

THE RIGHT OF ACCESS TO PUBLIC INFORMATION IN THE AMERICAS: ADVANCEMENTS AND CHALLENGES IN THE INTER-AMERICAN MODEL LAW 2.0

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ABSTRACT

Access to public information is an essential pillar of democracy, ensuring transparency, citizen participation, and social oversight. This article provides a comparative analysis of the Inter-American Model Laws on Access to Public Information 1.0 (2010) and 2.0 (2020), highlighting the normative and operational advancements introduced in the latest version. The study adopts a qualitative approach, employing a comparative method and relying on documentary analysis of the normative texts of the Organization of American States (OAS), institutional reports, and specialized literature. Content analysis was used to identify patterns, conceptual changes, and regulatory improvements in access to information governance. The results indicate that Model Law 2.0 expanded the scope of transparency, strengthened institutional mechanisms, reinforced proactive disclosure, and incorporated detailed guidelines on records management, digitization, and oversight. Furthermore, it introduced new interpretative principles and stricter criteria for the exceptions regime. The study concludes that despite these advancements, the effectiveness of the regulation depends on its implementation by member states, the strengthening of oversight institutions, and the adoption of policies that ensure the full application of its provisions.

Keywords: Access to information. Public Transparency. Inter-American Model Law. Records management. Organization of American States.

DIREITO DE ACESSO À INFORMAÇÃO PÚBLICA NAS AMÉRICAS: AVANÇOS E DESAFIOS NA LEI MODELO INTERAMERICANA 2.0

RESUMO

O acesso à informação pública é um pilar essencial da democracia, garantindo transparência, participação cidadã e controle social. Este artigo analisa comparativamente as Leis Modelo Interamericanas sobre Acesso à Informação Pública 1.0 (2010) e 2.0 (2020), destacando os avanços normativos e operacionais da versão mais recente. A pesquisa adota uma abordagem qualitativa, com método comparativo, fundamentando-se na análise documental dos textos normativos da Organização dos Estados Americanos (OEA), relatórios institucionais e literatura especializada. A análise de conteúdo foi utilizada para identificar padrões, mudanças conceituais e aprimoramentos normativos na regulamentação do acesso à informação. Os resultados indicam que a Lei Modelo 2.0 ampliou o escopo da transparência, aprimorou mecanismos institucionais, reforçou a transparência ativa e incorporou diretrizes detalhadas sobre gestão documental, digitalização e fiscalização. Além disso, introduziu novos princípios interpretativos e critérios mais rigorosos para o regime de exceções. Conclui-se que, apesar dos avanços, a efetividade da norma depende da implementação pelos Estados membros, do fortalecimento das instituições de fiscalização e da adoção de políticas que garantam a plena aplicação dos dispositivos normativos.

Palavras-chave: Acesso à informação. Transparência. Lei Modelo Interamericana. Gestão de documentos. Organização dos Estados Americanos.

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1 INTRODUCTION

Access to public information is widely recognized as one of the fundamental pillars for the consolidation of democracy, particularly in contexts such as Latin America, which are characterized by a historical legacy of inequalities, administrative opacity, and political instability. This right enables citizens to oversee governmental actions, strengthen public participation, and contribute to combating corruption – elements that are essential for the construction of more fair and transparent societies (Perlingeiro, 2015). Beyond serving as a mechanism for social oversight, access to public information is also a tool for individual empowerment, allowing citizens to make informed decisions and actively engage in democratic processes (Blanke; Perlingeiro, 2018).

The effectiveness of this right, however, depends on a robust and complex institutional and normative framework that encompasses clear and comprehensive legislation, the implementation of effective mechanisms for both proactive and reactive transparency, proper records management, the establishment of independent oversight bodies, the enforcement of sanctions in cases of non-compliance, and the adoption of technologies that facilitate access and interoperability of public information. In this regard, as highlighted by Perlingeiro (2015), the absence of independent administrative authorities responsible for ensuring the implementation of access-to-information regulations can undermine the effectiveness of this right. Furthermore, transparency can only be fully achieved when it is supported by a well-structured system for preserving and organizing public records, ensuring not only the secure storage of data but also its accessibility, integrity, and long-term legibility (Perlingeiro, 2016).

In recent decades, Latin America has experienced notable progress in the regulation of the right to access of public information. These advancements have been largely driven by the jurisprudence of the Inter-American Court of Human Rights (IACtHR) and the efforts of the Organization of American States (OAS) (Sanchez de Tagle; Oropeza Eng, 2015). The ruling in *Claude Reyes et al. v. Chile* (OAS, 2006) was a landmark in this regard, as it recognized, for the first time at the international level, the right to seek and receive official information as an extension of the freedom of thought and expression guaranteed by Article 13 of the American Convention on Human Rights (ACHR) (OAS, 1969). This interpretation was reinforced in the OAS Declaration of Principles on Freedom of

Expression (OAS, 2000) and in the Inter-American Model Law on Access to Public Information (OAS, 2010), which established normative standards for transparency in the region (Perlingeiro; Díaz; Liani, 2016).

