

BASIC GUIDE

**FOR SUBMITTING PUBLIC
INFORMATION REQUESTS
IN PUERTO RICO**

THIS GUIDE EXPLAINS BASIC CONCEPTS

for any person interested in submitting a public information request to any entity of the Government of Puerto Rico. For accessibility, it has been written in a Q&A format with key action checklists as a reference.

It also provides a step-by-step outline detailing the process for filing a Special Petition for Public Records Disclosure Order, or lawsuit, before the courts of Puerto Rico; what to do if a government entity refuses to produce public records or if fails to disclose them within the period or deadline required by law.

The guide can be used jointly with the Public Information Request and the Special Petition for Public Records Disclosure Order templates, currently available in Spanish, and prepared by the Centro de Periodismo Investigativo (CPI).

www.periodismoinvestigativo.com

If a person wants to submit a request or prepare a special petition without these templates, then this guide also provides answers to other questions they may have.

INTRODUCTION

WHAT IS THE RIGHT OF ACCESS TO INFORMATION?

The right of access to information refers to the fundamental human right that all individuals have to request and receive government information or documents. In Puerto Rico, this right guarantees that any information generated, kept, or received by the government is presumed to be public and must be made equally accessible to everyone.

The right to access information is recognized at an international level as a transversal human right, which influences or affects all other human rights in a democratic society. The right of access is the oxygen of democracy and the foundation of government transparency.

The “right to know” is specifically recognized in Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Similarly, the Organization of American States, the European Union, the Council of Europe, and the African Union have recognized the importance of guaranteeing it.

The United States Supreme Court has consistently refused to recognize a fundamental right to access public records under the U.S. Constitution. However, seven states, including California, Florida, Illinois, and Montana, have recognized this right under their own state constitution. At the federal level, any person can request public records through the Freedom of Information Act (FOIA) and every state has an equivalent “sunshine” public records law.

WHAT IS PUBLIC INFORMATION USEFUL FOR?

- When we know how public information affects our lives and that of our community, we can opine, analyze, and participate effectively, timely, and actively in any decision-making process.
- To know how public funds and resources are being used and why decisions affect us at an individual, personal, or collective level. This knowledge allows us to evaluate those who govern us and hold them accountable.
- To engage in citizen participation. Beyond voting in elections every four years, we have the responsibility to become more involved and build relationships with our communities and the government.
- Accessing public information can help to combat and contrast rumors and misinformation through official government data. This creates public trust and further helps fight and reduce corruption.

What do we understand by government transparency?

Transparency requires, at a minimum, the timely, accessible, and proactive disclosure of public information. It is a key democratic principle that the government be held accountable for how it uses public resources and funds.

THE CONSTITUTION OF PUERTO RICO IS THE BASIS OF OUR RIGHT TO ACCESS INFORMATION.

The right of access to information was recognized in Puerto Rico as a fundamental constitutional and human right in the Supreme Court's landmark decision of *Soto v. Secretary of Justice* (1982). In 1978, two pro-independence university students, Carlos Soto Arriví and Arnaldo Dario Rosado, were murdered by the Puerto Rico Police in the Cerro Marravilla mountains. In this case, writer Pedro Juan Soto and Ángeles Rivera Castillo, the father and widow of the young men, respectively, requested and were able to obtain, public documents concerning the official investigation carried out about this tragic event.

Although not explicitly written in the Constitution of Puerto Rico, this right emanates from the rights of freedom of expression, press, and association expressly recognized in Article 2, Section 4 of our Constitution.

Constitutional rights cannot be abolished by the Legislative Branch, but they can be regulated through legislation if a law is not too onerous or burdensome for the person requesting public information.

IS THERE A LAW IN PUERTO RICO THAT REGULATES THE RIGHT OF ACCESS TO INFORMATION?

Yes. Since 2019, the Transparency and Expedited Procedure for Public Records Access Act (Act 141 of 2019), has regulated our constitutional right to access information. This law applies to the entire “Government of Puerto Rico.” Specifically, it applies to the Legislative Branch, the Judicial Branch, and the Executive Branch, including every governmental entity, public corporation, and the 78 local municipalities. The law also applies to private third-party custodians of public records or documents.

