‘I am a journalist’: A Comparative Analysis of Journalists’ Complaints to Chilean and Spanish Transparency Councils

“Soy periodista”: análisis comparado de las reclamaciones presentadas por periodistas ante los Consejos para la Transparencia de Chile y España

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Abstract:

The press is a democratic institution, as it fulfills the function of monitoring power and forming public opinion through truthful information. In this context, the role of journalists as users of so-called “transparency laws” is predictable, but previous research has identified that their mechanisms are not easily implemented in newsrooms. This study adopts a legal perspective to understand how journalists relate to the transparency system. The analysis of transparency complaints in Chile and Spain reveals contrasting approaches. In Spain, journalists use their professional role to justify access to information, arguing that their right as public interest requesters should be specially protected. On the other hand, in Chile, journalists did not justify their requests by asking for a special consideration for their professional role, but rather it was

Resumen:

La prensa es una institución democrática por excelencia, que cumple con la función de vigilar al poder y formar la opinión pública a través de información veraz. En este contexto, el rol de los periodistas como usuarios de las llamadas “leyes de transparencia” es previsible, pero investigaciones previas han identificado que sus mecanismos se instalan con dificultad en las salas de prensa. Este estudio adopta una perspectiva jurídica para comprender cómo se relacionan los periodistas con el sistema de transparencia, analizando las reclamaciones que presentan ante los Consejos para la Transparencia de Chile y España. Los resultados revelan que, en España, los periodistas utilizan su función profesional para justificar el acceso a la información, aduciendo que su derecho como solicitantes de interés público debe estar especialmente protegido. Por otro lado, en Chile los periodistas no justificaron sus soli-

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the authorities who used the journalists' function as a justification for denying access. This highlights the complex relationship between journalism and governmental bodies, confirming that their experiences while requesting public information are winding and unsatisfactory.

Keywords:

Journalism; transparency; access to information; watchdog; democracy.

citudes pidiendo una consideración especial por su rol profesional, sino que fueron las autoridades las que utilizaron la función de informar de los periodistas como una justificación para negar el acceso. Esto pone de relieve la compleja relación entre el periodismo y los organismos del Estado, confirmando que sus experiencias solicitando información pública son sinuosas e insatisfactorias.

Palabras clave:

Periodismo; transparencia; acceso a la información; watchdog; democracia.

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1. Introduction

The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights has stated that democracy is fundamentally the ability of individuals to participate effectively in the decisions that affect them, and that this participation depends on the information available (2007, p. 45). This definition makes freedom of information the cornerstone of the democratic order.

For this fundamental function, the international system[1] has defined a number of principles and standards to guarantee access to information. Among them, the 2011 General Comment No. 34 of the United Nations Human Rights Committee states that the procedures for access to information of public interest held by the State must be provided for in a domestic law on access to information. In this scenario, many countries have adopted specific legislation, defining this right, its limits and guarantees. Among the legal guarantees –that is, the mechanisms for protecting the right– these laws have established the procedure of petition or request, which allows individuals to request information held by public agencies, which are required to respond within a certain period.

Thanks to these access to information mechanisms, thousands of people around the world are requesting documents from the state and exercising their right to know. Among them are journalists, who can be considered public interest requesters, specializing in seeking and analyzing information on behalf of citizens in order to expose irregularities and hold powerful accountable. Nevertheless, its utilization within newsrooms has been discouraged by journalists' frequently unsatisfactory experiences in accessing information.

To date, the majority of studies addressing this issue have employed experimental (sending identical requests to various public offices) and exploratory methods through interviews with the requesters themselves. However, few studies have examined the arguments exchanged between public agencies and journalists in an access to information process. The elements involved in such processes suggest that they constitute a rich source of concepts related to the role of journalism in democracy. It

1 The concept of "the international system" is understood to encompass the standards deriving from two fundamental instruments of the United Nations: Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

is therefore the objective of the present study to make a comparison between the complaints submitted by journalists to transparency councils in Chile and Spain. The study will address the following research questions: Do journalists assert their professional status when requesting access to public information? Furthermore, how do public agencies consider the status of journalists when denying requests for access to information?

