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LAW N° 20.285, ON ACCESS TO PUBLIC INFORMATION *

Considering that the H. National Congress has approved the following Bill, initiated in Motion of the HH Senators Messrs. Jaime Gazmuri Mujica and Hernan Larraín Fernández.

Legislative Bill:

«**Article one.**- Approves the following Transparency Law of the public administration and access to State Administration information:

TITLE 1 General Regulations

Article 1, - The present law regulates the principle of transparency of the Public Administration, the right of access to information of the State Administration entities, the procedures for the exercise of rights and for its defense, and the exceptions to the publicity of information.

For the purpose of the present law, it is understood that:

1. The authority or chief or head of the service of the State Administration entity, is the authority with public, provincial, regional competence or, otherwise, the head of the service at national level.
2. The Council : the Council for Transparency
3. Working days or working days term: is the term specified in article 25 of Law N° 19.880, on Basis of the Administrative Procedures governing the State Administration Acts, understanding as nonworking days Saturday, Sunday and holidays.
4. The Transparency Law: The present Transparency Law of the Public Administration and Access to Information of the State Administration
5. The entities or services of the State Administration: those mentioned in clause two of article 1 of the Constitutional Organic Law of General State Administrative Procedures, whose revised, coordinated and systematized text is included in the D.F.L.(Legislative Decree) N° 1-19.653, of 2001, of the Ministry General Secretariat of the Presidency
6. Electronic sites: Are also denominated as “websites”. Technological devices, which allows transmitting data through computers, telephone lines or by the use of digital publications.

Article 2.- -The provisions of this law are applicable to the ministries, intendancies, governorship, regional governments, municipal governments, the Armed Forces, the Police and Public Security Forces and the state enterprises and public services created for the compliances of the administrative function.

* Published in the Official Gazette of August 20th., 2008.

The General Comptroller's Office of the Republic and the Central Bank shall reconcile with the provisions of this law, that are explicitly indicated, and their respective organic laws that deal with matters referred in Article 1° aforementioned.

In addition, the provisions specifically requested in this law shall be apply to the public undertakings created by law and to the State enterprises and companies where it has stock share over 50 percent or majority in the board of directors. The rest of the State entities shall adjust to the provisions of their respective organic laws that discuss matters related to article one aforementioned.

Article 3- The public function is performed with transparency, in order to allow and promote the knowledge of the procedures, contents and decisions adopted in the exercise of it.

Article 4 -The authorities, whatever the denomination that are appointed by the Constitution and the laws, and the officials of the State Administration, shall strictly comply with the transparency principle of the public function. The principle of transparency of the public function consists in respect and protect the publicity of acts, resolutions, procedures and documents of government, as well as, of its foundations, and in facilitating the access of any person to this information, through the means and procedures establish by law for this purpose.

TITLE II

Of the Publicity of the Information of the State Administration Entities.

Article 5-- In view of the transparency principle of the public function, the acts and resolutions of the State Administration entities, its foundations, documents that serve as direct and essential support or complement, and the procedures used for its enactment are public, except the exemptions established by this law and the foreseen in other laws of qualified quorum. Likewise, it is public the information elaborated with public budget and all other information which are filed before the State entities, whichever is its format, support, date of initiation, origin, classification or procedure, unless it is subject to the exceptions indicated.

Article 6.- The acts and documents that have been published in the Official Gazette and those related with the functions, competences and responsibilities of the State Administration entities, must be permanently available to the public. The same regulation concerns the websites of the respective service, which shall have an update record in the information and support offices of the public of the State Administration.

TITLE III

Of the Active Transparency

Article 7.- The State Administration entities mentioned in article 2 shall permanently maintain for public access, through its website, the following records, updated at least, once a month:

- a) Its organic structures,
- b) The faculties, functions and attributions of each of its units or internal entities,
- c) The regulatory framework applicable to them,
- d) Their personnel and contractual and freelance staff, with the corresponding salaries,
- e) Contracts for the supply of goods and for the provision of services, to implement support actions for the execution of works, and contracting of studies, consultancies and consultancies related with investment projects, with an indication of the contractors and identification of partners and main shareholders of corporations or companies, where appropriate.
- f) Transfers of public funds made, including all economic support given to natural or legal

persons, directly or through bankruptcy proceedings, without them, or those performing a reciprocal consideration for goods or services,

g) The acts and resolutions affecting third parties,

h) The procedures and requirements that shall accomplish the contracting party to access to the services rendered by the respective entity,

i) The design, assigned amounts and access criteria to subsidize programs and other benefits supplied by the respective entity, furthermore the list of beneficiaries of social programs underway.

It will not be included herein, sensible data, namely, personal information referring to physical or moral characteristics of the person or to facts or circumstances of its private life or intimacy, such as personal habits, social origin, ideologies, and political opinion, its beliefs or religious convictions, physical or psychological health and sexual life.

j) The mechanism of citizen participation, where appropriate,

k) Data regarding assigned budget, as well as reports on its performance in terms provided in the respective Budget Law of each year.

l) The results of audits to the fiscal year of the respective entity and, where appropriate the corresponding explanation,

m) All entities in which they have participation, representation, and intervention, whichever is its nature and regulatory framework that justify them,

The above information, shall be incorporated in the website in a complete and updated form and in a way allowing its easy identification and a expedite access. Those entities and services that do not have their own website, shall keep this information in the website of the Ministry to which they belong or relate with the Executive, notwithstanding they are responsible for preparing the automation, presentation and contents of the corresponding information.

In the case of the information in the aforementioned letter e), dealing with acquisitions and contracts submitted to the Public Procurement System, each corporation should include in its institutional website a link to the public procurement portal through which shall access directly to the corresponding information to the respective service or entity. Contracts not subject to such System shall be incorporate to a separate record, to which it shall also be possible to access from the institutional website.

In case of the information in the aforementioned letter f), when it deals with regulated transferences by Law N° 19.862, each corporation shall include in its website the records that the law requires, without detriment of article 9° of the same legal regulation. Transferences not governed by such law should be incorporate into a separate record, also accessed from the institutional website.

