining to public servants should be publicized. In addition to those responsible for providing access to information, all public servants holding this information should be trained; there is often resistance at these levels and this negatively affects [meeting] deadlines.”<sup>67</sup>

All public servants should receive training in the management of LTAIP obligations since they refer to basic requirements for the exercise of all public functions. However, the focus, intensity, and specialization of training should be differentiated.

The National Civil Service Authority (SERVIR), through its Office of Capacities and Performance, could play a key role in training public servants in the implementation of and compliance with LTAIP, but this has yet to occur.<sup>68</sup> In practice, training has been developed and funded by public bodies on only a few occasions. One example of this is SGP training in 2009 and 2010 based on the directive associated with the required formats for delivering information to the PCM for the preparation of the annual report to Congress. Some regional governments use their own resources to finance training of their officials, as in the case of the regional government of Cerro de Pasco.

In general, training of public servants is an initiative of the Ombudsman’s Office or of civil society organizations like the IPYS or the CPP. Training sessions provided by the Ombudsman’s Office are reported in the annual reports submitted to Congress.<sup>69</sup> Another example is the training offered to first-instance and appellate court judges by the IPYS between 2003–04, in coordination with the Ombudsman’s Office and the Magistrate Academy, on the scope of RTI and its protection through actions of *habeas data*.<sup>70</sup>

A noteworthy effort of the CPP is the *Transparent Municipalities Project*, implemented since 2002 in five regions of the country. The project trains public servants of regional, local, provincial, and district governments. This project works in partnership with the Integrated Financial Administration System (SIAF) of the Ministry of the Economy and Finance, the Ombudsman’s Office, the Public Window of the Pontificia Universidad Católica del Perú, and the newspapers *La Industria*, *Ahora*, *El Comercio*, and *El Tiempo*.<sup>71</sup>

All of these initiatives are extremely important given that they attempt to remedy government deficits. However, they tend to be very specific and depend on the funds these organizations can

obtain. In summary, there is no general policy, financed and sustained over time, for training public servants in the obligations of LTAIP.

### 4.3.3. Specific Budget Allocations

All norms designed to transform the government culture and to instill the principle of transparency and RTI involve profound changes that require adequate budget allocations. Among the activities that require funding are; the dissemination of the scope of the right and the promotion of its exercise, training of public servants, implementation of Web sites, and professional archives and digitized records. To this end, Subsection 2 of Article 3 of LTAIP establishes that: The government shall adopt basic measures that guarantee and promote transparency in the actions of public entities.”

Along these lines, Paragraph a of Article 3 of the RLTAIP states that the top-ranking official of an entity subject to LTAIP has the obligation to: “Adopt the measures necessary to guarantee the exercise of the right of access to public information as part of his or her job duties.”

The obligations of LTAIP and the RLTAIP require a specific budget allocation because without these funds it would be difficult to adequately guarantee RTI and government transparency. Unfortunately, the Peruvian government did not allocate these funds; because of this the participants of the Third National Conference on Access to Public Information concluded that, “It is essential for public entities to receive specific resources (economic and human) for the functions of transparency and access to public information derived from the Single Ordered Text of Law No. 27806.”

The problem is that directors of the entities subject to LTAIP have no incentive to incorporate indicators for targets of compliance with LTAIP and RLTAIP obligations in their annual operating plans that would enable them to allocate budget funds to achieve these objectives. Without these funds, entities must attempt to comply with LTAIP obligations using general budget allocations.

There are notable exceptions, such as the Ministry of Health, which has incorporated as an internal policy, in the annual operating plans of its units, compliance with LTAIP obligations in order to ensure budget funds for the development of the activities necessary to achieve this objective.<sup>72</sup> This is a case in which a government entity made transparency and respect for RTI a priority. Health Minister Pilar Mazzetti (2004–06) first established this priority; subsequent health ministers have respected and upheld it.<sup>73</sup>

### 4.3.4. Appointment of the Officials Responsible

LTAIP mandates the designation of public servants responsible for responding to requests for access to public information in an effort to facilitate the exercise of RTI. This ensures that citizens will have specific public servants in all public entities to process their information requests. The law also attempts to achieve some level of specialization in compliance with LTAIP obligations. To this end, the public servants responsible are required to meet a specific profile: they must be very familiar with the institution, hold higher-ranking positions, have the capacity to influence and change institutional attitudes, and have the capacity to propose institutional policies and changes to the entity based on their experience in the fulfillment of their functions.

Although designating the officials responsible has not been difficult, the fact that there are no standard profiles or criteria for appointing them is problematic. Profiles of individuals assigned to the promotion of RTI and compliance with LTAIP obligations vary widely. The following public servants have been assigned the task of responding to or processing requests for access to information:

- Secretary general of a government body
- Head of the communications and public relations unit
- Head of the general administrative office
- Head of the executive office
- Heads of each unit

In some cases, the designation of the official responsible in each body is in accordance with LTAIP, which stipulates that this function is the responsibility of the Secretary General who can delegate this function or form a team with personnel from the area. In other cases, the official is appointed because of his or her training (for example, lawyers with judicial knowledge), the official manages the archive, because his or her job is related to the different areas in which information is requested, because he or she is the communication official, or because the official is responsible for computer services. Exceptionally, the official is designated based on his or her experience and contacts in the ministry.<sup>74</sup>

With respect to personnel responsible for publishing information on institutional Web sites, the job profile is less problematic because this task is generally assigned to individuals involved with the entity's computer unit. However, in these cases, a problem may arise in terms of the updating of information in accordance with time periods established by law. Computer personnel often do not have the authority to order officials who produce or hold the information that needs to be published to send it in time for processing and publication.

Another problem concerns the designation of officials responsible for the decentralization process in regional governments. Peru is currently transferring national government functions to regional governments in several areas, including health, education, and agriculture. Managing these new functions requires regional governments to create regional directorates, management units, and other bureaucratic offices. Consequently, all activities are not managed from the regional government headquarters where the president works, but rather from these regional directorates and/or management offices that are frequently established in different and distant locations. As a result, the following situations can occur with respect to the officials responsible:

- a single official is responsible for the entire regional government;

- an official is designated for the regional government's presidential office but there is no official responsible for the other offices;
- an official is designated for the regional government's presidential office but since there are no officials designated for the other offices, he or she has *de facto* responsibility for those offices; or
- officials are designated for the regional government's presidential office, regional directorates, and/or management offices and projects.

This diversity in the designation of responsible officials can generate problems with regard to the performance of job functions. When the designated official does not hold a high-ranking position, he or she may have little influence within the institution to be able to adequately respond to information requests (for example, to ensure timely delivery of the information to comply with established response times) or to impose his or her criteria to overrule a unit's refusal to provide the information. Another problem is that officials often focus on their regular job duties because many already have several other responsibilities in addition to being assigned this task.

The absence of directives within the entities to guarantee and adapt the obligations of laws on transparency and access to public information frequently causes the designated personnel to fail to adequately comply with the assigned functions.

For these reasons, participants at the Third National Conference on Access to Public Information concluded that: "It is advisable to prepare guidelines to define the profile and develop the functions of the officials responsible for access to information. This is a key rather than a secondary function that should be assigned to a high-ranking individual."<sup>75</sup>

In effect, although all officials responsible are not expected to be equal, especially since there should be some reasonable differences given the nature of the institutions and their functions, it is necessary to establish some common criteria or profiles in an effort to guarantee RTI.



## 4.4. Promotion of the Right to Information in Health, Education, Social Development, and Government Contracting

No in-depth studies exist on the implementation of LTAIP in specific government sectors or entities. This section briefly examines transparency and access to information in two selected institutions of the executive branch (the Ministry of Health and the Ministry of Education) as well as in the implementation of social programs and government contracting procedures. In general, the effective compliance with public disclosure obligations and RTI largely appears to depend on the leadership and organizational culture of each entity.

### 4.4.1. The Experience of the Ministry of Health

This institution made transparency a management indicator beginning in 2004. The experience began with INFOSALUD, which is a free, national 24-hour phone service that provides information, guidance, and advice on health issues and that receives complaints from health service users.

The Ministry of Health also redesigned its institutional Web site to better comply with proactive public disclosure obligations and uphold RTI. The Web site was no longer simply a link within the portal devoted to transparency and access to information; rather, the Web site was designed to serve as a channel for access to information for all types of users of health systems or services. Thus, the Web became the main communication mechanism between the Ministry and the users of its services. For example, a system was implemented to submit and respond to requests for access to information through the Web site. This involved using *simple language* to facilitate access to information by the average user and digitizing information, a task that began in 2005. A highlight in this process was the publication, for the first time on the Web site, of the entire *reverse auctions*<sup>76</sup> process for purchasing medicines. Another important achievement is that, at this writing, approximately

80 percent of requests for access to public information are processed electronically.

Throughout this process, the Ministry of Health focused on interaction with users' and other organizations that promote transparency and access to information. Thus, associations of people living with tuberculosis or HIV/AIDS, which actively seek information on health services, participate in the decision-making process associated with their treatments or access to services and needed medicines. In 2005, the IPYS and the Ministry of Health signed an agreement to build capacity to respond to requests for access to public information in the General Health Directorate, specifically the General Directorate of Medications, Supplies, and Drugs.

These advances in the Ministry of Health reflect this institution's political will to incorporate transparency and access to information as management indicators. Each unit has incorporated transparency and access-to-information targets in their operating plans, thereby ensuring the necessary budget funds to achieve these targets. Since 2009, the Ministry of Health has had efficiency indicators for transparency and access to public information.<sup>77</sup> As a result, the Health Ombudsman's Office, which is responsible for INFOSALUD; the General Communications Office, which is responsible for the institutional Web site; and the General Statistics Office, which provides technical support, all have targets, indicators, and a budget (for example, the modified 2011 budget for the Health Ombudsman's Office is approximately 250,000 nuevos soles).

