



Remisión de resolución

S/REF:
N/REF: R/0155/2017
FECHA: 29 de junio de 2017

D. FÉLIX LORENZO DONOSO (Plataforma contra la Contaminación de Almendralejo)
C/ Guadalupe 17
06200 Almendralejo (Madrid)

Attached copy of the decision of the President of the Council of Transparency and Good relapse reference file refers.

Esperanza Zambrano Gómez
Deputy Director General

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CSV : GEN-9af8-59d1-c96a-583d-c1fb-ecad-cc81-4524

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FIRMANTE 1 : MARIA ESPERANZA ZAMBRANO GOMEZ FECHA : 29/06/2017 11:50 NOTAS : F.



Consejo de Transparencia y Buen
Gobierno
Registro General de CTBG
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Consejo de
Transparencia y
Buen Gobierno

PRESIDENCIA

RESOLUCIÓN

S/REF:
N/REF: R/0155/2017
FECHA: 27 de junio de 2017

Nombre: D. FÉLIX LORENZO DONOSO
(Plataforma contra la contaminación de
Almendralejo)
Dirección: C/ Guadalupe, 17,
Código Postal: 06200
Localidad: Almendralejo, Badajoz

SUBJECT: Resolution of Claim filed under Article 24 of Law 19/2013, of December 9, on Transparency, access to public information and good governance

In response to the Claim presented by D. FÉLIX LORENZO DONOSO (Plataforma contra la contaminación de Almendralejo), with entry on April 5, 2017, this Council of Transparency, and Good Government, considering the Background and Legal Foundations specified below, adopts the following **RESOLUTION**:

I. BACKGROUND

1. According to the documentation in the file, D. FÉLIX LORENZO DONOSO, on behalf and representation of the Plataforma contra la contaminación de Almendralejo requested, by letter dated February 16, 2017, under the provisions of Law 19 / 2013, of December 9, of Transparency, Access to Public Information and Good Governance (hereinafter LTAIBG), access to the following information;

First: If the Ministry of Justice is aware of the process' open to Spain for breach of the Aarhus Convention.

Second: We request a copy of any document that related to the subject. In the case that there is some type of protection or classification, we request that we communicate what documents are and what Act expressly establishes it.

Third: If the Ministry of Justice is aware that the repeated failure to comply with the Resolutions of the Compliance Committee and the Parties that signed the treaty may have negative consequences for Spain.

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CSV : GEN-578d-54ee-8c64-879c-11a5-1ee3-6faa-5cd2

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FIRMANTE(1) : FRANCISCO JAVIER AMOROS DORDA | FECHA : 28/06/2017 14:39 | NOTAS : F



Fourth: What measures has the Ministry of Justice taken or is it considering to ensure that, without delay, Spain complies with the provisions of the aforementioned Resolutions, so that before September 11, 2017, when it will take place, in Budva, Montenegro, the sixth session of the Meeting of the Parties to the Aarhus Convention, Spain is not open to the Parties to decide to suspend the application of the Aarhus Convention in our country..

2. On April 5, 2017, we received a written complaint filed by D. FÉLIX LORENZO DONOSO, under the provisions of article 24 of the LTAIBG, which stated that the maximum deadline has elapsed without replying to application.
3. On April 18, 2017, this Transparency Council forwarded the file to the Transparency Information Unit of the MINISTRY OF JUSTICE, so that the Department could make the allegations it considered appropriate.
4. On May 15, 2017, there was a new written entry submitted by D. FÉLIX LORENZO DONOSO, in which he stated the following:
 - *On May 15, 2017, our association received a letter from the General Subdirector of Administrative Information and General Inspection of Services in which it resolves: "Consequently, as provided in letter e) of article 18.1 of Law 19 / 2013, of December 9, of transparency, access to public information and good governance, this General Technical Secretary resolves to inadmit the request for access to public information."*
 - *The request for information was made as a consequence of what was affirmed by Spain to the Compliance Committee of the Aarhus Convention, in which it was stated that: As a result, as we stated in our last communication, we trust that, during this new period that ends If we start now, this legal reform will be taken into account. To this end, we are in contact with the Ministry of Justice to resume this project to reform the Spanish legislation of Free Legal Assistance.*
 - *What the Plataforma wanted to obtain is information on the contents or documents of the contacts to which the communication refers to the Compliance Committee of the Aarhus Convention. Therefore, we do not request to know the "executive position in a specific open matter".*
 - *The Platform does not understand how it could harm Spain's external relations to know the efforts it is making to comply with the repeated resolutions of the Parties that signed the Aarhus Convention, as well as its Compliance Committee. On the contrary, we consider that, if the will of Spain were to comply with those resolutions, it would be of great help to know in detail the information that evidences this.*



