





Analitic summary

Data protection and access to public registries

Carlos Garrido Falla

When we refer to the data protection, we are talking about a constitutional right, being thus considered by the Spanish Constitution and the European Constitution approved on 18 June 2003, a right that has been developed in Spain by Law 15/1999, of 13 December, about Data Protection and in Europe by the Comunitarian Directive 95/46/CE.

From the study of the aforementioned regulations and their interpretation by the Data Protection Spanish Agency that in Spain is in charge of their observation, it would be possible to differentiate several cases and application rules to the access to the data contained in the archives and registries regulated under article 37 of the 30/1997 Law and the Spanish Constitution itself, taking into account the nature of the accessed data, the purpose that justifies the access and the antiquity of such data:

1. The personal information protection laws shall not apply when the information provided as a result of the access to the archives or registries does not contain personal details, either because the documents whose access is requested do not include them or because a dissociation process has previously occurred.

2. In the same way, regulations about data protection shall not apply to information about deceased, without detriment of the singularities that, if it comes to it, could be settled down in the regulations of the Spanish Historical Heritage or in other special regulations.
3. When the interested party whose data appear in the accessed documents, requests access to such documents, a data disclosure shall not be necessary but a request by the interested party to exercise the right of access, right that will be exercised under the dispositions of Law 15/1999, without detriment of the possible existence of regulating specific dispositions about this access when archives or registries are submitted to special laws as it is stipulated under article 25.8 of the development Regulation of Organic Law 15/1999.
4. When the interested parties gain access to documents containing particularly protected data about people different from those requesting access, the consent of the interested ones shall be required, consent that shall meet the requirements under article 7 of Organic Law 15/1999 or, being data regarding to the health, the racial origin or the sexual life of the interested ones, a law permit that authorizes it for reasons of public interest.
5. In the same way, the consent of the interested parties should be also needed when dealing with documents affecting the privacy of people, since on the contrary case the access is only limited to them, under the provisions of article 37.2 of Law 30/1992.
6. Access to “nominative nature” documents, not containing other data affecting the privacy of people will be possible, in addition, not only when the interested party has consented to it, but also in issues where the applicant credits the existence of a legitimate and direct interest, as stipulated under article 37.3 of Law 30/1992, in connection with article 11.2 a) of Law 15/1999, being understood that this interest can arise because taking “into consideration its content, it may be valid for the exercise of the rights of the citizens”.
7. However, those documents referring to the sanctioning procedures shall be exempted from the aforementioned regulations.
8. Finally, the direct access to documents may be authorized in the event the researching applicant credits an historical, scientific or cultural interest and “whenever the privacy of the people is properly guaranteed”. For this purpose, the rules established in the regulating laws about the right of access to archives and registries and the ones establishing the regime of the Spanish Historical Heritage shall be taken into consideration.

ARCHIVES AND REGISTRY (REGISTRIES) / CONSENT / DISSOCIATION / HISTORICAL, SCIENTIFIC OR CULTURAL INTEREST / INTERESTED PARTY / INTIMACY / PERSONAL INFORMATION PROTECTION / RIGHT OF ACCESS / SPANISH HISTORICAL HERITAGE / SPANISH DATA PROTECTION AGENCY / SPANISH CONSTITUTION / PARTICULARLY PROTECTED DATA

Data protection in public archives

Francisco Fernández Cuesta

This paper summarizes the content and main conclusions of a previous research paper with the same title that analyzes the level of implementation and the impact of data protection law and rules on public archives, focusing on the Spanish Public Administration Archives.

ARCHIVAL SCIENCE / DATA PROTECTION / LEGISLATION / PUBLIC ARCHIVES / SPANISH PUBLIC ADMINISTRATION

The data protection of the Internet archives user: from the researcher's files to the web analysis

Javier García-Aráez Martín-Montalvo / Juan José Generelo Lanaspá

Archivists must know the demands of users in order to provide a better service and adapt it to their needs, especially in recent years since there has been a great diversification in the types and profiles of archive users.