The Inter-American Model Law 1.0, approved in 2010, represented an initial milestone in the standardization of national transparency laws. Based on the principle of maximum disclosure, the law reinforced the understanding that information held by public entities belongs to society and should be accessible, except in cases where justified exceptions apply (Perlingeiro, 2015). However, as noted by Barbosa Neto e Albuquerque (2023), its implementation revealed structural challenges, such as the lack of specific guidelines on records management, which proved to be essential for ensuring the preservation, organization, and continued accessibility of public records (Barbosa Neto; Albuquerque, 2023). Additionally, the absence of clear regulations on digitization and document preservation posed obstacles to the effective realization of this right, particularly in the face of the increasing adoption of digital technologies by governments (Sotelo-Torres; García-Curiel, 2024).

To address these challenges, the OAS approved the Inter-American Model Law 2.0 in 2020, aiming to correct regulatory gaps and adapt the framework to new technological and social demands (Negro Alvarado, 2022). Among its key innovations, the Model Law 2.0 strengthens records management regulations and incorporates specific guidelines for the digitization and preservation of public records (Negro Alvarado, 2022). This update reflects a growing concern with the effectiveness of the right to information, acknowledging that transparency depends not only on the existence of laws but also on their practical and efficient implementation (Blanke; Perlingeiro, 2018).

In this context, this article aims to comparatively analyze the Inter-American Model Law on Access to Public Information 1.0 and its updated version, 2.0, emphasizing the normative and operational advancements introduced by the latest regulation. The proposed analysis seeks to understand how the Model Law 2.0 has improved institutional and technological mechanisms related to public transparency, as well as to assess the impact of these changes on governmental records management and the guarantee of access to information in Latin America. To support this discussion, the following section presents theoretical and contextual aspects that guide the

understanding of the right to public information, as well as the role of Inter-American regulations in strengthening transparency and democratic governance.

2 THE INTER-AMERICAN MODEL LAW ON ACCESS TO PUBLIC INFORMATION AND ITS CHALLENGES

The consolidation of access to information as a fundamental human right involves recognizing its political and social dimensions, overcoming traditions of secrecy that have historically limited public scrutiny and citizen participation (Rodrigues, 2011). In this sense, as the author highlights, ensuring this right means promoting public transparency as a systematic practice of producing, organizing, and disseminating information in a clear, accessible, and reliable manner, enabling social oversight and strengthening trust in institutions. Supporting this idea, Bernardes (2015) emphasizes the need for consistent regulatory frameworks and administrative processes capable of sustaining broad and effective access to public data, aligned with democratic commitments and the State's social responsibility. In this context, the Inter-American Model Law on Access to Public Information emerges as an attempt to establish minimum standards to guarantee this right in the countries of the region, seeking to address historical inequalities and promote a culture in which openness is the rule and secrecy the exception.

The Inter-American Model Law on Access to Public Information, from now on referred to in this work as Model Law 1.0, was approved in 2010 by the General Assembly of the OAS with the goal of establishing minimum standards for member states to develop or enhance their access to information legislation (Eirão; Leite, 2020). This initiative was founded upon the 10 fundamental principles adopted by the Inter-American Juridical Committee (CJI) in 2008, which reinforce access to information as a fundamental human right and set guidelines for its regulation, implementation, and oversight (Perlingeiro; Díaz; Liani, 2016). These principles include directives such as maximum disclosure, the obligation of proactive transparency, accessibility guarantees, and the establishment of appeal mechanisms for challenging denials of access (CJI, 2008).

As explained by Negro Alvarado (2022), Model Law 1.0 had a direct impact on OAS member states, particularly those that had not yet established

clear regulations regarding access to information. By systematizing the jurisprudence of the IACtHR, this legal framework contributed to the formulation of more robust national laws on transparency in several Latin American countries

2.1 The Claude Reyes Case and Article 13 of the American Convention on Human Rights

The significance of Model Law 1.0 is largely tied to its role in consolidating the historic decision of the IACtHR in the case of *Claude Reyes et al. v. Chile* (OAS, 2006), which, for the first time at the international level, recognized access to public information as a fundamental human right (Perlingeiro, 2015). This case involved a request for information made by Chilean activist Claude Reyes and his team regarding a foreign investment in Chilean forests. The Chilean government denied the request without providing an adequate justification, leading to legal proceedings before the IACtHR (Sanchez de Tagle; Oropeza Eng, 2015). The Court ruled that the right to seek and receive public information is directly linked to Article 13 of the ACHR, which concerns freedom of thought and expression. This article states:

"Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, or through any other medium of one's choice" (OAS, 1969).

According to Perlingeiro (2016), the IACtHR ruling mandated that OAS member states adopt mechanisms ensuring broad access to information and provide detailed justifications for any denial, thus consolidating the notion that transparency is an essential requirement for democracy and human rights.

2.2 Challenges and Limitations of Model Law 1.0

Despite the advances promoted by the first Model Law, the practical implementation of national legislation inspired by this framework revealed significant challenges, hindering the full realization of the right to access public information in OAS member states. One of the main obstacles was the difficulty in effectively applying the regulations, as many states lacked the necessary technological infrastructure to process and adequately respond to information requests. Additionally, as highlighted by Sotelo-Torres and García-Curiel (2024), the insufficient training of public officials further complicated the adoption of

practices that would ensure the operationalization of the principles established in the law, leading to an unequal and often ineffective application of transparency standards.