Article 8 - Any person can file a complaint before the Council if any of the institutions of the Administration do not inform what has been prescribed in the aforementioned article. This action should have the same procedure as the measures enacted in article 24 and following.

Article 9.- The divisions in charge of the internal control of the institutions or corporations of the Administration, shall have the obligation to look after the compliance of the rules of this Title, without detriment of the power and functions that this law commissions to the Council and to the General Comptroller's Office of the Republic

TITLE IV

Of the Right to Access to Information of the State Administration Entities

Article 10.- Every individual has the right to request and receive information from any entity of the Public Administration, in the form and conditions established by the present law. Access to information involves the right to access to the information included in acts, resolutions, minutes,

files, contracts and agreements, as well as to all information prepared with public budget, whatever is the format or media in which it is contained, except statutory exemptions.

Article 11.- The right to access to information of the State Administration entities recognizes, among others, the following principles:

- a) Principle of Relevance, pursuant to which it is assumed relevant all information owned by the State Administration entities, whichever is its format, support, starting date, origin, classification or indictment.
- b) Principle of Freedom of Information, pursuant to which every individual has the right to access to information of the State Administration entities, with the sole exceptions or limitations established by the law of qualified quorum.
- c) Principle of Openness and Transparency, under which all information held by entities of the State Administration is presumed public, unless it is subject to indicated exceptions.
- d) Principle of Maximum Disclosure, according to the State Administration entities they should provide information in the broadest terms possible, only excluding what is subject to constitutional or statutory exceptions.
- e) Principle of Divisibility, according to which if an administrative act contains information that can be released and information that cannot be released under legal offense, access will be granted to the first and not the second.
- f) Principle of Facilitation, according to which the mechanisms and procedures for the access to information of the State Administration entities must expedite the right, excluding the demands and requirements that may interfere or restrict it.
- g) Principle of Non-Discrimination, in accordance with the State Administration entities shall deliver information to all individuals who request it, on equal terms, without any arbitrary distinctions and without demanding a statement of cause or reason for the request.
- h) Principle of Opportunity, in accordance with the State Administration entities it should provide a reply to information requests within the legal terms, with the maximum possible promptness and avoiding any sort of procrastinating procedures.
- i) Principle of Control, in compliance with the enforcement of the regulation governing the right to access to information will be subject to permanent monitoring, and the decisions taken during requests for access to information are subject to be claimable before an external entity.
- j) Principle of Responsibility, in accordance with the breach of obligations that this law demands to the Administrative State entities, originates responsibilities and leads to sanctions under this law.
- k) Principle of Gratuitousness, according to which, access to the information of the Administration agencies must be free, subject to the provisions of this law.

Article 12.- The request to access to information shall be formulated in writing or through the website and shall have the following:

- a) Name, second name and address of the applicant and of its representative, where appropriate,
- b) Clear identification of the requested information.
- c) Signature of the applicant affixed by any means enabled,
- d) Administrative entity where it is addressed,

If the request does not meet the requirements indicated in the former clause, the applicant shall be requested that within five days, from the respective notification, must solve the error, with the indication that if it fails to do so it shall be considered it has withdrawn its petition.

The applicant may express in the request the desire of being informed through the website for all the proceedings and resolutions of the administrative procedures of access to information, indicating for it, under their responsibility, a valid email address. In other cases, notices that may be in the procedures shall be performed in accordance to the rules of Articles

46 and 47 of the Law N° 19.880, on Basis of Administrative Procedures.

Article 13.- In case the Administrative entity requested is not competent to take care of the request for information or shall not have the documents requested, immediately it shall send the request to the corresponding authority in compliance with legal regulations, in the extent that it is possible to individualize it, informing of it to the applicant. If it is not possible to individualize the competent entity or if the information requested pertains to multiple agencies, the requested agency shall inform of such circumstances to the applicant.

Article 14.- The authority, chief, or head of the service or of the State Administration agency, as required, shall decide on the application, whether by delivering the requested information or denying it, within a maximum of twenty working days from the receipt of the request that comply with the requirements of Article 12.

This period may be exceptionally extended for another ten working days, if there are circumstances that makes it difficult to collect the information requested, in which case the agency must inform the applicant before the deadline, the extension and the reasons.

Article 15.- Whenever the requested information is permanently available to the general public, or if it is available in printed media such as books, compendiums, brochures, or Administration public files, as well as in electronic formats available in internet or in any other means of communication. The applicant shall be informed of the source, place and form that it can access to such information, by which it will be understand that the Administration has comply with its obligation to inform.

Article 16.- The authority, chief or head of the service or State Administration agency, as required, shall furnish the information, unless there is a regulated objection governed by Article 20 or any of the grounds of secrecy or reserve established by law.

In these cases, the refusal to release the information must be in writing, by any means, including the electronics means.

Furthermore, it shall be justified, specifying the legal grounds relied on and the reasons that in each case give reasons for their decision. Any abuse or excess in the exercise of its powers, will lead to actions and related resources.

The decision to refuse shall be notified to the applicant in the form provided in the final clause of article 12 and the recurrence of the claim will be inferred under the provisions of Articles 24 and following.

Article 17.- The information requested shall be submitted in the way and the means requested by the applicant, if it does not imply an excessive cost or a non-scheduled expense in the institutional budget, in which cases the delivery should be performed in the form and through the available means.

It needs to have a system to certify an effective delivery of the information to the applicant, which includes relevant technical provisions.

Article 18.- It will only be required the payment of the direct cost of reproduction and of any other securities expressly authorized by law to charge for the delivery of the information requested.

The obligation of the entity required to provide the information requested is interrupted until the interested party pays the cost and values referred in the preceding clause.

Article 19.- The delivery of copies of acts and documents shall be perform by the requested entity without imposing conditions on use or restrictions, unless those expressly stipulated by

law.

Article 20.- Whenever the request for access refers to documents or records with information that may affect third parties rights; the authority, chief or head of the service or of the State Administration entity, as required, within a period of two working days, counted from the reception of the request, complying with the requirements, shall inform through register mail to the person or persons to which it refers or affects the corresponding information, the faculty that assists them to oppose to the delivery of the requested documents, attaching copy of the order concerned.

The affected third party shall exercise its right to object within three working days from the date of notification. The opposition must be in writing and shall request a statement of cause.