The most important change in this process is occurring now with the appearance of the Internet search engines. The incorporation through the statistical and analytical tools of the archives and archives systems of these search engines has forced to seek ways to harmonize the obtaining and processing of information on such users protecting at the same time their personal details.

Data protection of Internet users -including those who access archives websites- is as important as the protection of the data published on the Web. This paper examines the problems related to the implementation of web analytics and its connection with data protection. It starts from the experience of implementation of DARA, the search engine of Records and Archives of Aragon, and the use of web analytics tools to manage this website.

DATA PROTECTION / ANALYTICAL WEB / STATISTICS OF ARCHIVES / DARA, DOCUMENTOS Y ARCHIVOS DE ARAGÓN / USERS OF ARCHIVES / WEB SEARCH ENGINE

Data protection and records management: the case of the Public Body of Tax Services of the Principedom of Asturias

Cruz Jolín Garijo / Carmen Fernández Vega

The project of the Public Body of Tax Services of the Principedom of Asturias (Spain) (hereinafter EPST) in order to implement safety measures provided under the Royal Decree 1720/2007, of 21 December, that approves the development regulation of the Organic Law 15/1999, of 13 December of Personal information Protection begins with the formation of a multidisciplinary Working Group that shall promote such project.

The Working Group, formed as a Safety Committee, is responsible for drafting the safety document, which is a legally binding document for the entire Organization and which includes safety policies and procedures for every process run in the Tax Services, including records management processes. The review of all Archival processes from the Personal information Protection perspective has provided information of enormous significance in the continuous improvement of the records management system in the EPST.

DATA PROTECTION / PERSONAL INFORMATION / RECORD MANAGEMENT / PUBLIC INSTITUTION

The protection of personal information in the field of real estate brokerage

María del Carmen Rodríguez López

The construction sector has been for a long time one of the main Spanish economic sectors, with a great impact on the entire society. This paper is not about business documents on the Small and Medium-sized companies' management, but about those types of documents that contain personal information and the prescribed treatment of them. The profession of archivist, falling within the society in which it operates, is affected (with increasing frequency) by the rights of access in conflict with the rights of privacy. Working as an archivist for a company of this sector requires the knowledge of the laws governing the data protection of such a complete documentation.

DATA PROTECTION / DATA FILE / CONSTRUCTION SECTOR / TYPE CODES / FILES

Protection of the information and the right of access to the documentary funds of the Civil Registry

Xavier Gayán Félez

The present paper deals with the problems of the right of access to the documentary funds of the Civil Registry, dealing with the regulatory aspects as well as with the casuistry of access requests and denials, resources and the resulting resolutions

produced in this context. Its narrative speech takes into consideration the following points:

- Knowledge of the regulatory evolution experimented by the Civil Registry and especially of the post-analysis about the access.
- Achievement of a certain analysis of the situation, in order to focus attention on the strong and weak points.
- Promotion of the right of research, through the necessary recognition of the singular reserve derogation under defined criteria according to the different casuistry.
- Achievement of an explanation to the deliberation concerning the issue about the rights of privacy and intimacy against the rights of access and information and conclusive considerations evaluation.

ACCESS / CIVIL REGISTRY / HISTORIC MEMORY / MINORS

The Access procedure developed by Royal Decree 1708/2011, of 18 November. Between reality and desire

Blanca Desantes Fernández

This paper is focused on a detailed examination of the draft process of Chapter IV on the Access procedure developed in Royal Decree 1708/2011, of 18 November.

After a general analysis of the weak and strong points of the aforementioned Royal Decree and of the hurdles and issues arisen before its passing, the regulation of the Spanish Archives System and the Public Administration (“Administración General del Estado”) Archives System together with the creation of its cooperating and coordination organizations, is pointed out as one of the goals achieved since they were waiting for a regulatory development.