Another major limitation was the absence of effective oversight and sanction mechanisms. In some national legislations, the lack of provisions ensuring compliance with transparency obligations made it difficult to hold officials accountable for obstructing or denying access to information. Without a monitoring and enforcement framework, the implementation of the right to information was compromised, allowing a culture of administrative opacity to persist across various government sectors (Perlingeiro; Díaz; Liani, 2016).

Moreover, the flexibility granted to governments in defining exceptions and secrecy measures led to overly broad restrictions on access, which, in some cases, exceeded the necessary limits for protecting legitimate interests, such as privacy or national security. This situation generated legal disputes and interpretative gaps, ultimately weakening the effectiveness of transparency policies and allowing some governments to adopt more restrictive approaches than those recommended by the OAS (Perlingeiro, 2015).

The rapid advancement of digital technologies also underscored the need for a review of Model Law 1.0. The evolution of Information and Communication Technologies (ICTs) has transformed the ways in which public data is produced, stored, and shared, making it imperative to incorporate guidelines on document digitization, proactive transparency, and the use of new government communication platforms. As Perlingeiro, Díaz, and Liani (2016) explain, the lack of clear regulatory provisions to address these technological changes hindered the adaptation of national legislations, particularly concerning the implementation of open data standards, electronic records, and government social media practices.

Given these challenges, it became evident that updating the Inter-American Model Law was essential to align it with technological advancements, strengthen oversight and sanction mechanisms, and ensure that exceptions to access were applied with clear and proportional criteria. This normative revision resulted in the adoption of Model Law 2.0, which aimed to address the identified gaps and reinforce the right to public information across the region.

2.3 The Role of the OAS and the Department of International Law in the revision of the Model Law

Within this context, the OAS and its Department of International Law (DIL) played a central role in the review and update of the Inter-American Model Law on Access to Public Information. According to Negro Alvarado (2022) – who actively participated in the elaboration and coordination of the Model Law 2.0 project as Director of the DIL at the OAS and Technical Secretary of the CJI – the OAS, through its General Assembly and the CJI, conducted extensive debates and consultations with experts, civil society organizations, and government representatives. The objective of this process was to assess the obstacles encountered in implementing the previous version and to propose adjustments that would enhance the effectiveness of the regulation.

According to Negro Alvarado (2022), among the main initiatives undertaken by the DIL, the following stand out:

- Comparative analyses among OAS member states, allowing for an evaluation of Model Law 1.0's impact and the identification of common challenges in implementing access to information policies. These studies provided key insights into the law's limitations and the reasons why its application varied significantly across different countries.
- Development of guidelines and recommendations to improve both proactive and reactive transparency, ensuring that governments adopted more effective measures for the spontaneous disclosure of public information and for responding to access requests swiftly and appropriately.
- Promotion of best practices and capacity-building, focusing on the training of public officials and the exchange of successful experiences among OAS countries. According to Negro Alvarado (2022), this strategy aimed to reduce disparities in the implementation of transparency laws, encouraging governments to adopt more efficient administrative models aligned with international best practices.

As a result of this intensive revision process, Model Law 2.0 emerged as a more comprehensive and modern regulatory framework, incorporating new requirements and best practices while adapting to technological transformations and emerging social demands. As emphasized by Negro Alvarado (2022), this update sought to strengthen the right of access to public information as a fundamental human right, ensuring that OAS member states could advance in the development of more effective transparency policies and mechanisms for citizen participation.

The next section outlines the methodology employed in this study.

3 METHODOLOGY

This study is characterized as qualitative research, as it seeks to analyze and interpret legal norms and institutional guidelines in the field of public access to information, considering their context, applicability, and impacts. According to Minayo (2001), qualitative research focuses on a deep understanding of social phenomena, making it suitable for investigations involving normative and institutional processes. Moreover, Gil (2008) emphasizes that the qualitative approach allows for the examination of phenomena in their complexity, valuing the interpretation of meanings and the contexts in which they are embedded.

The methodological approach adopted is comparative analysis, which lends the study an analytical and explanatory nature, as pointed out by Sartori (1994). This method is widely used in Legal Studies to evaluate normative and institutional changes, enabling the identification of similarities, differences, and patterns of evolution among different legal frameworks. Thus, this research is oriented toward analyzing the differences and developments between the Inter-American Model Law on Access to Public Information 1.0 and its updated version, 2.0, with the goal of identifying normative advancements, persistent challenges, and improvements introduced in the revised version.

This study was conducted through documentary research¹, as defined by Cellard (2008), who highlights the importance of analyzing official documents for understanding historical and institutional processes. The primary documents analyzed were the official texts of Model Laws 1.0 and 2.0 on Access to Public

¹ Acknowledgements to the undergraduate research fellow Anna Luísa Medeiros Nunes for her valuable and dedicated contribution to the data collection stage, which was essential for the consolidation of the research presented in this article.

Information, published and made available by the OAS. Additionally, guidelines, implementation manuals, and institutional reports were examined to provide a broader perspective on the normative evolution, application context, and practical recommendations for implementation across OAS member states.

For the interpretation of these legal texts, content analysis was employed, as systematized by Bardin (2011). This technique enables the identification of patterns, conceptual changes, and reinforcement of fundamental principles. Relevant sections from the legislative texts were extracted and categorized, allowing for the construction of a comparative framework between the two versions, thereby highlighting both gaps and advancements. Through this categorization, it was possible to establish a critical analysis of the differences and enhancements observed in the regulation of the right to access public information within the studied legislative framework.