Article 409 of the Puerto Rico Code of Civil Procedure, the Puerto Rico Public Documents Administration Act, the Act to Guarantee Access of Information to Disabled Persons, and the Electronic Government Act, among others, are also statutes that govern the scope of our right to access information.

Why does government transparency matter and how does it relate to the right of access to information?

The right to access public information is considered the “oxygen of democracy” as it cultivates good governance. Accessing public information provides citizens with the necessary tools to identify, understand, and evaluate government actions, both at the individual and collective levels.

WHAT IS A PUBLIC DOCUMENT?

IS THERE A DIFFERENCE BETWEEN PUBLIC INFORMATION AND A PUBLIC DOCUMENT?

Currently, in Puerto Rico “public information” is defined as any information or document “generated, kept, or received by any Government entity, even if it is under the custody of a third-party.” Article 3, Act 141. Likewise, the definition of public information encompasses the wide range of official documents, reports, or transactions prepared or produced by public officials in the exercise of their public duty and authority. See *Kilómetro 0, Inc. v. Pesquera Lopez* (2021). This includes documents that are “produced electronically which meet the requirements established by law and regulations.” Public Documents Administration Act, Act 5 of 1995, as amended.

What is open data?

Open data is data that is made available through technology and helps validate requester rights to access information. This data must be objective, accurate, complete, reusable, processable, and available in accessible and comprehensive formats.

PUBLIC INFORMATION REQUESTS

HOW CAN I SEND A PUBLIC INFORMATION REQUEST?

A public information request can be made via written letter sent by email (electronically), regular mail, or delivered in person to the government entity of interest.

A requester is not obliged to inform the government what use they will give to the information sought, nor is it pertinent for agency officials to inquire about it during the request process. In other words, public information requests can be sent without the need to show proof of a private or legal interest.

TO WHOM MUST I SEND THE REQUEST? WHERE DO I FIND THEIR CONTACT INFORMATION?

- Public Records Officers
- Head of the government entity or agency
- Press Officer
- Official in charge of the section or division in which the requested information is kept

The contact information of these public officials, in particular those of the Public Records Officers, should be available on the web page of the different Government of Puerto Rico entities. CPI has compiled the contact information of Public Records Officers who have been appointed. These are available on CPI's website under the Directory of Public Records Officers - Governmental Agencies and Directory of Public Records Officers - Municipalities sections, in the following links:

<https://periodismoinvestigativo.com/directorio-de-oficiales-de-informacion-de-agencias-gubernamentales/>

<https://periodismoinvestigativo.com/directorio-de-oficiales-de-informacion-municipales/>

Recommendation:

Send the requests to all these government officials if their contact information is available.

WHAT ARE SOME EXAMPLES OF PUBLIC INFORMATION THAT CAN BE REQUESTED?

Under Puerto Rico's current transparency laws, government entities within the Executive Branch have the duty to digitize and routinely and proactively publish the following public information:

- 1** Official travel reports specifying the destination, expenses, purposes, and payment method.
- 2** Budget approved by the government entity and quarterly expenses.
- 3** Strategic plans, results projected and achieved.
- 4** Representation expenses prepaid, paid, or reimbursed by the appointing authority.
- 5** Specific personnel compensation and the position classification plan; vacancy announcements, job descriptions, personnel selection, contracting, and appointment processes.
- 6** Records of resolutions adopted by the Governing Boards or Boards of Directors of public entities and corporations.
- 7** Calendars with the hearings and administrative procedures to be held, as well as the decisions, adjudications, and determinations published.
- 8** Regulations, letters, circular letters, policy letters, codes, protocols, and any other information relating to the operations, adjudications, and determinations regarding the application of public policy by every government entity, provided that it does not jeopardize confidential information, or the security of Government institutions, and/or any person; and that it does not contain protected information.
- 9** Business hours, telephone directory, office location, services offered, opportunities for citizen participation in the works of the Governmental Body, complaints and/or claims

processes, and the service request process.