The following paragraphs will tackle one of the main issues arising during the processing of the Royal Decree, that is, the continuous interferences with the regulations on access and transparency, developed by the Presidency’s Department. It is considered in detail the impact of the aforementioned projects of the aforementioned Department (Bill on Access and Transparency, Bill on the Right of Access regarding the Historical Memory Law and Draft of the Royal Decree on Access) on the Royal Decree 1708/2011. It is included as well a detailed analysis of all the studies, proposals and reports submitted by the Agency of State Archives, in order to structure an access procedure for the records and archives of the Public Administration, from enlightening and progressive common principles. It is particularly outstanding the proposal submitted by the ad hoc working group, made up by representatives of several Departments.

Subsequently, key reports to understand the results contained in Chapter IV drawn up by the Spanish Data Protection Agency (“Agencia Española de

Protección de Datos”) and also the significant Report of the Council of State of 2011 are examined. Other important reports of the different Departments are mentioned as well, submitted during the last period of audience of the Royal Decree.

The paper concludes with an evaluation of the aforementioned Chapter IV, analyzing the potential progress but mainly, the new issues that its interpretation and application may involve with regard to access. Despite the efforts, the reality has not fulfilled the desire and a Law on Access and Transparency is still required, as a constitutional right of the citizens in a democratic country.

ARCHIVES / ACCESS / ROYAL DECREE 1708/2011, OF 18 NOVEMBER/ SPANISH ARCHIVES SYSTEM / PUBLIC ADMINISTRATION ARCHIVES SYSTEM / COOPERATION AND COORDINATION BODIES / REGULATIONS REGARDING ACCESS AND TRANSPARENCY / ACCESS PROCEDURE FOR THE RECORDS AND ARCHIVES /SPANISH DATA PROTECTION AGENCY /COUNCIL OF STATE / PRESIDENCY ‘S DEPARTMENT/ STATE ARCHIVES AGENCY / CONSTITUTIONAL RIGHT

“To be or not to be”: the archivist between the right of access and information protection

Daniel de Ocaña Lacal

In any democratic state, transparency of public sector is essential. Access to documents in the archives is one of the most important tools of transparency, although it has got limits because of public and private interests. In Spain, however, the legal system of the right of access is confusing, ambiguous or unfavorable, leading to legal uncertainty for both users and public officers. The trend toward secrecy or the use of indeterminate concepts are some of the problems of law, making it very hard to decide when a right takes precedence over another one in case of, for instance, a conflict between access and privacy (or data protection). Problems on human resources or infrastructures contribute to worsen the situation. The recent Royal Decree 1708/2011, applicable to the Public Administration, seeks to clarify the situation, but contains some important obscurities to be solved.

ACCESS TO INFORMATION / RIGHT TO PRIVACY / DATA PROTECTION / ARCHIVES LAW

The role of the appraisal committees with regard to access to public records and archives

Isabel González Corral

With regard to the difficulties in the exercise of the right of access to public records and archives in Spain, we will focus on the study of the role of the Appraisal committees created by the Public Administration under the Law 16/1985, of 25 June, under the Spanish Historical Heritage Law, and also in the Autonomous Communities.

We will see its competences, roles and composition, and the differences with other committees created in the surrounding European countries, and their relationship with the Data Protection Agencies.

We will analyze the links between appraisal and selection of records and the establishment of access periods and access under the Data Protection regulations, as part of an adequate records management, essential to provide transparency.

Finally, in connection with the gaps and issues detected by the legal doctrine, the archivists, records researchers and archives users, we will examine some solutions and proposals developed from the appraisal works and reports of such committees.

APPRAISAL COMMITTEES / DATA PROTECTION / ACCESS TO DOCUMENTS

The action on access of the National Commission on Access, Appraisal and Selection of Records of Catalonia

Lluís Cermeno Martorell

The Catalan law of Archives and Records (10/ 2001) attributed to the National Commission on Access, Appraisal and Selection of Records (hereinafter CNAATD) functions to establish the general system of access to records of the Catalan public administration. The Commission has also authority to issue non-binding reports on complaints from citizens who consider that their right of access to documentation has been violated. It can also issue a report to allow access to restricted access records series.

Since 2008, when the decree developing access is passed, there have been some initial results in this area. Some factors, described in the paper, such as the difficulty in combining access with appraisal, the change of the commission members' profiles, the non-binding nature of their reports, the popular ignorance of the existence of the Commission, the existence of other agencies with jurisdiction over access... have not allowed its emergence.