The research was conducted in three main stages. First, the identification and systematization of documentary sources were carried out to ensure the selection of relevant normative texts for the study. Subsequently, based on content analysis, the main axes of evolution between the two versions of the Model Law were identified, facilitating a critical reflection on the improvements incorporated and their implications for transparency and the right to access to public information in OAS member states. Finally, a systematic comparison of the provisions of Model Laws 1.0 and 2.0 was undertaken, emphasizing structural and conceptual modifications introduced in the new version. The results of the analyses will be presented in the following sections, structured according to the categories of analysis established during the content analysis phase.

4 STRUCTURAL AND CONCEPTUAL COMPARISON OF MODEL LAW 1.0 AND 2.0 ON ACCESS TO PUBLIC INFORMATION

4.1 Scope and Definitions

The transition from Model Law 1.0 to Model Law 2.0 introduced a significant expansion in both scope and definitions, reflecting emerging needs in the right of access to public information. While Model Law 1.0 had already established a broad concept of "public authority," Model Law 2.0 expands this definition by explicitly including political parties, nonprofit organizations, and

associations receiving public funds as entities subject to transparency obligations (OAS, 2020a, Art. 2). In this regard, this expansion strengthens social oversight over institutions that, despite not being government entities, perform functions of public interest and manage state resources.

Article 2 of Model Law 2.0 formalizes this change by stipulating that these entities must respond to information requests regarding the public resources they manage and comply with active transparency obligations. This measure aims to ensure greater accountability and public oversight over institutions that were previously outside the regulatory framework for transparency.

Another important conceptual advancement is the redefinition of what constitutes a public interest activity. In Model Law 1.0, this definition was more restrictive, focusing primarily on governmental entities. Model Law 2.0 broadens this definition to encompass areas of governance that directly impact communities and involve government decision-making processes (OAS, 2020a, Art. 1). Through this adjustment, the aim was to reinforce the understanding that transparency is fundamental to good governance and essential in addressing social demands in a comprehensive manner.

4.2 Fundamental Principles

Model Law 1.0 was already founded on the principle of maximum disclosure, affirming that the right to access information should be applied broadly, with any exceptions clearly defined and strictly limited by law (OAS, 2010, Art. 2). Model Law 2.0 retains this principle but introduces significant refinements:

1. *Pro Homine* and *In Dubio Pro Actione* Principles

Model Law 2.0 introduces the *pro homine* and *in dubio pro actione* principles, which dictate that any doubt or conflict in the interpretation of the law must be resolved in favor of access to information (OAS, 2020a, Art. 2). This revision reinforces the presumption of transparency, preventing restrictive interpretations that could unduly limit citizens' right to information.

2. Incorporation of a Gender Perspective

Another notable innovation in Model Law 2.0 is the explicit inclusion of a gender perspective, marking an advancement in the

intersection between transparency and human rights. The new regulation requires that public policies addressing women and vulnerable groups be disclosed proactively and in an accessible manner (OAS, 2020a, Art. 6). This provision ensures that the right to information accommodates the specific needs of historically marginalized populations, thereby promoting more equitable access to public policies.

3. Strengthening of Active Transparency

While Model Law 1.0 already mandated that public bodies regularly disclose information of collective interest, without requiring formal requests, Model Law 2.0 strengthens this obligation by imposing stricter transparency standards and mandating that information be published in a structured and accessible manner, including in open and interoperable data formats (OAS, 2020a, Art. 5).

As evidenced by these modifications, Model Law 2.0 reaffirms the commitment of OAS member states to expanding access to information, making it more inclusive, dynamic, and aligned with the contemporary needs of digital governance and social participation.

4.3 Active Transparency

As previously mentioned, Model Law 1.0 established the principle of active transparency, mandating that public institutions proactively disclose information of collective interest without the need for a formal request (OAS, 2010, Art. 12). However, this version presented significant limitations, as it provided only a narrow and restrictive list of the types of information that had to be disclosed. This regulatory gap allowed for varied interpretations among OAS member states, leading to disparities in the application of the principle of maximum disclosure.

Furthermore, the absence of a more comprehensive and detailed regulatory framework hindered the uniform implementation of active transparency practices. As a result, each country established its own rules, often without a clear standard for the availability of public data. Similarly, Model Law 1.0 did not directly address key aspects such as digital accessibility, open data,

and government advertising expenditures, all of which became central issues in Model Law 2.0.

To address the shortcomings of the previous version, Model Law 2.0 provides a more detailed and objective specification of the types of information that must be proactively disclosed, establishing minimum standards to ensure greater uniformity in the implementation of active transparency across OAS member states. Article 6 of Model Law 2.0 lists various categories and subcategories of information that must be made available, including:

