



## **Access to Information, Human Rights and Transparency (English syllabus)**

**Professor: María Gracia Andía, Ph.D**

([mandia@udesa.edu.ar](mailto:mandia@udesa.edu.ar)) Total workload: 64 hours.

### **GENERAL OBJECTIVES**

- Exercise reasoning, dialogue, integration and debate on legal issues around the right of access to public information and the instruments designed for its implementation.
- Develop attitudes that allow linking theory and practice through case studies.
- Recognize the problems presented by the reality of the right of access to information, identify the rules and reflect on the consequences of the behaviors of users and system operators.
- Encourage the proper use of administrative bodies as a faster and less wasteful way of access to public information.

### **SPECIFIC OBJECTIVES**

- Understand the rules and general principles related to the right of access to information and generate aptitude for its interpretation and application through a critical reading.
- Note the importance for the proper functioning of representative and participatory democracy, of an empowered citizenry with tools to know the performance of public institutions.
- Develop the capacity to analyze the law, facts, jurisprudence and doctrine referring to participatory democracy, and freedom of expression and access to public information as an element of the above.

### **METHODOLOGY AND EVALUATION OF THE CLASS**

The seminar will consist of theoretical-practical classes by the teacher, with the participation of experts when possible. The participation of students is encouraged and in some opportunities developing practical activities in the second part of the class.

The evaluation will consist of two instances throughout the course. In the mid-course evaluation instance ("partial"), students must prepare a presentation of 10 to 15 minutes related to any of the topics addressed in the course, subsequently translated into an essay of four (4) pages (Times New Roman font size 12, line spacing 1.5, A4 size sheet). The final exam will consist of an article of a minimum of 7 pages and a maximum of 12 (identical dimensions to the partial) on a topic related to access to public information, whether it has been treated in class or not. Then, they must prepare a presentation of the article made of 10 to 15 minutes of duration. The novelty in the treatment of the subject, the personal contribution and the bibliography addressed will be evaluated. Both evaluation instances are approved with FOUR (4) (which is equivalent to knowing and understanding **60%** of the subject).

In any case, the final grade will include a component related to the participation in class of the students, understanding by participation the active intervention of the assistants in the organized debates and in the spontaneous discussions, as well as in the development of presentations in class or practical work.

### **ATTENDANCE**

In accordance with the requirements of the Law Department, a minimum attendance of 75% of the total theoretical classes will be required.

### **PLAGIARISM AND INTELLECTUAL DISHONESTY**

The University of San Andrés requires strict adherence to the canons of intellectual honesty. The existence of plagiarism constitutes a serious dishonor, improper in university life. Its configuration not only occurs with the existence of a literal copy in the exams but whenever an abusive use of the intellectual effort of others is noticed. The Code of Ethics of the University considers punishable conduct the appropriation of the intellectual work of others detracting from the contents of novelty and originality that can be expected in the required works, for which the citations and bibliography must correspond to the accepted academic formats (MLA, APA, Chicago, etc.). The alleged violation of these rules will lead to the formation of an Ethics Tribunal that, depending on the seriousness of the offense, will recommend disciplinary sanctions that may include warning, suspension or expulsion.

### **STUDENTS WITH DISABILITIES**

If any student in this class requires any special situation because of their disability, it is important to notify the Teacher in order to make reasonable accommodations.

### **CREATING A HEALTHY CLASSROOM ENVIRONMENT**

Students are expected to behave appropriately, respecting the opinions, ideas, values, and thoughts of others.

## THEORETICAL ACTIVITIES

The teacher will present the most salient theoretical points based on the doctrine and specific jurisprudence recommended for each unit, using constant dialogue with students.

## PRACTICAL ACTIVITIES

The students will debate the arguments presented in the bibliography, solve hypothetical cases in which the theoretical contents studied are applied, carry out practical work and do exercises in class.

## RIGHT OF ACCESS TO INFORMATION: GENERAL PART

**Date: to be defined** **UNIT 1: RIGHT OF ACCESS TO PUBLIC INFORMATION (1 meeting)**

### TOPICS:

Participatory democracy. General introduction to the Right of Access to Public Information. Historical origin and conceptual development. Freedom of Expression. Declaration of Principles of Freedom of Expression. Recognition as a human right. Case "Claude Reyes" of the Inter-American Court of Human Rights. OAS Model Law. Comparative overview of access to information laws of OAS member states, in relation to the Model Law.

### ACTIVITY:

Approach to the concepts expressed from an exchange of ideas between students and the teacher taking as triggers journalistic articles on the subject made available by the teacher.