- 10** Bids or proposals received for works and services.
- 11** Public bidding records once awarded, or when no bid is placed.
- 12** Auction certification once the adjudications have been granted or declared void.
- 13** Any contracts executed with public funds, stating in detail for each contract: the public works entailed, the goods acquired or leased, and the services contracted. Moreover, the amount, the name of the provider, contractor, or Person with whom the contract has been executed; the public servant or entity that oversees the contracting; the contract completion dates, the proposals and/or bids received for such contracts; the source of the funds earmarked for said contract, the status of the works performed under said contract, and the documents and/or reports that certify the work performed under such contract shall be specified.
- 14** External audits and any financial status reports issued by the Governmental Body
- 15** Court judgments, except those that include nondisclosure agreements, partial or total debt cancellation agreements, or concession or conveyance agreements executed by any government entity.
- 16** Agreements for the modification, suspension, or approval of urban planning, soil classification, zoning, and any actions that have an environmental impact.
- 17** Licenses, permits, concessions, and exemptions granted each month.

However, these categories of information are not the only ones that can be requested. Rather, they must be publicly available without having to make a request. By sending information requests and filing lawsuits before the courts, CPI has been able to obtain Puerto Rico's mortality or causes of death database, information about audits and fines imposed on political candidates, reports regarding bondholders who bought the island's public debts, agencies' natural disaster emergency plans, legislative lobbyist registry, municipality employees' salary information, enrollment numbers, and budgets for every public school, and statistics about administrative complaints and domestic violence incidents of Puerto Rico Police Bureau agents against their partners, among many other types of public information.

Recommendations:

- If the duty to compile a public record arises from a specific law or a court ruling that previously ordered its disclosure, it is recommended to cite and reference this legal obligation.

Example:

I request Puerto Rico's mortality or causes of death database from the last five years, which the Demographic Registry and the Department of Health generate. This database has been cataloged as public information on various occasions by the courts in *CPI v. Llovet Díaz*, SJ2020CV02641; *Centro de Periodismo Investigativo v. Llovet, et al.*, SJ2018CV00561, consolidated with SJ2018CV00843.

- You must clearly and specifically identify information you are requesting.

Example:

I request the database of administrative complaints presented against Puerto Rico Police Bureau agents for domestic violence, immoral conduct, and sexual harassment from 2010 until the present. I request that this database be anonymized (that the agents named in the complaint are identified by a code or number instead of their names or last names).

- Avoid writing an unnecessarily broad or specific request.

Example:

“I am interested in obtaining all available data about violent incidents in Puerto Rico.”

It will likely be impossible for any government agency to respond to this request, which fails to include a period for the statistics requested or a specific violence category or indicator.

- When pertinent, identify the specific dates or places requested. If you are petitioning for the most current information, use phrases such as “until the date of production,” instead of “until today.”

IN WHAT FORMAT DO YOU WANT TO RECEIVE THE REQUESTED INFORMATION?

Act 141 requires that you identify what format the information requested should be received. Formats can include Word, PDF (OCR), Excel (CSV or XLS), print, or in-person inspection.

Recommendation:

If you are requesting a database or table, we suggest requesting it as an Excel (CSV or XLS) and not in PDF format.

HOW DO YOU WANT TO RECEIVE THE REQUESTED INFORMATION?

Act 141 requires you to specify how the agency should send the requested information. Methods of delivery can include regular postal service, email, Dropbox, WeTransfer or Google Drive links, USB or pen drive, FTP, CD, or in-person pickup.

Recommendation:

Indicate, at least, two methods of delivery.

IS THERE A DISCLOSURE PERIOD OR DEADLINE? HOW DO I INFORM THE AGENCY?

Under Act 141, a government entity must respond to a request within a period of no more than 10 business days. If you are drafting your own request, we recommend using the following language:

- I would appreciate an acknowledgment receipt of this message and that you provide me with a request identification number, if one is assigned. I expect a response to this request within no more than 10 business days, as required by Act 141 of 2019.

To calculate these 10 business days, you should exclude weekends and holidays, recognized by the Government of Puerto Rico. If the request is made to a Regional Office, the entity will have 15 business days, instead of 10, to respond to the request.

FOLLOW-UP COMMUNICATIONS REGARDING A PENDING PUBLIC INFORMATION REQUEST

WHAT SHOULD I EXPECT ONCE I SEND A REQUEST?