- **Salaries and Benefits of Public Officials:** Model Law 2.0 mandates the publication of remuneration data for public employees, including additional benefits, bonuses, subsidies, and compensations (OAS, 2020a, Art. 6). This provision aims to enhance public oversight of the use of public resources, allowing citizens consistent and structured access to financial information that was previously disclosed inconsistently or in fragmented formats.
- **Government Advertising Expenditures:** Unlike Model Law 1.0, which did not include specific provisions on this issue, Model Law 2.0 establishes that governments must disclose detailed information on public spending in advertising and social communication campaigns, specifying the type of media used, the service providers, and the selection criteria for contracting such services (OAS, 2020a, Art. 6, Inciso i).
- **Asset Declarations of Senior Officials:** Another notable innovation in Model Law 2.0 is the mandatory disclosure of asset declarations by senior public officials (OAS, 2020a, Art. 6, Inciso f). This provision aims to strengthen public sector integrity and mitigate conflicts of interest, enabling the monitoring of officials' financial assets and identifying potential cases of illicit enrichment.
- **Open and Interoperable Data:** A major improvement in Model Law 2.0 is the mandatory use of open data formats, ensuring that public information is reusable, electronically processable, and interoperable (OAS, 2020a, Art. 5). This innovation represents a significant step forward in promoting digital transparency and data-driven governance, allowing civil society, researchers, and

journalists to analyze and investigate government actions more effectively.

- **Principle of Digital Accessibility:** Another important addition in Model Law 2.0 is the requirement to ensure accessibility for people with disabilities, obliging all digital platforms to comply with accessibility standards (OAS, 2020a, Art. 7). This advancement reinforces a commitment to social inclusion, ensuring that no citizen is deprived of their right to access public information due to technological barriers.

With these improvements, Model Law 2.0 represents a substantial evolution in the regulatory framework for active transparency, expanding the scope of information that must be proactively disclosed, standardizing transparency obligations, and aligning government accountability mechanisms with contemporary digital governance principles.

4.4 Information request procedures

Model Law 1.0 exhibited significant gaps that compromised the effectiveness of public information request procedures, creating barriers to access and inconsistencies in the application of the law across OAS member states. One of the most notable shortcomings was the lack of an explicit provision guaranteeing requestor anonymity. Although the law recognized the right of any individual to request public information, it did not explicitly allow for anonymous requests (OAS, 2010, Art. 20). This omission enabled certain government administrations to require the identification of requestors, which could hinder access, particularly in cases involving sensitive information or when there was a risk of retaliation against the requester.

Additionally, Model Law 1.0 established basic response timeframes for handling requests but failed to provide clear criteria for addressing delays or prioritizing urgent requests (OAS, 2010, Art. 26). The lack of detailed procedures for appeals against denials of access was another significant weakness, as it allowed each country to implement its own appeal mechanisms, which were often bureaucratic, inconsistent, and ineffective. These disparities in

implementation ultimately undermined the uniformity and efficiency of the information request process.

Another critical issue was the absence of penalties for cases in which authorities failed to comply with the established response deadlines. Although the law mandated that requests be answered within a reasonable timeframe, there were no specific sanctions for agencies that ignored or delayed responses (OAS, 2010, Art. 27). This lack of enforcement mechanisms led to situations where requests could be indefinitely postponed without justification, significantly weakening the effectiveness of the right to access information and compromising government transparency.

To address these deficiencies, Model Law 2.0 introduced substantial modifications to information request procedures, aiming to eliminate bureaucratic barriers, streamline processes, and enhance efficiency in responding to citizens' demands. One of the most significant improvements was the explicit inclusion of the right to anonymous requests (OAS, 2020a, Art. 3). By establishing this safeguard, any citizen can now request information without revealing their identity, thereby protecting individuals who might fear retaliation or discrimination when seeking access to sensitive government data.

Furthermore, Model Law 2.0 significantly reduced response timeframes, ensuring a faster and more efficient information request process (OAS, 2020a, Art. 22). While Model Law 1.0 provided general and flexible deadlines, the revised version introduced clear and objective time limits, along with penalties for unjustified delays. The updated provisions also prioritize urgent requests, requiring them to be processed within shorter deadlines, preventing authorities from intentionally delaying the release of public interest information.

Additionally, Model Law 2.0 introduced significant improvements to appeal mechanisms for cases where access to information is denied. The law now provides detailed procedures for challenging refusals, with stricter deadlines for review and resolution (OAS, 2020a, Art. 47). These revisions enhance procedural clarity, ensuring that citizens have a transparent and efficient avenue for contesting denials, thereby strengthening the enforceability of the right to access public information across OAS member states.

4.5 Exception Regime

The exception regime to the right of access to information is an essential component of any transparency legislation, as it establishes the boundaries for the disclosure of public information while safeguarding data whose release could compromise legitimate interests, such as national security, privacy, and ongoing investigations. The transition from Model Law 1.0 to Model Law 2.0 demonstrates notable advancements, particularly with the introduction of stricter criteria aimed at preventing abuses and reinforcing the principle of maximum disclosure.

Model Law 1.0 already acknowledged the necessity of exceptions to the right of access to information, allowing for certain content restrictions to protect fundamental interests of both the State and society (OAS, 2010, Art. 41). However, the law did not establish sufficiently detailed criteria for the review of such exceptions, which increased the risk of arbitrary interpretations and potential misuse by public authorities.

Although the principle of maximum disclosure was the central pillar of Model Law 1.0, its practical implementation was contingent upon individual state regulations to define clear rules on classification, review, and declassification of confidential information. The absence of mandatory minimum standards resulted in heterogeneous practices, which, in some cases, led to excessive restrictions that hindered effective access to public information.