1.1. Right of access to information and journalism

Strömbäck (2005) defines the relationship between democracy, media and journalism as a "social contract". On the one hand, democracy is the form of government that best respects information freedoms and the independence of the media from state power, allowing for the free exercise of journalism and the creation of media. On the other hand, democracy requires a constant flow of information that enables public discussion and the autonomous control of power (p. 332).

In order to better serve democracy, Curran (2005) argues that the media must fulfil certain functions: for example, it should keep people informed about public affairs; it should be a fearless watchdog, monitoring the exercise of power and informing the public about wrongdoings; it should also be a platform for facilitating debate and the expression of different points of view; and it should give people a voice so that their concerns and worries are represented before the authorities. In these terms, the relationship between journalism and democracy is an academic, professional and normative consensus. However, the relationship is by no means clear-cut; rather, it is surrounded by questions and nuances that are natural to the new challenges of industry, technology and the socio-cultural characteristics of the community.

As posited by Mellado (2020), the expectations that society harbors regarding the role of journalism –such as the expectation of objectivity and the duty to hold powerful accountable– are not always met. Instead, these expectations are characterized by their dynamism; they change according to different situations and contexts. Meanwhile, Zelizer (2005) argues that definitions of journalism point in different directions, reflecting the diversity of media, technologies, historical periods and geographical locations. In summary, Zelizer argues that journalism "is anything but universal" (p. 67) and that a single definition will be incapable of reflecting all the expectations we have of the press in a democracy.

In this context, can we expect journalists and the media to be users of the legal tools for accessing information? In their legal basis, most of the so-called transparency laws stipulate that no reason or justification can be required from the state for requesting information. Thus, we may affirm that the subject entitled to access to information is a universal subject, given that all people have the power and freedom to seek, receive, and disseminate information (Sánchez de Diego, 2011).

However, since the journalist or information professional is "someone who has decided to exercise freedom of expression in a continuous, regular and paid manner" (IACHR, 1985, p. 22), he or she is a particularly important requester. Sánchez de Diego (2010) argues that there is an unspoken social delegation of the public to the information professional; an unspoken social delegation based on the qualification and specialization of the journalist as a representative of the public's interests, who is mandated to select, investigate and disseminate facts (Desantes, 1987).

If journalism is defined by its core commitment to the pursuit of information as a fundamental aspect of its profession, entrusted to it by the public, then it is reasonable to expect that journalists will be ideal and specialized users of the transparency laws.

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Indeed, Wagner and Cuillier (2024) characterize journalists as "public interest requesters" due to their role in requesting information on behalf of the public interest.

1.2. The (rather complicated) journalistic use of transparency requests

Despite this, the implementation of transparency laws within newsrooms has proven to be complicated (Silver, 2016; Camaj, 2016; Sierra-Rodríguez, 2020). A series of studies and professional audits have detected low levels of response (Piñeiro & Rossel, 2014), partial responses (Sohr & Zommer, 2018) and unjustified delays (Bluemink & Brush, 2005) when journalists request information. A recent study by Díez-Garrido (2024), sought to address this problem by consulting the opinion of journalists and access to information specialists in Spain. The study confirmed that the limits imposed by government agencies and response times are among the main obstacles that hinder the journalistic use of access to information tools. Consequently, these tools are not frequently employed in newsrooms (Díez-Garrido & Campos-Domínguez, 2018).

The factors that make it difficult to integrate access to information requests into journalistic routines have already been highlighted in these studies and audits: the responses of public authorities to transparency requests from journalists are slow and unsatisfactory. For instance, in an effort to determine whether journalists are subject to differential treatment by the public administration, Wagner and Cuillier (2024) conducted a comparative analysis of FOIA requests in the United States. The researchers distinguished between for-profit and nonprofit requesters, categorizing those seeking information for private, corporate and/or commercial purposes, and those requesting information for public interest purposes, which includes journalists and the media.

The results of their study suggest that the experience of accessing information is diametrically different for the two types of requesters: for-profit requesters report greater success and satisfaction than nonprofit requesters (p. 336). Wagner and Cuillier (2024) say that requests from those pursuing corporate or commercial interests tend to be less embarrassing for the government and state agencies obliged to respond, and therefore report greater success compared to public interest requests. In other words, the role that journalists play in society in promoting accountability and exposing irregularities ends up being a factor that works against them when dealing with the public administration.