A government entity can respond before the 10 business days established by law. It could disclose the requested information or simply provide an acknowledgment receipt. If the government entity fails to answer within the established deadline, it is deemed that the request has been denied and a petitioner may file a lawsuit in court.

Recommendations:

- After sending the request avoid modifying or amending it. This may result in the 10 business days' period starting over.
- When inquiring about when to expect a response, if the 10 days have not elapsed, then we suggest reiterating the original due date and how many days remain until the deadline concludes.

CAN AN ENTITY REQUEST ADDITIONAL TIME TO DISCLOSE INFORMATION?

WHAT SHOULD I DO IF THE GOVERNMENT ENTITY SEEKS AN EXTENSION?

An entity can request additional time or an extension to respond to a request. Under Act 141, it can seek an extension totaling 10 additional business days, but only if it provides a justification and informs a requester within the petition's original 10 days. If this happens, we recommend acknowledging receipt of the message, and explicitly informing the entity that the original deadline now expires in 20 business days, calculated from the date in which the initial request was sent.

WHAT CAN I DO IF AFTER THE INITIAL 10 BUSINESS DAYS DEADLINE, OR THE EXTENSION OF TIME, HAS ELAPSED AND THE ENTITY HAS STILL NOT RESPONDED TO MY REQUEST?

In this situation, it is understood that the request has been denied and you can file a Special Petition for Public Records Disclosure Order before the Puerto Rico Court of First Instance of the judicial region in which the petitioner resides. This lawsuit may be filed pro se (self-represented) and free of charge. A special petition template can be downloaded in Spanish from CPI's website "How to Request Public Documents" or using the form prepared by the Puerto Rico Judicial Branch, available at:

<https://www.poderjudicial.pr/documentos/formularios/OAT-1877-Recurso-Especial-Revision-Acceso-Informacion-Publica.pdf>

Recommendation:

An entity may request additional time after the original period, or the extension has expired. Even though each situation and the reasons for a deadline extension should be evaluated individually, a requester is not obliged to agree to any additional extension of time and can go directly to court. If you do accept the extension, we suggest establishing a new disclosure deadline.

WHAT SHOULD I DO IF A GOVERNMENT ENTITY FULLY RESPONDS TO MY REQUEST?

You must evaluate whether the information produced is correct and that all records requested were indeed disclosed.

Recommendation:

Do not sign any document certifying that all records were delivered, without carefully evaluating what was produced.

ARE THERE EXCEPTIONS THAT THE GOVERNMENT CAN INVOKE TO DENY DISCLOSING PUBLIC INFORMATION?

Yes. The right of access to information is not absolute. The Government of Puerto Rico can invoke a “compelling government interest” that justifies withholding information under a claim of confidentiality. However, the government needs to “accurately and unequivocally prove” that the applicability of an exception exists because there is a presumption that every document under its authority is public. To demonstrate that an exemption applies, the government cannot rely on “mere generalizations.”

THE SUPREME COURT OF PUERTO RICO HAS ESTABLISHED THE FOLLOWING EXCEPTIONS:

- 1** A law declares that the information requested is confidential.
- 2** The requested information is a communication protected by a privilege recognized under the Rules of Evidence (for example, attorney-client, physician-patient, and spousal privileges, among others).
- 3** The requested information may injure the fundamental rights of third parties (for example, the right to privacy).
- 4** The requested information may reveal the identity of a confidant (a person that has provided information to the authorities with the intention of discovering the violation of a Puerto Rico or federal law)
- 5** The information is “official information,” which has been acquired in confidence by a public official carrying out their official duties. This includes pre-decisional and deliberative documents.

For any of these exceptions to prevail, the Government has the burden of proof in court and must satisfy a strict scrutiny. This judicial test requires that: (1) the regulatory exercise falls within the constitutional power of the Government; (2) it promotes a compelling government interest; (3) that such interest is not directly related to the suppression of freedom of speech, and (4) that the restriction to freedom of speech is not greater than what is necessary to promote such interest.