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- We hope the resolution of Council transparency and good governance to our complaint in confidence to know as requested in no way detrimental to the interests of Spain.
5. On May 22, 2017, the allegations of the MINISTRY OF JUSTICE entered and indicated the following:

The request, received on March 1, 2017, could not be answered within the required period for the following reasons:

- The legal analysis of this request received regarding the process opened to Spain has been required, in compliance with Decision IV9 (f) of the meeting of the parties to the Aarhus Convention, still under study and assessment, regardless of whether the official position to date has been compliance with the Convention by the Spanish legislation in all its terms. Given the terms in which the request has been raised, it has been necessary to clarify whether, in its first, third and fourth paragraphs, it is covered by Law 19/2013, of December 9, on transparency, access to public information and good government, having come to a negative conclusion.
- For the rest, the information requested in the second section may affect the external relations of our country, since it has been proven that the interested party is an active party in the procedure of non-compliance that the Compliance Committee of the Aarhus Convention has opened to Spain.
- So that the information provided to the interested party will be sent for publication on the website of the agreement:

<https://www.unece.org/environmentalpolicy/treaties/public-participation/aarhusconvention/envpptfwg/envppcc/envppccimplementation/fifth-meeting-of-the-parties-2014/spain-decision-v9k.html>

- The information that the interested party wishes to access is not concentrated in a single unit of our Ministry, because the competent Centre for decisions corresponding to the granting of legal aid and international relations is the Ministry of State of our Ministry, and in particular the General Directorate for Relations with the Administration of Justice for the former and the General Directorate for International Legal Cooperation and Relations with the Religious Confessions for the latter. It was necessary to contact the focal point of Aarhus Convention in AGE, located in the MAGRAMA.
- On May 5, 2017, the interested party was answered, so the response is attached to this document.





II. LEGAL BASIS

1. In accordance with the provisions of article 24 of the LTAIBG, in relation to article 8 of the Real Decree 919/2014, of October 31, by which the Statute of the Transparency and Good Government Council is approved, the President of this Organization is competent to resolve the claims that, prior to a possible and optional Contentious-Administrative Appeal, are submitted as part of an information access procedure.
2. The LTAIBG recognizes in article 12 the right of all persons to access public information, understood, according to article 13 of the same norm, as contents or documents, regardless of their format or support, that they work in. power of any of the subjects included in the scope of application of this title and who have been drawn up or acquired in the exercise of their functions".

That is, the LTAIBG recognizes and regulates the right to access public information that is in the possession of the Agency to which the request is addressed, either because it has been prepared by it or because it has been obtained in the exercise of the functions entrusted to it.

3. In the first place, consideration must be given to the term available to the Administration to answer a request for access to information.

As provided in article 20.1 of the LTAIBG, the resolution granting or denying access must be notified to the applicant and the affected third parties who have requested it within a maximum period of one month from receipt of the request by the competent body to resolve. This period may be extended for another month in the event that the volume or complexity of the requested information so require and after notification to the applicant.