1.3. The doctrine of the transparency councils

In order to ensure compliance with the right of access to information, transparency laws provide that applicants are entitled to a complaint procedure. The Transparency Councils (or similar designations) are the authorities responsible for conducting this appeals process, ensuring public agencies' compliance with the law by examining and deciding on each case. This is "a fundamental condition for the success of this type of legislation", according to Astudillo-Muñoz (2021), because "without a body with these characteristics, the right of access to information would end up being irretrievably overwhelmed by the political-partisan interests of the government in power or of any other relevant actor within the political system" (p. 147).

The resolutions of the Transparency Councils are documents that provide a detailed account of the decision-making process, including the various stages of the procedure (i.e. the text of the request, the public agency's response, the public agency's objections and the Council's decision). According to Droguett (2020), these councils "will hear most of the appeals brought in

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the first instance following a refusal of access or a failure to respond" (p. 195). It is for this reason that the resolution document is an extremely relevant corpus of analysis. It allows for the identification of the dynamics of a key moment: namely, when a subject who makes information seeking their profession is confronted with public agencies that limit access.

In addition, the resolutions of these councils provide a substantial body of jurisprudence, which is frequently consulted in legal sciences (Droguett, 2020). Consequently, they represent a valuable source of doctrine[2], suitable to answer the questions posed in the introduction. This corpus of analysis also allows for the combination of journalism studies with legal studies, which provides an interdisciplinary perspective better suited to address the research problem.

Therefore, this study adopts a comparative perspective, which allows, among other things, to test theories across different scenarios in order to understand the dimensions of a phenomenon (Esser & Vliegenthart, 2017). In this case, the comparative perspective between two countries is useful to understand how access to information tools is installed in different administrative and journalistic cultures. This makes it possible to identify elements that would probably not be obvious with other methodologies.

Chile and Spain are two countries with very similar systems of transparency. Both laws –*Ley 20,285* in Chile and *Ley 19/2013 de 9 de diciembre* in Spain– are part of legal systems that do not explicitly recognize access to information as a fundamental right of constitutional rank. However, the case law and doctrine in both countries have established a right of "constitutional anchorage" ["anclaje constitucional"] without the need for explicit recognition (Droguett and Sánchez de Diego, 2021). Moreover, both laws include the right to request information and have a similar catalogue of exceptions and limitations.

As is customary in legislation of this nature, both countries have established a body that receives complaints and examines the cases presented by users of the system through their transparency laws. In this regard, the Chilean Council for Transparency (*Consejo para la Transparencia*, CPLT) and the Spanish Council for Transparency and Good Governance (*Consejo de Transparencia y Buen Gobierno*, CTBG) are two bodies that, despite their significant differences in terms of design and functioning, allow for a comparative analysis of their doctrine. According to Astudillo-Muñoz (2021), the main difference between the two agencies is that the CPLT in Chile has an oversight and sanctioning function that the CTBG in Spain lacks, a situation that puts the latter "at a clear disadvantage as the body in charge of ensuring compliance" (p. 165). This discrepancy results in more effective decision-making by the council in Chile, however, it does not pose a problem when analyzing the arguments put forward by journalists and state agencies, which are the subject of this study.

2. Methods

This study presents an analysis of 57 resolutions of the Transparency Councils of Chile and Spain, which had to meet the requirement of being cases presented by journalists. To this end, a collection method was designed based on searching for keywords through search engines. Subsequently, the study then adopts a qualitative perspective to analyze the jurisprudence

2 For example, Article 8 of Royal Decree 919/2014, of 31 October, which approves the Statute of the Council for Transparency and Good Governance, states that this body is competent to "adopt criteria for the uniform interpretation of the obligations contained in Law 19/2013, of 9 December".

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of the councils. Each resolution was analyzed manually using an analysis matrix, which sought to identify the central elements of the argumentation of the journalist and the public agency in the context of a dispute over access to public information.

2.1. Data collection

A dual-search engine approach was adopted for the collection of resolutions. Within the Chilean context, the CPLT has established a digital repository of case law, wherein the resolutions made by the Council in response to submitted complaints are catalogued. CPLT initiated the case register in April 2009, following the enactment of Ley 20.285[3]. This repository also contains the judgements of the courts of justice (*Corte de Apelaciones* and *Corte Suprema*), those that have ruled on certain cases that have been taken to court after the Council's decision. However, the court rulings were not considered in the present study and were therefore excluded from the total number of cases.