ACCESS / APPRAISAL / PUBLIC RECORDS

“To serve and protect” the appraisal of accessibility in the Spanish Government Records Center

Francisco Fernández Cuesta

The paper presents the methodology adopted by the Spanish Public Administration Records center (“Archivo General de la Administración”) to appraise the legal access of their records, and its usefulness in order to implement the requirements established under the new regulation (Royal Decree 1708/2011) on the procedure for accessing the Public Administration Archives.

ACCESS POLICY / ARCHIVAL LEGISLATION / ARCHIVAL METHODOLOGY/ ARCHIVO GENERAL DE LA ADMINISTRACIÓN

The personal and familiar archives in the General Archive of the University of Navarre: The difficult balance between the free access and the restriction of use

Inés Irurita Hernández

The difficulty of reconciling the existing rules and the right of access to records by users and researchers have led the General Archive of the University of Navarre to find a way to resolve this disagreement. We present here a system of income funds, a self-access policy and a document of commitment to the researchers developed for this purpose. The result is that there are no magic formulas but practical solutions starting with the systematization of the work processes in Archives that can enable professionals to ensure the preservation of the records, people's rights and personal information and simultaneously provide access to the records.

PUBLIC ACCESS / DOCUMENTS / ARCHIVES / PERSONAL INFORMATION / RESEARCHERS

Conflict between confidentiality and access rights of the tax records. The experience of the records appraisal committee of the Government of Navarre

Susana Herreros / M^a Teresa Sola / Juan Carlos Balda

This paper presents the experience of the Records Appraisal Committee of Navarre (“Comisión de Evaluación Documental de Navarra”) regarding the assessment of the tax documentation of Navarre, carried out between 2009 and 2010.

The Archive of the Public Administration of Navarre proposed this appraisal due to the volume of documentation and its historical value as a particular function recognized by law to this autonomous region within Spain.

The Records Appraisal Committee decided that tax documentation had a great value as a primary source for research, but not in paper format. Thus it decided to preserve taxpayer files in electronic format and eliminate the paper copies as they were difficult to use for research purposes. The volume was huge and it was necessary to use a database to process the information.

Regarding the access to this documentation, it was very difficult to provide access to these records by researchers because the law specifically prohibits their use outside tax management.

The Committee decided to propose an amendment in the section of the law regulating the access by researchers to this documentation and the establishment of a deadline when accessing such records.

TAX DOCUMENTATION / ACCESS / APPRAISAL

The Archive of the Consultative Body of Castile and León and its website

Margarita Ausín Íñigo

The purpose of this paper is to introduce a new institution in the Castile and León area, which is the Consultative Body of Castile and León (“Consejo Consultivo de Castilla y León”), as well as its archives, the records contained in it, the way to gain access to them and also their diffusion through the website, especially the records series called “Expedientes sometidos a dictamen” (files under ruling) which are the most requested ones by the internal and external users”.

CONSEJO CONSULTIVO DE CASTILLA Y LEÓN / ARCHIVES / EXPEDIENTES SOMETIDOS A DICTAMEN

Transparency in Spain: state of the issue

Emilio Guichot Reina

The request for a greater transparency in the public authorities has become widespread. In fact, almost all democratic countries have passed general rules on transparency. However, in Spain a single article of Law 30/1992 on Administrative Procedure contains the only and highly deficient general rules on access to information. Apart from Law 30/1992, another set of rules regulates different aspects of transparency, in a fragmented and not even coherent way. It seems that in the near future the Parliament will finally pass the Law on Transparency and Access to information. In these pages we analyze the present state of law and express some thoughts about what might come.

TRANSPARENCY / ACCESS TO INFORMATION / ARCHIVES

Transparency, interdisciplinary and social participation in the records appraisal process

Miguel Suárez Curbelo / Samuel Carrillo Fumero

The aim of this paper is to discuss how the appraisal process is not performed under conditions of ideological neutrality. For this reason, we need to introduce an interdisciplinary perspective that allows a balance among the requirement of transparency, the requirement of accessibility and the requirement of accountability in the appraisal process.

