



**Act 1/2014, of 24 June, on Public Transparency of Andalusia.**

THE PRESIDENT OF THE REGIONAL GOVERNMENT OF ANDALUSIA HEREBY MAKES KNOWN TO ALL THOSE THAT MAY SEE THIS INSTRUMENT:

That the Parliament of Andalusia and I, on behalf of the King and pursuant to the authority granted to me by the Constitution and the Statute of Autonomy, enact and order the publication of the following

**ACT ON PUBLIC TRANSPARENCY OF ANDALUSIA**

**PRESENTATION OF REASONS**

I

Transparency is inherent to democracy and constitutes an essential part for establishing an advanced democratic society, which is one of the objectives announced in the introduction to our Constitution.

Without the knowledge gained by citizens being able to access public information, it would be almost impossible to form a critical opinion and allow all citizens to take part in political, economic, cultural and social life, an undeniable objective that must be fostered by public authorities (articles 9.2 of the Constitution and 10.1 of the Statute of Autonomy for Andalusia).

The assessment of public programmes and policies is also recognised as an administrative instrument for complying with transparency objectives. Therefore, the Regional Government of Andalusia has established the target of designing an Andalusian system for assessing public policies, pursuant to article 138 of the Statute of Autonomy and for ensuring maximum transparency in public administration.

The aim of this act is to provide greater insight into the transparency of actions by public authorities, understood to be one of the instruments that enable democracy to be more real and effective. This should not be limited to merely exercising the right to vote. Our legal system establishes that greater insight should be provided in designing the mechanisms that enable citizens to learn about the actions of public authorities, the reasons for such action, the result thereof and the warranted assessment thereof.

II

As indicated in the introduction to the Council of Europe Convention on Access to Official Documents, in a democratic and pluralistic society, transparency is an extremely important requirement. Therefore, exercising the right to access official documents, provides a source of information for the public; helps the public to form an opinion on the state of society and on public authorities and fosters the integrity, efficiency, effectiveness and accountability of public authorities, thus helping affirm their legitimacy.

Transparency in the actions of public authorities is laid out in this act through two major concepts: active dissemination and access to public information.



These two concepts respond to different dynamics. Active dissemination entails communicating information held by public authorities on their own initiative. The aim is to enable the public to be aware of any relevant information, in order to guarantee the transparency of their activities, involving a proactive attitude thereof.

Actively disseminating public information entails making information available to the public, that not only relates to institutional and organisational aspects, but also to very varied aspects of government action, such as regulatory production, planning, procurement and subsidy management or economic and budgetary information, among other aspects.

When accessing public information, the public takes the initiative, obtaining information held by public authorities. This access is established as an absolute right which, in procedural terms, leads to the establishment of the general rule of access to such information. Therefore, a refusal or limitation of access constitutes the exception. In order to guarantee that this limitation or refusal is based on accurate grounds, and to enable the relevant body to whom the claim is submitted or the courts to control the adopted decision, the duty to state the grounds for such decisions is established.

III

New technologies, on the other hand, are contributing to making transparency a reality. In fact, the Internet has become an essential instrument for disseminating information, which is leading to the emergence of a new culture in which a growing number of people interrelate with one another.

The net is gradually becoming a meeting place, a place for interrelations and why not, a place for transmitting ideas, opinions and information via a modern virtual agora that takes us back to the origin of democracy.

This act intends to make use of the full potential of new technologies to serve as an instrument for disseminating public information and to enable that information to be distributed and used by the public, who, as is often said, is the legitimate owner of public information.

IV,

Freedom of information has antecedents in Comparative Act. From the Swedish Freedom of the Press Act of 1766, to article 14 of the Declaration of the Rights of Man and of the Citizen of 1789, the Resolution adopted by the UN General Assembly No. 59, of 1946; the US Freedom of Information Act of 1966; the Recommendation of the European Council of 1981 on Access to Information held by Public Authorities, and, finally, the Council of Europe Convention on Access to Official Documents of 18 June 2009.

In Spain, both the Spanish Constitution and the Statute of Autonomy for Andalusia, have different provisions that establish the basis for controlling transparency.

Pursuant to the Spanish Constitution, the aim is to increase and boost transparency in government activities and to recognise and guarantee the right to access information relating to such activities, with the aim of enabling, pursuant to article 9.2 of the Spanish Constitution, the participation of all citizens in political life; guaranteeing, pursuant to article 9.3 of the Spanish Constitution, the



dissemination of regulations, legal certainty and protection against arbitrary and discriminatory measures by public authorities; and lastly, pursuant to article 20.1.d) of the Spanish Constitution, the right to freely receive accurate information from public authorities and, pursuant to article 105.b) of the Spanish Constitution, access by citizens to public information.

Likewise, promoting transparency is also established in various provisions of the Statute of Autonomy for Andalusia. The aim is to enhance, pursuant to the provisions set forth in article 10.1, the quality of democracy, enabling the entire Andalusian community to take part in politics; to encourage, as a basic objective, in the public interest, social engagement in the creation, provision and assessment of government policies and an individual and associated participation in the political arena, in the interest of an advanced and participatory social democracy, as established in article 10.3.19; foster, pursuant to the provisions set forth in article 11, the development of a fully-fledged democratic civic engagement; constitute, pursuant to the provisions set forth in article 30.1.e), the channels for exercising the right to political participation and, in particular, the right to actively participate in public life in Andalusia, establishing the necessary mechanisms for information, communication and reception of proposals.

Special mention should be given to the relationship between transparency and the right to good governance recognised in article 31, which includes the rights of all persons with regard to public administrations, whose actions shall be proportionate to their purposes, to fully participate in the decisions affecting them, obtaining from these accurate information and for their matters to be treated objectively and in an unbiased manner and to be resolved within a reasonable period, and to access files and records from all institutions, corporations, entities and public organisations of Andalusia, regardless of the medium, with the exceptions established by ; to develop, pursuant to article 34, the right to access and use new technologies and to actively take part in the knowledge society of information, knowledge and communication, via the means and resources established by ; develop the appropriate instruments to establish, pursuant to article 133, and as a principle of the activities of the Andalusian Regional Administration, the obligation to objectively serve all general interests and to act in accordance, among others, with the principles of good faith, protection of legitimate trust, non-discrimination and proximity to citizens, subject to the Constitution, the Statute and the rest of the legal system and, lastly, to develop, pursuant to the provisions set forth in article 134 and as a statement of public participation, the right of citizens to Access the Andalusian Regional Administration, which shall include, in any event, its files and records, notwithstanding the constitutional and statutory guarantees, providing said citizens with the technological means to do so.

Andalusia's regional legislation has antecedents governing various aspects of transparency. Special mention should be given to Act 9/2007, of 22 October, of the Andalusian Regional Administration which, in its article 3, establishes transparency as a general principle of organisation and activities and chapter I, title IV, establishes the rights of citizens with regard to government actions.

Likewise, Act 5/2010, of 11 June, on Local Autonomy of Andalusia, establishes transparency, in its article 27, as a guiding principle for local services of general interest, while, in article 54, it already includes specific obligations regarding active dissemination.



With regard to environmental issues, the progress made in terms of transparency are numerous and tangible, resulting from international convention obligations (Aarhus Convention), community directives (Directive 2003/4/EC of the European Parliament and of the Council, of 28 January 2003, on public access to environmental information) and Act 27/2006, of 18 July, governing the rights of access to information, public participation in decision-making and access to justice in environmental matters, specifically governing this area. Andalusia established its own regulatory implementation: Act 7/2007 of 9 July, on the Integrated Management of Environmental Quality in Andalusia, and Decree 347/2011, of 22 November, governing the structure and functioning of the Environmental Information Network of Andalusia and access to environmental information (Rediam).

The Parliament approved its basic Act 19/2013, of 9 December, on transparency, access to public information and good governance. Under the jurisdiction attributed by the Statute of Autonomy to this regional community in this regard, the aim of this act is to develop the basic state regulations, pursuant to the terms established in article 149.1.18<sup>a</sup> of the Constitution in relation to article 47 of the Statute of Autonomy, further extending, insofar as possible, the scope of activities subject to transparency.

This would therefore address the non-binding motion regarding legislative measures on transparency and access to public information, approved by the Andalusian Parliament Plenary Session of 27 February 2013 and in which the Governing Council was called upon to make the future Andalusian on transparency a benchmark in terms of transparency and access to public information, based on the requirements established in the Council of Europe Convention on access to official documents.

V

This act is structured in six titles, the first of which refers to general provisions. These include the subject matter and definitions, together with the subjective scope of the Act, which aims to be applied in Andalusia to all individuals and entities that may be depositories of public information. It therefore covers what is established as basic in national legislation and adapts and extends in our case to all administrations, including the administrative actions of the Andalusian Parliament and notwithstanding the respect for its own autonomy. Likewise, the Act intends to be applicable to private entities that are financed with public funds and others that participate in the management of public services supported by public funds, with the idea of citizens maintaining their right to transparency when actions are financed with public funds.