Deducted the opposition in a timely manner, the executing agency shall not be able to provide the requested documents or records, unless otherwise decided by the Council, promulgated in accordance to the procedure establish by this law.

In case of not removing the opposition, it shall be understand that the third party affected agree to the publicity of such information.

Article 21 – The only grounds of secrecy or reservation under which it would be possible to deny totally or partially the access to information, are the following:

1. When its publicity, communication or knowledge affects the duly fulfillment of the functions of the required entity, particularly:

a) If is an impairment for prevention, investigation and prosecution of a crime or offense or in the case of necessary background to legal and judicial defenses,

b) In the case of background or deliberations prior to the adoption of a resolution, measure or policy, without detriment that the grounds of those are public once they are adopted,

c) In the case of requirements of generic nature, referring to a large number of administrative acts or background or which care requires to distract unduly the officials from the regular accomplishment of their ordinary work.

2. When its publicity, communication or knowledge affects the rights of individuals, particularly, when it refers to their safety, health, private life, commercial or economic rights.

3. Whenever its advertising, communication or knowledge affects the safety of the Nation, especially if it refers to the national defense or the maintenance of the public order or the public security.

4. Whenever their advertising, communication or knowledge affects national interests, particularly, if it refers to the public health or to the international relations and the economic or commercial interests of the country.

5. In the case of documents, data or information that a law of qualified quorum has declared it as reserved, or secret, in accordance to the grounds listed in Article 8 of the Political Constitution.

Article 22.- The acts that a law of qualified quorum declares secret or reserved shall maintain such character until another law of the same hierarchy rescinds this qualification.

After five years from the notification of the act declaring the qualifications, the service or entity that formulate it, by written communication or through request of any person and for once, will be able to renew it for other five years, as a whole or in part, assessing the risk of damage that its termination could impose upon.

However, the secret or reserved character will be indefinite in the case of acts and documents in the field of national defense, establish military or strategic planning, and of those whose knowledge or dissemination may affect:

a) The territorial integrity of Chile;

- b) The interpretation or compliance of an international treaty subscribe by Chile with regard to boundaries;
- c) The international advocacy for the rights of Chile, and
- d) The foreign policy of the country in a severe manner.

The documents in which are contained the acts whose reserve or secret was declared by a law of qualified quorum, shall be kept in conditions that guarantee its preservation and security by the corresponding entity or service.

The documents containing the acts declared as secret or reserved by an agency or service, shall be kept under conditions that guarantee its preservation and safety by the corresponding agency or service during a period of ten years, without detriment of the norms that regulate its delivery to the National Archives.

The results of the surveys or opinion polling requested by the State Administration agency empowered for it, shall be kept reserved until the end of the presidential period during which they were elaborated, in defense of the proper performance of those functions.

Article 23.- The Administrative State agencies shall maintain an updated index of the acts and documents labeled as secret or reserved in accordance with the law, at the offices of information or attention of the public users of the State Administration, established in Supreme Decree No. 680, of 1990 of the Ministry of Interior.

The index shall include the acts denominations, documents and information that are labeled as secret or reserved in accordance with this law, and the individualization of the act or resolution in which such labeling is recorded.

Article 24.- Upon expiration of the period prescribed in Article 14, for the delivery of the requested documentation or denied the request, the applicant shall have the right to appeal before the Council established under Title V, requesting support for its right of access to the information.

The claim must clearly state the offense incurred and the facts that shapes it, and must be accompanied by the evidence that certifies it, if necessary.

The claim shall be presented within a period of fifteen days, after notification of denial of access to information or from the expiration of the period prescribed in Article 14 for the delivery of information.

When the applicant has its residence outside of the city of the Council, may file a claim in the respective governorship, which shall be forwarded to the Council immediately and by the most expeditious means available for it. In these cases, the claim shall be consider as filed on the date of receipt by the governorship.

The Council shall have a claim form on requirement of the interested party, which shall, likewise be provided to the governorships.

Article 25.- The Council shall notify the claim to the corresponding State Administration entity and to the third party involved, if any, through a registered letter.

The claimed authority and the third party, where appropriate, could file evidences or observations to the claim within a period of ten working days, attaching the records and the means of evidence available.

The Council, under authority or on request of the interested parties, shall, if it deems necessary, set background or hearing to receive evidence.

Article 26.- When the resolution of the Council that ruled the claim declare that the information that motivated it is secret or reserved, also the papers, documents and proceedings shall have the same character that were the basis for the decision.

On the contrary, the information and such records and proceedings shall be public.

In the situation prescribed in the preceding paragraph, the claimant can access to the information once it is rendered by the resolution.

Article 27.- The resolution of the claim shall be pronounce within the fifth working day of the deadline stipulated in Article 25, whether or not they have file their defense. In case of having ordered, the hearing referred in the same article, this term will run once the fixed term for it has expired.

The resolution of the Council that grants the access to information, shall fix a reasonable term for its delivery on behalf of the executing agency.

The resolution shall be notified through registered letter to the claimant, to the demanded entity and to a third party, if any.

In the same resolution, the Council may indicate the need to initiate disciplinary proceedings to establish if any officer or authority has incurred in any violation to Title VI, which shall be notified in accordance to this law.

Article 28.- Against the resolution of the Council that deny access to information, it shall proceed the claim of unlawfulness before the Court of Appeals corresponding to the address of the claimant.

The State Administration entities shall not have the right to claim before the Court of Appeals for the resolution of the Council that grants access to the information they have denied, when the refusal has been based on the grounds of number 1 of Article 21.

The affected party may also claim the resolution of the Council before the corresponding Court of Appeal, when the grounds invoked may had been timely opposed by the owner of the information, in compliance with article 20.

The claim must be filed within fifteen calendar days, from the notification of the resolution claimed, it shall contain the legal and fact reasons in which it is supported and the specific requests which are made.

Article 29.- In case the resolution appealed would grant access to the information denied by a State Administration agency, the filing of the complaint, if appropriate, shall suspend the delivery of the requested information and the Court shall not decree any measures whatsoever, allowing any knowledge or access to it.