Some statistics highlight the advantages of this institutional policy. In 2004, the Ministry of Health received approximately 12,000 requests for access to public information; by 2010, this figure had dropped to approximately 2,500 requests. This trend contrasts with the number of visits to the institutional Web site.<sup>78</sup> In 2009, it received 46,037,552 visits, whereas the number of visits rose to 40,207,013 in 2010. From January 1 to August 31, 2011, approximately 35,488,185 visits were registered, suggesting that the number of visitors in future years will exceed those in 2010.

The most frequented sites on the Ministry of Health's Web site (from the most frequented to least) are: (1) The virtual health library of Peru (BVS Perú); (2) press releases; (3) transparency; (4) health campaigns; and (5) employment opportunities. Most requests are for: (1) information on legislation; (2) information on health investment projects; and (3) information on Ministry of Health personnel (salaries, contracts, functions, and so on).

#### **4.4.2. The Experience of the Ministry of Education**

In the case of the Ministry of Education, transparency and access to information are analyzed in terms of education quality. This is the responsibility of the Ministry's Education Quality Unit (UMC). The UMC forms part of the Office of Strategic Planning and Educational Quality Measurement (PLANMED), an agency of the Strategic Planning Secretariat of the Ministry of Education.

The UMC produces information of significant public interest, especially for users of education services (in other words, education quality statistics). The UMC publishes the results of these sample and census evaluations on education quality on the Ministry of Education's Web site. However, this effort is not necessarily part of an institutional policy on transparency and RTI, nor does it respond to the desire to strictly comply with LTAIP. Public disclosure of this information is part of the UMC's institutional mission: "To offer relevant, reliable information on the results of student evaluations and their associated factors to contribute to decision-making in the different offices, with a view to improving the quality of the education system."

This is information on global or general results, which is for both internal and public use. Specific or detailed information on each education center is not included in this public disclosure regime. This specific information is sent to the education centers and managed by pertinent agencies of the Ministry of Education. In exceptional cases, requests for access to this information are accepted, delivered under the commitment for its good use due to concerns that the results could be misinterpreted or only partially disseminated.

This concept of access to public information violates Subsection 5 of Article 2 of the Constitution and Article 7 of LTAIP, which expressly stipulates that it is illegal to condition the delivery of the information on the explanation of the reasons for the request, its destination, or its use. The possibility that the information will be improperly used is not a valid argument for conditioning its delivery because this would give a wide margin of discretion to public entities to deny access to public information, introducing arbitrariness. The individual who disseminates the information obtained through the exercise of his or her RTI is responsible for the effects it may cause.

In general, individuals who request this information are specialized users who are conducting research or consultancies. Other users include academic researchers and mining companies, which, in the context of their corporate social responsibility policy, implement social programs to support schools in their area of influence. On average, the UMC receives approximately 10 requests for information per week from these types of users. Requests for information from nonspecialized users are infrequent. In the first half of 2011, five requests were received, many with deficiencies (for example, they were not specific with respect to the information required or the requested information the UMC does not possess).

These requests are made through the official responsible for delivering information, whereas the requests made by specialized individuals or institutions are made directly to the UMC. This arrangement was most likely set up because the specialized users know what information the UMC holds.

#### **4.4.3. Transparency and Access to Information in Social Programs**

Social programs are particularly important, sensitive government activities since they are designed to alleviate serious problems of inequality and social fragmentation that are expressed in situations of unequal rights. To this end, the government allocates a large amount of public funds, whose implementation should be transparent, both for program beneficiaries and

the general public. In the framework of its constitutional duties to oversee fulfillment of the functions of public entities and to defend fundamental human rights, the Ombudsman's Office opted to monitor social programs designed to develop human capacities, also known as *social empowerment programs* (PSH).

The Ombudsman's Office identified three reasons for concentrating its oversight duties on the PSH: (1) these programs are designed to uphold a large number of rights associated with the life plans of individuals and the conditions for the exercise of other fundamental rights; (2) these projects concentrate the largest share of public resources allocated to social programs;<sup>79</sup> and (3) the Ombudsman's Office received the most complaints about this group of projects regarding alleged acts of corruption and violations of public ethics.<sup>80</sup>

The insufficient level of compliance with public disclosure and information access obligations was one reason the Ombudsman's Office chose to supervise the PSH. Between January 2009 and December 2010, the Ombudsman's Office received 432 complaints concerning the PSH nationwide, 219 of which were declared admissible. Only one of these complaints involved a violation of RTI (File N° 0450-2009-000620, reported to the Puno Ombudsman's Office). The principal of a school in Puno, in the country's southern highlands, did not respond to a request for information associated with the provision of dairy products and other foods for school breakfasts in the framework of the Comprehensive Nutrition Program.<sup>81</sup>

To evaluate the level of compliance with proactive public disclosure obligations in the PSH, the Ombudsman's Office assessed the publication of information on institutional Web sites. In September 2010, the Ombudsman's Office evaluated PSH portals to determine the percentage of compliance with the proactive obligations set forth in LTAIP (Web site, budget, contracts and procurement, personnel, planning, and institutional information).<sup>82</sup> Only the Comprehensive Health Insurance System (SIS) earned a high score. The Integral Improvement of Neighborhoods program, the Street in my

Neighborhood program, and the Comprehensive Nutrition Program recorded the lowest levels of compliance (17 percent each). Only three social programs (SIS, Juntos, and the Wawa Wasi programs) had compliance rates over 50 percent.<sup>83</sup>

An initial conclusion of this assessment is that most PSHs did not have their own Web sites, but rather published their information in a section of the institutional Web site of their sector or implementing agency. The Ombudsman's Office stated that this hindered access to PSH information given that individuals had to locate, amid all the data on the Web site, the concrete information they needed, which not only involves a significant amount of time, but also requires special knowledge in navigating Web sites.

The Glass of Milk Program, which is a PSH of special social significance, does not have a Web site that provides consolidated information on its implementation. Access to information on this program is fragmented because the program is implemented by local governments that have administrative, economic, and political autonomy. Therefore, if a citizen requires aggregate information on the Glass of Milk Program, he or she must search each of the Web sites of the implementing government, or send individual information requests to each.

In addition, the Single Registry of Beneficiaries (RUB) of social programs, which includes identity data of beneficiaries as well as their place of residence, cannot be accessed by the public. While the Ombudsman's Office facilitates public disclosure of RUB to enable citizen control over access to social programs (to determine if individuals qualified as beneficiaries have access to these programs), it also cautions that information that could affect personal or family privacy should be confidential.<sup>84</sup> Because the RUB is a beneficiary database, its public disclosure should be considered, as long as the provisions of Law No. 29733 (Law on Protection of Personal Information) are taken into account.<sup>85</sup>

Although the Ombudsman's Office has only received one complaint of violation of RTI in a PSH over the past two years, noncompliance with

proactive public disclosure obligations suggest that similar problems affect response to requests for access to public information. The lack of complaints may indicate that the exercise of RTI with respect to PSH is limited, or that violations of RTI in PSH are not reported by citizens. Therefore, it is difficult to clearly determine the state of the effective exercise of RTI in the framework of PSH.

#### **4.4.4. Transparency and Access to Information in Government Contracts**

Transparency and access to public information in government contracts are regulated by a specific complementary legal regime of LTAIP. Specific mechanisms for transparency and access to public information were first implemented in early 2001 during the political transition. Although Law No. 26850 (Law on Government Contracts and Procurement) already established the possibility of using electronic support for government contracts, the creation of SEACE through Supreme Decree No. 031-2002-PCM on May 8, 2002, marked a milestone in this area. SEACE was progressively developed and incorporated in Legislative Decree No. 1017, which adopted the Law on Government Contracts currently in effect.

All public entities subject to the Law on Government Contracts must publish all activities involved in their selection processes, contracts signed (regardless of the legal regime or source of funding), and their implementation in SEACE. Moreover, they must publish their annual contracting plans, tender documents, consultations resolved, pronouncements associated with contracting processes, bid documents, comparison table and/or minutes used to select the winning bid, resolutions to resolve petitions to appeal, and resolutions of appeals for review. The information published in SEACE is identical to the final documents issued in the processes of selection, contracting, and implementation of contracts. SEACE is an electronic information registry of public access that is administered by the Agency for Oversight of Government Contracts (OSCE).<sup>86</sup> If an individual requests information, in accordance with LTAIP, the response is to give directions to them on how to locate the information on the SEACE Web site; otherwise physical information already published

on the Web site will be delivered to the requester. If there is a request for information that is not published on SEACE (for example, resolutions of contracting procedures), LTAIP will apply.

Transparency and access to information on contracts through SEACE are complemented with the following:<sup>87</sup>

- *National registry of suppliers:* All individuals and corporations interested in becoming government suppliers must register with this registry.
- *Ineligibility to become a contractor:* All high-ranking officials are prohibited from being contracted by the government for a period of 12 months after they leave their position.<sup>88</sup>
- *Annual government contract plan:* All public entities must prepare and publish on SEACE their annual contracting plan, which contains all goods, services, and works they plan to contract out during the year, including the estimated amounts and contracting procedures to be followed.
- *Prohibition of fractioning:* Contract amounts for the same goods cannot be fractioned in an attempt to avoid following the pertinent selection procedure. Therefore, it is not possible to procure the same goods more than once during the same fiscal period.

Notwithstanding the positive aspects of SEACE, the information produced during contracting procedures is difficult for many citizens to understand. Therefore, SEACE should include windows at which it provides reader-friendly information on contracting procedures.

#### 4.5. The Role of Civil Society in the Implementation of LTAIP

Civil society organizations have contributed to the implementation of LTAIP through different initiatives. Some of the main activities of these organizations are listed below.