Likewise, this title also governs nuclear aspects that will affect the development of transparency carried out by all individuals and entities involved, by establishing a series of basic principles (among others, transparency, free access, accountability, technological neutrality, veracity, utility and ease), which constitute a pro-transparency approach that will apply to all individuals and entities bound by ; regarding rights and also obligations that structure the relationship of citizens with administrations in this area, with a clear approach that avoids voluntarism. Therefore, Andalusia clearly establishes what citizens can demand in terms of transparency, what obligations they must fulfil and the main governing principles in this area, regardless of the specific subject or issue being communicated.



The second title includes the articles referring to active dissemination, with a long list of specific contents, with regard to which the Act has already ruled upon, together with general regulations, so they are available if needed. This is, undoubtedly, an extensive list that includes widely varied elements understood by to be of interest to the public.

However, this extensive list is representative rather than comprehensive. On the contrary, it has been drawn up to include minimal and general elements. The basic idea is to gradually make public information available in a wider and more systematic manner and for this to be done by using the technologies and platforms that enable universal and free access.

The Act is also aware of the need to ensure that the information obtained from the different individuals and entities is at least homogenous. Otherwise, small differences can have a detrimental effect on the way in which citizens compare the information obtained from different liable individuals and entities. Therefore, this title has been prepared very carefully in order to avoid the introduction of differentiating elements in the composition with regard to basic regulations. This means that differences in the way it has been drafted, shall not be able to be used to justify not conforming with common standards in the provision of information handled by all the administrations in similar matters. Furthermore, it introduces significant new elements, and, above all, it establishes a clear commitment to permanently increase and update information made available via this channel.

The legal regulation governing the principle of transparency in Administration requires completing two different aspects of transparency itself in Administration activities. On the one hand, all that entails proactive information, that is, information offered by public institutions themselves for the public, using new information technologies. The second aspect of transparency refers to the submission of information by the public entity, as a response to a specific request by an individual, regarding any matters related to the Administration and in relation to which they are interested in obtaining more information. This is referred to in title III, under the heading, “The right to access public information”.

This aspect of transparency may serve to recognise that effectively applying it, requires assuming an in-depth change of mentality by all those involved in the Public Administration. The nineteenth-century legacy based on discretion has justified a mentality which, up until now, has been opaque and perhaps obscurantist, accustomed to the work or results being neither accessible to the public, nor even generally known.

The Act recognises the subjective application for all persons, which involves any legal entity not only have the legitimate right to demand information, but also individuals, regardless of their nationality. This is an important extension in relation to governing other rights.

Together with the legal obligation assumed with regard to the submission of information by the Administration itself, drafted so broadly, it is clear that the limitations established in basic regulations are applicable thereto. In the Act it is provided for as a simple reference in what is in fact an intention not to establish other more extensive ones and, even, to explain the arguments that could be made with regard to those limits to refuse access.



In this area of organisation, which shall now be inclined towards general transparency, it is important for the procedure being designed to request information to be as simple and brief as possible and not subject to formalities. Therefore, a reference to basic regulations has been chosen, once again aiming not to establish more requirements or difficulties than absolutely necessary. The new aspects to be incorporated are aimed at facilitating the process of exercising the right to access. Accordingly, online communication tools are promoted, limiting the use of grounds for non-acceptance, and establishing the obligation to provide assistance and collaboration, and other standards established with the aim of enabling citizens to exercise their right.

Title IV refers to promoting transparency. It therefore begins with the obligation to integrate transparency in management. Transparency must be transversal and impregnate all the activities of the various entities. Likewise, measures are established in relation to the conservation of information and the medium used, which will enable interoperability between administrations. And a vital aspect in an area that affects both professionals and the public in general, are two essential elements for transforming the culture and practice of our administrations, which are training and dissemination. It is essential to provide the professionals that are going to meet these demands, with the necessary training and to inform citizens that the information is accessible and the channels available to access said information.

The organisational aspects are laid out in title V, structured in two chapters.

The first of these chapters includes elements for transparency coordination and planning within the scope of the Regional Government of Andalusia. The principles announced in the first title and the transparency commitment that impregnates the , require instruments in practice that enable transparency to be applied in a homogeneous and effective manner in every area of each Administration. Notwithstanding the measures that each entity adopts within its own area, the Andalusian Regional Administration shall be coordinated via the General Commission of Deputy Councillors. Each regional ministry shall establish a transparency department to foster transparency within their area and a transparency commission to ensure it is applied homogeneously. Therefore, each regional ministry shall have operative plans in place under the executive planning and monitoring of a higher coordination body.

The second chapter creates the Andalusian Council for Transparency and Data Protection, as an entity with autonomy and independence to act as the independent control authority in the area of transparency and data protection. It has been constituted as the agency from those set forth in the second additional provision of Act 9/2007 of 22 October, of the Public Administration, that is, as an entity with functional independence or special autonomy.

This agency shall have organic and functional independence and autonomy with regard to the Andalusian Regional Administration, with respect to exercising the powers attributed thereto and with a differentiated legal status and full legal capacity and to act, with its own treasury and resources and management autonomy. Its independence, therefore, with regard to the regional Administration is absolute and its future prestige shall only be determined by the rigour of its actions and control decisions, once it begins its activity.

Firstly, the unification of the independent authority under the same entity in terms of transparency with the relevant data protection, should be noted. Article 82 of the Statute of Autonomy attributes the enforcement jurisdiction in terms of data protection to the Autonomous Community, which



requires an independent authority under the terms established in basic legislation in this area. The identity of persons and the overlapping of functions in many aspects of their work, with which they must assume independent authority in terms of transparency, as well as the clear interconnection between both areas, makes it advisable to unify both functions under the same authority. This will not only result in inevitable organisational economy, but also and above all, coherence in the application of criteria that should govern the manner in which individuals and entities bound by act when providing public information to citizens.

To ensure the independence of the agency, a special system has been established to ensure the independence of the head thereof, while providing the position with immutability, following the example of similar authorities. This includes an important step in which the actions of all individuals and entities bound by are subject to a control and supervision process by a solvent and independent entity that is not subject to the availability of any authority other than the one derived from the principle of legality.

Likewise, a participatory agency has been created within this independent entity, which has been called the Transparency and Data Protection Advisory Committee, in which the individuals and entities affected by the shall be represented, as well as experts and other entities that may be established by . The model is similar to that of other similar institutions that has already proved to be useful in other administrations.

Title VI governs the sanctioning system. The aim is to fulfill the need for such a system, widely demanded by organisations promoting transparency and by citizens. With this, Andalusia establishes itself at the forefront of transparency in Spain, implementing all the necessary and appropriate measures to ensure the new culture of transparency is not simply a statement of intent. The decisive commitment of this autonomous community to transparency, democracy and citizens, translates into the establishment of this system, which is aimed at acting not as a restrictive or restraining mechanism, but to guarantee and enforce citizens' rights to public transparency.

The final part consists of six additional provisions, two temporary provisions, one repealing provision and five final provisions.

The purpose of the first additional provision is to establish the review process and regulatory simplification, which must result in an improvement of the regulations, making this clearer for citizens.

The second additional provision establishes various improvement measures with regard to the clarity of the regulation, establishing the regulatory impact analysis report and the approval of regulatory technical instructions that provide the regulatory texts with homogeneity in their formal aspects, which should result in greater coherence of our legal system, with the aim of serving as a guide when drafting said texts.

The third additional provision complies with the provisions set forth in article 38 of Organic Act 15/1999, of 13 December on the Protection of Personal Data.

The fourth additional provision refers to the supplementary nature of the with regard to issues that already have a specific legal system for accessing information.



The fifth additional provision indicates the necessary agreements of the Act with state regulations, given the basic nature of the latter.

The sixth additional provision establishes the creation of the Advisory Committee for Subsidies and Benefits. This is an advisory body designed to carry out an important preventative function in the area of the legal principles established in its reports, recommendations or instructions, contributing to the establishment of homogeneous criteria. This is an additional transparency measure, which shall also be declared in the disclosure of reports, instructions and recommendations.

The seventh additional provision includes publication on the profile of the contracting party for negotiated procedures without prior publication. This is an additional transparency measure in the area of procurement, the aim of which, notwithstanding the simplification of the procedure established in basic regulations in these cases, is to facilitate greater participation when awarding these types of contracts.

The first and second temporary provisions govern the transition system for applications to access information submitted before the Act came into force and the application of transparency obligations in previous legal relationships.

The sole repealing provision refers to repealing provisions that oppose the content of the actual Act.

The first to the third final provisions, both inclusive, refer to the adaptation of provisions of other previous laws that need to be adjusted to the provisions set forth in this act, therefore, some provisions shall be changed in Act 6/2006, of 24 October, of the Government of the Autonomous Community of Andalusia; Act 9/2007 of 22 October, of the Andalusian Regional Administration and in Act 7/2011, of 3 November, on Documents, Archives and Documentary Heritage of Andalusia.

The fourth final provision establishes the regulatory development of the Act.

And, lastly, the fifth final provision refers to the entry into force of the Act, establishing a *vacatio legis* of one year, a period deemed reasonable to prepare the Administration with regard to the new obligations attributed thereto, both in terms of preparing personnel and in terms of the processing and dissemination of the information. And the term established by the basic law for local entities is respected.