### MANDATORY BIBLIOGRAPHY:

- Faúndez Ledesma, Héctor, "El fundamento de la libertad de expresión", in *Los límites de la libertad de expresión*, Mexico City: Instituto de Investigaciones Jurídicas de la UNAM, 2004, Chap. I.
- Inter-American Court, "Claude Reyes y otros vs. Chile", September 19, 2006.
- Saba, Roberto, "The right of the person to access the information held by the gobierno", in *Derecho Comparado de la Información*, No. 3, 2004, pp. 145-185.
- Díaz Cafferata, Santiago, "El derecho de acceso a la información pública: situación actual y propuestas para una ley", in *Lecciones y Ensayos*, Nro. 86, 2009, pp. 151-

OAS, *Declaration of Principles on Freedom of Expression*, 2000

- OAS, *Access to public information, a right to exercise other rights*,

2013.

- United Nations (UN) Special Rapporteur on Freedom of Opinion and Freedom of Expression and Freedom of Opinion

Expression, Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE) and Special Rapporteur for Freedom of Expression of the Organization of American States (OAS), *Joint Declaration on Freedom of Expression and Elections in*

*The Digital Age*, 2020, available in

<http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1174&IID=2>.

- Massal, Julie, "Participatory democracy: challenges and disenchantments in the XXI century", *Political Analysis*, vol. 23, no. 69, Bogotá May/Ag. 2010, available at [http://www.scielo.org.co/scielo.php?pid=S0121-47052010000200005&script=sci\\_abstract&tIng=en](http://www.scielo.org.co/scielo.php?pid=S0121-47052010000200005&script=sci_abstract&tIng=en)

- Rendón Corona, Armando, "Los retos de la democracia participativa", in *Sociológica*, año 19, número 54, enero-abril de 2004, pp. 183-211, available in,

<http://www.sociologiamexico.azc.uam.mx/index.php/Sociologica/article/view/361/337>

- Contreras, Patricio and Montecinos, Egon, "Democracy and citizen participation: Typology and mechanisms for implementation", in *Revista de Ciencias Sociales (Ve)*, vol. XXV, no. 2, Universidad del Zulia, pp. 178-191, 2019, available at

<https://www.redalyc.org/journal/280/28059953014/html/>

#### OPTIONAL BIBLIOGRAPHY:

- Colombo, Clelia, "Democratic innovation and ICT, towards a democracy

participatory?", *IDP. Internet Review, Law and Politics*, No. 3, 2006, pp. 28- 40 Universitat Oberta de Catalunya Barcelona, Spain, available at

<https://www.redalyc.org/pdf/788/78800308.pdf>

**Date: to be defined: first meeting. Date: to be defined: second meeting (role play alert)**

#### **UNIT 2: NORMATIVE EXPRESSION OF THE DAIP (2 meetings)**

TOPICS:

Reception of DAIP in the legal systems of the States of the region: the case of Mexico. The case of Argentina: Decree 1172/2003, Law 27.275 and jurisprudence of the CSJN. AIP laws at the subnational level: overview of the 24 jurisdictions. CABA: Law 104: 1998 and modification in 2016. Chaco, Neuquén.

INVITE/OS: First meeting: (**Date: to be defined**) Marina Alicia San Martín Reboloso, Commissioner of the Institute of Transparency, Access to Public Information, Protection of Personal Data and Accountability of Mexico City (INFO-CDMX).

Second meeting: (**Date: to be defined**) Diego Seoane, Deputy Director of Access to Public Information, Province of Mendoza.

ACTIVITY: Choose the question to ask for requests for information. Role play: argue according to the corresponding party and base the decision based on the case before the CSJN raised by the teacher.

#### BIBLIOGRAPHY:

- OAS, *Model Inter-American Law 2.0 on Access to Public Information*, 2020.
- CSJN, "Asociación Derechos Civiles c/ EN - PAMI (dto. 1172/03) s/ amparo ley 16.986", 2012.
- CSJN, "CIPPEC c/ EN - M. Desarrollo Social - dto. 1172/03 s/ amparo ley 16.986", 2014.
- CSJN, "Giustiniani, Rubén Héctor c/ Y.P.F. S.A. s/ amparo por mora", 2015.
- CSJN, "Garrido, Carlos Manuel c/ EN - AFIP s/ amparo ley 16.986", 2016.
- Herrero, Álvaro and Rotenberg, Julián, "Did the Supreme Court lose patience? The novel judicial standards that condition the legislative debate on a Law on Access to Public Information", *Public Policy Laboratory website*, 2014.
- Law 104 on Access to Public Information (CABA).
- Law 27,275 on Access to Public Information (Nation).