APPRAISAL PROCESS / INTERDISCIPLINARY / ACCOUNTABILITY

Citizens in power. Activism 2.0 in the social requests for transparency and access to public information

Antonia Salvador Benítez / M^a Estrella Gutiérrez David

The wave of popular dissatisfaction and demonstrations against the worldwide economic crisis have shown how activism 2.0, from Tunisia to Egypt and from Madrid to New York, has contributed to “globalize” social requests for transparency and access to public information. Essentially, this paper focuses on how this phenomenon is developing in Spain putting special emphasize in two basic finds. On the one hand, it will be analyzed, in the light of the comparative and international Law, the current state of the Spanish regulation related to freedom of information (the so-called “right to know”) and how this defective and inadequate legislation creates opaque practices in the public Administration, broadly echoed by a restrictive interpretation of Spanish jurisprudence. On the other hand, it will be emphasized the potential impact of ICTs and 2.0 tools on the transition to a new concept of governance, based on the principles of transparency, access to relevant information, liability, accountability of both public and private agents, and on the effective participation of citizens in the decision-making process of public policies.

TRANSPARENCY / FREEDOM OF INFORMATION / RIGHT TO KNOW / SOCIAL NETWORKS / SOCIAL MEDIA / ACTIVISM 2.0 / E-GOVERNMENT / E-GOVERNANCE

Paper shortage and destruction of documents in Zamora during the Spanish Civil War

José Luis Hernández Luis

The Spanish Civil War caused a big paper scarcity which was partially solved using old paper. This paper deals with such process and its consequences on the archives of Zamora, a particular area of the nationalist rearguard.

DOCUMENTS / DESTRUCTION / ARCHIVES / ZAMORA / SPANISH CIVIL WAR

Analysis of the use of the ideas of Michel Foucault by the Brazilian Archival Science

Roberto Lopes dos Santos Junior / Aluf Alba Elias

Identification and analysis of the use of the work of French philosopher Michel Foucault (1926-1984) by the Archival Science discipline in Brazil, trying to visualize the influence of the author on this area of the country. Initially we will analyze the relation between the philosophical movement called post-structuralism, where Foucault’s work is commonly classified, with disciplines that study information. Subsequently, we will make a brief biographical description about

Foucault. Later, we will discuss the analysis of the French philosopher, in specific works, about his approach to concepts relating to archives and records. Lastly we will make a brief consideration of Brazilian authors related to the Archival and the Information and documentation science that have quoted or discussed Foucault's ideas in their intellectual production. It is concluded, preliminarily, that the analysis carried out in much of the Brazilian archival literature indicates an insufficient analysis of Foucault's ideas, but such analysis allows new research that may, in different ways, enrich epistemologically the discipline.

MICHEL FOUCAULT / POST-STRUCTURALISM / DISCOURSE ANALYSIS / ARCHIVAL SCIENCE

Archival Science and legislation: terms and concepts

Antonia Heredia Herrera

The recent publication in Spain, of different legal texts such as the Andalusian Law of Records, Archives and Documentary Heritage ("Ley andaluza de Documentos, Archivos y Patrimonio documental") of 3 of November 2011, and the Decree establishing the Spanish Archival System and regulating the Archival System of the Spanish Public Administration and its organizations and its access regime of 18 of November 2011 has made me think about the use of essential terms and concepts, in the context of Archival science, always open to review and update that should not be compatible with the invention and discretionarily: Archive, records, records management, among others.

A confrontation between theory and practice, in which International Standards and their translation into the Spanish language are involved, has been a practical exercise that might be of interest.

ARCHIVE / ARCHIVAL SCIENCE / RECORD / RECORDS MANAGEMENT / LEGISLATION ON ARCHIVES / LEY ANDALUZA 7-2011 DE 3 DE NOVIEMBRE DE DOCUMENTOS, ARCHIVOS Y PATRIMONIO DOCUMENTAL / REAL DECRETO 1708/2011 DE 18 DE NOVIEMBRE / UNE-ISO 30300