## TITLE I

### GENERAL PROVISIONS

#### Article 1. Purpose

The purpose of this act is to govern, within the scope of the Autonomous Community of Andalusia, transparency in terms of active dissemination and the right to access public information, as an instrument designed to enable citizens to be aware of the activities carried out by public authorities and entities with public funding, fostering responsible practices when carrying out said activity and a fully-fledged democratic civic engagement.



## Article 2. Definitions.

For the purposes of this act, the terms set forth below shall have the following meaning:

- a) Public information: the contents or documents, regardless of the format or medium, held by the persons and entities included in this title and which have been prepared or acquired while exercising their duties.
- b) Active dissemination: the obligations of the persons and entities referred to in articles 3 and 5 to make any and all relevant public information public on their own initiative, pursuant to the terms established in this act, in order to guarantee the transparency of their activity relating to the functioning and control of their public actions.
- c) Access to public information: possibility of safely accessing public information held by the entities subject to the scope of this act regarding the veracity thereof and without any further requirements other than those established therein and in basic state regulations.
- d) Regional Government of Andalusia portal: email address available via telecommunications networks, the ownership, management and administration of which is the responsibility of the Andalusian Regional Administration, with the aim of all citizens being able to access all types of services and information relating to the Autonomous Community of Andalusia totally free of charge, pursuant to the provisions set forth in the regulation governing information and citizens' services and the processing of administrative procedures by electronic means.

## Article 3. Subjective scope of application.

1. The provisions of this shall apply to:

- a) The Andalusian Regional Administration.
- b) The Advisory Council of Andalusia, the Economic and Social Council of Andalusia and the Audio-visual Council of Andalusia.
- c) The agencies of the Andalusian Regional Administration, whether these are administrative, special or corporate entities as well as public organisations referred to in the second additional provision of Act 9/2007 of 22 October, of the Andalusian Regional Administration.
- d) The entities that form part of the local Andalusian Administration.
- e) Instrumental bodies under public related to or reporting to local Andalusian administrations and, in particular, local public administrative agencies, local corporate public agencies and local special regime agencies.
- f) Andalusian public universities and their instrumental entities, such as university-led investment corporations and public university foundations.
- g) Any other public organisations with legal status related to Andalusian public administrations or reporting thereto.



h) Andalusian public corporations and similar entities, such as federations and sports clubs in relation to their activities subject to administrative .

i) Companies in which the entities included in this article have a direct or indirect share capital that exceeds 50 per cent. In any event, companies within the Andalusian public sector referred to in article 4 of the Consolidated Text of the General on Public Finance of the Regional Government of Andalusia approved by Legislative Decree 1/2010, of 2 March and local companies and inter-local companies included in articles 38 and 39 of Act 5/2010, of 11 June, of Andalusian Local Autonomy or regulations that replace these.

j) Public sector foundations included in legislation in terms of foundations reporting to the entities included in this article. In any event, Andalusian public-sector foundations included in article 55 of Act 10/2005, of 31 May, Foundations of the Andalusian Autonomous Community and local public foundations set forth in article 40 of Act 5/2010 of 11 June, of Andalusian Local Autonomy, or regulations that replace these.

It includes the cooperation agencies set forth in article 5 of Act 30/1992, of 26 November, on the Legal System of Public Administrations and Common Administrative Procedure, insofar as, given the particular nature and the lack of a specific administrative structure of their own, the provisions of this title are applicable thereto. In these cases, the fulfilment of the obligations derived from this act shall be carried out by the Administration that represents the Secretariat of the cooperation agency.

l) All other entities with their own legal status not included in the preceding sections, in which the Andalusian Regional Administration holds a direct or indirect majority representation, as referred to in article 5.1 of the Consolidated Text of the General on Public Finance of the Regional Government of Andalusia.

m) Consortiums, foundations and other entities with legal status referred to in article 5.2 of the Consolidated Text of the General on Public Finance of the Regional Government of Andalusia.

n) The funds referred to in article 5.3 of the Consolidated Text of the General on Public Finance of the Regional Government of Andalusia.

2.The Andalusian Parliament, the Ombudsman for Andalusia and the Audit Chamber of Andalusia, shall be subject to the basic State legislation with regard to the provisions and area of this act insofar as it affects the administrative functions to be carried out, notwithstanding those established by the Andalusian Parliament while exercising the autonomy guaranteed thereto by article 102 of the Statute of Autonomy for Andalusia.

3.For the purpose of the provisions of articles 4.4, 12, 13 and 14 of this act, Andalusian public administrations shall be understood to be the organisations and entities included in letters a) to g) of section 1.

4.The scope set forth in this article is understood to be notwithstanding the specific obligations established by this act for other agencies or entities.



#### Article 4. Obligation to provide information.

1. In case of prior request, individuals and legal entities other than those referred to in the preceding article that provide public services or carry out delegated control functions or any other type of administrative functions shall have to provide the Administration, agencies or entities set forth in article 3.1 to which they are related, within a period of fifteen days, with all the information required in order for these to fulfil the obligations set forth in this act, notwithstanding the deadlines that may be established by local entities when exercising their autonomy.

2. This obligation shall apply to individuals awarded public sector contracts pursuant to the terms set forth in the respective contract. For these purposes, the documents establishing the specific administrative clauses or equivalent contractual documents, shall specify this obligation.

3. This obligation shall also be applicable to individuals receiving subsidies in the terms established in the regulatory bases of the subsidies and in the award decision. Accordingly, the regulatory bases for the concession of subsidies, the award decisions or the agreements that facilitate the concession of subsidies shall also expressly include this obligation.

4. The public administrations of Andalusia may agree, having first warned and notified the interested party, to impose coercive fines once the established deadline has been reached if the request has not been met. The fine, ranging between 100 and 1,000 euros, shall be reiterated for fifteen-day periods until it is fulfilled. The total fine shall not exceed 5% of the sum of the contract, subsidy or administrative instrument enabled for exercising the public functions or providing the services. If such instrument does not include a specific amount, the fine shall not exceed 3,000 euros. For establishing the amount, the severity of the breach shall be considered and the principle of proportionality, among others.

5. The personal and material means required for the fulfilment of the obligations set out in this article, shall be assessed by the administrations, organisations or entities set forth in article 3.1 and, accordingly, the necessary provisions shall be established in public-sector contracts and in the terms and conditions governing subsidies to ensure they are fulfilled.

#### Article 5. Other liable parties.

1. Political parties, union organisations and business organisations, in any event, and churches, confessions, communities and other entities registered in the Register of Religious Entities, corporations, associations, institutions, entities representing collective interests and other entities that receive public benefits or subsidies during a period of one year for a sum exceeding 100,000 euros or when at least 40 per cent of the total annual income is from public benefits or subsidies, providing they reach at least 5,000 euros, shall comply with the transparency obligations set forth in basic legislation.

However, regardless of the preceding limits, if these entities access financing for their activities and ordinary operations via subsidies or benefits financed with the Regional Government of Andalusia budget, they may also be subject to specific disclosure requirements, applying similar transparency criteria to those regarding active dissemination established in this act for liable entities, in the terms established in the implementing provisions of this act and the relevant announcements, always respecting the private nature of these entities and the purposes recognised for these.



2. Likewise, the governing standards for agreements and other forms of participation of private entities in public education and sports and health and social services systems, shall establish active dissemination obligations from among those established in this act, which must be fulfilled by these entities in order to collaborate in the provision of these services covered with public funds. These obligations shall be included in the bidding specifications or equivalent contractual documents.

3. Apart from the provisions set forth in article 4, companies providing local public services under an indirect management system shall comply with the active dissemination obligations, from among those set forth in this act, determined according to regulations to enforce the principle of financial transparency and in the management of local services of general interest set forth in article 27.8 of Act 5/2010, of 11 June, of Local Autonomy of Andalusia, which shall be classed as common and minimum and may be complemented with others by local entities. The s governing the provision of the public service and the bidding specifications or equivalent documents shall include these active dissemination obligations.

#### Article 6. Basic principles.

The following basic principles shall be taken into account in the interpretation and application of this act:

- a) Principle of transparency, pursuant to which, all public information is in principle accessible and shall only be withheld to protect other legitimate rights and interests in accordance with Act.
- b) Principle of free access to public information, pursuant to which, any person may request access to public information.
- c) Principle of accountability, pursuant to which, the entities subject to the provisions set forth in this act are responsible for complying with its terms and conditions.
- d) Principle of technological neutrality, pursuant to which, entities subject to the scope of application of this act shall implement all measures necessary to ensure that transparency requirements are met, regardless of the means of accessing the information.
- e) Principle of veracity, pursuant to which, public information must be true and accurate, ensuring it has been obtained from documents, the authenticity, reliability, integrity, availability and chain of custody of which have been verified.
- f) Principle of utility, pursuant to which, the public information that is provided, when possible shall fulfil the purposes for which it is requested.
- g) Principle of gratuity, pursuant to which, access to the information and requests to access information shall be free of charge, notwithstanding charges that may be established for issuing copies or supporting documents or the transposition of the information to a different format than the original.



h) Principle of ease and understanding, pursuant to which, information shall be provided in as simple and clear manner as possible and in accordance with the nature thereof and the requirements of people with special circumstances for whom it is difficult to exercise the right.

i) Principle of accessibility, pursuant to which, structured information shall be provided on the documents and information resources with the aim of facilitating the identification and search for information.

j) Principle of interoperability, pursuant to which, the information shall be published in accordance with the National Interoperability Framework.

k) Principle of reuse, pursuant to which, efforts shall be made to ensure that the information is disseminated in formats that enable it to be reused, in accordance with applicable legislation in the area of the reuse of public sector information.