WHAT CAN I DO IF THE GOVERNMENT ENTITY INCOMPLETELY OR PARTIALLY RESPONDS TO MY REQUEST?

You must immediately inform the entity, preferably in writing, that the information is incomplete or that it does not correspond to what was requested, and that for this reason, you have a right to file a lawsuit in court. You can also give the agency a new, shorter deadline for it to disclose any missing or corrected information.

Likewise, in this scenario, you can consider filing a pro se (self-represented) and free-of-charge Special Petition for Public Records Disclosure Order before the Court of First Instance of the judicial region where you reside.

WHAT CAN I DO IF THE GOVERNMENT ENTITY DENIES MY REQUEST OR CLAIMS THAT THE REQUESTED INFORMATION IS CONFIDENTIAL, WITHOUT GIVING ANY FURTHER EXPLANATION?

You must inform the entity that every decision to deny disclosing public information must be in writing and include the legal grounds for such denial, as required by Act 141.

In this scenario, you can also consider filing a pro se (self-represented) and free-of-charge Special Petition for Public Records Disclosure Order before the Court of First Instance of the judicial region where you reside.

WHAT CAN I DO IF THE GOVERNMENT ENTITY WANTS TO CHARGE ME FOR PRODUCING THE REQUESTED INFORMATION?

As a rule, the right of access to public information is free.

The requested information must be delivered in the format requested and through the means selected by the requester “provided that it does not entail a cost greater than the delivery of the record as a hardcopy or in the format usually used by the government entity, nor jeopardizes the integrity thereof,” as established in Article 9 of Act 141. This implies that the “issuance of certified or uncertified copies, recordings, and reproductions” is subject to the payment of a reasonable fee or charge.

Even though this practice is uncommon, if an agency indicates that you must pay, we recommend that you ask under what legal authority are these fees being collected and how much is the actual cost of producing the information. Similarly, you can ask if there is any format in which you can receive the information at a lower cost or free of charge.

WHAT CAN I DO IF I HAVE DOUBTS ABOUT HOW TO INTERPRET THE INFORMATION PROVIDED?

We suggest sending a follow-up message, asking precise questions to clarify any doubts. You can also ask the agency to provide you with a key or data dictionary if it exists, which can help interpret the information.

WHAT CAN I DO IF THE GOVERNMENT ENTITY INFORMS ME THAT IT DOES NOT GENERATE NOR STORE THE INFORMATION REQUESTED?

You must require the entity to prepare an official certification that specifically indicates that it failed to produce the information sought and explain why it does not generate nor store it.

SPECIAL PETITION FOR PUBLIC RECORDS DISCLOSURE ORDER

WHAT IS A SPECIAL PETITION FOR PUBLIC RECORDS DISCLOSURE ORDER?

The Special Petition for Public Records Disclosure Order is one of the legal mechanisms available to requesters who want to file a lawsuit before a Puerto Rico court. The Special Petition can be filed if the government entity denies an information request or fails to respond within the period established by law.

DO I NEED LEGAL REPRESENTATION TO FILE A SPECIAL PETITION FOR A PUBLIC RECORDS DISCLOSURE ORDER?

No. A requester can file the Special Petition as a self-represented or pro se litigant. Also known as the “right of self-representation,” which entails that people can represent themselves in a legal proceeding.

For access to information lawsuits, Act 141 states that a person shall not be required to hire an attorney to file this petition, nor shall they be prevented from filing it as a pro se litigant.

Notwithstanding, any person can hire legal representation. If you qualify, the Access to Information Project, Legal Aid Clinic at InterAmerican University of Puerto Rico Faculty of Law, or other pro bono programs, could provide legal representation free of charge.

To contact the Access to Information clinical project, you can call (787) 751-1600 or send an email to: **accesoinfo@pr@gmail.com**.

WHERE AND WHEN CAN I FILE A SPECIAL PETITION FOR PUBLIC RECORDS DISCLOSURE ORDER IN COURT?

The Special Petition can be filed in different forms: (1) in-person at the Clerk's Office at the Court of First Instance in the judicial region where the petitioner resides; (2) by postal mail addressed to the Court of First Instance in the judicial region where the petitioner resides; or (3) if you have secured legal representation, online via Puerto Rico's court filing system or Unified Case Management and Administration System (SUMAC for its Spanish acronym).