In Spain, the CTBG website contains the resolutions of complaints[4]. These resolutions are available according to the type of administration (General State Administration, AGE, or Territorial Administrations, AA.TT.) and the year. Resolutions related to the AGE are available from 2015, while those related to the AA.TT. are available from 2016. Technically, the Council's website does not allow keyword searches for resolutions, as the Chilean jurisprudence search engine does. For this reason, Google search commands were used for Spain, using the command "site:consejodetransparencia.es", so that the keywords appeared only on the Council's website.

The keywords used to identify the cases in both search engines were "journalist" and "journalism" ["periodista" and "periodismo"]. The data collection period considered was from the date of availability on the websites of both councils (2009 in Chile and 2015 in Spain). The end of the period for both countries was 16 June 2022, the date on which the search was completed.

2.2. Data cleaning

The collection of data using keywords returned hundreds of matches; however, not all of them were relevant for the purposes of this study. Therefore, upon finalizing the search process, the subsequent step was to clean the data (see Table 1). This cleaning process differed in both countries. In the case of Chile, which has a more refined case law search engine, the search yielded 100 cases, including resolutions of the Council and judgements of the courts of justice. Firstly, all rulings from the courts of justice were excluded. Following this, the cleaning process continued by excluding all cases containing the words "journalist" or "journalism" that had not been presented by a journalist[5]. For instance, several cases were requests for information about the hiring of journalists by the state, while another was a historical background on the death of a journalist in 1973, among

3 The website is https://jurisprudencia.cplt.cl/cplt/index.php, created and maintained by the Chilean Transparency Council, Consejo para la Transparencia.

4 The resolutions of the website of the Spanish Council of Transparency and Good Governance are available at the following link: https://www.consejodetransparencia.es/ct_Home/Actividad/Resoluciones.html

5 For example, see cases C6792-19, C445-18, C1760-19, C1782-19, C3069-18 and C493-18, among others.

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others[6]. It is noteworthy that all these cases were excluded from the database, and consequently, they were not included in the total number of cases.

A Google search was conducted in Spain, with the results being limited to the CTBG website. This yielded 129 results; however, it should be noted that not all of these were resolutions. The search returned CTBG's annual reports, detailing its engagement in activities organized by educational institutions and journalism-related courses. Additionally, the Council's agendas encompassed meetings held with journalists and informative material developed by the CTBG. All these results were discarded and did not form part of the total number of cases. Similarly, all judgments from higher courts, such as the Audiencia Nacional, were excluded. As in Chile, resolutions that mentioned the word "journalist" or "journalism" but were not cases brought by journalists were excluded[7].

Table 1. Search results and final number of resolutions per country

Country	"Journalist"	"Journalism"	Total	N
Chile	60	40	100	13
Spain	103	26	129	44

Source: author's own creation

2.3. Analysis matrix

Following the compilation of the database containing 57 resolutions, a matrix was constructed in order to facilitate the identification and coding of aspects of the text deemed essential for the study's objectives. These aspects pertained to the central elements of the argumentation employed by the journalist and the public agency in the context of a dispute over access to public information. The initial phase of the analysis involved the identification of textual mentions of the words "journalist" or "journalism" within the 57 resolutions. A subsequent phase involved the classification of these mentions according to their placement within the dispute, specifically whether they appeared during the presentation of the request or the public agency's rebuttals.

The analysis matrix sought to identify the following: the country, the date of the request, the date of the response, the public agency to which the complaint is addressed, and the resolution. However, two additional aspects were coded (see Table 2): firstly, whether the journalist identifies him or herself or whether the public agency refers to the journalist, and secondly, the arguments supporting both mentions.

6 See case C493-18.

7 For example, in Resolution 874/2020 the applicant refers to an article by a journalist to substantiate his request, or Resolution 274/2016, where the applicant requests a copy of a journalist's qualification.