#### Article 7. Rights.

The following rights are recognised:

a) Right to active dissemination. This consists of every person's right for the public authorities in accordance with this act to provide accurate information on a regular and updated basis, the knowledge of which is relevant in order to guarantee the transparency of their activities relating to the functioning and control of government action.

b) Right to access public information. This consists of everyone's right to access, pursuant to the terms established in this act, the contents or documents held by any of the individuals and entities included in the scope of application of this act and which have been prepared or acquired while exercising their functions.

c) Right to obtain a reasoned decision. This consists of the right of applicants to reasoned decisions in cases where requests for access are rejected, or access is denied, or partial access is granted, or access granted via a different means to that requested or when access is granted in the event of opposition by relevant third parties.

d) Right to use the information obtained. This consists of the right to use the information obtained without prior authorisation and without any limitations other than those derived from this or other acts.

#### Article 8. Obligations.

Individuals accessing public information pursuant to the provisions set forth in this act, shall be subject to compliance with the following obligations:

a) To exercise their right in compliance with the principles of good faith and prohibition of abuse of rights.

b) To access the information in such a way that the effectiveness of how the public services work is not affected, limiting the request insofar as possible. Accordingly, the Administration shall collaborate with the applicant in the terms set forth in article 31.



c) To respect the obligations established in basic regulations for reusing the information obtained.  
and

d) To comply with the conditions and material requirements for access indicated in the relevant decision when access is performed in person in a file or public department.

## TITLE II

### ACTIVE DISSEMINATION

#### Article 9. General standards.

1.The individuals and entities listed in article 3 shall disseminate public information on a regular basis and in an accurate, objective and updated manner, when the knowledge thereof is relevant in order to guarantee the transparency of their activity related to the functioning and control of government action by citizens and society in general and favouring the involvement of citizens in such action.

In this regard, relevant measures shall be adopted to ensure the dissemination of public information and the availability thereof for citizens as widely and systematically as possible.

2.The transparency obligations set forth in this title are classed as minimum and general requirements and are understood notwithstanding the application of other specific provisions set forth in a broader regime in terms of dissemination.

3.The limits to the right to access public information set forth in basic regulations shall be applicable, when appropriate, and, particularly, the limit resulting from the protection of personal data. In this regard, if the information contains specially protected data, such information shall only be disseminated once the protected data has been disassociated therefrom.

4.Public information subject to active dissemination shall be available via electronic offices, portals or websites of the individuals and entities included in the scope of application of this act in a secure and comprehensible manner, particularly guaranteeing universal accessibility and technological neutrality, with the aim of everyone being able to exercise their rights with equal status and incorporating the characteristics required to guarantee accessibility to individuals or groups as required.

For non-profit organisations exclusively pursuing social or cultural purposes and when the budget is lower than 50,000 euros, the fulfilment of the obligations derived from this act may be carried out by using the electronic means made available by the Public Administration via which the majority of the public benefits or subsidies received by such entities has been obtained.

5.All the information shall be available to individuals with a disability in an accessible medium, understood to be that which is supplied by means or in formats that are accessible and understandable, pursuant to the principles of universal accessibility and design for all.

6.When drawing up information subject to active dissemination, the provisions of Act 12/2007 of 26 November shall be particularly considered for promoting gender equality in Andalusia, with regard to the use of non-sexist or discriminatory language.



7. All the public information indicated in this title shall be disseminated and updated on a quarterly basis in general, unless specific regulations establish other terms, taking into account the specific nature of the relevant information and notwithstanding the terms that may be established by local entities while exercising their autonomy or the authority of the Andalusian Regional Administration or its instrumental entities to disseminate any public information deemed convenient within shorter periods.

8. The active dissemination set forth in this title shall be configured in such a way that it enables the participation of citizens in accordance with the information provided.

Article 10. Institutional and organisational information.

1. The entities included in the scope of application of this act shall disseminate, when applicable, information concerning:

- a) The functions they carry out.
- b) Regulations applicable thereto and, in particular, the functioning and organisational statutes and standards of the instrumental bodies.
- c) Their organisational structure. Accordingly, they shall include an updated organisational chart identifying the persons in charge of the different agencies and their profile and professional experience and the identification of the persons in charge of the administrative departments.
- d) Physical office, opening times, telephone number and email address.
- e) Delegations of responsibilities in force.
- f) List of affiliated established agencies and the regulations governing these.
- g) The list of positions, catalogue of positions or equivalent document referring to the type of personnel, indicating their annual salaries.
- h) Decisions regarding authorisation or compatibility recognition decisions affecting public employees.
- i) Agreements or covenants governing working conditions and collective agreements in force.
- j) Public sector employment or other similar management instruments for staffing management.
- k) Personnel selection processes.
- l) The identification of the persons forming part of the agencies representing the personnel and the number of persons enjoying a total work exemption.
- m) Governments' institutional agendas.

2. The Andalusian Regional Administration shall also disseminate the following information:



- a) The inventory of agencies within the Autonomous Community of Andalusia.
- b) The General Inventory of Properties and Rights of the Autonomous Community of Andalusia, pursuant to the terms established by .
- c) Annual plan and report by the General Inspection of Services of the Regional Government of Andalusia.

3. Local Andalusian entities shall also disseminate information whose dissemination is required by the provisions of Act 5/2010 of 11 June, and the minutes of plenary sessions.

Article 11. Information regarding senior staff and individuals holding positions of maximum accountability in the entities included in the scope of application of the Act.

The entities included in article 3 shall make the following information public:

- a) The identification of the senior staff included in the scope of application of the regulation regarding incompatibilities of senior staff of the Andalusian Regional Administration.
- b) Remuneration of any sort received annually by senior staff and by individuals holding positions of maximum accountability in the entities included within the scope of application of this act.
- c) Severance pay received, if applicable, as a result of discharge of employment.
- d) Declarations of activities, assets, interests and remunerations of senior staff of the Andalusian Regional Administration.
- e) Annual declarations of assets and activities of local representatives, pursuant to the terms and conditions set forth in Act 7/1985, of 2 April Governing the Basis of the Local Government. If the regulation does not establish the terms pursuant to which these declarations should be made public, the provisions of regulations on conflicts of interest in the area of the Public Administration shall be applicable. In any event, data concerning the exact location of the properties shall be omitted and the privacy and security of the titleholders thereof shall be guaranteed.

Article 12. Information concerning planning and assessment.

1. Public administrations, companies and Andalusian public foundations shall disseminate the annual and multi-annual plans and programmes in which specific objectives are established, together with the activities, means and timeframe for achieving these. The level of fulfilment and results shall be assessed and disseminated periodically, together with measurement and assessment indicators. For these purposes, the assessment of public policies is considered to be the systematic process of generating knowledge aimed at the comprehensive understanding of a public intervention to achieve a critical appraisal based on supporting documents regarding the design, implementation, results and impacts thereof. The aim is to contribute to the improvement of public interventions and promote transparency and the accountability.

2. The plans and programmes referred to in the preceding section shall be disseminated as soon as they are approved and, in any event, within a maximum period of 20 days and shall be maintained



while they are in force, notwithstanding shorter periods that may be established by local entities while exercising their autonomy.

Article 13. Legally relevant information.

1. Public administrations in Andalusia, in the area of their competencies and functions, shall disseminate:

a) The guidelines, instructions, agreements, circulars, or responses to queries submitted by individuals or other agencies, insofar as they represent an interpretation of Act or are legally binding.

b) Act proposals when, after the mandatory submission by the relevant Regional Ministry, they are recognised by the Governing Council. Likewise, act proposals and legislative decree projects shall be published when the reports are requested, if applicable, from the Economic and Social Council of Andalusia and the Advisory Council of Andalusia. And, finally, draft acts after the approval thereof by the Governing Council.

c) Draft regulations for which the initiative is applicable thereto, shall be made public when, if applicable, they are submitted to hearing proceedings or public information. Likewise, if so requested, rulings by the Economic and Social Council of Andalusia and the judgement of the Advisory Council of Andalusia shall be disseminated, if applicable. The dissemination of draft regulations shall not necessarily entail the start of public hearing formalities.

Within the scope of local entities, once the initial approval of the local act or regulation has been given by the Corporation's Plenary Meeting, the text of the initial version shall be disseminated, notwithstanding other requirements that may be established by local entities while exercising their autonomy.

d) The reports and records that form part of the files for drawing up the regulatory texts as a result of the dissemination thereof.

e) Documents which, pursuant to sector-specific legislation in force, must be submitted to a period of public information during the process.

f) An updated list of regulations being processed, indicating the purpose thereof and the process status.

2. The Andalusian Regional Administration shall permanently update and provide citizens with the regulations in force in the Autonomous Community.