Another critical shortcoming of Model Law 1.0 was the lack of a public interest test for challenging secrecy claims. While the law required that justifications be provided for the classification of documents, it failed to establish specific mechanisms for the systematic review of such justifications. This regulatory gap allowed governments to apply secrecy measures indiscriminately, without clear justification or proportionality in their national legislation.

In response to these limitations, Model Law 2.0 introduced substantial improvements to the exception regime, incorporating stricter oversight mechanisms and clear normative criteria to prevent the misuse of confidentiality restrictions.

Key Innovations in Model Law 2.0

1. Expansion and Specification of Exceptions

Model Law 2.0 restructured and further clarified the types of exceptions, explicitly covering national security matters, ongoing investigations, sensitive economic information, and personal data (OAS, 2020a, Art. 25). However, unlike its predecessor, Model Law 2.0 reinforces the requirement that all exceptions be strictly justified and limited, ensuring that their application remains legitimate and proportional in a democratic society.

With this reform, the law seeks to prevent authorities from classifying documents based on vague or generic criteria, mandating that all secrecy decisions include a detailed explanation of why the information must remain confidential and for how long.

2. Introduction of the Public Interest Test and the Harm Test

One of the most significant innovations of Model Law 2.0 was the incorporation of two essential criteria aimed at preventing abuses in the classification of confidential information:

- Public Interest Test: Requires authorities to demonstrate that maintaining secrecy serves a greater public interest than disclosure (OAS, 2020a, Art. 36).
- Harm Test: Mandates that authorities prove that disclosing certain information would cause significant and concrete harm to a protected interest (OAS, 2020a, Art. 35).

By incorporating these two mechanisms, Model Law 2.0 ensures that confidentiality is applied only in exceptional cases and is always well-substantiated, reinforcing the principle of transparency and the imperative of government accountability.

3. Maximum Confidentiality Period and Periodic Declassification

Another notable advancement in Model Law 2.0 is the establishment of clear rules regarding the maximum duration of confidentiality and the mandatory periodic review of classified information. Article 45 of Model Law 2.0 mandates that classified documents be periodically reassessed, ensuring that information that no longer meets the secrecy criteria is automatically made public.

Additionally, Model Law 2.0 introduces the following fundamental requirements:

- No information can remain classified indefinitely.
- The secrecy status of documents must be reviewed on a regular basis.
- If the justification for confidentiality is no longer valid, the document must be automatically declassified.

By implementing these new safeguards, Model Law 2.0 prevents governments from arbitrarily maintaining secrecy over public information for extended periods, thereby expanding access to information and enhancing transparency in government decision-making.

4.6 Strengthening institutions responsible for access to information

The strengthening of institutions responsible for ensuring public access to information is crucial for the effective implementation of transparency regulations and for establishing the right to information as a democratic principle. In this regard, the evolution from Inter-American Model Law 1.0 to 2.0 demonstrates consistent advancements in defining guidelines for the creation, operation, and oversight of the entities tasked with enforcing the law.

The Inter-American Model Law 1.0 stipulated the establishment of bodies responsible for implementing and enforcing access to information legislation but lacked detailed guidelines regarding their structure, competencies, and autonomy (OAS, 2010, Art. 55). Although the normative framework mentioned the need for states to establish supervisory authorities to ensure transparency, its generic language and absence of mandatory minimum standards allowed for significant variations between countries, complicating the uniform application of the law and, in some cases, undermining the effectiveness of oversight mechanisms.

Another problematic aspect of Model Law 1.0 was the lack of formal requirements regarding the administrative and financial independence of these bodies. In some countries, these transparency authorities were subordinated to governmental structures, making them susceptible to political influence. Additionally, the absence of clear sanction mechanisms made it difficult to hold public officials accountable for obstructing access to information.

In response, Inter-American Model Law 2.0 introduced significant improvements regarding the structuring, operation, and oversight of institutions responsible for ensuring public access to information. The updated legal framework provides specific requirements to guarantee the autonomy, efficiency, and transparency of these bodies.

Key Innovations in Model Law 2.0

1. Establishment of an Independent Oversight Body

One of the most significant changes in Model Law 2.0 is the requirement that each member state establish an independent oversight body with administrative and financial autonomy, as stipulated in Chapter VI of the law (OAS, 2020a, Art. 55). This independence is crucial for preventing political or economic interference, which could compromise the impartiality of decisions and the effective operation of the institution.

Furthermore, Model Law 2.0 broadens the powers of the oversight body, granting it the following competencies:

- Monitoring compliance with the law, ensuring that public authorities adhere to transparency regulations.
- Assessing and measuring the level of transparency in public institutions by conducting audits and evaluations of law enforcement.
- Handling administrative appeals, ensuring that citizens can challenge refusals of access to information in a timely and effective manner.
- Promoting a culture of transparency through training programs, awareness campaigns, and best practices in public administration (OAS, 2020a, Art. 63).

By institutionalizing this independent oversight body, Model Law 2.0 transforms it into a central pillar of transparency governance, reinforcing its role in monitoring and enforcement.

2. Introduction of Administrative and Criminal Sanctions

Unlike the previous version, Model Law 2.0 introduces a sanctioning regime to hold public officials accountable for violating transparency obligations (OAS, 2020a, Art. 67).