Article 30.- The Court of Appeals shall order that the claim of illegality be notified by a document to the Council and to the interested third party, if any, who shall have a period of ten days to file its evidences or observations.

Vacated the transfer by the Council or if the period that allows comments expires, the court shall order to bring the related judiciary resolutions and the lawsuit shall be abnormally added to the table of the next scheduled hearing, previous assignment of the courtroom.

The Court may, if deemed appropriate, open an evidentiary period that shall not exceed seven days, and hear the statements of the parties.

The court shall issue its decision within a period of ten days from the date of the performance of the hearing referred in clause three of this Article or, if appropriate, from the date when the resolution obtains a favorable judgment to declare the expiration of the probationary term. There will be no proceeding accepted against the decision of the Court of Appeal.

In the case of making use of illegality claim filed against the denial of access to information, the decision shall indicate a time limit for submission of such information.

In the same resolution, the Court of Appeal shall indicate the need for disciplinary proceedings to establish if any officer or authority has incurred in any violation of Title VI, which

shall be instructed in accordance to the stipulated in this law.

TITLE V

Of the Council for Transparency

Article 31.- The Council for Transparency is created, as an autonomous corporation of public law, with legal capacity and own patrimony.

The address of the Council shall be the city of Santiago, without detriment of the addresses that may be established in other places of the country.

The supreme decrees regarding the Council, in which it does not appear a link with an specific Ministry, shall be issued through the Ministry Secretary General of the Presidency.

Article 32.- The Council objective is to promote the transparency of the public function, supervise the fulfillment of the regulations on transparency and the publicity of the information of the State Administration entities, and guarantee the right to access to the information.

Article 33.- The Council shall have the following functions and attributions:

a) Supervise the compliance of the provisions of this law and apply the sanctions in case of violation of the same.

b) Resolve, with good reasons, the claims for denial of access to the information formulated in compliance to this law.

c) Promote the transparency of the public function, the publicity of the information of the State Administration entities, and the access to the information, through any mean of publication.

d) Issue general instructions for the compliance of the legislation regarding transparency and access to the information by the State Administration agencies, and request them to adjust their procedures and systems of public attention service to this legislation.

e) Formulate recommendations to the State Administration entities in order to improve transparency of its administration and to facilitate the access to their information.

f) Propose to the President of the Republic and to Congress, where appropriate, rules, instructions and other regulatory improvements to ensure transparency and access to information.

g) Undertake, directly or through third parties, training activities to public employees in matters regarding transparency and access to information.

h) Undertake broadcasting activities and public information on matters within its competence.

i) Perform statistics and reports regarding transparency and access to information of the State Administration entities and on the enforcement of this law.

j) Ensure proper protection of data and information that under the Constitution and the law are secret or reserved.

k) Collaborate with and receive cooperation from public entities or natural or legal persons, national or foreign, within the scope of their competence.

l) Enter into contracts and other acts necessary acts for the fulfillment of their functions.

m) Ensure adequate compliance of the law N° 19.628, on protection of personal data by the State Administration entities.

Article 34.- For the exercise of its attributions, the Council shall request the collaboration of different State agencies. Likewise, it may receive all the testimonies and obtain all information necessary for assessing situations included in the sphere of its competence.

Similarly, for the accomplishment of its functions, the Council may celebrate contracts

with institutions or non-profit corporations, in order for them to provide the necessary professional assistance.

Article 35.- All the acts and resolutions of the Council, likewise its foundations and the procedures used, shall be public, except that information which in view of article 8 of the Political Constitution and of the provisions contain in the present law, have the condition of reserve or secret.

Article 36.- The higher management and administration of the Council shall correspond to an Advisory Board consisting of four advisors assigned by the President of the Republic, with previous agreement of the Senate, adopted by two-thirds of its members in office. The President shall make the proposition in a single act and the Senate must act of the proposal as a unit.

The advisors will last six years in office and can only be appointed for another term. They shall be renewed by partiality of three years.

The Advisory Board shall elect from among its members its President. In the event there is no agreement, the appointment of the President shall be by ballot.

The office of President of the Council shall rotate. The President will last eighteen months in its functions and shall not be reelected for the remainder of its present period as advisor.

Article 37.- Deputies and senators cannot be appointed as advisors, neither the members of the Constitutional Court, the Ministers of the Supreme Court, counselors of the Central Bank, the Public Prosecutor, or the persons that are part of the high command of the Armed Forces and of the Forces of Order and Public Security.

The position of advisors of the Board are incompatible with the following positions: State ministers, under-secretaries, superintendent and governors; majors and councilors; regional counselors: members of the Judiciary Primary Ranking; secretary and speaker of the Constitutional Court; public prosecutor; member of the Elections Classification Court and its speaker, members of the regional election courts, its substitutes and its secretary-reporters; members of the other courts created by law; officials of the State Administration and members of governing entities of the political parties.

Article 38.- The advisors will be removed by the Supreme Court at the request of the President of the Republic, the Chamber of Deputies by resolution adopted by simple majority, or at the request of ten deputies, by inability, misconduct or gross negligence in the exercise of its duties. The Supreme Court shall learn of the subject in full specially convened for this purpose and to arrange the removal must meet the affirmative vote of the majority of its member in office.

In addition to the removal, shall be grounds for termination in the position of its Advisory Board membership, the following:

- a) Expiration of the period for which it was appointed,
- b) Resignation to the President of the Republic,
- c) Nomination for elective office,
- d) Supervening incompatibility, circumstance which will be assessed by the majority of the advisors, excluding the affected one.

In case that one or more advisors ceases for any reason, it will be necessary to appoint a new advisor, by a one-man proposition of the President of the Republic, subject to the same procedure stipulated in Article 36, for the rest of the period.

If the adviser who ceases of the position, subject to the previous clause, vested the condition of the President of the Council, its replacement shall be appointed in the manner provided in Article 36, for the time needed to finish the term of the ceasing advisor.

Article 39.- The advisors, with the exception of the one acting as President of the Council, shall perceive a salary equivalent to 15 UF (Unidad de Fomento= price index) for each session to which it attends, with a maximum of 100 UF by calendar month.

The President of the Council shall perceive a net monthly salary equivalent to an Under Secretary of State.