The Special Petition must be filed within 30 calendar days from the date in which the government entity denied the request or failed to respond after the original 10 business days, or 20 business days if it had requested a deadline extension.

WHAT INFORMATION SHOULD I INCLUDE IN THE SPECIAL PETITION FOR PUBLIC RECORDS DISCLOSURE ORDER?

CPI made available on its website other recommendations on "How to request public documents." These can be found at the following web address:

<https://periodismoinvestigativo.com/como-solicitar-documentos-publicos/>

These recommendations include a Special Petition for Public Records Disclosure Order template in Spanish. To use this template, you must mark those options applicable to your request and add your personal information and contact information, as well as the name of the government entity in the corresponding spaces. You must also include the contact information of the public official to whom you sent the request, attach a copy of the original information request (including any email message chains, if applicable), and write in detail the information requested.

IS THERE ANY COST TO FILING A SPECIAL PETITION FOR PUBLIC RECORDS DISCLOSURE ORDER?

The Special Petition is filed free of charge and does not require the cancellation of stamps or the payment of fees. If the petitioner files this petition using the postal service, they must pay the cost of postal stamps.

HOW DOES THE GOVERNMENT ENTITY KNOW THAT I HAVE FILED A SPECIAL PETITION FOR PUBLIC RECORDS DISCLOSURE ORDER?

The court has the obligation to notify the entity, free of charge, that a Special Petition has been filed against the entity.

HOW MUCH TIME DOES THE GOVERNMENT ENTITY HAVE TO RESPOND TO THE SPECIAL PETITION?

Once the governmental entity is notified of the petition by the court, it must respond in writing within 10 business days. At its discretion, the court may shorten this response period if it deems that there is just cause to protect the petitioner's interests.

WILL THE COURT HOLD A HEARING TO CONSIDER YOUR SPECIAL PETITION?

The court can order the entity to disclose the information without a hearing. A judge may hold a hearing within three (3) business days from the receipt of the government entity's answer if it believes that the circumstances of the case and the requested records warrant it.

HOW CAN I FIND OUT IF THE COURT HAS MADE DECISIONS REGARDING THE SPECIAL PETITION?

As a rule, if the requester goes to court self-represented, any judgment or decisions as to the Special Petition will be sent by postal mail to the address provided. A pro se litigant can request in its Special Petition that they be notified only by email and must include an address.

If the petitioner has legal representation, the attorney will receive notifications, including a judgment, via the SUMAC electronic filing system.

HOW CAN I RESPOND TO AN ORDER ISSUED BY THE COURT REGARDING THE SPECIAL PETITION?

If the petitioner is self-represented, they can only respond to a court order through a written motion that must be presented in person at the Clerk's Office or sent through postal mail. Currently, a petitioner is not allowed to respond to a court order by sending a motion via email.

HOW LONG SHOULD IT TAKE THE COURT TO DECIDE ON A SPECIAL PETITION?

The court has the obligation to resolve in an expedited manner within 10 days counted from the date that the government submitted its answer to the special petition or from the date that the hearing was held.

WHAT HAPPENS IF THE COURT RULES IN FAVOR OF THE GOVERNMENT ENTITY AND DENIES ACCESS TO THE REQUESTED INFORMATION?

When a person disagrees, completely or partially, with a court ruling or final resolution, they can present an appeal.

Appeals are filed before the Puerto Rico Court of Appeal.

Every person has the right to ask a higher court to review the lower court's decision.

However, appeals have other legal requirements and higher costs, even though a petitioner can also file it as a self-represented litigant and request that certain fees be waived. If you intend to present an appeal, we recommend that you consult with an attorney.

This guide was prepared by Carlos Francisco Ramos Hernández, Esq., an Equal Justice Works fellow working at CPI as a public interest lawyer. The guide was edited by CPI's Executive Director, Carla Minet, and by co-founder and Transparency Program Coordinator, Oscar J. Serrano, Esq. A special thank you to the University of Puerto Rico, Río Piedras Campus student Andrea De Jesús Colón, who assisted with the guide's English translation.

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