The CPP and the IPYS, which played important roles in the passage of LTAIP, have consolidated their work concerning LTAIP, exercising leadership in this area. In 2004, the CPP launched a media campaign to disseminate RTI and LTAIP. The organization also monitors compliance with proactive public disclosure obligations on transparency portals and the regular dissemination of results in the mass media.<sup>89</sup> Since 2002, the CPP has implemented the Transparent Municipalities Project, designed to

promote the implementation of LTAIP in the municipalities of Lambayeque, San Martín, Cusco, Piura, and Arequipa. The project includes activities in training, dissemination, and coaching of public officials and civil society representatives to improve levels of access to information and transparency.<sup>90</sup>

The IPYS has implemented several projects on access to public information, such as the pilot project carried out with the Lambayeque regional government to implement LTAIP. It has also developed projects to train public officials and civil society representatives (for example, district judges in the provinces and journalists).<sup>91</sup> Four years ago, the IPYS launched the project, Strengthening the Right of Access to Public Information in Peru, which organizes the National Conference on Access to Public Information, evaluates annual reports prepared by the PCM, contributes to the exercise of RTI through requests for access to information (in Lima and the country's interior) and engages in strategic litigation.

In 2005, Informed Citizens (Ciudadanos al Día, CAD) published the consultation document, *Access to Government Information. Legal Framework and Best Practices*. CAD has conducted research on advances and setbacks with respect to transparency and RTI; it publishes the results in newsletters and reports.<sup>92</sup> Since 2005, with support from the Ombudsman's Office, CAD has awarded the Best Practices in Public Administration Prize, which includes a category on best practices in complying with LTAIP.

The Citizen Proposal Group (Grupo Propuesta Ciudadana, PROPUESTA) oversees compliance with the proactive public disclosure obligations of LTAIP through the Web sites of regional governments.<sup>93</sup> Through *Vigila Perú*, PROPUESTA's system for citizen oversight of the decentralization process, it monitors transparency of mining companies. Although this is not government information in the strictest sense, it is an interesting case involving information of public interest associated with the corporate social responsibility of companies that exploit natural resources.<sup>94</sup>

Also noteworthy is the work of Suma Ciudadana to promote transparency in the management of development cooperation resources, sworn declarations of income, and curricula of public officials. Suma Ciudadana has developed a database (*Justicia y Transparencia*) of the rulings of the Constitutional Tribunal in *habeas data* proceedings for the defense of RTI.<sup>95</sup>

Although it closed in March 2011, another important mechanism was the Social Oversight Observatory (OBSERVA). This was a platform of several organizations<sup>96</sup> to encourage transparency and access to public information in regional governments through training and the promotion of best practices among officials responsible for providing information.

Two initiatives stand out at the sectoral level. Between 2008 and 2009, Universidad Coherente<sup>97</sup> developed a project to train 250 university students in the promotion of transparency and access to public information. Since 2010, Universidad Coherente has been carrying out a project to measure the levels of implementation of transparency and access to public information in 35 public universities in Peru.<sup>98</sup> Rights, Environment, and Natural Resources (DAR) is an organization that promotes sustainable development in Peru. As part of its activities, DAR implements the Promoting Transparency in the Forestry Sector project,<sup>99</sup> which publishes annual reports on transparency for this sector.<sup>100</sup>

As is evident, media organizations were the first to promote and support the implementation of LTAIP. Since LTAIP went into effect, an increasing number of civil society organizations have incorporated lines of action to promote and uphold RTI and compliance with LTAIP. In some cases, new organizations, such as Suma Ciudadana, OBSERVA, or Universidad Coherente, have incorporated individuals who were associated with pioneering organizations like the IPYS. This demonstrates the formative role that civil society organizations have played in supporting the application of LTAIP since it went into effect.

The efforts of these organizations are diverse or specialized, focusing on different aspects of LTAIP. In some cases, activities concentrate on promoting the exercise of the right and its administrative and judicial defense (IPYS); in other cases, organizations may focus on compliance with proactive obligations through Web sites (CPP and PROPUESTA); prioritize a specific group of

entities subject to LTAIP (Universidad Coherente); or focus on specific sectors of activity (DAR). Nevertheless, with few exceptions, the organizations do not link RTI with the exercise or defense of other rights.<sup>101</sup> Moreover, civil society organizations in the country's interior do not usually work in the area of compliance with LTAIP or in defense of the exercise of RTI.

## 5. Has Access to Public Information Increased with the Adoption and Implementation of Law No. 27806?

Almost eight years after LTAIP went into effect, citizens have more possibilities for accessing public information. However, it is difficult to determine if they have more *real* access to public information. The problem lies in identifying information or tools to measure the level of access as well as the reliability of that information.

There are three tools to evaluate the exercise of RTI. First is the annual report that the PCM submits to the Congress. Second are the complaints of RTI violations reported to the Ombudsman's Office. Finally, there are the *habeas data* rulings issued by the judicial branch and the Constitutional Tribunal. Although the CGR oversees compliance with some aspects of LTAIP, there is no report or document that provides information on the results of oversight activities. The section below examines the information produced by each of these mechanisms.

### 5.1. The Annual Report of the Office of the President of the Ministerial Cabinet to the Congress

In accordance with Article 22 of LTAIP and Article 22 of the RLTAIP, all designated government entities must submit to the PCM information concerning processed and unprocessed requests for access to public information during the year. With this information, the PCM prepares an annual report that it submits to Congress before March 31 of each year.

The submission of information on processed and unprocessed requests for information takes place in accordance with a timetable prepared by the PCM. In entities that fail to comply with this obligation, the Secretary General of the entity is held responsible. This is the only mechanism mandated by LTAIP to provide information on the

state of the exercise of RTI nationwide and the upholding of this right by government entities.

The annual report is designed as an institutional mechanism to provide Congress with the information necessary to make any required legislative modifications. At the same time, it serves to enable Congress to exercise its control functions and to impose possible sanctions or assign political responsibility in the case of noncompliance with LTAIP obligations.

The conclusions below are drawn from an analysis of the annual reports from 2004 to 2009. Only the annual reports of 2005 and 2006 were submitted to Congress by the established deadline (before March 31 of each year).<sup>102</sup>

Through a request for information submitted by the IPYS on August 20, 2010, Congress was required to provide information on the processing of the annual reports submitted by the PCM. In accordance with congressional information, the reports from 2003, 2004, 2005, and 2006 were sent to the archive with the knowledge of the Congressional Executive Council.<sup>103</sup> The 2007 report was delivered to the archive with the knowledge of the executive council after copies were sent to congressional groups. The council was briefed on the 2008 Annual Report that was submitted to congressional groups, but the records do not expressly state whether or not it was sent to the archive. In light of previous experiences, it was most likely delivered to the archive. The 2009 Annual Report was submitted to Congress, but has yet to be sent to the executive council.

According to this information, the annual reports submitted to Congress did not lead this body to take any type of action and the executive council was only *informed* of the existence of these reports. The annual report does not fulfill its institutional purpose stipulated in LTAIP because



it has not led to any public control action or proposal for legislative reform or public policy on RTI.

Table 2 lists the requests for access to public information reported annually by government entities to the PCM from 2003 to 2010. The table presents the total number of requests received as well as the number that were processed and those that were not, in both absolute numbers and percentages.

The figures presented may give the impression that RTI is frequently exercised in Peru. However, these numbers should be viewed with caution for two reasons. The first is related to the accuracy or sufficiency of the information. The second is associated with the fact that there are entities subject to LTAIP that do not comply with the obligation to report requests for access to information to the PCM.

On July 9, 2009, Ministerial Resolution No. 301-2009-PCM adopted Directive No. 003-2009-PCM/SGP, “Guidelines for reporting requests for access to information to be submitted to the Office of the President of the Ministerial Cabinet.” This directive was issued to (1) clarify the definition of processed requests for information; and (2) establish what information should be

excluded because it is not subject to RTI and not included in LTAIP.

With respect to the first point, until the 2008 Annual Report, a processed request was defined only as one that had obtained a positive response, whereas those classified as unprocessed had received a negative response. Nevertheless, after the aforementioned directive was issued, *processed requests* were defined as all requests that had been answered, regardless of whether the answer was positive or negative, complete or partially delivered. *Unprocessed requests* were defined as those receiving no response.

This modification is criticized by some experts who argue that it is not in keeping with the spirit of RTI. They claim that according to the Constitutional Tribunal, RTI is affected in the following cases:

- When there is no response to the requests
- When the information request is denied for reasons not stipulated by law
- When there is a response but incomplete, outdated, inaccurate, or unclear information is delivered.<sup>104</sup>

**Table 2. Requests for Access to Public Information Reported to the PCM (2003–10)**

Year	Total	Processed	Not Processed
2003	39,296	37,522 (95%)	1,774 (5%)
2004	56,122	49,942 (88.99%)	6,180 (11.01%)
2005	49,188	44,147 (90%)	5,041 (10%)
2006	57,599	51,452 (89.28%)	6,174 (10.72%)
2007	70,136	61,232 (87.30%)	8,904 (12.70%)
2008	62,968	56,414 (89.6%)	6,554 (10.4%)
2009	61,427	58,373 (95%)	3,054 (5%)
2010	68,290	65,461 (95.86%)	2,829 (4.14%)

Source: Annual reports of the Office of the President of the Ministerial Cabinet to Congress.

As a result, these experts concluded that:

*“Therefore, currently, when public entities report a request for information as processed, this does not inform the leading body on the public policy of transparency on whether or not the designated entity has respected the right of access to information.*

This information only informs the PCM that the constitutional right has not been violated through silence or a lack of response, *which is of course one of the most blatant cases of its violation.* But it does not enable knowledge of whether or not the entity made a legal justification for denying the information or if it delivered the information in a complete manner.