3. The Andalusian Regional Administration shall publish the list of competencies and transfers of functions and services assumed by the Autonomous Community of Andalusia.

Article 14. Information about procedures, service charters and public engagement.

The public administrations of Andalusia will disseminate information regarding:



- a) The updated catalogue of administrative procedures and the jurisdiction thereof, indicating the purpose, processes and deadlines, together with their related forms, if applicable. It shall specifically indicate procedures that totally or partially accept electronic processing.
- b) Service charters drawn up with the information about public services managed by the Autonomous Community of Andalusia, reports on the degree of fulfilment and quality of the public services, together with any information available that enables the assessment thereof.
- c) A list of the procedures in which citizens can take part while they are being processed.

#### Article 15. Information about contracts, agreements and subsidies.

The entities included in the scope of application of this act shall make any information public regarding the administrative management indicated below:

- a) All contracts, indicating the purpose, duration, the tender amount and award amount, the procedure used for the tender, the instruments via which, if applicable, they have been announced, the number of bidders taking part in the procedure and the identity of the successful bidder, together with any contract amendments and extensions and indicating the procedures that have not been awarded, grounds for terminating the contract or declaring it null and void, together with possible price reviews and contract terminations. Likewise, decisions to withdraw and abandon contracts and subcontracts shall be subject to dissemination when these are carried out with reference to the successful bidders.

The dissemination of the information concerning minor contracts may be carried out on a quarterly basis.

Likewise, statistical data concerning the percentage in budgetary volume of the awarded contracts shall be disseminated via one of the procedures established in legislation concerning public sector contracts.

- b) The list of agreements signed, mentioning the signatory parties, the purpose thereof, duration term, amendments made, persons subject to carrying out the services and, if applicable, the agreed financial obligations. Likewise, any management assignments that may be signed shall be disseminated, indicating the purpose thereof, the budget, financial obligations and subcontracts that are carried out with reference to the successful bidders, the procedure followed to award the contract and the amount thereof.
- c) Public subsidies and benefits awarded indicating the announcement or the concession agreement in the case of exceptional subsidies, the programme and budgetary credit they are charged to, the sum thereof, purpose or objective and beneficiaries. However, subsidies co-financed with European agricultural funds shall be governed, in terms of the dissemination of information regarding the beneficiaries, by the provisions set forth in articles 111 and 112 of Regulation (EU) No. 1306/2013 of the Parliament and of the Council, of 17 December 2013, on financing, management and monitoring of the Common Agricultural Policy or repealing regulations.

#### Article 16. Economic, financial and budgetary information.



The individuals and entities included in the scope of application of this act shall, if applicable, make public, at least, the information with any economic or budgetary impact as indicated below:

- a) The budgets, describing the main budgetary entries and updated and comprehensible information regarding the execution status thereof and regarding the fulfilment of the budgetary stability objectives and financial sustainability of the public administrations and information concerning control actions pursuant to the terms established by act.
- b) The annual accounts that must be rendered and audit and inspection reports by external control bodies issued in this regard.
- c) Basic information about the Autonomous Community's financing, indicating the various financing instruments.
- d) The Administration's Public Debt, indicating the progress thereof, the level of indebtedness per inhabitant and the relative level of indebtedness.
- e) Public expenditure used in institutional dissemination campaigns.

Article 17. Extension of the active dissemination obligations.

1. In order to ensure greater transparency in public sector activities in Andalusia, the inclusion of any other public information shall be encouraged when it is considered of interest to the general public. In this regard, information shall be included for which access requests are submitted most frequently.

2. Notwithstanding the foregoing, the Andalusian Regional Administration shall disseminate, insofar as the technical and legal possibilities allow, any information that has been provided while exercising the right to access public information.

3. The Governing Council and local entities, in their area of jurisdiction and autonomy and through regulations, may extend the dissemination obligations included in this title.

Article 18. Access to active dissemination.

1. The public information subject to active dissemination, in the area of the Andalusian Regional Administration and its instrumental entities, shall be available via the Regional Government of Andalusia's Portal.

2. The Andalusian Regional Administration may adopt additional measures in collaboration with other public administrations to fulfil the transparency obligations set forth in this title. This collaboration may be established via the subscription of inter-administrative agreements.

Article 19. Reuse of information.

1. The information referred to in the preceding articles may be reused within the limits established by Act 37/2007, of 16 November, on the reuse of public sector information and other relevant regulations in force.



2. Accordingly, any information subject to active dissemination shall be offered, when technically possible, in electronic formats that enable it to be redistributed, reused and developed. The information shall use open standards as set forth in the provisions of Act 11/2007 of 22 June, on electronic access by citizens to Public Services.

#### Article 20. Institutional assistance.

Notwithstanding the provisions of article 18.2, smaller towns or those with insufficient economic and management capacity may comply with the active dissemination obligations set forth in this title by receiving technical assistance from the town province, as set forth in article 12 of Act 5/2010, of 11 June, or pursuant to the provisions established in article 54 of the aforementioned act, with regard to the dissemination via the electronic office of the relevant Provincial Council.

#### Article 21. Dissemination of the plenary sessions of local entities.

When local entities hold plenary sessions, they shall provide access online, or transmit the session by providing audio-visual access to the recorded session once it has been held, providing this is technically or economically feasible. In any event, those attending may record the session by their own means, always respecting the way the institution works on a normal basis.

#### Article 22. Transparency concerning the structure and operation of governments.

1. The Governing Council of the Regional Government of Andalusia and other government collegiate bodies of townhalls, councils and associations of townships, notwithstanding the secrecy or privacy of their deliberations, shall disseminate the planned agenda before the meetings are held and, once held, the approved agreements, together with the information included in the file submitted to their consideration, pursuant to the terms established by .

2. In order to comply with the provisions of the preceding section and in order to respect the limits applicable to active dissemination established in this act, the proposing regional ministries shall determine the information with regard to which a reservation should be made, when submitting the file to the Governing Council, in accordance with applicable legislation. The General Commission of Deputy Councillors shall establish the most suitable coordination criteria.

#### Article 23. Control.

Notwithstanding the internal control established by each entity or Administration in accordance with their own organisational regulations, the Andalusian Council for Transparency and Data Protection may, on its own initiative or as a result of complaints filed, order the rectification of any breach of the obligations established in this title.



## TITLE III

### THE RIGHT TO ACCESS PUBLIC INFORMATION.

#### CHAPTER I

##### General standards

##### Article 24. Right to access public information.

Everyone has the right to access accurate public information pursuant to the terms established in article 105.b) of the Spanish Constitution and its implementing legislation and in article 31 of the Statute of Autonomy for Andalusia, without any further limitations other than those set forth in Act.

##### Article 25. Limits to the right to access public information.

1.The right to access public information shall only be restricted or denied in accordance with the terms set forth in basic legislation.

2.The limitations to the right to access shall only be applicable for the length of time established by s or while there is justified reasons for this. The application thereof shall be assessed with regard to the possibility of enabling partial access.

3.The application of the limits shall be justified and proportional to the purpose and aim to protect and shall comply with the circumstances of the specific case, particularly in the event of a superior public or private interests that justifies such access.

4.Decisions that restrict or deny the right to access shall be subject to dissemination once any personal data they contain have been disassociated. If there is a mere indication that the information could represent a breach of any of the limits to the access, this circumstance shall be noted when rejecting the request.

##### Article 26. Protection of personal data.

Pursuant to the provisions set forth in basic legislation on access to public information, in order to decide upon the request to access the public information containing personal data of the applicant or third parties, the provisions of Act 19/2013, of 9 December and in Organic Act 15/1999, of 13 December shall be applicable.

##### Article 27. Partial access.

If the requested information is subject to any of the limits referred to in article 25 of this act, wherever possible, partial access to the public information shall be granted, pursuant to the provisions set forth in the basic Act on access to public information.



## CHAPTER II

Exercising the right to access public information.

Article 28. Access procedure.

1.The procedure for exercising the right to access shall be governed by the provisions established in the basic on transparency and by the provisions of this act.

2.The agency or entity with jurisdiction in the subject matter referred to by the requested information shall be responsible for deciding upon the procedure.

3.If the interested person knows the specific location of a document or information in a particular file, they may contact the authority in charge pursuant to the terms established in legislation concerning files.

Article 29. Promoting the use of electronic resources.

1.The individuals or entities included in the scope of application of this act shall promote the submission of requests using electronic resources, notwithstanding the provisions of article 6.d).

2.In any event, the normalised application models shall be available on their respective electronic offices, portals or websites.

3.Within the scope of the Andalusian Regional Administration, the electronic submission of requests to access public information shall be carried out on the Regional Government of Andalusia Portal.

Article 30. Special rules concerning grounds for rejecting requests for access.

In relation to the grounds for rejecting the requests indicated in basic legislation, the following rules shall apply:

a) If a request is rejected because the information is still being prepared or generally disseminated, the refusal shall specify the authority that is preparing such information and the time expected for it to be completed and made available.

b) Mandatory reports shall not be considered ancillary or supporting information to justify rejections of the requests referring thereto.

c) Likewise, information obtained via commonly used digital processing procedures shall not be considered a reinterpretation that justifies a rejection.