Article 40.- The Advisory Board shall adopt its decision by the majority of its members and in case of a tie, the President shall decide. The minimum quorum to convene a session shall be of three counselors. The regulations shall establish the rest of the necessary norms for its performance.

Article 41.- The Board by-laws shall establish the operation regulations. The by-laws and its modifications will be proposed to the President of the Republic by, at the least, a majority of three quarters of its members, and its approval shall be available through supreme decree issued through the Ministry General Secretariat of the Presidency.

Article 42.- The Director of the Board shall be the legal representative, and shall perform the following functions:

- a) Implement and enforce the agreements of the Board,
- b) Plan, organize, direct and coordinate the operation of the Board, in accordance with the guidelines set by the Board of Directors,
- c) Enactment of internal regulations that are necessary for the proper performance of the Council, with a previous agreement of the Board.
- d) Hire the staff for the Council and terminate their services in accordance to the law,
- e) Carry out all other acts and conduct the necessary conventions to achieve the aims of the Council,
- f) Delegate specific powers and faculties to Board officials,
- g) Perform the rest of the functions as are delegated by the Board of Directors.

Article 43.- The persons that render services to the Board shall be ruled by the Labor Code.

Without detriment of the aforementioned, shall apply to this personnel the probity standards and the provisions of Title III of the Constitutional Organic Law of General Basis of the State Administration, which consolidated, coordinated and systematized text was established by Decree Law No. 1 (D.F.L. No. 1) of 2001, of the Ministry General Secretariat of the Presidency, giving evidence in the respective contracts of a clause that so provides.

The persons that perform leadership roles in the Board shall be selected by public bidding conducted by the Civil Service in accordance with the standards governing the selection processes of the High Ranking Public Administration on the basis of a triad consisting of Council of Senior Management.

The Board must meet the standards set by the Decree Law No. 1.263, of 1975, on financial administration.

Furthermore, the Board shall be subject to be audited by the General Comptroller's Office, with regard to its personnel and the examination and prosecution of their accounts.

The Board resolutions will be exempt from the process of taking-over by the General Comptroller's Office.

Article 44.- The patrimony of the Board shall consist of:

- a) The resources that includes the Annual Budget Law of the Nation,
- b) Movable and immovable property that shall be transfer or acquire on any title and by the returns of the same,
- c) Gifts, inheritance and legacies accepted by the Board

The donations to the Board do not require of judicial suggestion referred to in Article 1401 of the Civil Code and are exempt of the donation tax provided by Law N°.16.271.

TITLE VI

Infringements and Sanctions

Article 45.- If the authority or chief or head of the service of the State Administration entity, as required, who has unreasonably denied access to information, contravening the provisions of Article 16, shall be punished with a fine of 20% to 50% of its remuneration.

Article 46.- Failure to provide timely information as decreed, once it has been ordered by a final resolution, shall be punished with a fine of 20% to 50% of its remuneration. If the authority, chief or head of the service of the State Administration office, as required, persists with its attitude, it shall receive the double sanction indicated and the suspension from office for a period of five days.

Article 47.- Unjustified breach of the present transparency regulation is punishable by a fine of 20% to 50% of the offender's remuneration.

Article 48.- The penalties provided in this Title, shall be published on the websites of the Council and of the appropriate agency or service within five working days after the relevant resolution has been approved.

Article 49.- The sanctions provided in this Title shall be applied by the Council, after instructions of an investigation or administrative proceeding, according to the rules of the Administrative Regulations. However, as requested by Council, the Comptroller General of the Republic, according to its organic regulations, may initiate the investigation and establish appropriate sanctions.

TITLE VII

Transitory Provisions

Article 1.- Pursuant to the fourth transitory provision of the Constitution shall be understood that they meet the quorum requirements, the current effective legal principles and pronounced prior to the enactment of Law No. 20.050, establishing secrecy or confidentiality with respect to certain reports or documents, which states the grounds indicated in Article 8 of the Constitution.

Article 2. - The first appointment of advisors for the Council for Transparency shall be sixty days from the effective date of this Law. In the proposal made to the Senate it shall be identified the two advisors who shall last six years in office, and the two others that shall last three years in office. The Council for Transparency shall be understood as legally constituted once the Board has held its first valid meeting.

Article 3. - The increase in the expenses that this law will represent during the first

year of its term, shall be financed by transferences from item 50-0 1-03-24- 03-104 of the budget of the Public Treasury of the National Budgetary Law for the respective year.

Article two. - The following amendments are made to the Organic Constitutional Law on General Bases of the State Administration of which abbreviated, coordinated and systematized text was established by the Legislative Decree No. 1, of 2001, of the Ministry General Secretariat of the Presidency:

Clause three and following of Article 13 and Article 14 are revoked.

In clause two of Article 21 is inserted the following: after the denomination "Consejo Nacional de Televisión", the expressions "to the Council for Transparency" is followed by a coma (,).

Article three. - Replaces the second clause of Article 16 of the Law No. 19.880, on Bases of the Administrative Procedures, by the following:

"Consequently, as apart of the exceptions provided in the Transparency Law of the Public Administration and of Access to State Administration Information and in other legal provisions approved by qualified quorum, the acts and rulings of State Administration are public, as well as its grounds and documents in which are contained and the procedures used in their elaboration or pronouncement.."

Article four. - The following amendments are added to Law No. 18.695, Constitutional Organic Law of Municipalities, which consolidated, coordinated and systematized text was established by the Legislative Decree No. 1 of 2002, of the Ministry of the Interior:

The following final clause is added to Article 12:

"All of these resolutions shall be available to the public and should be published in the electronic or digital systems available at the municipality."

The following final clause is added to Article 84:

"Once approved, the minutes of the council shall be made public, and it must contain at least, the attendance to the meeting, the agreements reached in it and how they were voted. The publication shall be done by electronic or digital system whichever is available at the municipality.

Article five.- Amends the Law on Organization and Jurisdiction of the General Comptroller's Office of the Republic, No. 10.336, adding in Title X, the new Article 155, which follows:

"Article 155. - The General Comptroller's Office of the Republic in exercising its public functions is governed by the transparency principle established in Article 8, clause two of the Constitution of the Republic and in Articles 3 and 4 of the Transparency Law of Public Administration and of Access to State Administration Information.