Key new provisions include:

- Administrative sanctions for unjustified refusals to provide information, including warnings, fines, and suspension in cases of repeated offenses.
- Criminal liability for more serious infractions, such as the deliberate obstruction of information requests or the improper classification of documents as confidential.
- Strict deadlines for responding to requests, with penalties for unjustified delays in the provision of public information.

By incorporating these sanctions, the law enhances its enforceability, creating concrete mechanisms to punish irregularities and reduce impunity in cases of transparency violations. In this sense, by establishing specific penalties for public officials who fail to fulfill their transparency obligations, the law aims to deter illicit practices and ensure that the right to access information is effectively upheld across OAS member states.

Additionally, by providing for both administrative and criminal sanctions, the law strengthens public officials' accountability, promotes a culture of responsibility, and discourages conduct that may hinder the dissemination of information of collective interest.

5 RECORD MANAGEMENT AND TRANSPARENCY: THE NEW PERSPECTIVE OF MODEL LAW 2.0

Record management plays a fundamental role in ensuring transparency and strengthening the right of access to public information. As highlighted by Rodrigues (2011), the relationship between records management and access to information is essential, since the administration of public documentary heritage is both a technical and political field in which the State defines the boundaries between what is public and what is secret. The author argues that records management cannot be separated from State information policies, as it involves decisions about what is preserved, who has access, and under what conditions, directly affecting the right to memory, transparency, and the possibility of democratic scrutiny of government actions.

However, this aspect was only marginally addressed in Inter-American Model Law 1.0, leading to operational challenges that affected the effectiveness of access to information in OAS member states. Model Law 2.0, on the other hand, introduced detailed and structured guidelines for the organization, maintenance, and accessibility of public records, establishing document management as the cornerstone of transparency and institutional memory.

Although Model Law 1.0 established access to information as a fundamental right, it did not include clear guidelines on document management. The regulation did not require standardized practices for archiving, classification, or digitization of documents, leaving the implementation of these processes at the discretion of member states. As a result, many countries failed to adopt uniform procedures to ensure the preservation and efficient retrieval of public records.

The lack of specific guidelines in Model Law 1.0 may have contributed to operational and administrative challenges, particularly concerning the management and preservation of public records. The absence of standardized norms for the organization and archiving of government records makes information retrieval difficult, especially in agencies without structured document management systems. Furthermore, the lack of formal directives on digitization and preservation of historical records poses a risk to the integrity and continuity of institutional memory, as the absence of standardized frameworks may jeopardize the longevity and accessibility of these records. Similarly, the lack of clear rules on the review and declassification of confidential documents may lead to prolonged restrictions on access to information, without objective criteria to assess whether confidentiality remains necessary over time.

Given these limitations in the previous version, Model Law 2.0 established a new paradigm for document management and public transparency. In addition to recognizing efficient document management as an essential condition for the exercise of the right to information, the regulation introduced detailed guidelines for the organization, preservation, and recovery of government records (OAS, 2020b, Art. 17).

Key Advancements in the New Document Management Framework

1. Development of a Model Law on Document Management

One of the most significant innovations of Model Law 2.0 was the creation of a specific legal framework for document management, complemented by an Implementation Guide, included as an annex to the Model Law. This framework, which did not exist in Model Law 1.0, aims to establish minimum standards for the preservation, organization, and accessibility of government records, ensuring that public information is efficiently managed and readily available for consultation (OAS, 2020b, Art. 1). Beyond reinforcing the connection between document management and institutional memory, this innovation has a direct impact on the preservation of administrative and political history, seeking to prevent the deliberate or accidental destruction of essential records.

2. Mandatory Maintenance and Organization of Public Records

Unlike Model Law 1.0, version 2.0 establishes mandatory requirements for the maintenance and organization of public records. The regulation mandates that government agencies adopt standardized practices for archiving and classification, ensuring that information is easily retrievable and accessible (OAS, 2020a, Art. 20). Another significant advancement is the explicit inclusion of digitization as a fundamental directive. Model Law 2.0 further stipulates that member states must implement digitization and record preservation programs to prevent information loss, optimize physical storage space, and facilitate remote access to public records.

3. Specification on Classified Information Records

Model Law 2.0 introduced stringent rules for the management of classified information. While Model Law 1.0 did not provide specific mechanisms for controlling and periodically reviewing confidential documents, the new regulation mandates that states create detailed records of information protected by secrecy (OAS, 2020a, Art. 38). Additionally, Model Law 2.0 establishes clear criteria for the periodic declassification of documents, ensuring that records that no longer meet confidentiality criteria are automatically made available to the public. This advancement aims to prevent the misuse of classified information as a mechanism to conceal matters of public interest.

4. Procedures for the Recovery of Lost Information

Model Law 2.0 also introduces an innovation by establishing state responsibility in cases of loss or improper destruction of public documents (OAS,

2020a, Art. 21). Unlike the previous version, which did not include guidelines for recovering missing information, the new legislation requires governments to implement measures to restore damaged or lost records. This provision recognizes that the loss of documents compromises not only the right to access information but also institutional memory and governmental accountability, reinforcing the responsibility of public agents in document management.

With these new provisions, Model Law 2.0 emphasizes that the right of access to information depends directly on an efficient records management system. The regulation advances the field by requiring public agencies to develop and implement document management plans, ensuring that information is organized, accessible, and quickly retrievable (OAS, 2020a, Art. 20). In this way, records management is no longer treated as a secondary aspect of transparency regulations but is now recognized as an essential component for ensuring the effectiveness of access to public information.