Article 31. Obligation to provide assistance and collaboration.

1.The entities subject to this act shall establish the necessary advice on their respective information platforms and advisory guides, so people wishing to exercise the right to access information can locate the information they are requesting and the authorities that hold such information.



2.The personnel working for these entities shall have to help and inform those seeking information regarding the manner and the place in which they can submit their requests to access the information.

3.Complying with the obligations established in the preceding sections shall particularly include the requirements of individuals with disabilities or other personal circumstances that hinder their ability to access the information available within public administrations or via electronic resources.

#### Article 32. Resolution and notification period.

Requests shall be resolved and notified as soon as possible. In any event, within the scope of the Andalusian Regional Administration and its instrumental entities, the maximum period for issuing and notifying the resolution shall be 20 business days from receipt of the request by the competent authority for issuing a decision, which may be extended by the same period if so required by the volume or complexity of the requested information. The applicant shall be informed of this extension.

#### Article 33. Claims against decisions.

1.Claims may be filed against any express or alleged decision concerning access by submitting it to the Council for Transparency and Data Protection in Andalusia, voluntarily and before it is challenged in administrative/litigious proceedings. This claim shall be governed by the provisions set forth in basic legislation concerning transparency and by the provisions of this act.

2.Appeals against resolutions concerning the right to access public information that are issued by the institutions and entities referred to in article 3.1.b and 3.2, shall only be filed before the contentious/administrative jurisdiction.

3.The Council's resolutions shall be disseminated, once any personal data contained therein have been disassociated, electronically and pursuant to the terms established by , once the interested parties have been notified. The party responsible for the Council Directorate shall inform the Ombudsman for Andalusia of any resolutions that are issued in application of this article.

#### Article 34. Implementation of the right to access public information.

1.The requested information shall be delivered to the requesting party in the manner and format chosen by said party, unless it could lead to the loss or deterioration of the original format, or the technical means are not available to provide a copy in this format, or it could affect intellectual property rights or there is simpler and more economical form or format for the treasury. In any event, if the information provided in response to a request to access the public information is submitted electronically, it must be provided in an open standard or, otherwise, it must be legible with IT applications that do not require a commercial licence for use.

2.The review of the requested information on the site in which it is located shall be free of charge, together with the submission of information by electronic means.

3.The entities and authorities subject to shall draw up, disseminate and make the list of rates and public prices available to the individuals requesting public information as applicable to such requests, pursuant to the provisions of article 6.g) and the cases in which no payment is applicable. Under no



circumstances shall the inability or impossibility to pay the public rates or prices established be a reason for refusing full access to public information requested pursuant to this act, in accordance with the terms established by .

#### TITLE IV

#### PROMOTING TRANSPARENCY

Article 35. Integration of transparency in management.

1.The entities referred to in article 3.1 of this act shall establish systems to integrate the management of citizens' information requests into the manner in which the internal organisation operates.

2.Likewise, measures shall be established to facilitate a cross-sectoral approach towards transparency in the organisation's general activities.

Article 36. Conservation of information.

1.The entities referred to in article 3.1 shall conserve the public information they hold or which other individuals or entities hold on their behalf, pursuant to the terms established in existing legislation.

2.Notwithstanding the provisions of the preceding section, this information shall be conserved in open standards that guarantee the longevity thereof and maintaining the capacity to automatically transform them into easy-to-reproduce formats with easy access when technically possible.

Article 37. Promoting interoperability initiatives.

The Andalusian Regional Administration shall promote the interoperability of the information between public administrations, fostering joint initiatives for the exchange of information between the entities included within the scope of application of this act.

Article 38. Training

The public administrations and entities included in the scope of application of this act shall establish the relevant instruments to provide training and professional qualification for publicly employed individuals, in particular those responsible for information functions in the area of transparency, with regard to active dissemination and those responsible for requests submitted while exercising the right to access.

Article 39 Communication.

The public administrations included within the scope of application of this act shall include initiatives within their communication and institutional dissemination actions, specifically aimed at providing citizens with knowledge regarding information accessible to them and the channels available to access such information, particularly with regard to access available by electronic means.



## TITLE V

### MANAGEMENT

#### CHAPTER I

Coordination and planning within the scope of the Regional Government of Andalusia

Article 40. Administrative coordination.

1. Within the scope of the Andalusian Regional Administration and its affiliated entities and agencies, general coordination in terms of transparency shall be carried out by the General Commission of Deputy Councillors.

2. This Commission shall have a secretariat in charge of providing support for preparing the project and as an administrative office for the relationship with the transparency units and transparency commissions of each regional ministry.

3. The General Commission of Deputy Councillors shall establish the executive planning in terms of transparency, issue instructions and establish criteria with regard to the implementation of active dissemination procedures and in relation to monitoring the operational planning carried out in the area of transparency by each of the ministries for them and their affiliated entities and agencies.

Article 41. Transparency units and commissions.

1. Each council shall have a transparency unit, the functions of which shall be to assign a unit with a minimum basic level of service, which, accordingly, shall act under the authority of the Deputy Ministry with the aim of promoting transparency in the area of the Regional Ministry and its affiliated entities and agencies and facilitate the application in this area of the criteria and instructions that may be established.

2. Likewise, a transparency commission shall be established in each regional ministry with the participation of the different executive centres, archives, instrumental entities and other reporting entities to ensure the implementation of transparency in a homogeneous manner in all areas of Regional Government of Andalusia's administrative actions.

3. The way in which the transparency units and commissions operate shall be controlled by Governing Council Decree.

4. The General Inspection of Services of the Regional Government of Andalusia shall ensure compliance with all the obligations established in titles II and III of this act and in all matters applicable to the Andalusian Regional Administration and its instrumental entities.

Article 42. Planning.

1. In terms of transparency, each regional ministry shall establish an operational plan, which shall include the organisational structure, responsibilities, functions and the procedures for carrying out the transparency action in the area of the regional ministry and its affiliated entities and agencies.



2. These plans shall be approved by means of an Order and drawn up with the involvement of the relevant Transparency Commission pursuant to the criteria and requirements established by .

3. The initiatives carried out and the assessment thereof shall form part of the public information subject to active dissemination.

## CHAPTER II

### Andalusian Council for Transparency and Data Protection

#### Article 43. Creation and nature.

1. The Andalusian Council for Transparency and Data Protection, hereinafter the Council, was created as an independent control authority in the area of data protection and transparency in the Autonomous Community of Andalusia.

2. The Council was established as a public entity with its own legal status, with full capacity and basic and functional autonomy for exercising its functions.

3. The Council shall exercise its functions with objectivity, professionalism, subject to the legal system and with full independence from the public administrations when exercising these.

4. Its relationship with the Andalusian Regional Administration shall be carried out via the Regional Ministry of the Presidency.

1. The Council shall be classed as an institutional Administration for the purpose of the second additional provision of Act 9/2007 of 22 October.

2. The Council shall be governed by the provisions of this act, by the terms established in the second additional provision of Act 9/2007, of 22 October and, additionally, by the provisions established in the same for administrative agencies, and those set forth in their statutes in terms of organisational and operational matters.

3. The Council's budgetary, equity, economic-financial, accounting and intervention system, shall be established in the Consolidated Text of the General on Public Finance of the Regional Government of Andalusia and other applicable provisions. The procurement system shall be established for the public administrations in the consolidated text of the on Public Sector Contracts, approved by Royal Legislative Decree 3/2011, of 14 November.

#### Article 45. Purpose.

The Council shall act in the region of Andalusia as a public independent control authority in the area of data protection, pursuant to the terms established in article 41 of Organic Act 15/1999, of 13 December and as an independent and unbiased authority guaranteeing the right to transparency, pursuant to the provisions of this act and in basic legislation in this regard,



#### Article 46. Structure of the Council.

1. The Andalusian Council for Transparency and Data Protection shall be made up of the following bodies:

- a) The Advisory Commission, with the composition and functions set forth in article 49.
- b) The Directorate, the titleholder of which shall also preside over the Advisory Commission.

2. The effective constitution of the Council shall take place in accordance with its statutes, which shall be approved by the Governing Council and shall always include its structure, competencies, organisation and mode of operation.

#### Article 47. Management of the Council.

1. The person responsible for the Council Management shall be appointed by the Governing Council for a non-renewable period of 5 years. However, once the relevant mandate term has expired, he/she shall continue to carry out his/her functions until a new person responsible takes his/her place.

2. The Andalusian Parliament is responsible for the relevant appointment, by absolute majority and the position shall be assigned to a person with recognised prestige and professional skills.

3. This person shall carry out the functions with full independence and objectivity and shall not be subject to instructions of any sort when carrying out said functions. However, the person that holds the position of Manager shall listen to the Advisory Commission with regard to proposals made by the latter when carrying out the functions.

4. The person responsible for the Council Management shall only leave the position before the end of the mandate period for one of the following reasons:

- a) Death or legal disability.
- b) Waiver.
- c) Due to separation, agreed by the Governing Council prior investigation of the case, in which the Advisory Commission shall be necessarily heard, due to a serious breach of his/her obligations, unforeseen inability to exercise their functions, incompatibility or a sentence due to wilful offences.