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Table 2. Glossary of analysis categories

Category	Description	Value
Journalist identifies him/herself	If the text of the resolution indicates that the journalist identified him/herself as such (during the request or appeal process), the answer is coded as "yes". If there is no indication that the journalist identified him/herself, the answer is coded as "no".	Yes / No
Public agency refers to the journalist	If the text of the resolution indicates that the public agency referred to the applicant's status as a journalist, code as "yes". If there is no indication that the public body referred to the applicant's status as a journalist, code as "no".	Yes / No

Source: author's own creation

3. Findings

Prior to the presentation of the results, it is imperative to clarify that the review of the 57 resolutions culminated in a matrix from which quantitative data is extracted, which is presented in two tables. Conversely, in order to provide a qualitative description of the main elements that are negotiated between journalists and public agencies, some passages were selected which –in the author's opinion– are relevant because they reflect the disciplinary and legal arguments exchanged by journalists and state agencies in the context of a dispute over access to information of public interest.

3.1. Spain: Journalists identify themselves and demand better protection

As shown in Table 3, in Spain, it was more common for journalists to self-identify as such, either at the initial stage of the request or during the complaint process, when defending their case. In contrast, in Chile, the majority of journalists who filed a complaint did not introduce or identify themselves.

Table 3. Frequency of cases in which the requester identifies as a journalist

Country	No	Yes	Total
Chile	8 (61,54%)	5 (38,46%)	13 (100%)
Spain	6 (13,64%)	38 (86,36%)	44 (100%)
Total	**14**	**43**	**57**

Source: Table compiled using the resolution analysis matrix. If the text of the decision indicates that the journalist identified him/herself as such (during the request or appeal procedure), it was coded as yes. If there was no indication that the journalist identified him/herself, it was coded as no

In Spain, journalists identify themselves as such in 38 out of 44 cases (86.36%). Journalists have different strategies when it comes to presenting themselves. In some cases, they are concise and merely inform agencies of their profession, while in others, they employ a series of legal and disciplinary arguments, as will be demonstrated below.

For example, in November 2020, an individual asked the Spanish Ministry of Health for the results of quality assurance tests on products purchased in the context of the Covid-19 pandemic. Twenty-one days after receiving the request, the Ministry of Health sent its response, invoking the grounds for non-admission provided for in article 18.1 e) of Law 19\/2013, "according to which requests that are manifestly repetitive or are abusive in nature without justification for the purpose of transparency of the law will not be admitted for processing" (Resolution 887\/2020, CTBG). Not satisfied with the aforementioned refusal, the applicant lodged a formal objection, stating:

> I am a journalist, and I need this information[8], as I request the final conclusions of the tests on medical supplies that the Ministry of Health commissioned on the Covid products that were purchased during the state of emergency (Resolution 887/2020, CTBG)[9].

Similarly, in March 2019, another applicant asked the Spanish Ministry of the Interior for access to the final report prepared by a consultancy firm on equal pay for state security forces. Two months after the request was submitted, the Ministry of the Interior declared the request inadmissible on the grounds that the information requested was "under preparation" ["en curso de elaboración"]. Faced with this response, the applicant lodged a complaint with the CTBG, stating that:

> I believe that (the Ministry of) Interior is using this argument, after having extended the deadline for me to reply, so that these preliminary reports are not made public, but as a citizen and as a journalist, I consider them to be of enormous interest. I therefore reiterate my request to have access to these reports (CTBG resolution 342/2019)[10].

In both cases, the journalist's presentation of his profession is rather brief, with no reference to a social or political function, and without mentioning any law, regulation or right. However, in other cases, legal and disciplinary arguments of the journalistic profession are deployed.

For example, in December 2017, an individual requested from the Spanish Ministry of Transport "each and every inspection recorded to date in the register of railway bridge inspections" (Resolution 0105/2018 of the CTBG). Two months after receiving the request, the Ministry of Public Works responded by denying access to the information, arguing that its publication could "affect the overall safety of rail transport as a strategic service" (Resolution 0105/2018 of the CTBG).

According to Resolution 0105/2018 of the Spanish CTBG, the applicant identified him/herself as a journalist when submitting the request, which is made clear at the stage of submitting disclaimers. In this section, the journalist begins their intervention by stating:

8 The underlining in direct quotations has been added by the author of this study.

9 The CTBG's decision in this case was to dismiss the journalist's complaint, considering it a "manifestly repetitive" request. The CTBG did not refer to the applicant's status as a journalist in its legal grounds.