In this case, the Administration has replied to the Claimant more than two months after receiving the access request, that is, once the legally established deadline expired and, once the interested party had filed a claim with this Transparency Council, of which the Department was aware because the file for allegations had been sent. This delay is justified in that the information that the interested party wishes to access is not concentrated in a single unit of our Ministry, because the competent Center for decisions regarding the granting of legal aid and international relations is the Secretariat of the State of our Ministry, and in particular the General Directorate of Relations with the Administration of Justice for the first and the General Directorate of International Legal Cooperation and Relations with Religious Confessions





for the second. It was necessary to contact the focal point of Aarhus Convention in AGE, located in the MAGRAMA.

For these complex cases, - the Administration can and must make use of the power granted in the aforementioned article 20.1 of the LTAIBG, extending in one month the term to resolve prior notification to the applicant. However, this authority has not been used and, as we said, the response has been provided even after having known the filing of the corresponding claim by the interested party.

4. The application of the limits contained in this article must take into account the provisions of Interpretive Criterion CI/002/2015, of June 24, approved by this Transparency Council, in exercise of the powers expressly attributed by article 38.2 a) of the LTAIBG. This Criterion indicates the following:

The limits referred to in Article 14 of the LTAIBG, unlike those relating to the protection of personal data, do not apply directly, but according to the literalness of the text of number 1 thereof, 'may' be applied.

In this way, the limits do not operate either automatically in favour of the denial nor absolutely in relation to the contents.

The invocation of reasons of public interest to limit access to information should be linked to the specific protection of a rational and legitimate interest.

In this sense, its application will not be automatic in any case: before on the contrary it should be analysed if the estimation of the information request supposes a damage (test of the damage) concrete, defined and evaluable. This, in addition, can not affect or be relevant for a certain material scope, because otherwise it would be excluding a complete block of information.

In the same way, a justified and proportional application is necessary taking into account the circumstance of the specific case and whenever there is no interest that justifies the publicity or access (test of public interest).

In the present case, the Administration is limited to invoking the existence of the limit, but does not sufficiently justify why it is applicable, beyond the assertion that it has been proven that the interested party is an active party in the procedure of non-compliance that the Committee of compliance with the Aarhus Convention is open to Spain.

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5. This Transparency Council does not notice how Spanish foreign relations may be affected by answering a series of questions aimed at explaining whether the Ministry knows of the existence of a possible breach of the Agreement and its possible consequences for Spain.

Likewise, the Ministry does not justify either, because sending the applicant a copy of any document that is related to the subject matter may also put Spanish foreign relations at risk.

In this regard, it should be explained that the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, as well as the community regulations derived from it, suppose the concept of the Administration open and transparent public.

Derived from this normative body, citizens enjoy the right to access information of an environmental nature that public authorities possess. International and community commitments require the dissemination of extensive environmental information, such as information on legislation, on the state of the environment, on projects, plans and programs or on decisions that may be adopted that may affect the environment. This contributes to fulfilling the constitutional mandate to guarantee the right of everyone to enjoy an adequate environment for the development of the person, as well as fulfil the obligation of everyone to preserve it.

Through Decision I / 8, the Meeting of the Parties to the Aarhus Convention (Lucca, Italy, October 2002) established a reporting mechanism by which each party is requested to submit a report to each Meeting of the Parties, on legislative and regulatory measures and other measures taken to comply with the Convention and put it into practice, in accordance with a report format annexed to Decision. Desde la página Web del Ministerio de Agricultura y Pesca, Alimentación y Medio Ambiente

(<http://www.mapama.gob.es/es/ministerio/servicios/informacion/informacion-ambiental/informes-nacionales-de-cumplimiento/>), Anyone can consult the reports submitted by Spain to date. Therefore, the existence of the limit invoked by the Administration is not appreciated.

6. However, the foregoing, given the essential content of the documents requested, relating to the Environment, it must be taken into account that, in this matter, Law 27/2006, of July 18, which regulates the rights of access to information, public participation and access to justice in environmental matters.

This Law, prior to the LTAIBG, is intended to regulate the following rights:

- a) To access environmental information held by public authorities or other subjects that have it in their name.