Advertising and Access to the information of the General Comptroller's Office shall be governed, as appropriate, by the following regulations of the law indicated above in the preceding paragraph: Title II, Title III and Articles 10 to 22 of Title IV.

If the legal deadline for the delivery of the required information expires or if the request is denied by any of the grounds authorized by the law, the applicant may appeal to the respective Court of Appeals, in accordance with the provisions of Articles 28, 29 and 30 of the Transparency Law of the Public Administration and of Access to State Administration Information. In the same resolution, the Court may indicate the need to initiate disciplinary proceedings to establish if any officer or authority has incurred in any violation of Title VI of the Transparency Law of the Public Administration and of Access to State Administration Information, which shall be carried out in accordance with their organic law. Penalties for breaching the regulations of the Transparency Law of the Public Administration and of Access to State Administration Information will be those set forth in that law.

The Comptroller, through resolution published in the Official Gazette, shall establish the rest of the regulations and instructions necessary to comply with the legal provisions cited, considering for this purpose the general rules issued by the Council of Transparency in accordance with Article 32 of the Law”.

Article six. - The National Congress is governed by the transparency principle in the exercise of its public functions established in the second clause of Article 8 of the Constitution of the Republic and in Articles 3 and 4 of the Transparency Law of the Public Administration and of Access to State Administration Information.

The Chambers shall comply with the provisions of Article 7 of the Transparency Law of the Public Administration and of Access to State Administration Information, as appropriate. In addition, they shall especially publish the attendance of the members of parliament to the sessions of the Chamber and committees, the voting and elections to which they attend and the allowances they perceive. The regulations of both Chambers shall consign the precautionary rules for public access to information that deals this article.

Article seven. - Amends the Organic Constitutional Law of the Central Bank, contained in ARTICLE I of Law No. 18.840, as follows:

a) It is added to Title V, the following new Article 65 bis, “Article 65 bis. - The Central Bank is governed by the principle of transparency in the exercise of public functions, established in Article 8 of the second subparagraph of the Constitution of the Republic and in Articles 3 and 4 of the Transparency Law of the Public Administration and of Access to State Administration Information.

Advertising and Access to the Bank information shall be governed, as appropriate, by the following rules of the above-cited law in the preceding paragraph: Title II; Title III, with the exception of Article 9, and Articles 10 to 22 of Title IV. In any case, the extension to which the second paragraph of the referred Article 22, shall be adopted by agreement of the Council who shall require the favorable vote of at least four directors, and with respect to the preservation of documents, to which that same provision apply, the provisions of Article 86 will be applied. The references of these regulations make to the authority, or head chief, shall be understood as made to the President of the Bank.

If the legal deadline for delivery of the required information expires or the request is denied by any of the grounds authorized by law, the applicant may appeal to the Court of Appeals of Santiago, in accordance with the provisions of Article 69. The Court in the same ruling shall sanction with a fine of 20% to 50% of royalties to the infringer.

The Bank, by agreement of the Council shall publish in the Official Gazette, additional regulations and instructions necessary to comply with the cited legal provisions.

b) Subparagraph one of Article 66 is replaced by the following:

"Article 66.- In addition, the Bank must hold back and respect the records related to monetary credit transactions or investments carried out in conformity with Articles 34, 36, 37, 38, 54, 55 and 56; or those which come from information required pursuant to Articles 40, 42 and 49 on international Exchange rate or powers granted in the same area by other laws; and of the information gathered for fulfilling the task contemplated in Article 53; and, may not provide information about them but only to the person who has been part of them, or its agent or legal representative.

Article eight. - The Courts that are part of the Judiciary Power, in accordance with the provision of Article 5 of the Organic Code of Courts, through its Management Corporation, shall maintain permanently at public disposition on their websites and duly updated, the information

indicated in Article 7 of the Public Function Transparency Law and Access to State Management Information.

The other special courts of the Republic, such as the Court of Public Procurement or the Court of Free Competition Defense and the entities that exercise jurisdiction such as the Directorate General of Civil Aviation or the Experts Panel referred to in Law No. 19.940, shall comply with the obligation provided in the preceding paragraph through their own websites or the websites of the entities to which they depend or that have close connections, if they do not have their own system.

In cases where the amount exceeds 500 UTM (Monthly Tax Paying Units) or to which fines were imposed in excess of that amount, of jail or prison sentences exceeding three years and one day, the final judgment of ordinary or special courts and the definitive judgment in case the first only modifies or replaces parts of them, must be published as provided in this Article. The same applies to the other courts to which it refers the preceding clause with regard to the same nature, whatever their denomination.

Judgments or rulings referred to in the preceding paragraph shall be published within five days they become final.

Article nine. - The Public Prosecutor's Office, the Constitutional Court and the Electoral Justice are governed by the principle of transparency in the exercise of its public office as set out in Article 8, second clause, of the Constitution of the Republic and in Articles 3 and 4 of the Public Function Transparency Law and Access to the State Administration Information. Advertising and Access to the information of the entities cited in the precedent paragraph shall be governed, as appropriate, by the following regulation of the law cited in the preceding paragraph: Title II, Title III and Articles 10 to 22 of Title IV.

If the legal deadline for delivery of the required information expires or the request is denied by any of the grounds authorized by law, the applicant may appeal to the respective Court of Appeals in accordance with the provisions of Articles 28, 29 and 30 of the Transparency Law of the Public Administration and of Access to State Administration Information. In the same resolution, the Court may indicate the need to initiate disciplinary proceeding to establish whether any officer or authority has incurred in any offense to Title VI of the Transparency Law of the Public Administration and of Access to State Administration Information, which will be investigated in accordance with their respective laws. However, penalties imposed for violation of the rules of the Transparency Law of the Public Administration and of Access to State Administration Information, shall be those contained in the Law.

The Public Prosecutor or the President of the Constitutional Court, by resolution published in the Official Gazette, will establish the rest of the regulations and rules necessary to comply with the legal provisions cited, considering for this purpose the general rules issued by the Council for Transparency in accordance with Article 32 of the Law.