Box 1 below summarizes the main results of the comparative analysis between Model Laws 1.0 and 2.0.

Box 1: Comparison Between the Inter-American Model Law 1.0 and 2.0

Criterion	Model Law 1.0 (2010)	Model Law 2.0 (2020)
Scope and Definitions	Limited definition of "public authority."	Expanded scope to include political parties, NGOs, and entities receiving public funds.
Fundamental Principles	Maximum disclosure and active transparency.	Inclusion of the <i>pro homine</i> and <i>in dubio pro actione</i> principles to ensure access to information.
Active Transparency	Limited list of mandatory disclosures.	Expanded categories of mandatory disclosures (public servants' salaries, contracts, government advertising).
Request Procedures	Flexible deadlines and no guarantee of requester anonymity.	Reduced response times, right to anonymity, and penalties for delays.
Exceptions Regime	Vague criteria with no periodic review.	Introduction of the <i>Harm Test</i> and <i>Public Interest Test</i> to restrict secrecy.
Oversight Bodies	Generic requirement for oversight bodies.	Establishment of an <i>Independent Oversight Body</i> with autonomy and supervisory powers.
Sanctions and Penalties	No penalties for non-compliance.	Administrative and criminal sanctions for officials obstructing access to information.
Digital Accessibility	No specific requirements for accessibility.	Mandatory open data and accessibility requirements for persons with disabilities.

Criterion	Model Law 1.0 (2010)	Model Law 2.0 (2020)
Record Management	No detailed guidelines.	Mandatory standards for archiving, digitization, and preservation of public records. Aggregation of a model law for document management

Source: Prepared by the author (2025).

These regulatory advancements, presented in Box 1, indicate a transition from formal guarantees to practical effectiveness, ensuring that transparency is no longer just a legal principle but an operational reality. By addressing structural weaknesses and integrating modern governance mechanisms, Model Law 2.0 enhances both access to and the management of public information. The next section presents the conclusions, reflecting on the broader implications of these findings for access to information governance in the Inter-American system.

6 CONCLUSION

The right of access to public information is not merely an abstract principle of democratic governance; rather, it serves as a structural instrument within modern institutional architecture, enabling social oversight, strengthening civic participation, and imposing limits on the discretionary power of the state. If transparency is one of the cornerstones of democratic legitimacy, its realization requires more than legal frameworks. It requires institutions capable of ensuring its practical enforcement. In Latin America, a region historically marked by transparency deficits, institutional instability, and structural challenges in policy implementation, the regulation of this right has played a decisive role in fostering more open and accountable governance practices in emerging democracies.

In this regard, the Inter-American Model Law on Access to Public Information, developed under the auspices of the OAS, has become a key regulatory framework guiding countries in the region in the structuring of their transparency laws. Model Law 1.0 (OAS, 2010) represented a milestone in institutionalizing access to information, consolidating principles such as maximum disclosure, proactive transparency, and the state’s obligation to disclose public interest data. However, its implementation exposed regulatory and operational shortcomings, leading to the need for legislative reassessment, which culminated in the formulation of Model Law 2.0 (OAS, 2020a) – an enhanced version designed to overcome the limitations of its predecessor and adapt the regulatory framework to new informational and technological realities.

Against this backdrop, this study sought to conduct a comparative analysis of Model Laws 1.0 and 2.0, identifying the normative, institutional, and operational advancements introduced in the latest version. The research revealed that while Model Law 1.0 marked a significant step forward in recognizing access to information as a fundamental human right, its application was limited by the absence of specific guidelines on records management, the lack of effective oversight and sanctioning mechanisms, and its failure to accommodate emerging technological realities.

Model Law 2.0 introduced several critical advancements to address these limitations, including expanding the range of obligated entities – incorporating organizations that receive public funds; reinforcing the principle of maximum disclosure through the incorporation of the *pro homine* and *in dubio pro actione* principles; broadening proactive transparency obligations, making the disclosure of strategic information – such as public servant salaries, government contracts, and asset declarations of high-ranking officials – mandatory; and, most notably, strengthening records management by establishing detailed guidelines on digitization, archiving, and the periodic declassification of confidential documents.

Despite these contributions, this study acknowledges its limitations. The research focused on a comparative legal analysis of regulatory provisions without conducting an empirical investigation into the actual implementation of Model Law 2.0 in OAS member states. Future studies could explore this issue further, examining the challenges faced by countries in adopting the new guidelines, assessing the effectiveness of sanctioning and oversight mechanisms, and evaluating the real-world impact of regulatory innovations on public administration practices. Additionally, the growing intersection between public transparency and digital transformation opens new avenues for research, particularly regarding open data governance and the implications of emerging technologies for public information management.

The revision of the Inter-American Model Law represents a significant regulatory advancement, but its effectiveness will ultimately depend on political commitment, institutional strengthening, and active civil society engagement. Public transparency cannot remain a merely rhetorical or symbolic principle – it must be translated into an effective, well-established practice, deeply

embedded in the institutional culture of states. Only in this way can access to public information be transformed into a concrete instrument for democratizing state-society relations, fostering a more open, accountable, and accessible model of public governance.

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