While this omission is understood in the context of wanting to avoid further complicating the format that public bodies must complete to submit their report the PCM, ensuring that it provides information on whether or not the citizen who requested information received a response to encourage this conduct of respect; *it should also be kept in mind that almost all public entities that provide information on this currently report high levels of compliance.*<sup>105</sup> (Author’s emphasis).

The second part of the directive excludes from the content of RTI, and consequently from the application of LTAIP, requests from citizens, their representatives, or attorneys for information about private or personal affairs included in administrative proceedings of the entity where the request was made, among others. Thus, these requests are not reported by the entities and, consequently, are not included in the annual reports of the PCM.

This decision has been criticized because the Constitutional Tribunal qualified these types of requests as a legitimate exercise of RTI when it admitted several actions of *habeas data* in cases involving the Ministry of Labor and its Office of

Normalization of Social Benefits denying information to former workers and pensioners concerning their files, in the framework of administrative proceedings of these entities to defend their rights.<sup>106</sup>

This would, therefore, exclude cases in which the Constitutional Tribunal had identified RTI violations from a calculation of the number of requests made for public information. The Constitutional Tribunal is the highest-level body for interpreting the Constitution, for which reason its jurisprudential criteria is binding for all operators and interpreters of the Constitution and of fundamental rights, such as in the case of RTI.

Furthermore, the Constitutional Tribunal is characterized by an adequately rights-based jurisprudence in terms of RTI, irrespective of decisions that may require some fine-tuning or development. The Constitutional Tribunal has broadly defined the content of this fundamental right and has established specific procedures for the government to follow when it invokes a cause for exclusion of information to public access.<sup>107</sup>

With respect to the sufficiency of the annual report information, it has been commented that: *“...the information they report is very aggregated or general, by group of public entities; this does not allow for identifying the difference existing within each group, but especially, it does not permit the accurate identification of the public entities that are seriously threatening this fundamental right, or to the contrary, those which because they adequately respect it, even deserve a recognition or an incentive that would encourage them to continue with this policy.”* (Author’s emphasis).<sup>108</sup>

Furthermore, it is observed that: *“The second problem with the annual report is the limited level of processing of the data it currently presents and that disaggregated data should be included. As mentioned, the annual report currently does not contain statistical information on topics as relevant as: which public information*

is the most requested in each entity; the reasons why requests are not processed; the types of information requests that are the most and least likely to be processed, etc.”<sup>109</sup> (Author’s emphasis).

In the annual reports, the level of disaggregation varies, given the lack of a standardized method. For example, the conclusion section of the 2008 Annual Report states that the Ministry of Housing, Construction, and Sanitation received the most information requests (6,878), but it does not specify how many of those requests were processed.

The 2009 Annual Report does not disaggregate processed and unprocessed requests for access to information by ministries; rather, it simply provides aggregated figures. By contrast, the 2010 Annual Report presents disaggregated information by ministries in two graphs. That year, the ministries receiving the most information requests were the PCM (7,925); the Ministry of Housing, Construction, and Sanitation (4,967); the Ministry of Economics and Finance (4,163); and the Ministry of Health (3,851). According to that report, the ministries reporting the largest number of unprocessed requests were the PCM (260); the Ministry of Defense (90); the Ministry of Culture (88); and the Ministry of Justice (58). As is evident, these methodological discrepancies make it impossible to identify patterns with respect to requests for access to public information and responses by government entities.

Municipal government entities tend to be the public bodies that most frequently fail to comply with their obligation to submit information to the PCM for the preparation of the annual report. Of a total of 194 provincial municipal governments, only 43 (22.1 percent) fulfilled their obligation to send information in 2005. In 2006, only 34 provincial municipalities delivered information to the PCM, a number that increased to 75 (38.5 percent) of a total of 195 in 2007. In 2008, only 68 provincial municipalities complied with the obligation; in 2009, this number declined to 56.<sup>110</sup> In the case of district governments, out of a total of 1,638 district municipalities, only 316 complied with the obligation to send information to the

PCM in 2007, declining to 264 in 2008, and to 204 in 2009.<sup>111</sup>

The analysis of PCM reports on information requests reveals that they are of limited reliability. The documents are a summary of an imperfect information collection process nationwide, evidenced by the fact that fewer than half of public entities fulfill their obligation to send information to the PCM. Since there has been no promotion of standardized, transparent information management processes, it is impossible to assess the actual performance of the public administration.<sup>112</sup> Information problems identified in the annual reports could be resolved if Congress used this tool for the institutional function assigned it by LTAIP.

## **5.2. Complaints of the Right to Information Violations Reported to the Ombudsman’s Office**

Given that the Ombudsman’s Office has a consolidated line of action on RTI and the promotion of transparency, it is of special interest to examine the complaints this institution receives for alleged RTI violations. The analysis below is based on the annual reports of the Ombudsman’s Office to Congress, beginning in 2001.

While the Ombudsman’s annual reports do not include figures on complaints presented by year, they do enable the identification of wrongful acts invoked to justify citizen complaints.

The only report that provides figures on the complaints received on RTI violations is the Eighth Annual Report, 2004–2005, in which the Ombudsman’s Office compared the number of complaints received during the first year after LTAIP went into effect (2003) with the number of complaints processed in 2004. The Ombudsman’s Office received 261 complaints in 2003 and 493 in 2004, representing an increase of 47.05 percent. The Ombudsman’s Office interpreted this increase as an indicator of a more demanding attitude of citizens with respect to RTI.

The analysis of the different reports (all annual reports from 2001 to 2010) indicates that some

violations are recurring. Most important among these are:

- Failure to comply with the legal time limit
- Undue or excessive charges
- Allegation of exceptions that are not adequately explained or justified.
- Requirements that are not stipulated by law (for example, the submission of documents or forms)
- Lack of designation of public officials responsible
- Lack of incorporation of the procedures for access in a TUPA (a single text on administrative procedures).

### 5.3. Rulings of the Judicial Branch and the Constitutional Tribunal

Another key source of information is the final rulings of the judicial branch and the Constitutional Tribunal<sup>113</sup> in *habeas data* proceedings in defense of RTI.

A study commissioned by the IPYS analyzed 150 *habeas data* final rulings of the judicial branch and the Constitutional Tribunal published between January 2009 and May 2010.<sup>114</sup> An initial key finding is that the public entities involved in the most legal proceedings during that period were the Office of Normalization of Social Benefits (ONP)—26.2 percent; local governments—25.4 percent; ministries—13.8 percent; and the judicial branch (9.2 percent).

In the case of ministries, 70 percent of the claims were filed against the Ministry of Labor by former employees who demanded information contained in their files that were submitted for inclusion in the reincorporation process, in the framework of the recovery of labor rights violated during the illegal collective dismissals implemented during the government of Alberto Fujimori.

Of the 146 rulings analyzed (four of the 150 selected rulings did not provide the necessary information), requests for information associated with the *public interest* were denied by government bodies in 51.4 percent of cases; 48.6 percent of the cases referred to information related to private or personal interests of the plaintiffs.

In approximately 60 percent of the cases in which information about personal interests was requested, the information was associated with the defense of rights to benefits (pensions and social benefits); the other 40 percent of requests sought to obtain information for the exercise of other rights, such as that of due process in administrative and judicial proceedings.

The study classifies the rulings analyzed by types of cases. In the first group of cases, plaintiffs demanded information for the defense of their rights to pensions (26.2 percent). The second group involved plaintiffs who wanted information to defend their labor rights, which were affected by the illegal collective dismissals that occurred during the Fujimori government (13.8 percent). The third group of cases involved demands for information about private companies providing public services (7.3 percent). Interestingly, in this group, the same individual filed all the complaints. Finally, a fourth group of cases is of citizens who made at least two requests because they were denied different types of information on the management of public entities (salaries, budget, functioning of justice bodies, and so on) in administrative proceedings. Finally, the study highlights the persistent allegations of formal arguments being used to deny information in administrative proceedings.

This study contributes important information regarding the precariousness of the exercise of RTI in administrative proceedings. In nearly every case in which the Constitutional Tribunal declared an action of *habeas data* admissible, the individuals involved did not ultimately receive the requested information. In addition, many of these accusations should never have reached the judicial branch or the Constitutional Tribunal given that they constitute clear cases of RTI violations (for example, in the case of retired claimants or former workers affected by the collective dismissals of the 1990s). Moreover, the traditional reticence of judges was evident with regard to the possibility of third parties reviewing documents on the processes they administer.<sup>115</sup>

Because the judicial branch is the first step in the system to guarantee human rights (and in this



case RTI), the members of this government branch should assume their responsibility by using reasonable judgment to maintain an adequate balance between access to information and other rights that may be affected.<sup>116</sup>

### 5.3.1. Illustrative Cases of *Habeas Data* Rulings

Some concrete cases promoted by the IPYS, in cooperation with a private law firm,<sup>117</sup> can provide a better understanding of the role of the judicial branch and the Constitutional Tribunal in the defense of RTI and the implications for effective accountability.

- **Access to sworn declarations of public officials.** On December 17, 2009, the IPYS requested Sections 1 and 2 of the sworn declarations on assets and revenues of former President Alan García Pérez, beginning in the year he assumed office. On January 12, 2010, the Office of the President responded to the request, delivering only Section 2 and claiming that Section 1 was not subject to public access. On March 23, 2010, in response to this refusal, the IPYS filed an action of *habeas data*. The government defense attorney requested that the Comptroller General's Office be included in the proceedings, a request accepted by the judge. On June 23, 2010, the Constitutional Court of Lima, which was the court of first instance, declared the action inadmissible. This ruling was disputed and is pending review in an appellate court.