- Basterra, M., "Introduction", in Basterra, M. (dir.), *Transparent City. Law No. 104 Commented, Law No. 5784 and Regulatory Decree No. 260/17*, CABA: Editorial Jusbaire, 2018, pp. 15-29.
- OGDAL, *Comparison Document of Subnational Regulations on Access to Public Information - Part One* (in progress).

**Date: to be defined: first meeting****Date: to be defined: 1/2 meeting****UNIT 3: DAIP: SCOPE AND LIMITS (NATION AND CABA) (1 meeting and 1/2)**

TOPICS:

Comparative analysis: principles; obligated subjects; Exceptions; procedure; institutional design; coordination bodies. AAIP and OGDAL. Judicial procedure.

ACTIVITY (**Date: to be defined**):

Role play: present arguments in defense of one of the parties in a case of claim of access to information raised by the teacher and substantiate the decision against the OGDAL.

GUEST: Marcelo López Alfonsín, Doctor of Law with orientation in Constitutional Law (UBA), Master in Human Environment (FD-UNLZ), and lawyer (UBA). Undergraduate, postgraduate and doctoral teacher at different universities. Judge in Administrative and Tax Litigation of the Autonomous City of Buenos Aires. Author of several publications on constitutional law, human rights and environmental law.

BIBLIOGRAPHY:

- Law 104 on Access to Public Information (CABA).
- Law 27,275 on Access to Public Information (Nation).
- IACHR, *The bodies that supervise the right of access to public information*, 2016.
- Del Campo, Agustina and Serra, Franco, "The Guarantor Body of the Law of Access to the Información Pública de la Ciudad Autónoma de Buenos Aires", in Basterra, M. (Dir.), *Ciudad Transparente. Law No. 104 Commented, Law No. 5784 and Regulatory Decree No. 260/17*, CABA: Editorial Jusbaire, 2018, pp. 543-567.
- Pérez, Adrián, "Instances of coordination in matters of access to public information", in Basterra, M. (Dir.), *Ciudad Transparente. Law No. 104 Commented, Law*

N° 5784 and Regulatory Decree N° 260/17, CABA: Editorial Jusbaire, 2018, p pp. 667-676.

- Andia, Maria Gracia; Burton, Brian Alex, "The amparo and the administrative claim in the law on access to public information of the Autonomous City of Buenos Aires", in *Revista de Derecho Administrativo Nro. 131*, September - October 2020.
- Andrade, Tania Sánchez, Guide to the interpretation of the principles of Law 27275 on the Right of Access to Public Information (national) and Law 104 on Access to Information (Autonomous City of Buenos Aires), Inter-American Development Bank, 2020, available at

[https://www.argentina.gob.ar/sites/default/files/guia\\_criterios\\_de\\_interpretacion\\_leyes\\_de\\_acceso\\_a\\_la\\_informacion\\_.pdf](https://www.argentina.gob.ar/sites/default/files/guia_criterios_de_interpretacion_leyes_de_acceso_a_la_informacion_.pdf)

**Date: to be defined: 1/2 meeting. PARTIALFecha: to be defined: 1 meeting. UNIT 4: TRANSPARENCY, CITIZEN PARTICIPATION, and CORRUPTION (1 meeting and 1/2)**

TOPICS:

Definition of corruption. DAIP in its two facets: reactive, active. Link. Empirical studies. (World Bank, IDB, CAF, OECD). Transparency, accountability, efficiency.

INVITE/OS:Second meeting (Date: **to be defined**):Javier Irigaray, General Director of the General Directorate of Institutional Quality and Open Government. Degree in Political Science (UBA), specialized in open government. (To be confirmed) Sebastián Lopez Azumendi, Lead Regulatory Reform Advisor at the Development Bank of Latin America. Lawyer (UNLP). Experienced advisor in public policy.

ACTIVITY:

Brief presentation of cases of transparency of entities and public agencies prepared by the students and exhibition of co-creation CABA - Madrid. Sharing and application of the contents learned in class.

BIBLIOGRAPHY:

- Transparency International, *Using the Right to Information as an Anti-Corruption Tool*, 2006.
- Saba, Roberto, "The control of corruption and the need for a law on access

a la información pública", in Dirección Provincial de Anticorrupción y Transparencia del Sector Público, *Memorias del Seminario Internacional sobre Acceso a la Información Pública*, 2012, pp. 100-106.