10 The CTBG's decision in this case was to uphold the journalist's complaint and to order the Ministry of the Interior to provide, within a maximum of 10 working days, "the various preliminary reports prepared by the consultancy firm *Ernst Young Abogados SLP* on the subject of equal pay for state security forces and bodies". The CTBG did not refer to the applicant's status as a journalist in its legal reasoning.

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> Before going into the substance of my complaint, it should be recalled that this request is made in my capacity as a journalist for El Confidencial, published by Titania Compañía Editorial S.L., as stated in the heading of my request. According to the case law of the European Court of Human Rights, transposed into Spanish law by virtue of Article 10.2 of the Spanish Constitution, explained in detail in Resolution 10/2017 of the Andalusian Council for Transparency and Data Protection, journalists enjoy greater protection in the application of the right of access to information since, in the event that this right is denied to us, as the AESF has done, we are consequently prevented from exercising the fundamental right to inform enshrined in Article 20.1 d) (...) Therefore, in this case, because the person requesting information is a journalist, and I so state, Law 19/2013 becomes a fundamental right and, therefore, the public interest takes on special relevance (Resolution 0105/2018 of the CTBG)[11].

In this case, the journalist decided to mention both his profession and the media organization where they work and the publishing company that manages it. They also mentioned the case law of the European Court of Human Rights (ECHR), the resolution of a regional transparency agency and the Spanish Constitution, claiming "greater protection" of their right of access to information due to their professional role as a journalist.

In another case in 2017, an individual requested from the State Tax Administration Agency details of the tax pacts and agreements sent to the Organization for Economic Cooperation and Development (OECD). The agency denied access to the information, citing General Tax Law 58/2003 and the "confidential nature of data of relevance for tax purposes". Faced with this refusal of access, the applicant lodged a complaint with CTBG, where they began their presentation by saying:

> Firstly, the refusal by the Tax Agency prevents me, as a journalist, from exercising my fundamental right to information as set out in Article 20.1 d) of the Spanish Constitution and endorsed by the National High Court in the Appeal Ruling 51/2017, of 11 September 2017, in its Fourth Legal Ground; as well as by the European Court of Human Rights in its Ruling Magyar Helsinki Bizottság v. Hungary, of 8 November 2016, sections 164-170. In this case, the right of access to information contained in Law 19/2013 forms an essential part of my fundamental right to inform, as a journalist, as set out in Article 20.1 d), according to the doctrine of the National High Court. (Resolution 0044/2018 of the CTBG)[12].

In this particular instance, the journalist asserts that the refusal in question hinders his or her ability to exercise a fundamental right, citing both the Spanish Constitution and national and regional case law, with particular reference to the jurisprudence of the European Court of Human Rights (ECHR). The journalist also asserts that the right of access to information, and consequently Ley 19/2013, is imperative for the exercise of the fundamental right to inform, a right that is intrinsically linked to their "status as a journalist" ["condición de periodista"]. (Resolution 0044/2018 of the CTBG).

11 The CTBG's decision in this case was to uphold the journalist's complaint, ordering the Ministry of Public Works to hand over the requested information. The CTBG did not refer to the applicant's status as a journalist in its legal grounds.

12 The CTBG's decision in this case was to reject the journalist's complaint. The CTBG did not refer to the plaintiff's status as a journalist in its legal reasoning, but it did remind him that "in order to safeguard his fundamental right, he may initiate the procedure for the protection of the fundamental rights of the individual, of a preferential and summary nature, regulated in Articles 114 et seq. of Law 29/1998, of 13 July, which regulates the contentious-administrative jurisdiction and, where appropriate, the appeal for legal protection to the Constitutional Court, provided for in Articles 41 et seq. of Organic Law 2/1979, of 3 October, of the Constitutional Court".

3.2. Chile: The State identifies the journalist and refuses access because of the damage it could cause.

In contrast, in Chile, the journalist is identified as such in 5 out of 13 cases (38.46%). However, a notable aspect of the Chilean case is that in 10 out of 13 cases, the status of the journalist is identified by the public agency receiving the request or by third parties whose right to privacy would be violated by the potential release of the information. As illustrated by Table 4, the word "journalist" or "journalism" is mentioned in the section where the state body, or interested third parties, respond to the request or complaint. In several cases, the identification of the journalist is accompanied by an argument for denying access to the information.