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b) To participate in the procedures for taking decisions on matters that directly or indirectly affect the environment, and whose preparation or approval corresponds to the Public Administrations.

c) *To urge the review, administrative and judicial acts and omissions attributable to any of the public authorities that involve violations of environmental regulations.*

2. *This law also guarantees the dissemination and making available to the public environmental information, gradually and with the degree of breadth, system and technology as wide as possible.*

As it is a specific legislation, which devotes its Title II entirely to regulating the right of access to environmental information, we must bear in mind, although it has not been alleged by the Administration, the provisions of Additional Provision One, section 2, of the LTAIBG, according to which "they will be governed by their specific regulations, and by this Act with character, supplementary, those matters that have foreseen a specific legal regime of access to information."

Therefore, it can be understood that this precept applies, in this case, with respect to the part of the application that seeks to access any document that is related to the subject matter, since this request must be regulated by its own specific regulations, not by the LTAIBG.

7. However, in the opinion of this Transparency Council, the LTAIBG is of direct application to the rest of the issues raised by the Complainant, since these are questions for the Ministry to explain if it knows of the existence of a possible breach of the Agreement and its possible consequences for Spain, which do not affect the Environment, but in the fulfilment or non-compliance of the Spanish Administration with the commitments acquired through the signature and ratification of an International Agreement.

In this sense, the questions posed by the Complainant seek to know how decisions are made that affect citizens or under what criteria our institutions act, which are two of the fundamental axes under which the LTAIBG was approved and its fundamental reason for being, according to his Preamble.

In short, for all the arguments set forth above, this Claim must be partially estimated, so the Ministry must provide the Claimant with the following information:

- If the Ministry of Justice is aware of the process opened to Spain for breach of the Aarhus Convention.
- *If the Ministry of Justice is aware that repeated non-compliance with the Resolutions of the Compliance Committee and the Parties that signed the treaty may have negative consequences for Spain.*
- What measures has the Ministry of Justice taken or is it considering to make, without delay, Spain complies with the provisions of the aforementioned Resolutions, so that before September 11, 2017, the date



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in which the sixth session of the Meeting of the Parties to the Aarhus Convention will take place in Budva, Montenegro, Spain will not be exposed to the possibility that the Parties may decide to suspend the application of the Aarhus Convention in our country.

III. RESOLUTION

Considering the Background and Legal Foundations described, it procedes

FIRST: ESTIMATE partially the Claim presented by D. FÉLIX LORENZO DONOSO (Plataforma conyra la contaminación de Almendralejo), with entry on April 5, 2017, against the Resolution of the MINISTRY OF JUSTICE, of January 26, 2017.

SECOND: TO INSTALL the MINISTRY OF JUSTICE to, within a maximum period of 7 working days, send D. FÉLIX LORENZO DONOSO (Plataforma contra la contaminación de Almendralejo) the information referred to in Legal Basis 7 of this Resolution.

THIRD: TO INSTALL the MINISTRY OF JUSTICE to send a copy of the information sent to the Complainant to the Council of Transparency and Good Government within the maximum period of 7 working days.

In accordance with article 23, number 1, of Law 19/2013, of December 9, on Transparency, Access to Public Information and Good Governance, the Complaint provided for in article 24 thereof is considered as a substitute for administrative resources, in accordance with the provisions of article 112.2 of Law 39/2015, of October 1, on Common Administrative Procedure of Public Administrations.

Consequently, against the present Resolution, which puts an end to the administrative channel, it is only possible, in case of disagreement, the filing of a Contentious-Administrative Appeal with the Central Courts of Contentious-Administrative Law of Madrid within a period of two months from the day following its notification, in accordance with the provisions of article 9.1, c), of Law 29/1998, of July 13, governing the Contentious-Administrative Jurisdiction.

BY SUPLENCE (RESOLUTION of June 19, 2017)

THE GENERAL DEPUTY DIRECTOR OF TRANSPARENCY AND GOOD GOVERNANCE

Fdo: Francisco Javier Amorós Dorda