- CCAF - Room V, "Fundación Poder Ciudadano c/ EN s/ amparo ley 16.986".
- Kaufman, E. (2017). "Access to information, open data and the fight against corruption", in *Voices in the Phoenix*, Year 8, No. 59, 2017, pp. 50-57.
- Ramírez Alujas, Álvaro, "The State of the Open State in Latin America: Progress, scopes and perspectives", in *Open State*, Vol. 4, No. 1, 2019, pp. 13-38.
- Gurría, Angel, "Openness and Transparency - Pillars for Democracy, Trust and Progress", available at

<https://www.oecd.org/fr/corruption/opennessandtransparency-pillarsfordemocracytrustandprogress.htm>

**Date: to be defined: 1 meeting. UNIT 5: IMPLEMENTING THE LAW AT THE LOCAL LEVEL (CABA) (1 meeting)**

TOPICS:

OGDAI. Vocation. Last administrative area. Heterogeneous universe of obligated subjects. Reasonableness in the exercise of DAIP. Implied powers. Experiences.

ACTIVITY:

Brief presentation on the situation in subnational jurisdictions (except CABA) and AIP at the choice of the students. Sharing.

BIBLIOGRAPHY:

- Andía, María Gracia, "Las funciones del Organante de Acceso a la Información: primeros pasos", in Basterra, M. (Dir.), *Ciudad Transparente. Law No. 104 Commented, Law No. 5784 and Regulatory Decree No. 260/17*, CABA: Editorial Jusbaire, 2018, pp. 569-616.
- Andía, María Gracia and Kissner, Ariana, "Right of access to public information. Reflections on the institutional design of the Government of the City of Buenos Aires", in Dávila, Federico E. (Comp.), *Debates sobre el presente y el futuro de la*



*Public Administration, CABA: UPCN, 2019.*

- Andía, María Gracia y Araque, Lucía Belén; "The work of the Guarantor Body of the

Right of Access to Information of the Government of the City of Buenos Aires during 2019 (Part I)", in *DPI Quantum Civil Journal and Obligations*, No. 222, 06/18/2020.

**Date: to be defined: 1 meeting**  
**UNIT 6: EXCEPTIONS TO ACCESS TO IN-DEPTH PUBLIC INFORMATION (1 meeting)**

TOPICS:

National and CABA regime. Most common assumptions: personal data and public safety. Application.

GUESTS: Eduardo Bertoni, Representative at the Inter-American Institute of Human Rights.

BIBLIOGRAPHY:

- OAS, *Comments and Implementation Guide for the Model Inter-American Law on Access to Public Information*, 2010, pp. 8-12.
- CAinfo and CELE, *National Security and Access to Information in Latin America: State of Discussion and Challenges*, 2012.
- Saba, Roberto, "Access to information and national security", in *Revista Estudios en Derecho a la Información*, Nro. 3, 2017, pp. 99-110.
- CELE, Tensions between access to public information and personal data, introduction.
- Resolution 94/OGDAI/2019.
- Resolution 51/OGDAI/2020.
- Resolution 50/OGDAI/2021.
- Article on the theme to be defined by the guest.

**RIGHT OF ACCESS TO INFORMATION: SPECIAL PART**

**Date: to be defined: 1/2 meeting. UNIT 7: ACCESS TO CRITICAL PUBLIC INFORMATION IN A STATE OF EMERGENCY (1/2 meeting)**

TOPICS:

Health emergency due to COVID-19 pandemic. Response of AIP bodies to the need for dissemination of health-related information. Comparative law. Right to privacy.

**GUEST: complete**

**BIBLIOGRAPHY:**

- Andía, María Gracia y Burton, Brian Alex, "Respuestas de los sistemas de acceso a la información pública a la emergencia sanitaria", in Dávila, Federico E. (Comp.), *Una administración pública de cara al futuro. Reflections and challenges*, CABA: UPCN, 2020, pp. 13-36.
- "Protection of personal data and geolocation", *AAIP website*, 29/04/2020.
- Bertoni, Eduardo; "Privacy, a fundamental right even in a crisis",  
*La Nación*, 03/24/2020.
- Andía, María Gracia and Colombato, Inés, "Tensions between access to information public and the protection of personal data in vaccination against COVID-19 in Argentina", *Millcayac Magazine*, 2020.

**Date: to be defined: 1/2 meeting. UNIT 8: ACCESS TO PUBLIC INFORMATION, HEALTH AND EDUCATION (1/2 meeting)**

**SYLLABUS:**

Articulation of DAIP with public health issues and the education system. Experiences and possible areas of growth.

GUESTS: Dalile Antunez, Co-director of Civil Association for Equality and Justice (ACIJ). Paula Colombo (Ministry of Education).

**BIBLIOGRAPHY:**

- OGDAl Resolutions 13/2018 and 14/2018 and Report No. 21186974/OGDAI/2018.
- Court CAF 11, "Civil Association for Equality and Justice c / EN - Ministry of Education s / amparo law 16.986" (2019).
- Article/s on the topics, to be defined by the guests.