The ruling was based on Article 15 of the Regulations of Law No. 27482 that regulates the publication of the Sworn Declaration of Income and of Assets and Revenue of public officials. According to the ruling, "In keeping with the rights set forth in numerals 5) and 7) of Article 2 of the Political Constitution of Peru, the Section 1 shall only be used by control agencies or upon an injunction." Nevertheless, Article 4 of the same law qualifies the sworn statements as *public instruments*, without distinguishing between the sections. Likewise, the Constitutional

Tribunal, in its ruling published in File No. 04407-2007-PHD/TC, established that the information contained in Section 1 of the sworn declarations was of a public nature, as long as it referred to: (1) *income originating from the public sector*; and (2) *movable and immovable property that can be registered*. This criteria was rejected by the Constitutional Court, which declared the case inadmissible.

The information contained in Section 2 of the sworn declarations is aggregated, for which reason it is not possible to identify changes in the wealth of public officials. While the form in Section 1 could include information whose public disclosure might be inappropriate and might affect other constitutional rights, the problem is not resolved by excluding from public access all information contained in that section. It would seem more reasonable to propose a solution that would reconcile transparency and RTI with the other rights involved.

- **Information on pardons granted to an individual convicted on corruption charges.** On December 18, 2009, the IPYS requested from the Ministry of Justice the legal and medical reports supporting the decision of then-President Alan García to grant a pardon to an individual serving a sentence for acts of corruption during the Fujimori government on humanitarian grounds. On January 10, 2010, an action of *habeas data* was filed and on January 13, the Ministry of Justice rejected the action, arguing that it was for information contained in reports that formed part of the deliberation process prior to a government decision. Nevertheless, the pardon had been granted through a resolution published in the official gazette, in which it was expressly stated that the decision was based on the reports that had been the subject of the information request. The Constitutional Court declared that the action was admissible on July 19, 2010. The Ministry of Justice appealed the ruling and the Superior Court declared it null and void, arguing an alleged lack of grounds. The case has been returned to the Constitutional Court for review.



- **Reports on a donation from the Congress.** On December 18, 2009, a request was made to the Congress for the legal and budget documents justifying the donation of US\$15,000 by then-President of the Congress Luis Alva Castro to finance a Peruvian music concert. The Congress never responded to the information request. On March 23, 2010, an action of *habeas data* was filed, which was declared admissible on December 9, 2010, by the Constitutional Court of Lima. The Congress appealed the ruling, but it was upheld in appellate court on June 8, 2011. The ruling is currently being implemented.
- **Closed congressional sessions.** On September 18, 2007, a request was made for the audiotape and minutes of the session in which a congresswoman was punished for improper conduct. The Congress had declared it as a closed session, even though there is no mention of this possibility in the Congressional Regulations. The Congress never responded to the information request. In September 2007, an action of *habeas data* was filed. After nearly four years, on August 9, 2011, the Constitutional Court declared the action admissible. Nevertheless, the congressional attorney appealed the ruling, and it is pending a decision in appellate court.

In all of these cases (except for the sworn declarations that are open to discussion), information of public access was requested, but the requests were denied or did not receive a response. All the requests were made to high-level institutions—Congress, the Ministry of Justice, and the Office of the President—that should have expressed a greater willingness to facilitate government transparency.

Of the four cases presented here, only one was definitively resolved. The duration of *habeas data* proceedings frequently cause the delivery of information to be delayed past the time of its usefulness, if the information was to have been used for control and accountability purposes. Moreover, litigation against the government requires a level of specialization that is beyond the capacity of many citizens. These limitations support the need to consider the establishment of an authority to enforce and monitor LTAIP; this would contribute to accountability in public affairs.

## 6. Conclusions

The adoption and implementation of LTAIP marked a milestone in guaranteeing and upholding RTI in Peru. LTAIP was the first to develop a systematic legal framework to regulate this constitutional right. Its adoption generated a great sense of expectation and stimulated important debates on government transparency.

Nevertheless, the previous sections describe an inefficient process of LTAIP implementation. While transparency and RTI are part of the public discourse and have been incorporated as government policies in the National Accord, in practice, there is no implementation strategy linked to clear, sustainable objectives. In this context, the efforts of different actors to implement the law remain isolated, leading to only partial results.

Three factors contribute to this situation. First, there is a lack of political will for the effective implementation of LTAIP. This is reflected in a type of bureaucratization of the law—an attempt to literally comply with its basic contents without necessarily guaranteeing maximum access to information and transparency of a public entity. The publication of budget or contract information within the legal time limits, but cloaked in administrative language, the high levels of noncompliance of local governments in submitting information for the PCM’s annual reports, and the legal proceedings against national government entities are examples of this lack of political will. Secondly, a lack of a professional civil service or career public servants has a negative impact on the sustainability of efforts to implement LTAIP. The high turnover of public officials causes delays and difficulties in the implementation process. Finally, the institutional design for the implementation and oversight of compliance with LTAIP is a diffuse model that places responsibility for these tasks on several public officials and entities. This model seemed to be the most reasonable in the political and institutional circumstances in which LTAIP was

adopted, but today it is insufficient. The factors identified in this analysis as well as the absence of strong institutional incentives for a functioning model (for example, linking compliance with transparency indicators to budget allocation) point to the need to promote discussion on the creation of a specialized, independent institution with authority over all of the entities subject to LTAIP. This discussion should take into account the characteristics of the Peruvian government and the experience of institutions that have demonstrated positive results in the oversight of compliance with the obligations of public entities and defense of RTI, such as the Ombudsman’s Office.

In terms of civil society, the work of different organizations has favored the implementation of LTAIP. Ideally, more organizations should associate RTI with the demand for compliance with other rights; additionally, there should be more such institutions located in the country’s interior. Moreover, consensus regarding the indicators or criteria that the different civil society institutions use to measure compliance with LTAIP would enable more effective assessments.<sup>118</sup> This would prevent the same entity from being classified differently by these organizations and diminish the potential for submitting partial assessments as proof of an entity’s transparency.

Despite the obstacles mentioned, LTAIP implementation process has generated important learned lessons. As demonstrated each year at the National Conference on Access to Public Information, there is accumulated experience in this area in several government sectors. Furthermore, civil society organizations have made significant contributions. The beginning of the new government administration offers the best opportunity for promoting some of the pending reforms (for example, a new institutional model for implementation and compliance with LTAIP) to contribute to strengthening access to public information and government transparency.<sup>119</sup>

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## Notes

<sup>1</sup>Constitution, Article 2. All people have the right to: (...) Paragraph 5) Request information they need without stating a reason and to receive it from any public entity, within the legal time period, at the cost the request involves. Information that affects personal privacy is excluded, as is that expressly excluded by law or for reasons of national security. Banking and tax secrets can be lifted at the request of the Judge, the Attorney General or an investigative committee of Congress in accordance with the law and as long as the information refers to the case being investigated.

<sup>2</sup> According to the official definition, "The National Accord is a set of government policies prepared and adopted through dialogue and consensus, after a process of workshops and consultancies nationwide, with the aim of defining a direction for the country's sustainable development and for affirming its democratic governance." The National Accord was signed in a solemn act at the Government Palace on July 22, 2002, with the participation of then-President Alejandro Toledo, the President of the Ministerial Cabinet, Roberto Dañino, and leading representatives of political and civil society organizations participating in the National Accord. See (in Spanish):

<http://www.acuerdonacional.pe/an/definicion.html>

<sup>3</sup>Ibid. p. 200.

<sup>4</sup>Other relevant norms are Legislative Decree No. 757, the Framework Law for the Growth of Private Investment, adopted on November 13, 1991, as well as its Regulations, adopted through Supreme Decree No. 094-92-PCM. While these norms broadly regulated access to documentary information, their area of application (private investment) limits coverage.

<sup>5</sup> Article 65 of the 1993 Constitution recognized the right of consumers and users to access information on the goods and services available to them in the market.

<sup>6</sup>Abad Yupanqui, Samuel. Op. Cit. p. 14.

<sup>7</sup>Many of these cases went to trial and the guilty parties were sentenced. For example, see (in Spanish):

[http://historico.pi.gob.pe/CorteSuprema/documentos/RN\\_A\\_V\\_023-2001-09\\_260711.pdf](http://historico.pi.gob.pe/CorteSuprema/documentos/RN_A_V_023-2001-09_260711.pdf).

<sup>8</sup>See *Exposición de Motivos del Proyecto de Ley No. 1356/2001-CR*, p. 3. The bill was submitted by Carlos Ferrero, who was a member of Fujimori's party but who gradually distanced himself from it, demonstrating public discrepancies with the government. See,

<http://www.congreso.gob.pe/comisiones/1998/constitucion/proyecto.htm>.

<sup>9</sup>Refers to the government led by Valentín Paniagua, which began in Peru in November 2000 after the resignation of Alberto Fujimori at the beginning of his third term, and which ended in July 2001. Its mission was to organize and hold new elections to elect a new government.

<sup>10</sup> On this subject, see: Bertoni, Eduardo. *Libertad de información. ¿Tres palabras inofensivas? Leyes de acceso a la información y rol de la prensa*. The World Bank. 2011

<sup>11</sup> According to articles 161 and 162 of the Constitution and Article 1 of Law No. 26520 (Organic Law of the Ombudsman's Office), this institution is created as an autonomous constitutional body charged with defending the constitutional and fundamental rights of individuals and the community, the supervision of compliance with the functions of public bodies and the adequate delivery of public services.

<sup>12</sup> See, CPP and British Council. *Los Principios de Lima. Libertad de Expresión y Acceso a la Información en Poder del Estado*. Lima, 2001. pp. 1-4.

