

SUPREME DECREE No. **28168**

CARLOS D. MESA GISBERT
CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

CONSIDERING:

That the right of people to information, consisting of the exercise of freedom of seek, receive and disseminate information and ideas of all kinds, without regard to borders, whether orally, in writing, in printed form, artistically or by any other procedure of your choice, is recognized, in its individual aspect, in the subsection b) of Article 7 of the Political Constitution of the State, which establishes the right to freely express ideas and opinions by any means of dissemination, and, in its aspect social, as an implicit right, in its Article 35.

That the right to information is directly related to the fundamental right of the persons to formulate petitions individually or collectively, recognized in subsection h) of the Article 7 of the Political Constitution of the State.

That the Universal Declaration of Human Rights, in its Article 19, establishes that: "Every individual has the right to freedom of opinion and expression; this right includes not to be bothered because of their opinions, to investigate and receive information and opinions, and to disseminate them, without limitation of borders, by any means of expression".

That the International Covenant on Civil and Political Rights indicates the need for the States guarantee the right of everyone to freedom of expression, which includes the freedom to seek, receive and impart information and ideas regardless of borders, either orally, in written or artistic form, or by any other procedure of your choice.

That the American Convention on Human Rights provides that you cannot restrict the right of expression by indirect means or means, such as abuse of official or private controls of newsprint, radio frequency or devices used in the dissemination of information, or by any other means aimed at preventing communication and the circulation of ideas and opinions.

That Resolution No. 1932 adopted by the Organization of American States, in its plenary session of June 10, 2003, establishes that: "access to information public is an indispensable requirement for the very functioning of democracy, a greater transparency and good public management, and that in a democratic system, representative and participatory, citizens exercise their constitutional rights to

political participation, voting, education and association, among others, through a broad freedom of expression and free access to information ".

That in a broad and inclusive democratic society the validity of a right to communication and information that, corresponding to each and every one of the citizens, create broader opportunities for the edification of your citizenship beyond of the recognized freedoms of expression and thought.

That access to public information, in a timely, complete, adequate and truthful manner is an indispensable requirement for the functioning of the democratic system and pillar fundamental of transparent public management; particularly in access to information necessary to investigate crimes against humanity, violations of rights human rights, crimes of economic damage to the State and acts of corruption.

That in this sense, at the proposal of the Presidential Anticorruption Delegation, it corresponds issue this regulation by fast track, within the framework of Chapter IX of the Decree Supreme Court No. 27230 of October 31, 2003.

ON CABINET COUNCIL,

DECREE:

ARTICLE 1.- (PURPOSE). The purpose of this Supreme Decree is to guarantee the access to information, as a fundamental right of every person and transparency in the management of the Executive Power.

ARTICLE 2.- (SCOPE OF APPLICATION). This Supreme Decree applies in the scope of the Executive Power both at the central and decentralized levels, autarkic and deconcentrated; State companies and companies and companies with State participation majority. When the State does not have the majority social participation, this Decree Supremo will apply to public or private servants who represent it, within the framework of their functions and powers.

ARTICLE 3.- (PRINCIPLES). The fundamental principles that guide access to public information are as follows:

ADVERTISING: All information that the Executive Branch generates and possesses belongs to the collectivity and is public. People will have the right of unrestricted access to it. Except for exceptions expressly provided for by current laws. In no case may information be protected under secrecy, reserve or confidentiality referred to the commission of crimes against humanity, human rights violations, corruption in the exercise of public functions and economic damage to the State.

MANDATORY: Every entity of the Executive Power has the obligation to deliver the information in a complete, adequate, timely and truthful manner, requested by any person, without any discrimination.

FREE: Access to information is free. When there are costs of reproduction, these must be covered by the applicant.

ARTICLE 4.- (RIGHT TO INFORMATION). The right to access to information to all people as a fundamental assumption for the full exercise of citizenship and strengthening of democracy.

ARTICLE 5.- (LEGITIMATION). In exercise of the rights of information and petition, any natural or legal person, individually or collectively, is entitled to request and receive complete, adequate, timely and truthful information from the Executive Power.

ARTICLE 6.- (GUARANTEE OF ACCESS TO INFORMATION). The Maxims Executive Authorities must ensure access to information to all persons without distinction of any nature, establishing the structure and internal procedures of the public entities under their dependence, which allow to provide complete information, adequate, timely and truthful.