In the case of the Electoral Justice, the provisions of the preceding paragraph shall be established by order of the Court agreed by the Regional Electoral Tribunal, which will be published respectively in the Official Gazette and in the appropriate regional newspaper.

Article ten. - The principle of transparency of the public role established in clause two of Article 8 of the Political Constitution, and in Articles 3 and 4 of the Transparency Law of the Public Administration and of Access to State Administration Information is applicable to public undertakings created by law. In addition, it is applicable to State enterprises and companies where it has more than 50% of stock shares or majority in the Board of Directors, such as

Televisión Nacional de Chile, Empresa Nacional de Minería, Empresa de Ferrocarriles del Estado, Corporación Nacional del Cobre de Chile or Banco Estado. This is possible even when the respective law provides that it is necessary to explicit mention in order to be subject to regulations of other laws.

Under this principle, the enterprises mentioned in the preceding paragraph shall maintain available to the public through their websites, the following background information duly updated:

- a) The regulatory framework that is applicable to them,
- b) Its organizational structure or internal organization,
- c) The functions and competences of each of its units or internal agencies,
- d) Its financial statements and annual report,
- e) Its subsidiaries or affiliated companies and all entities that have participation, representation and intervention, whatever its nature and legal basis justifies it.
- f) The composition of its boards of directors and the identification of those responsible for the management and administration of the company,
- g) Consolidated information of its personnel,
- h) All compensation received in the year by each Director, CEO or Executive Vice President and Managers responsible for administration and senior management of the company, including those coming from office or employment other than the exercise of their duties which have been conferred by the company, or by way of public relations expenses, travel expenses, royalties, and generally any other stipend. Besides, it must be included in a comprehensive and consolidated way, the total remuneration received by the company staff.

The above information should be added to their websites in full and in a way that allows easy and expedited Access.

The companies referred to in this article, whatever is the statute by which they are governed, will be obliged to deliver to the Superintendence of Securities and Insurances or, if necessary, to the Superintendent at whose control they are subject, the same information to which the corporations are forced to in accordance with Law No. 18.046. If not, the directors responsible for the offending company will be sanctioned with fines for fiscal benefit for an amount of UF five hundred, implemented by the respective Superintendence under the terms of reference and the procedures establishing their respective laws.

Article eleven. - Article 8 of Decree Law No. 488, of 1925, is revoked.

Provisional Article. - This Law shall enter into force eight months after publication in the Official Gazette, except for the Provisional Article 2 of the Public Function Transparency Law and Access to State Management Information, that will enter into force since it is published in the Official Gazette.».

Having complied with the provisions established in No. 1 of Article 93 of the Constitution of the Republic, and since I considered appropriate to pass and sanction it: thus enact and take effect as Law of the Republic.

Santiago, August 11, 2008.- MICHELLE BACHELET JERIA, President of the Republic.- José Antonio Viera-Gallo Quesney, Minister Secretary General of the Presidency.- Edmundo Pérez Yoma, Minister of Interior.- Alejandro Foxley Riosco, Minister of Foreign Relations.- José Goñi Carrasco, Minister of National Defense.- Hugo Lavados Montes, Minister of Economy, Development and Reconstruction.- Andrés Velasco Brañes, Minister of Economy.- Carlos Maldonado Curti, Minister of Justice.- René Cortázar Sanz, Minister of Transportation and

Telecommunications.

Which for your knowledge I transcribe, - Sincerely, Edgardo Riveros Marín,
Undersecretary General of the Presidency.
Constitutional Court

Bill on Access to Public Information (Bulletin N° 3773-06)

The Secretary of the Constitutional Court, which subscribes, certifies that the Senate of the Republic of Chile sent the Bill indicated in the title, approved by the National Congress to enable the Court to exercise constitutional control over the same, and that ruling on July 10, two thousand eight by Court Decision Role N° 1.051 -08-CPR.

Declares:

THAT THIS COURT DO NOT COMMENT ON THE FOLLOWING PROVISIONS OF THE BILL SUBMITTED FOR CONTROL, SINCE IT DOES NOT CONTAIN REGULATIONS PROPER TO THE CONSTITUTIONAL ORGANIC LAW:

ARTICLE FIRST:

- Article 1st, numerals 3 and 6 of clause two;
- article 2nd, clause three, when it refers to Government enterprises and to companies where it has more than 50% of the shares or a majority in the Board of Directors;
- article 8th, with respect to the sentence "This action will be subject to the same procedure as the measures enacted in articles 24 and following of this law."; - articles 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23;
- Article 24, clauses two, three, four and five;
- Articles 25, 26, 27;
- article 28, clause four;
- Article 30, clauses one, two, three, four and five;
- article 34, clause two;
- Articles 35, 39, 40, 41, 42, 44, 45, 46, 47, 48; and
- Articles 1st and 3rd provisional;

ARTICLE THREE, which replaces clause two of article 16 of law N° 19.880, on Bases of Administrative Procedures;

ARTICLE SEVEN, letter b), which substitutes clause one of article 66 of law N° 18.840, Central Bank Constitutional Organic Law;

ARTICLE TEN, only when it refers to Government enterprises and to companies where it has more than 50% of the shares or the majority in the Board of Directors;

ARTICLE ELEVEN, which revokes article 8th of Decree Law N° 488, of 1925; and THE PROVISIONAL ARTICLE, establishing the entry into force of the law;

THAT THE FOLLOWING PROVISIONS OF THE BILL SUBMITTED ARE CONSTITUTIONAL:

Of ARTICLE FIRST –which approves the Public Functions Transparency Law and of Access to Government Administrative Information-, the following regulations:

- article 1st, clause one, and numerals 1, 2 and 4 of clause two;
- article 1st, clause two, numeral 5, which establishes that: "For the effects of this law it will be understood by: 5. The entities or services of the Government Administration: those indicated in clause two of article 1 of the Constitutional Organic Law on General Bases of the State Administration, which consolidated, coordinated and systematized text is contained in the D.F.L. (Legislative Decree) No. 1-19.653, de 2001, of the Ministry General Secretariat of the Presidency" bearing in mind, however, that the provisions of this regulation does not apply to the Central Bank under Article 108 of the Constitution.