<sup>13</sup>On freedom of expression and RTI as work areas of the Ombudsman's Office, see Ombudsman's Office Peru. Ombudsman's Report No. 48. *Situación de la libertad de expresión en el Perú. September 1996–September 2000*. Lima. 2000

<sup>14</sup> Some of the most noteworthy of these norms include: Law No. 27336, on transparency and public disclosure in telecommunications; Supreme Decree No. 018-2001-PCM, which establishes the obligation of government bodies to have a special procedure to guarantee RTI; Urgent Decree No. 035-2001, which establishes rules for allowing access of individuals to information on public finances; Law No. 27444, the Law on General Administrative Procedure, whose Article 110 regulates the right of individuals to request information held by public entities; Law No. 27482, which regulates publication of the Sworn Declaration of Income and of Assets and Revenues of public officials and servants as well as its Regulations, adopted through Supreme Decree No. 080-2001-PCM.

<sup>15</sup>Draft Bill No. 0021/2001-CR, submitted on July 24, 2001 by Congresswoman Mercedes Cabanillas Bustamante, of the Partido Aprista Peruano. Draft Bill No. 0103/2001-CR, submitted on July 27, 2001 by Congresswoman Marcial Ayaypoma Alvarado, of the Perú Posible government party. Draft Bill No. 0165/2001-CR, submitted on July 27, 2001 by Congressman Henry Pease García de Perú Posible. Draft Bill No. 0714/2001-CR, submitted on September 18, 2001 by Congressman Jaques Rodrich Ackerman, of Perú Posible. Draft Bill No. 1356/2001-CR, submitted on November 21, 2001 by Congressman Carlos Ferrero Costa, of Perú Posible, which is a modified version of Draft Bill No. 3903, submitted by the same congressman. Draft Bill No. 1922/2001-CR, submitted on February 1, 2002 by Congresswoman Ana Elena Townsend Diez Canseco, of Perú Posible. Draft Bill No. 1978/2001-CR, submitted on February 11, 2002 by Congressman Máximo Mena Melgarejo, of Perú Posible. Draft Bill No. 1992/2001-CR, submitted on February 12, 2002 by Congressman Luis Alva Castro, of the Partido Aprista Peruano. Draft Bill No. 3047/2001-CR, submitted on May 30, 2002 by Congressman Luis Gonzales Reynoso, of the Unión Parlamentaria Descentralista. These bills (in Spanish) may be viewed at:

[http://www2.congreso.gob.pe/Sicr/TraDocEstProc/TraDoc\\_expdig\\_2001.nsf/Sicr/TraDocEstProc/TraDoc\\_expdig\\_2001.nsf/Agenda/4F43C40FC1B8765D052578BF0070743E?opendocument](http://www2.congreso.gob.pe/Sicr/TraDocEstProc/TraDoc_expdig_2001.nsf/Sicr/TraDocEstProc/TraDoc_expdig_2001.nsf/Agenda/4F43C40FC1B8765D052578BF0070743E?opendocument).

<sup>16</sup> Originally, this committee was called the Working Group on Transparency, Access to Public Information and Citizen Participation. However, at the August 26, 2002 session of the Constitution Committee, the name was changed at the request of Congresswoman Ana Elena Townsend Diez Canseco.

<sup>17</sup> Ombudsman's Office. Ombudsman's Report No. 96. *Balance a dos años de vigencia de la Ley de Transparencia y Acceso a la Información Pública 2003–2004*. 15–16.

<sup>18</sup> This is a legal mechanism in Peru to systematize into a single document the different modifications of a law. The TUO does not modify the law; it simply integrates the different modifications into a single text to prevent normative dispersion on the same topic. The TUO is adopted through a regulatory norm called a Supreme Decree. Henceforth, all references to LTAIP refer to the TUO of Law 27806.

<sup>19</sup> The Ombudsman's Office disagreed with the decision that LTAIP would have Regulations, stating that: The first transitory, complementary and final provision of the Law stipulated that the Executive Branch should develop its regulations within a 90-day period. In our opinion, it is not indispensable to pass regulations because the Law is sufficiently precise; nevertheless it was decided to develop them." See Ombudsman's Office. Ombudsman's Report No. 96. *Balance a dos años de vigencia de la Ley de Transparencia y Acceso a la Información Pública 2003–2004*. 2005. p. 16.

<sup>20</sup> It was not possible to locate the official record of the discussions on the activities convened by the CPP or on the debate of the Working Group chaired by Townsend, for which reason this report offers general information, providing generic information on the groups that defended the different positions, based on the interviews conducted.

<sup>21</sup> Habeas data is a constitutional process to access a record or database that includes information on an individual. It is a legal guarantee for the adequate management of personal information held by third parties. It enables avoiding abuses and rectifying involuntary mistakes in the administration and publication of the data. Habeas data is regulated by legislation of several countries and is also included in legislation on the protection of personal information. In Peru, *habeas data* also protects RTI.

<sup>22</sup> Interview with Mayumi Ortecho, RTI program officer of the IPYS.

<sup>23</sup> See also: Abad Yupanqui, Samuel. "Servicios de Inteligencia sin Transparencia." In: *Legal Express*, No. 56, August 2005. *Gaceta Jurídica*. Lima.

<sup>24</sup> As mentioned in Table 1, Article 4 of the RLTAIP establishes that entities with decentralized offices may appoint the officials responsible for delivering information in each entity.

<sup>25</sup> Ipsos, Evaluación de la implementación de la ley de transparencia y acceso a la información. September 2009.

<sup>26</sup> On this case, see:

<http://www.infopublica.pe/?pag=noticia&idn=88>.

<sup>27</sup> Article 377. The public official who illegally omits, refuses or delays any action of his position shall be punished with imprisonment of no more than two years and 30 days—fine.

<sup>28</sup> It was not possible to obtain information for this report on whether or not this sentence was disputed and in the event

it was, whether or not it was the result of a ruling of the appellate court.

<sup>29</sup> At the time of this ruling, the following text of Article 376 was in effect: "The public official who, abusing his authority, commits or orders any arbitrary act that harms someone, shall be punished with a prison term of no more than two years. When the facts derive from a procedure of coercive charge, the sentence shall be no less than two years and no more than four years." This type of crime was modified through Law No. 29703, adopted on June 10, 2011, increasing the basic prison term to *no more than three years*.

<sup>30</sup> The resolution deactivating the ONA did not mention the reasons for doing so; however, ever since it began operations, the need for this office to fight corruption was questioned given that it did not have clear functions with respect to other government institutions. The Comptroller General's Office and the Attorney General's Office publicly questioned some of the powers attributed to the ONA because they claimed that they interfered with some of the constitutional powers of these institutions.

<sup>31</sup> At this writing, the SGP's Technical Component on Ethics, Transparency, and Citizen Oversight is responsible for the functions of transparency and access to public information; it has three members. See (in Spanish):

[http://sgp.pcm.gob.pe/index.php?option=com\\_content&view=article&id=81&Itemid=158](http://sgp.pcm.gob.pe/index.php?option=com_content&view=article&id=81&Itemid=158).

<sup>32</sup> For example, Ministerial Resolution No. 398-2008, of December 2, 2008, through which Directive No. 004-2008-PCM/SGP was adopted, "*Guidelines for the standardization of the contents of transparency portals of public entities*"; Ministerial Resolution No. 301-2009-PCM, of July 9, 2009, through which Directive No. 003-2009-PCM/SGP was adopted, "*Guidelines for the report on requests for access to information to be submitted to the Office of the President of the Ministerial Cabinet*"; Supreme Decree No. 063-2010-PCM, of June 3, 2010, through which the implementation of the *Standard Transparency Portal* was adopted; or Ministerial Resolution No. 200-2010-PCM, of June 24, 2010, through which Directive No. 001-2010-PCM/SGP was adopted "*Guidelines for the implementation of the Standard Transparency Portal in Government Entities*." These norms on the *Standard Transparency Portal* were promoted on the initiative of the SGP in response to constant complaints and comments from officials responsible for providing information regarding the difficulties in updating institutional Web sites. This legislation also addressed the disordered formats, diverse content and inadequate quality of the information published on the Web sites. To view the format and the applications of the *Standard Transparency Portal*, see:

[http://www.peru.gob.pe/transparencia/pep\\_transparencia.asp](http://www.peru.gob.pe/transparencia/pep_transparencia.asp).

<sup>33</sup> According to the norm that adopted the implementation of the *Standard Transparency Portal* (Supreme Decree No. 063-2010-PCM), this should be implemented within a period of 30 calendar days beginning on the date it went into effect (June 3, 2010) in the case of the national government. For regional and local governments that had Web sites, the deadline was 60 calendar days. Local district governments that did not have Web sites were given a maximum of one year to develop them.

<sup>34</sup>Guillén Nolasco, Patricia. "Rol de la Presidencia del Consejo de Ministros en el Fortalecimiento de la Transparencia en el Estado." Presentation at the Third National Conference on Access to Public Information. Lima. October 2010. Slides 12–17.

<sup>35</sup>The first implementation phase has the following objectives: (1) make it compatible with systems of the Ministry of Economics and Finance (MEF), the Ministry of Labor and Employment Promotion (MTPE) and the Agency for Oversight of Government Contracts (OSCE); (2) apply the recommendations of the MESICIC: Information should follow the outline of the publication model set forth in Inter-American Model Law on Access to Public Information; and (3) promote good practices in the public administration. This was chosen as a good practice in the competition organized by the Informed Citizens organization (CAD–2010). The second phase has the following objectives: (1) improve the users administrative system to facilitate access in accordance with criteria of functions or responsibilities; (2) implement a tool that will permit the migration of Excel files to the contracting information module; (3) link public investment projects with the SEACE selection process in an effort to inform on the procedure through the final implementation phase and to incorporate georeference data to locate it on Google Maps; (4) develop multimedia tutorials for users and administrators; (5) develop a module to monitor updating of Web sites; and (6) prepare a module for registering information on corporations under the National Fund for the Financing of Government Business Activity (FONAFE).