ARTICLE 7.- (REGULATION OF EXCEPTIONS). **I.** Access to information It can only be denied in an exceptional and motivated manner, only with respect to that information that prior to the request and in accordance with current laws find it classified as secret, reserved or confidential. This rating will not be, in no case, discretionary of the public authority.

II. Lifting of secrecy, reserve or confidentiality by competent authority, of In accordance with current laws, the requested information will be provided in a timely and preferential.

ARTICLE 8.- (SECRET, RESERVED OR CONFIDENTIAL INFORMATION OF THE EXECUTIVE BRANCH). **I.** The secret, reserved or confidential information of the Executive Power relating to the internal or external security of the State will be subject to the following regime:

1. Indefinite preservation of supporting documentation.
2. Lifting of secrecy, reserve or confidentiality by order of competent authority.
3. Automatic lifting of the secret, reserve or confidentiality of the information, twenty (20) years after the event information generator.

II. The execution and control of the Budget Item for Specific Expenditures of the Central Administration - 26100, will be subject to the provisions of the Supreme Decrees in force for this purpose.

ARTICLE 9.- (MEANS OF ACCESS TO INFORMATION). People can access public information directly through electronic pages, publications or any other broadcast format; and indirectly, through the Information Unit that the Highest Executive Authorities will enable in each of the entities under its charge or through the existing Unit to which said Authority expressly delegate this function.

ARTICLE 10.- (MANDATORY PUBLICATION). **I.** The entities included in the scope of application of this Supreme Decree must publish and update, to through their respective electronic pages, the following minimum information, without This means that access to the other information is restricted:

- Budget approved by the General Treasury of the Nation.
- List of permanent and eventual public servants and consultants, paid by the TGN or by other sources of financing.
- Main data of contracts for goods, works and services and agreements held by the institution.
- Annual Operating Programs.
- Annual reports on budget execution.
- Annual plans for the procurement of goods and services sent to the Information on State Contracts - SICOES and updated reports of its execution.

II. The international conventions and treaties in force for the country, as well as the instruments related to its celebration and validity, will be published in the Official Gazette of Bolivia.

III. The Ministry of Finance will publish the structure and scales on its website current wages in the Institutions that make up the Executive Power.

ARTICLE 11.- (INDIRECT ACCESS). **I.** The petitioners, duly identified, they will request the information verbally or in writing to the Information established for this purpose.

II. The responsible public servant will keep a record of all the applications submitted. The information will be made available to the applicant within a maximum period of fifteen (15) business days, except in the case of justified refusal in the causes established in this Supreme decret.

III. The justification of the request or the sponsorship of a lawyer for the submission of applications.

ARTICLE 12.- (INFORMATION FORMAT). **I.** Any public entity has the obligation to provide the required information in written documents, photographs, recordings, magnetic or digital media, or in any other format, provided there is

been created or obtained by it and which is under its responsibility or the scope of its competence.

II. The entity is only obliged to deliver the information in the state and form in which is found. The petitioner may not require a change in format or that the information in a manner other than that which is stored or archived in the entity.

III. In accordance with the principle of gratuity, the petitioner who requires information must pay only the amount corresponding to the costs of reproduction of the required information.

ARTICLE 13.- (ADDITIONAL INFORMATION). The request for information does not implies the obligation of the entity to create or produce information that it does not have at the time of the request.

ARTICLE 14.- (PARTIAL INFORMATION). In case a document contains partial information, the public entity must allow access to all the information that is available.

ARTICLE 15.- (JUSTIFIED NEGATIVE). **I.** Justified refusal to deliver of the information, may only be based on the following grounds:

1. Secrecy, reserve or confidentiality expressly established in current laws, Except in the case of lifting of this quality by competent authority, in accordance with provided in current regulations.
2. Non-existence of the requested information in the entity's records or files.
3. Lack of competence to provide the information, when it is corresponds to another entity.

II. The competent authority must notify the petitioner in writing of its refusal, based on the preceding grounds, indicating the limitations and reasons that justify the failure to deliver the requested information.

III. The authority must advise the petitioner, in writing, of the possible destination or location of the information, when it does not exist in their files or records or is not within the scope of its competence.

