



Processing applications for access to documents

Resolutions 047/2020 and 137/2020 of the Council of Transparency and Good Governance (CTBG)

Law 19/2013 on transparency, access to public information and good governance states on its statement of purpose that top-tier countries in terms of transparency have stronger institutions which facilitate economic growth and social development; and that citizens of such countries are in a much better position to judge the performance of public authorities. This high level of transparency, however, must always be pursued with full respect to procedural guarantees provided by law and with sufficient resources to adequately process applications for access to documents.

Procedural guarantees

Resolution 137/2020 resolves a case where an applicant requested access to information about the meetings held (including calendars, list of attendees, resolutions approved and minutes) and communications exchanged between the Ministry of Health (MOH) and pharmaceutical companies since 2011. The MOH provided the applicant with only part of the information requested; and only after being compelled by the CTBG, disclosed the remaining portion of documents.

Neither the MOH nor the CTBG informed about the disclosure to any of the pharmaceutical companies to which the information referred. The MOH and the CTBG acted this way despite the fact that Law 19/2013 on transparency expressly

contemplates the right of interested parties to be heard and participate in access proceedings.

Resolution 047/2020 rules on a case where the MOH declined to provide an applicant with information about certain medicinal products on the basis that this information was not held by the department of the MOH in charge of handling the application (the General Directorate of Pharmacy) but by a different department of the MOH (INGESA).

According to the CTBG, the MOH cannot decline an application for access to documents alleging that the department in charge of handling the application does not have the information at hand. If this occurs, the department of the MOH that handles the application must still gather all the information and disclose it.

This case is another example of a deficient processing of an application for access to documents. While the solution to this problem would need to consider many factors, we think that allocating more resources to the authorities that receive such applications would definitively help.

In sum, these CTBG illustrate two typical problems that arise when processing applications for access to documents: the omission of procedural guarantees provided by law and the lack of resources.