<sup>36</sup> Guillén Nolasco, Patricia. Op. Cit., Slide 18.

<sup>37</sup> Ibid. Slide 19.

<sup>38</sup>See conclusions (in Spanish) of the Third National Conference on Access to Public Information (October 21–22, 2010).

<sup>39</sup>Moreover, as proposed during the First National Conference on Transparency (September 2008), the purpose of institutional Web sites is sometimes distorted when public officials perceive them as a propaganda tool for the entity rather than as a communications mechanism between government bodies and society. The effective functioning of the Web sites is essential given that they are closely monitored by civil society, whose perception of transparency of government bodies is largely based on what is published on these sites. Nevertheless, the Ombudsman's Office confirmed that this has not served to promote improvements, particularly at the local government level.

<sup>40</sup>The Specialized Bureaus are: Bureau for the Government Administration; Constitutional Affairs Bureau; Bureau for Human Rights and People with Disabilities; Bureau for Women's Rights; Bureau for the Environment, Public Services and Indigenous Peoples; Bureau for Children and Adolescents; and Bureau for Social Conflicts and Good Governance.

<sup>41</sup>The thematic programs are: Indigenous Peoples; Decentralization and Good Government; Identity and Citizenship; Protection of Rights in Police Agencies; People with Disabilities; Criminal and Prison Affairs; and Public Ethics, Prevention of Corruption and Public Policies.

<sup>42</sup>For example, Ombudsman's Report No. 60, El Acceso a la Información Pública y la Cultura del Secreto (Access to Public Information and the Culture of Secrecy, September 2001), or

Ombudsman's Report No. 96, Balance a dos años de vigencia de la Ley de Transparencia y Acceso a la Información Pública 2003–2004 (Assessment Two Years After the Law on Transparency and Public Information Went into Effect, 2003–04, October 2005).

<sup>43</sup>The most recent records the results of the Web site assessment conducted in February 2011. The reports (in Spanish) can be viewed at:

<http://www.defensoria.gob.pe/programa-gob.php>.

<sup>44</sup>Ombudsman's Document No. 9, El derecho de acceso a la información pública. Normativa, jurisprudencia y labor de la Defensoría del Pueblo (The right of access to public information. Norms, jurisprudence and labor of the Ombudsman's Office, November 2009), or Transparencia, Acceso a la Información Pública y Rendición de Cuentas. Conceptos básicos y propuestas metodológicas (Transparency, Access to Public Information and Accountability. Basic Concepts and Proposed Methods, 2010).

<sup>45</sup>Since its founding, the Ombudsman's Office has successfully developed this intervention strategy to defend the rights of women, indigenous peoples and environmental organizations. See Thomas Pegram, "Accountability in hostile times: the case of the Peruvian Human Rights Ombudsman. 1996–2001," *Journal of Latin American Studies*, Vol. 40, no. 1, February 2008. Several civil society organizations work in partnership with the Ombudsman's Office to promote compliance with LTAIP. For example, the CPP implements the Transparent Municipalities project; the IPYS coorganizes the National Conference on Access to Public Information with the Ombudsman's Office; and CAD organizes the Award for Best Practices, with support from the Ombudsman's Office.

<sup>46</sup>Pegram Op. cit.

<sup>47</sup>See Directive No. 00001–2011–CG / PEC, formulation and evaluation of the annual control plan of oversight institutions for 2011. Adopted through Comptroller's Resolution No. 002–2011–CG, of January 10, 2011. This Directive establishes supervision of compliance with LTAIP as a priority control activity. These documents (in Spanish) can be viewed at:

[http://www.contraloria.gob.pe/wps/wcm/connect/c7d3d080455e4a748dcdfb5c04093d8/RC\\_002-2011-CG\\_.pdf?MOD=AJPERES&CACHEID=c7d3d080455e4a748dcdfb5c04093d8](http://www.contraloria.gob.pe/wps/wcm/connect/c7d3d080455e4a748dcdfb5c04093d8/RC_002-2011-CG_.pdf?MOD=AJPERES&CACHEID=c7d3d080455e4a748dcdfb5c04093d8).

<sup>48</sup>In this regard, the declarations of the former Comptroller General are pertinent. He stated that LTAIP was below the Organic Law of the CGR. This opinion reflected the interpretation that an organic law is hierarchically superior to a regular law. Nevertheless, the relation between the two laws is not hierarchical but rather of jurisdiction. An organic law is adopted through a more rigorous procedure than a regular law and is reserved for regulating specific areas such as functions and organization of certain institutions, but is in no way *hierarchically superior* to a regular law such as LTAIP. Moreover, this type of consideration hinders respect for RTI and creates confusion among public officials, negatively affecting the implementation of LTAIP (First National Conference on Access to Public Information, September 29–30, 2008).

<sup>49</sup>Since 2008, the IPYS has coorganized the National Conference on Access to Public Information with the Ombudsman's Office. This is a space for discussion, debate and exchange of experiences among public officials, experts, civil society leaders, journalists and academics. Public officials include mainly the secretaries general of national government entities who are responsible for access to public information and the transparency portal. This is the only event that brings together a large number of public officials responsible for access to public information and therefore constitutes an important forum for debate and proposals with respect to the problems that the government faces in this issue as well as the advances. Four conferences have been held so far, with 150 to 200 participants each, mostly public officials. The conference is organized with financial support from the Open Society Institute.

<sup>50</sup>Press and Society Institute. *Relatoría de la Tercera Conferencia Nacional de Acceso a la Información Pública*. Lima 2011. p. 79.

<sup>51</sup>At this writing, the official conclusions of the event had still not been published, for which reason this section is based on notes taken by the author.

<sup>52</sup>The General Archive of the Nation is the Central Agency of the National Archive System and is an administrative system.

<sup>53</sup>With respect to the legislation on archives, Law Decree No. 19414, the Law on the Defense, Conservation and Increase of Documentary Heritage, of June 16, 1972, establishes the criteria, rules and procedures for the conservation of the documentary heritage. Its Regulations were adopted through Supreme Decree No. 022-75-ED, of October 29, 1975. Law No. 25323, adopted on June 11, 1991, created the National Archive System. Its Regulations were adopted through Supreme Decree No. 008-92-JUS of June 26, 1992. In addition, Law No. 28296, the General Law on the Nation's Cultural Heritage, adopted on July 22, 2004, establishes provisions to protect the country's documentary cultural heritage. The regulations of this law were adopted through Supreme Decree No. 011-2006-ED of June 1, 2006.

<sup>54</sup>Conference of Iván Caro Acevedo, National Director of Archive Activity and Intermediate Archives of the National Archive System, at the Third National Conference on Access to Public Information organized by the IPYS, October 21-22, 2010. See: Press and Society Institute. *Relatoría de la Tercera Conferencia Nacional de Acceso a la Información Pública*. Lima 2011. p. 41.

<sup>55</sup>See <http://elcomercio.pe/ediciononline/html/2009-01-09/desaparecen-mas-800-cajas-importante-informacion-ministerio-salud.html>.

<sup>56</sup>See <http://peru21.pe/noticia/1054036/banmat-otra-vez-envuelto-escandalo>.

<sup>57</sup>See <http://www.ipys.org/index.php?q=noticia/801>.

<sup>58</sup>See <http://www.ipys.org/index.php?q=noticia/792>.

<sup>59</sup>Press and Society Institute. *Relatoría de la Tercera Conferencia...*p. 79.

<sup>60</sup>Ibid.

<sup>61</sup>These sectors were selected because they provide important services to a large number of citizens and because they are considered particularly vulnerable to corrupt practices given that they have a large number of beneficiaries and a large budget as well as many procurement and contracting procedures.

<sup>62</sup>Press and Society Institute—IPYS. *Relatoría de la Primera Conferencia Nacional sobre Acceso a la Información*. Lima 2009. p. 67.

<sup>63</sup>Press and Society Institute—IPYS. *Relatoría de la Tercera Conferencia Nacional de Acceso a la Información Pública*. Lima 2011. p. 79.

<sup>64</sup>Proof of this is the aforementioned publications on this topic. See footnote No. 53.

<sup>65</sup>Annual reports of the Ombudsman's Office to Congress (in Spanish) may be viewed at:

<http://www.defensoria.gob.pe/inform-anales.php>.

<sup>66</sup>Press and Society Institute—IPYS. *Relatoría de la Primera Conferencia Nacional sobre Acceso a la Información*. Lima 2009. p. 67.

<sup>67</sup>These conclusions can be viewed at:

[http://www.ipys.org/accesoinfo2/mesas\\_discusion.html](http://www.ipys.org/accesoinfo2/mesas_discusion.html).

<sup>68</sup><http://www.servir.gob.pe/index.php/es/ique-es-servir/gerencias/capacidades-y-rendimiento.html>.

<sup>69</sup>These reports can be viewed at:

<http://www.defensoria.gob.pe/inform-anales.php>.

<sup>70</sup>For the project description (in Spanish), see:

<http://www.defensoria.gob.pe/inform-anales.php>.

<sup>71</sup>For the project description (in Spanish), see:

<http://www.consejoprensaperuana.org.pe/tempo/proyectos.php?item1=MTM=>.

<sup>72</sup>See the Ministry of Health's Plan for the Promotion of Ethics, Transparency and the Fight against Corruption, 2010-2011 (in Spanish), adopted through Ministerial Resolution No. 384-2010/MINSA, at:

<http://www.minsa.gob.pe/transparencia/Archivos/RM384-2010MINSA.pdf>.