#### Article 48. Management Functions.

1. The Council Management shall exercise the following functions:

- a) Represent the Council.
- b) Resolve any claims submitted against express or alleged resolutions in terms of access that may be submitted by applicants or by third parties in the cases established in basic legislation.
- c) Adopt uniform interpretation criteria regarding the obligations contained in this act.



- d) Submit an annual action report to the Andalusian Parliament.
- e) Answer queries in the area of transparency or data protection submitted by administrations and entities subject to this act.
- f) Respond to queries which, optionally, may be submitted by agencies in charge of processing and ruling on requests for access to information, as well as queries submitted by competent bodies in compliance with the provisions set forth in article 22.
- g) Control the active dissemination pursuant to the terms established in article 23.
- h) Order the initiation of disciplinary or sanctioning proceedings pursuant to the provisions of title VI.
- i) Carry out the functions established in legislation on data protection to be exercised by autonomous agencies, if applicable.

2.The Council Management shall function under the guidance of the Advisory Commission established in article 49.

Article 49. Transparency and Data Protection Advisory Committee.

1.The Transparency and Data Protection Advisory Committee, hereinafter, the Committee, is established as a participatory and advisory body in the area of transparency and data protection.

2.Its functions, mode of operation and composition shall be established in the Council's statutes.

3.The Advisory Committee shall be made up of the person in charge of the Council Management and fourteen members representing:

- a) The Andalusian Regional Administration.
- b) The Andalusian Parliament, as representative.
- c) Local Andalusian administrations.
- d) Public universities of Andalusia.
- e) Entities representing consumers and users.
- f) Entities representing economic and social interests.
- g) Experts in the subject matter.
- h) A representative of the Ombudsman for Andalusia.
- i) One representative of the Audit chamber of Andalusia.



4. The members of the Committee shall be appointed by the head of the Regional Ministry referred to in article 43.4. They shall cease to hold the position for the same reasons as the person in charge of the Council Management or at the request of the entity that proposed them.

## TITLE VI

### SANCTIONING SYSTEM

#### Article 50. Legal framework.

1. Failure to comply with the obligations established in this act shall be penalised according to the provisions established in this title, notwithstanding other responsibilities that may apply.

2. The legal authority to impose penalties regarding the infringements typified in this act shall be exercised in accordance with the provisions established therein and in the legal regulations of public administrations and the administrative sanctioning proceedings. Disciplinary infringements shall be governed by the procedure established for civil service personnel, statutory personnel applicable in each case.

#### Article 51. Liable parties.

1. Individuals or legal entities, regardless of their nature, that carry out actions or omissions typified in this act with wilful misconduct, fault or negligence, albeit through simple negligence, shall be liable for the infringements.

2. In particular, the following shall be liable:

- a) Authorities, executives and personnel at the service of the entities established in article 3.
- b) Individuals and legal entities referred to in article 4.
- c) The entities referred to in article 5.

#### Article 52. Disciplinary infringements.

Infringements attributable to authorities, executives and personnel at the service of the entities established in article 3:

1. Very serious infringements:

- a) A breach of the active dissemination obligations established in title II when the express request of the Andalusian Council for Transparency and Data Protection has been ignored.
- b) The arbitrary refusal of the right to access public information.
- c) A breach of the resolutions issued in terms of access by the Andalusian Council for Transparency and Data Protection in claims that may be submitted.



## 2. Serious infringements:

- a) A reiterated breach of the active dissemination obligations established in title II.
- b) A reiterated breach of the obligation to duly issue a decision regarding the request to access public information.
- c) Lack of collaboration in processing claims that are submitted before the Andalusian Council for Transparency and Data Protection.
- d) Providing information in breach of the requirements derived from the principle of veracity pursuant to the provisions established in article 6.e).

## 3. Minor infringements:

- a) A breach of the active dissemination obligations established in title II.
- b) A breach of the obligation to duly issue a decision regarding the request to access public information.

## Article 53. Infringements by the persons required to provide information.

Infringements attributable to the individuals and legal entities referred to in article 4:

### 1. Very serious:

- a) A breach of the obligation to provide information that has been requested as a result of a notice by the Andalusian Council for Transparency and Data Protection or to comply with a decision issued by the latter in terms of access.
- b) Repeatedly committing serious infringements. Repeated infringements shall be understood to be committing more than one infringement of the same kind within a period of one year when it has been declared as such in a final unappealable decision.

### 2. Serious:

- a) Failing to respond to a request for information.
- b) Providing information in breach of the requirements derived from the principle of veracity pursuant to the provisions established in article 6.e).
- c) Repeatedly committing minor misdemeanours. Repeated infringements shall be understood to be committing more than one infringement of the same kind within a period of one year when it has been declared as such in a final unappealable decision.

### 3. Minor:

- a) An unjustified delay in providing the information.



b) Partially providing the information or under different conditions to those requested.

Article 54. Infringements by other entities.

The infringements attributable to private entities referred to in article 5 are as follows:

1. Very serious infringement: A breach of applicable active dissemination obligations, when the express request of the Andalusian Council for Transparency and Data Protection has been ignored.

2. Serious infringement: a repeated breach of applicable active dissemination obligations or disseminating the information in breach of the requirements derived from the principle of veracity.

3. Minor infringement: a breach of applicable active dissemination obligations when it does not represent a serious or very serious infringement.

Article 55. Disciplinary measures.

1. The infringements indicated in article 52, attributable to personnel working for the entities indicated in article 3, shall be subject to the corresponding disciplinary measures pursuant to the disciplinary system applicable in each particular case.

2. If infringements are attributable to authorities and executives, the following measures may be applied:

a) A warning in the case of minor infringements.

b) In the case of serious infringements:

1<sup>st</sup>. Declaration of the breach and publication in the corresponding official gazette.

2<sup>nd</sup> Discharge of employment.

c) In the case of very serious infringements:

1<sup>st</sup> All those stipulated for serious infringements.

2<sup>nd</sup> Not being able to be appointed to similar positions for a period of up to three years.

Article 56. Measures for other entities.

1. For the infringements set forth in articles 53 and 54, warnings and fines may be applied.

2. The disciplinary measures applied to minor infringements may be a warning or fine ranging between 200 and 5,000 euros.

3. The disciplinary measures applicable to serious infringements are fines ranging between 5,001 and 30,000 euros.



4.The disciplinary measures applicable to very serious infringements are fines range between 30,001 and 400,000 euros.

5.Serious and very serious infringements may entail, as an additional measure, the total or partial repayment of the granted subsidy or, if applicable the termination of the contract, concert or relationship established. In order to apply and grade these additional measures, the severity of the events and the impact thereof shall be taken into account, in accordance with the principle of proportionality.

Article 57. Procedure.

1.For imposing the measures established in this title, the provisions established in the sanctioning procedure shall be followed or in the case of infringements attributable to the personnel working for the entities, the relevant procedure established for civil servants, statutory or administrative personnel applicable in each case.

2.In any event, the procedure shall be initiated ex-officio, by the agreement of the relevant authority, or on its own initiative or as a result of a superior order, reasoned request by other authorities or a complaint filed by the general public. The Andalusian Council for Transparency and Data Protection, if non-compliances in this area are identified that could be classed as any of the infringements set forth in this title, shall order the initiation of the procedure. In this case, the competent authority shall have to initiate the procedure and inform the Council of the result thereof.

Article 58. Sanctioning authority.

1.The authority in charge of imposing disciplinary measures shall be the body that determines the regulations applicable in the Administration or entity to which the infringing party belongs.

2.For the infringements set forth in article 53, the jurisdiction shall lie with the body that determines the regulations applicable to the Administration or entity to which the infringing party is related.

3.For the infringements stipulated in article 54, the sanctioning authority shall be exercised by the Regional Ministry of the Regional Government of Andalusia responsible for matters concerning the presidency or by the local entity responsible for the public service.

First Additional Provision. Regulation review and simplification.

1.All the public administrations in Andalusia shall have to conduct a review and simplification process and, if applicable, a regulatory consolidation of their legal systems. Accordingly, they shall conduct the relevant studies, repeal any obsolete regulations and establish, if applicable, the need to introduce amendments, updates and propose the composition of a consolidated text, pursuant to the constitutional and legal provisions regarding jurisdiction and procedures to be followed, based on the priority of the affected regulations.

2.Accordingly, within the scope of the Andalusian Regional Administration, the Regional Ministry in charge of public administration shall draw up a quality plan and regulation simplification and shall be



responsible for coordinating the review and regulation simplification process of the other regional ministries.

3. The general technical secretariats of the different regional ministries shall carry out the review and simplification process in the areas of competence.

Second Additional Provision. Improved regulatory quality.

Within the framework of the provisions set forth in chapter I of title I of Act 2/2011, of 4 March, on Sustainable Economy, the following actions shall be carried out:

a) By means of a Governing Council Decree, as a mandatory process in approval procedures for preliminary drafts, legislative decrees and general provisions, a regulatory impact analysis report shall be established.

b) By Agreement of the Governing Council, instructions for technical standards shall be approved with the aim of homogenising the formal aspects of the regulatory texts of the Autonomous Community.