ARTICLE 16.- (UNDUE REFUSAL) **I.** In case of undue refusal, lack of response or illegal restriction to the right to information, the petitioner may go in complaint before the competent superior authority or the Ombudsman, or make use of the constitutional, judicial and administrative resources in force in the legal system.

II. The competent superior authority will resolve the complaint within five (5) days skillful from their presentation. If you consider it well founded, within the maximum term of fifteen (15) business days will provide the requested information.

ARTICLE 17.- (RESPONSIBILITY) **I.** The public servants in charge of the compliance and execution of this Supreme Decree that incur in undue refusal, lack of response or illegal restriction in the attention of requests for information, regardless of the administrative and civil responsibility that corresponds to them, they will be liable to criminal responsibility for the crime of breach of duties.

II. The higher administrative authority, once the fact is known, will file a complaint with the Public Ministry for the corresponding criminal action. The affected petitioner in his Right may file a complaint with the same entity.

ARTICLE 18.- (EXEMPTION OF SANCTIONS). **I.** Compliance with the provisions of this Supreme Decree will not give rise to any type of sanctions against the people who provide the requested information.

II. No natural or legal person, public or private, entity or means of communication that discloses the information obtained, may be subject to retaliation, actions administrative or judicial for the disclosure of information, including that indicated in the Article 7 of this Supreme Decree and Article 8 of this same rule when find it framed in the procedures and deadlines established for this purpose.

ARTICLE 19.- (HABEAS DATA REQUEST). **I.** Everyone, on the road administrative, may request before the authority in charge of files or records the updating, complementation, deletion or rectification of your data registered by any physical, electronic, magnetic or computer means, relating to your rights fundamental to identity, intimacy, image and privacy. In the same way, you can request access to the information from the competent superior authority in the event of refusal unjustified by the authority in charge of the public record or archive.

II. The Habeas Data request will be resolved within a maximum period of five (5) business days. In the event of unjustified denial of access to information, the hierarchical authority competent, additionally you will have a period of fifteen (15) business days to provide the information requested.

III. The Habeas Data petition does not replace or substitute the Constitutional Appeal established in Article 23 of the Political Constitution of the State. The interested party may alternatively resort to administrative procedures without its exercise entailing resignation or loss of judicial process. Access to the judicial process will not be conditioned to the previous use or exhaustion of this administrative channel.

ARTICLE 20.- (IMPLEMENTATION MEASURES). **I.** Any public entity must adopt administrative measures that guarantee and promote transparency and access to information. In this sense, adequate infrastructure must be provided, organization, systematization and publication of information, within the nineties (90) days following the date of publication of this Supreme Decree.

II. The Executive Branch will promote actions aimed at creating in society a culture of access to information through public awareness plans; Programs of training and updating of public servants; periodic evaluations and monitoring of the fulfillment and execution of the present Supreme Decree.

III. The Ministry of Finance will authorize the corresponding budget items, for the fulfillment and execution of this Supreme Decree.

ARTICLE 21.- (VALIDITY OF RULES) **I.** Supreme Decree No. 27329 of January 31, 2004.

II. The provisions contrary to this Supreme Decree are repealed.

The Ministers of State in their respective Offices and the Presidential Delegate Anti-corruption are in charge of the execution and fulfillment of this Decree Supreme.

It is given at the Government Palace of the city of La Paz, on the seventeenth day of the month of May of the year two thousand and five.

FDO. CARLOS D. MESA GISBERT
Signed. Juan Ignacio Siles del Valle
Signed. Jose Antonio Galindo Neder
Signed. Saul Lara Torrico
Signed. Gonzalo Arredondo Millán
Signed. Luis Carlos Jemio Mollinedo
Signed. Ervin Aguilera Antunez
Signed. Walter Kreidler Guillaux
Signed. René Gómez García Palao
Signed. Guillermo Torres Orías
Signed. María Soledad Quiroga Wheat
Signed. Graciela Rosario Quiroga Morales
Signed. Audalia Zurita Zelada
Signed. Jorge Gabriel Barrios Arancibia
Signed. Jorge Espinoza Morales
Signed. Gloria Ardaya Salinas
Signed. Pedro Ticona Cruz