<sup>73</sup>She was succeeded by ministers Carlos Vallejo, Hernán Garrido and Oscar Ugarte. The current administration of Health Minister Alberto Tejada has also demonstrated signs of continuing this policy.

<sup>74</sup>Ipsos, *Evaluación de la implementación de la ley de transparencia y acceso a la información*. September 2009, slide. 21.

<sup>75</sup>Press and Society Institute—IPYS. *Relatoría de la Tercera Conferencia Nacional de Acceso a la Información Pública*. Lima 2011. p. 79.

<sup>76</sup>A reverse auction is the "...selection method through which government bodies choose the supplier of common goods or services based solely on the prices offered, rather than on the technical characteristics of the good or service required, given that these are predetermined." In Bossano Lomellini, Luis Miguel. "La subasta inversa: un mecanismo de contratación pública eficiente y transparente." In: DERECHO PUCP No. 66—2011. *Monográfico sobre Contrataciones y Adquisiciones del Estado*. PUCP. Lima. pp. 276—277.

<sup>77</sup>Through Ministerial Resolution No. 584-2009/MINSA, of September 2, 2009, targets and performance indicators were adopted for the anticorruption policy in the Ministry of Health, among other issues. Three indicators are associated with RTI and transparency: (1) number of people trained in standards for ethics, transparency and the fight against corruption of the health sector. The 2009 target for this indicator was to train 400 people; (2) percentage of publication of mandatory documents in the Transparency link of the Ministry's Web site. The 2009 target for this indicator was 93 percent; and (3) number of requests for

information processed in the framework of LTAIP and the fight against corruption. The 2009 indicator was 3,000 processed requests. Compliance with indicators (1) and (3) is the responsibility of the Health and Transparency Ombudsman whereas the Office of Communications is responsible for indicator (2).

<sup>78</sup> The address of the Ministry of Health institutional Web site (in Spanish) is: <http://www.minsa.gob.pe/>.

<sup>79</sup> In 2010, nearly 6.8 billion nuevos soles were allocated to social programs, of which 4.15 billion were earmarked for the PSH, in other words, 60 percent of the total.

<sup>80</sup> Ombudsman's Office. Op. Cit. p. 27.

<sup>81</sup> Ibid. pp. 41-44.

<sup>82</sup> At the publication of all the information in each item, a value of 100 percent is given, and all items are averaged to obtain a final value.

<sup>83</sup> Ibid. pp. 124-126.

<sup>84</sup> Ibid. pp. 127-128.

<sup>85</sup> Adopted on July 3, 2011. Public disclosure of RUB does not only pose difficulties for the right to personal and family privacy, but in general with the right to informative self-determination or the protection of personal information.

<sup>86</sup> <http://www.seace.gob.pe/> For information on SEACE, see Ana Teresa Revilla Vergara. "La transparencia en la ley de contrataciones del Estado" DERECHO PUCP. Revista de la Facultad de Derecho No. 66 (PUCP-Lima). *Monográfico sobre contrataciones y adquisiciones del Estado*. p. 210.

<sup>87</sup> Ibid. pp. 202-209, 213-214.

<sup>88</sup> These officials include the president, vice presidents, members of Congress, ministers and vice-ministers, members of the Supreme Court of Justice, chairmen and members of the collegiate body of the Autonomous Constitutional Entities. The prohibition extends to the spouse, live-in partner or the fourth degree of consanguinity and second of affinity. This prohibition has generated controversy in Peru.

<sup>89</sup> <http://www.consejoprensaperuana.org.pe/tempo/proyectos.php?item1=MTI=&item2=MjA=>.

<sup>90</sup> For information on the Transparent Municipalities project (in Spanish), see:

<http://www.consejoprensaperuana.org.pe/tempo/proyectos.php?item1=MTM=>.

<sup>91</sup> For details on some IPYS projects (in Spanish) that deal with transparency and access to public information:

[http://www.ipys.org/project\\_listing&term\\_node\\_tid\\_depth=All&term\\_node\\_tid\\_depth\\_1=31](http://www.ipys.org/project_listing&term_node_tid_depth=All&term_node_tid_depth_1=31).

<sup>92</sup> For example, CAD Bulletin No. 129 of December 7, 2010, dedicated to analyzing aspects of compliance with proactive public disclosure obligations contained in LTAIP

(<http://www.ciudadanosaldia.org/boletines/default.htm>).

CAD Report No. 36 (December 2004) analyzes the level of compliance with LTAIP in municipal tax administrations.

<sup>93</sup> Results are published in regular bulletins:

[http://descentralizacion.org.pe/n-publicaciones-listado.shtml?conds%5B0%5D%5Bvalue%5D=Evaluaci%F3n+de+Portales&conds%5B0%5D%5Bcategory.....%5D=1&sort%5B0%5D%5Bpublish\\_date....%5D=d](http://descentralizacion.org.pe/n-publicaciones-listado.shtml?conds%5B0%5D%5Bvalue%5D=Evaluaci%F3n+de+Portales&conds%5B0%5D%5Bcategory.....%5D=1&sort%5B0%5D%5Bpublish_date....%5D=d).

<sup>94</sup> [http://www.descentralizacion.org.pe/apc-aa/archivos-aa/3c6bb51ada688b58c57cb18308d59d73/transparencia\\_mireras4.pdf](http://www.descentralizacion.org.pe/apc-aa/archivos-aa/3c6bb51ada688b58c57cb18308d59d73/transparencia_mireras4.pdf).

<sup>95</sup> <http://www.justiciaytransparencia.pe/> This is an important tool for officials responsible for access to information of public entities as well as for citizens who can access jurisprudence for use in defending their right to access public information.

<sup>96</sup> Economic and Social Research Consortium (CIES), Transparency, Propuesta Ciudadana, Mesa de Concertación de Lucha contra la Pobreza, Ventana Pública of the PUCP and Ciudadanos al Día.

<sup>97</sup> Established in 2007. <http://universidadcoherente.org/>.

<sup>98</sup> In March 2011, the results of these indicators were published in: *Hacia una universidad transparente. Informe sobre la transparencia y el acceso a la información en las universidades públicas del Perú 2010* ([http://universidadcoherente.org/documentos/info\\_hacia\\_ondavan\\_univ.pdf](http://universidadcoherente.org/documentos/info_hacia_ondavan_univ.pdf)).

<sup>99</sup> See <http://www.dar.org.pe/transparenciaforestal/indexproyecto.html>.

<sup>100</sup> At this writing, the reports corresponding to 2009 (<http://www.dar.org.pe/transparenciaforestal/Documentos/Informe%202009%20TF%20c.pdf>)

and 2010 (<http://www.dar.org.pe/informe-transparencia-forestal-2010.htm>) have been published.

<sup>101</sup> Exceptions include DAR cases that have ecological components and those of Universidad Coherente, whose actions are largely driven by the right to an education.

<sup>102</sup> The 2004 Annual Report was submitted on May 4, 2005 (Official Letter No. 092-2005-PCM/SG.200/SGP) whereas that of 2007 was submitted on April 4, 2008 (Official Letter No. 1508-2008-PCM/SG-SC). The 2008 Annual Report was sent on March 31, 2009 (Official Letter No. 1729-2009-PCM/SG-SC) and that of 2009 was delivered to Congress on March 31, 2010 (Official Letter No. 1812-2010-PCM/SG-SC).

<sup>103</sup> The response to this information request was Letter No. 008-2010-2011-DGP/CR, of August 31, 2010, which included the information on the reports corresponding to 2003–09.

<sup>104</sup> Esteban Delgado, Sara. "Revisión del Informe Anual de la Presidencia del Consejo de Ministros—2010" (Discussion notes). Lima, 2011. pp. 2-3.

<sup>105</sup> Loc. cit.

<sup>106</sup> Esteban Delgado, Sara. El derecho de acceso a la información a través del hábeas data. Insumos para una política pública de transparencia. Lima, 2010. pp. 22-23.

<sup>107</sup> See: Castro Cruzatt, Karin. Acceso a la Información Pública: Apuntes sobre su desarrollo en el Perú a la luz de la jurisprudencia del Tribunal Constitucional. Workbook No. 6. School of Law, Pontificia Universidad Católica del Perú. September 2008. p. 47.

<sup>108</sup> Esteban Delgado, Sara. "Revisión del Informe Anual de la Presidencia del Consejo de Ministros—2010" (Discussion notes). Lima, 2011.

<sup>109</sup> Loc. cit.

<sup>110</sup> Office of the President of the Ministerial Cabinet. Informe Anual 2009 sobre solicitudes y pedidos de información atendidos y no atendidos por las entidades de la administración pública. Lima. pp. 14-15.

<sup>111</sup> Ibid. p. 16.

<sup>112</sup> See conclusions of the First National Conference on Access to Public Information (September 29-30, 2008).



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<sup>113</sup>For information on the judicial regime of RTI and the jurisprudence of the Constitutional Tribunal, see, Pereira Chumbe, Roberto. *El derecho de acceso a la información pública y su régimen jurídico*. Lima. *Actualidad Jurídica*. T. 142. September 2005. pp. 155-160.

<sup>114</sup> Esteban Delgado, Sara. *El derecho de acceso a la información a través del hábeas data. Insumos para una política pública de transparencia*. Lima, 2010. 27p.

<sup>115</sup>See conclusions of the First National Conference on Access to Public Information (September 29-30, 2008).

<sup>116</sup>*Ibid.*

<sup>117</sup> Through an agreement with the Pereira&Asociados Law Firm, the IPYS can litigate cases of access to public information and freedom of expression both in administrative and jurisdictional proceedings, with the legal support of this firm.

<sup>118</sup>First National Conference on Access to Public Information (September 29–30, 2008).

<sup>119</sup>The first Ministerial Cabinet of the new government made a commitment to work with transparency and to promote access to public information.