**Date: to be defined: 1 meeting**

## **UNIT 9: ACCESS TO PUBLIC INFORMATION AND GROUPS IN VULNERABLE SITUATIONS (1 meeting)**

### TOPICS:

Access to information and equal opportunities in the protection of rights. Indigenous peoples, people with disabilities, situations of poverty. Information, gender and labour rights: sticky floor and glass ceiling. Equal opportunities in reproductive health.

GUEST: Ana Isabel García Quesada, Costa Rican communicator and sociologist with a master's degree from the University of Costa Rica. Specialist in management of social public policies and gender equity, with more than 25 years of experience. Consultant for various development cooperation agencies and governments, including the European Union and the EUROsocial programme.

### BIBLIOGRAPHY:

- ADC, "Access to Information and Communication Services and Persons with Disabilities," available at <https://accesibilidad-digital.adc.org.ar/assets/docs/adc-investigaci%C3%B3n.pdf>, 2019.
- Apreza Salgado, Socorro, "Right of access to information of indigenous peoples and communities. A way to ensure Human Rights", *Journal of the Faculty of Law of Mexico*, Volume LXIX, Number 275, 2019.
- ECLAC, UNFPA and UNICEF, with the support of AECID, "The right to information of indigenous and Afro-descendant peoples: urgent obligations in Latin America" in *Toolbox for the inclusion of indigenous and Afro-descendant peoples in population and housing censuses*, 2011.
- IACHR, *Access to information on reproductive matters from a human rights perspective*, 2011.
- IACHR, *Access to Information, Violence against Women, and Administration of Justice in the Americas*, 2015.
- Coliver, Sandra, "The Right to Information Necessary for Reproductive Health and Choice Under International Law," *American University Law Review*, No. 44, 1994-1995, pp. 1279-1303.
- Atlanta Declaration for the advancement of women's right of access to public information (2018).
- Luna Pla, Issa, "Information poverty and right of access to public information", available in <http://politicaspUBLICAS.com.mx/index.php/noticia/index/298>, 2012.

- Luna Pla, Issa, "Pro-poor and pro-development transparency laws and policies", UNRISD, available in <https://www.unrisd.org/sp-hr-pla>, 2014.
- Lwanga-Ntale, Charles, "A Rejoinder to 'Pro-Poor and Pro-Development Transparency'", Social Protection-Human Rights, available in <https://socialprotection-humanrights.org/expertcom/a-rejoinder-to-pro-poor- and-pro-development-transparency/>, 2014.
- Neuman, Laura, "The Right of Access to Information: Exploring Gender Inequities," in *IDS Bulletin*, Vol. 47, No. 1, 2016.
- OAS, "A Practical Guide to Inclusive and Rights-Focused Responses to COVID-19 in the Americas," 2020.
- Resolution 3/OGDAI/2020.
- Bibliography suggested by the guest.

**Date: to be defined: 1 meeting** **UNIT 10: PUBLIC INFORMATION AND ENVIRONMENT (1 meeting)**

TOPICS:

Escazú Agreement. Historical normative tour of environmental AI in the Latin American region and in Argentina. AI as one of the pillars of the agreement. Right of access to environmental information as a right in itself and also a key right to exercise other rights in relation to the environment. AI link in environmental matters with civil society organizations, journalism and environmental education. Implications at national and local level. Companies as obligated subjects. Freedom of expression of environmental activists.

GUEST: Andrés Nápoli, Executive Director of the Environment and Natural Resources Foundation (FARN).

MATERIAL:

- CSJN, "Mendoza, Beatriz Silvia y otros c/ Estado Nacional y otros s/ daños y damages (damage resulting from environmental pollution of the Matanza River - Riachuelo)", Rulings: 331:1622.
- Court of First Instance in Federal Administrative Litigation No. 8 CABA, "Fundación Ambiente y Recursos Naturales c/ YPF SA s/Varios".

- Andrade, Danielle, "The instruments of access to information incorporated in the Escazú Agreement and their possible impact in Latin America and the Caribbean", *Agreement*

*of Escazú. Towards Environmental Democracy in Latin America and the Caribbean, 2020.*

- Martin, Santiago J. Access to public environmental information in law

constitutional environmental, *Journal of Environmental Law*, 2014.

- Law 25831 - Regime of free access to public environmental information:

<http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=91548>

- Law 303- Environmental Information Law (CABA).

**Date: to be defined REVIEW AND CONSULTATION OF FINAL WORK (1 meeting)**

**Date: to be defined EXHIBITION OF FINAL WORKS (2 meetings)**