Third Additional Provision. Appointment of a representative of the Autonomous Community of Andalusia in the Spanish Data Protection Agency.

For the purpose of the provisions set forth in article 38 of Organic Act 15/1999, of 13 December, the director of the Andalusian Council for Transparency and Data Protection shall hold the position of representative of the Autonomous Community in the Advisory Council of the Spanish Data Protection Agency.

Fourth Additional Provision. Special regulations concerning the right to access public information.

1. The regulations governing the relevant administrative procedure shall be applicable to access by those considered interested parties in administrative procedures with regard to the documents that form part thereof.

2. Matters that are subject to a specific legal framework regarding access to information, shall be governed by their specific legislation and, additionally, by this act.

3. In this regard, this act shall be applicable, where not provided for in their respecting governing regulations, to access to environmental information and that intended for reuse.

Fifth Additional Provision. Compliance with state regulations.

The content of letter a) of article 2; letters e), g), h), i), j) and k) of section 1 and sections 2 and 3 of article 3; sections 1 and 2 of article 4; the first paragraph of section 1 of article 5; letters i), j) and k) of article 6; the first paragraph of section 1 and sections 2, 3 and 5 of article 9; letters a), b), c) and h) of section 1 of article 10; letters b), c) and e) of article 11; section 1 of article 12; letters a), b), c), d) and e) of article 13.1; article 15; letters a) and b) of article 16; section 2 of article 18; article 24; sections 3 and 4 of article 25; article 33 and section 2 of article 18; article 24; sections 3 and 4 of article 25; article 33 and section 2 of article 34 of this act shall be drawn up, totally or partially, in accordance



with generally applicable provisions of Act 19/2013, of 9 December, on Transparency, Access to Public Information and Good Governance.

Sixth Additional Provision. Advisory Commission for Subsidies and Benefits.

1. Pursuant to a Decree by the Governing Council, an Advisory Commission for Subsidies and Benefits shall be created as a collegiate advisory body in matters concerning subsidies and benefits, for agencies and entities that form part of the autonomous public sector, as well as local entities in Andalusia.

2. The creation regulation shall govern its composition, competencies and the manner in which it works.

3. Any reports, recommendations or instructions it issues shall be made public.

Seventh Additional Provision. Transparency in procedures negotiated without dissemination.

The individuals and entities included in article 3 of this act shall publish on their contractor profile, when sending the tender requests referred to in article 178.1 of the consolidated text of the on Public Sector Contracts, approved by Royal Legislative Decree 3/2011, of 14 November, an announcement, with the aim of enabling other possible bidders to take part.

The proposals submitted by bidders that have not been invited shall not be rejected exclusively for this circumstance.

First Transitory Provision. Requests to access already underway.

Requests to access public information submitted before this act enters into force, shall continue the process pursuant to the regulations applicable at the time of submission.

Second Transitory Provision. Application of transparency obligations to previous legal relationships.

The obligations established in articles 4 and 5 stem from and, therefore, the fact that the contract, subsidy or any other form of relationship, once in force, originated at an earlier date, shall not constitute an obstacle for enforcing these, once this act is in force.

Sole overriding provision. Overriding regulation.

Any provisions with equivalent or lower priority that contradict the provisions established in this act are hereby repealed.

First Final Provision. Amendment of Act 6/2006, of 24 October, of the Government of the Autonomous Community of Andalusia.

Article 31 of Act 6/2006, of 24 October, of the Government of the Autonomous Community of Andalusia, shall read as follows:

«Article 31. Transparency.



1.The Government shall always act with transparency and announce the planned agenda before its meetings are held and, once held, any agreements that may have been approved.

2.In any event, the deliberations of the Governing Council, together with the opinions or votes issued therein, shall be confidential, with the members thereof required to maintain this confidentiality, even when they no longer belong to the Governing Council.

3.The information included in the files for the matters submitted to the Governing Council shall be subject to the criteria and general rules of access established in legislation regarding transparency, with these applied by the regional ministries that have processed them. »

Second Final Provision. Amendment of Act 9/2007, of 22 October on the Andalusian Regional Administration.

Act 9/2007, of 22 October, of the Andalusian Regional Administration is amended as follows:

ONE. Article 79 shall read as follows:

«Article 79. Dissemination and transparency in administrative actions.

The actions of the Andalusian Regional Administration shall be carried out with the utmost respect for the principles of dissemination and transparency, notwithstanding the limitations derived from the right to privacy or other constitutional rights enjoying special protection.

In order to implement these principles, the right to active dissemination and the right to access public information is recognised in the terms established in the Public Transparency of Andalusia. »

TWO. The first paragraph of section 2 of article 80 shall read as follows:

«In order to enable citizens' right to information and notwithstanding the provisions established in the Public Transparency of Andalusia, the Andalusian Regional Administration shall be required to: [...]. »

THREE. Article 86 shall read as follows:

«Article 86. Right to access public information.

Citizens shall be entitled to access public information, archives and records pursuant to the terms and conditions established in the Constitution, in the on Transparency, Access to Public Information and Good Governance, in the Public Transparency of Andalusia and other applicable regulations. »

Third Final Provision. Amendment of Act 7/2011 of 3 November, on Documents, Archives and Documentary Heritage of Andalusia.

Act 7/2011 of 3 November, on Documents, Archives and Documentary Heritage of Andalusia is hereby amended as follows:



ONE. Article 31 shall read as follows:

«Article 31. Andalusian Document Assessment Commission

1. Within the framework of the regulations included in the Constitution, in the on Transparency, Access to Public Information and Good Governance, in the Public Transparency of Andalusia and other applicable regulations, the Andalusian Document Assessment Commission is a technical and participatory collegiate body, responsible for assessing publicly owned documents and applying the system for accessing the documentary heritage of Andalusia safeguarded in the System's archives.

2. The affiliation, composition and the way in which the Andalusian Document Assessment Commission works shall be established by act.

3. The functions of the Andalusian Document Assessment Commission are as follows:

a) To issue an opinion on the conservation of documents of interest to the Autonomous Community and authorise the elimination of others which, once their probative value of rights and obligations has ended, are no longer of interest, pursuant to the procedure established by act.

b) To establish the criteria regarding material access to publicly owned documents and to documents belonging to the Documentary Heritage of Andalusia safeguarded in the System's archives.

c) To establish the period for maintaining, safeguarding and controlling the documents in the various archives.

d) To issue the report declaring the conservation of the legal documents based on their historical-cultural value as referred to in article 48.2.

e) To issue the reports requested by the person in charge of the regional ministry and by those in charge of the general directorates in matters within their area of jurisdiction.

f) To submit proposals regarding other measures that enable the fulfilment of their functions.

g) Any other functions established by act. »

TWO. Article 61 shall read as follows:

«Article 61. Access to publicly owned documents and information contained therein.

Access to publicly owned documents and the information contained therein shall comply with the provisions set forth in the Constitution, in the on Transparency, Access to Public Information and Good Governance, in the Public Transparency of Andalusia and other applicable regulations. »

THREE. Article 62 shall read as follows:

«Article 62. Access to publicly owned documents.



1.The right to access may be limited or rejected pursuant to the limits and causes for non-acceptance established in the on Transparency, Access to Public Information and Good Governance and in the Public Transparency of Andalusia.

2.Material access to the documents may be rejected when the state of conservation of these so requires; however, these may be replaced by a faithful copy.

3.Direct access to original documents shall be denied for people sentenced via an unappealable final decision for committing offences against the safety and conservation of Documentary Heritage. Excluded from this limitation is the consultation of documents belonging to procedures in which they are an interested party.

4.The Andalusian Document Assessment Commission may establish homogeneous criteria regarding the application of regulations relating to actual access to files, pursuant to the terms established in legislation on transparency, taking into account the conservation status of the documents. »

Section 1 of article 63 shall read as follows:

«1. Exercising the right to access publicly owned documents and obtaining copies thereof shall be subject to the provisions set forth in articles 37 of Act 30/1992, of 26 November, on the on the Legal System of Public Administrations and Common Administrative Procedure and 86 of Act 9/2007, of 22 October, of the Andalusian Regional Administration and the procedure governing the Act on Transparency, Access to Public Information and Good Governance and in the Andalusian Public Transparency . »

FIVE. Paragraph c) of article 72 shall read as follows:

«c) Preventing citizens' right to access the archives, in breach of the terms set forth in article 65. »

Fourth Final Provision. Implementation of regulations.

The implementation of this shall be carried out in accordance with the provisions set forth in articles 112 and 119.3 of the Statute of Autonomy for Andalusia and 44 of 6/2006, of 24 October, on the Government of the Autonomous Community of Andalusia.

Fifth Final Provision. Entry into force.

1.This shall enter into force the day after it is published in the Official Gazette of the Regional Government of Andalusia.

2.Local entities in Andalusia shall have a maximum period of two years, from the entry into force of 19/2013, of 9 December to adapt to the obligations set forth in this .

Seville, 24 June 2014

Susana Díaz Pacheco



**Consejo de Transparencia  
y Protección de Datos  
de Andalucía**



President of the Regional Government of Andalusia.