- Article 2nd, clauses one, two and four and its clause three when it refers to public enterprises;
 - Articles 3, 4, 5, 6 and 7;
 - Article 8, first sentence up to full stop: “Any person may file a complaint with the Council if any of the agencies of the Administration does not report as required by the preceding article”.
 - Articles 9, 10, 11 and 19;
 - Article 24, clause one;
 - Article 28, clauses one, two and three;
 - article 29;
 - article 30, clause six;
 - articles 31 and 32;
 - article 33, letters a), b), c), d), e), g), h), i), j), k), l) and m);
 - article 33, letter f), that among the functions and powers assigned to the Council for Transparency – which is created pursuant to Article 31 of the same legal resolution-, considers to “propose to the President and to Congress, in its case, the regulations, instructions and other regulatory enhancements to ensure the transparency and access to information”, bearing in mind, however, that the proposed law in Chile is limited only to the President or not more than ten MPs or five Senators, pursuant to Article 65, first clause of the Constitution;
 - Article 34, clause one, which in part states: “In exercising its power, the Council may request the collaboration of different State agencies.”
 - Articles 36, 37 and 38;
 - Article 43, clause one, two, three, four and six;
 - Article 49, which indicates: "The penalties provided by this article will be applied by the Council, after preliminary summary investigation or administrative inquiry according to the rules of the Administrative Statute. However, when requested by Council, the Comptroller General of the Republic, in accordance with its organic law, may initiate the investigation and establish the appropriate sanctions”, bearing in mind that such investigations and administrative summaries must always be carried out with strict respect to the principle of due process; and
 - Article 2nd provisional;
- ARTICLE TWO, numerals 1 and 2, introducing modification to law No. 18.575, Constitutional Organic Law of General Bases of the State Administration;
- ARTICLE FOUR, numerals 1 and 2, introducing modifications to law N° 18.695, Constitutional Organic Law of Municipalities;
- ARTICLE FIVE, incorporating a new Article 155 to law No. 10.336, on Organization and Powers of the General Comptroller’s Office, subject to the understandings set forth in this article regarding the constitutionality of clauses two and four of the same legal regulation;
- ARTICLE SIX, referred to National Congress;
- ARTICLE SEVEN, letter a), which adds a new article 65a to law No. 18.840, Constitutional Organic Law of the Central Bank, without prejudice to the understanding that this Court will express in relation to clause two and will declare unconstitutional clause four, all of the same legal regulation;.
- ARTICLE EIGHT, refer to the courts that are part of the Judiciary and to the rest of the special courts of the Republic;
- ARTICLE NINE, only with regard to the Public Ministry, the Constitutional Court and the Board of Elections, without prejudice to the understanding that this Court will later recognize, and
- ARTICLE TEN, only with regard to public enterprises created by law;
3. THAT THE PROVISIONS OF THE BILL LISTED BELOW ARE CONSTITUTIONAL PROVIDED THAT IN EACH CASE IT IS INDICATED:
- In clause one of Article 34 of ARTICLE ONE, with regard to the sentence “may also receive all the testimonies and obtain all information and documents necessary for assessing situations

falling within its competence”, it is constitutional in the understanding that the pursuit of said power the Council for Transparency will recognize as limit the exceptions to publicity of acts and resolutions of State entities established by the legislature of a qualified quorum, according to the second clause of Article 8 of the Constitution.

- Clause five of Article 43 of ARTICLE ONE, conforms to the provisions of the Basic Law, it being understood that the limitations of the powers conferred to the Comptroller General of the Republic, in the regulation transcribed, and keeps harmless the ample legal control conferred to this entity by Article 98, clause one of the Constitution, as appropriate.

- Clause two of the new article 155 added to the Constitutional Organic Law of the Comptroller General of the Republic, No. 10.336, by ARTICLE FIVE, is constitutional on the understanding that such Administrative Control Entity is not covered by the provisions of article 8, Title III of the Law for Transparency of Public Functions and Access to State Administration Information of the same initiative under study.

- The new alluded article 155 is also constitutional in the understanding of that the general regulations issued by the Council for Transparency in exercise of its duties and legal functions are not binding for the Comptroller General of the Republic. The reference done in the final clause of the same precept to article 32, it must be understood made to article 33 of the regulation approved by ARTICLE ONE of the same bill under consideration.

- The aforementioned new article 155 is likewise constitutional on the understanding that the general regulations issued by the Council for Transparency in exercising its statutory powers and functions, are not binding to the Comptroller General of the Republic. The reference in the final clause of the provision to article 32 must be made to understand article 33 of the law to which are refers.

- Clause two of the new article 65a of law No. 18.840 –Constitutional Organic Law of the Central Bank- which is added by ARTICLE SEVEN, is constitutional on the understanding that it is not applicable to that public institution the article 8, Title III of the Law for Transparency of Public Functions and Access to Information of the State Administration, which is approved by ARTICLE ONE of the same bill under consideration.

- Clause two of ARTICLE NINE is constitutional on the understanding that it is not applicable to Public Ministry, Constitutional Court nor to the Elections Qualifying Board as provided in article 8, Title III of the Law for Transparency of Public Functions and Access to Information of the State Administration, which is approved by ARTICLE ONE of the same bill under consideration.

- Clause three of ARTICLE NINE is constitutional on the understanding that this provision does not apply to the Constitutional Court nor to the Elections Qualifying Board.

- Clauses four and five of ARTICLE NINE are constitutional in the understanding that the general regulations issued by the Council for Transparency, in exercising its statutory powers, are not binding with the Public Ministry, for the Constitutional Court nor for the Elections Qualifying Board. The reference done in clause four of that provision to article 32, must be made to understand article 33 of the legislation referred to.

4. THAT IT IS UNCONSTITUTIONAL THE FOLLOWING PROVISION OF THE REVISED BILL : Clause four of the new Article 65a that ARTICLE SEVEN, letter a), adds to Title V of law No. 18.840, Constitutional Organic Law of Central Bank, in the sentence “taking for this end the general rules issued by the Council for Transparency in accordance with Article 32 of the referred law”.

Santiago, July 11, 2008.- Rafael Larraín Cruz, Secretary.