Table 4. Frequency of cases where the agency identifies or refers to the journalist

Country	Yes	No	Total
Chile	10 (76,92%)	3 (23,08%)	13 (100%)
Spain	10 (22,73%)	34 (77,27%)	44 (100%)
Total	**20**	**37**	**57**

Source: table compiled using the analysis matrix for resolutions. If the word journalist or journalism appears in the body of the resolution in the organization's disclaimers, it was coded as yes. If there is no indication that the organization referred to the journalist, it was coded as no

In October 2009, for instance, a journalist asked for the salaries and other details of officials serving as institutional chaplains for the Chilean army. In other words, military officials carrying out religious duties. According to the text of the resolution, the journalist did not identify himself as such when making the request.

Twenty-six days after receiving the request, the Army responded with an official letter denying access to the information on the grounds that it was protected by the Code of Military Justice (*Código de Justicia Militar*, CJM). According to Article 436 of the CJM, the staffing of the armed forces, including military chaplains, is confidential. Not satisfied with this response, which prevented him from accessing the information, the journalist filed a complaint, again without mentioning his profession. However, the Army identified him by saying:

> Finally, (the Army) adds that the claimant is a journalist for a written media outlet (La Nación newspaper) who, by making use of this information, could cause serious damage to the protection of information that military activity constantly carries (Amparo Resolution C512-09, CPLT)[13].

In this instance, the Army is operating under the assumption that the work of the journalist at the newspaper *La Nación*, and the journalistic use of the information requested, could potentially have an impact on military activity. However, the Army did

13 The CPLT's decision in this case was to uphold the journalist's complaint, ordering the Army to hand over the requested information. In its legal grounds, the CPLT does refer to the claimant's status as a journalist and reprimands the Army for having invoked it as a reason for refusal. "Hence, the Public Administration cannot transform the profession of a petitioner as a journalist into a factor to be considered in order to deny the requested information, as the Army did in this case, discrimination that can only be rejected," the Council said in its resolution.

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not provide detailed or evidence-based analysis regarding the impact and effect that the right of access to information and journalistic activity would have on military functioning.

In another case, in January 2020, a person requested a copy of Exempt Resolution No. 193 of 18 July 2019, along with the background information available to the Investigative Police (*Policía de Investigaciones,* PDI) for the preparation of the said administrative act. The person did not identify him or herself as a journalist when making the request. The PDI extended the deadline for a response, and finally, 42 days after the request was submitted, it responded by denying access to the information on the grounds that the document requested was invalidated in February 2020, almost seven months after it was issued. It stated that it had been annulled in order to "adapt it to current regulations" ["adecuarla a la normativa vigente"] (Amparo Resolution Rol C1139-20, CPLT). Faced with this response, the applicant lodged a complaint, again without specifying their profession.

In its defence, the PDI then stated that:

> (...) resolution No. 193 dated 18 July 2019 contained errors in its content which should have been corrected, therefore, to reveal such information implies disclosing background information that the body should precisely consider when it is being prepared. Furthermore, it points out that its disclosure may give rise to interpretations, decontextualized questions that may put at risk, in a certainly, likely and specific matter, the adoption of the decision and that the applicant, in his capacity as a journalist, could carry out a report on background information that is no longer valid, the foregoing, in accordance with article 61 of law 19.880 of 2003 (Amparo Resolution Rol C1139-20, CPLT)[14].

In this case, the PDI claims that the disclosure of document that has been annulled –but has been in force for almost seven months– could lead to "interpretations, decontextualized questions" and that this risk is particularly latent given the applicant's status as a journalist. As in the Army's response, PDI identifies the journalist and assumes that his role would put the institution at risk.

Finally, in other cases, those who identify the journalist are those whose privacy could be affected by the publication of the information. For example, in October 2016, an individual submitted a request to the *Gendarmería* (the body responsible for the administration of prisons) for a performance evaluation of a female official of managerial rank. This official had been the subject of proceedings for administrative offences or crimes committed in 2013 and 2014. The applicant also requested access to and a copy of the files relating to these proceedings. Subsequently, *Gendarmería* requested an extension of the deadline for responding, and finally responded 44 days after the request was submitted, refusing access to the information on the basis that the official had expressed her opposition.

Dissatisfied with the decision refusing access to the information, the applicant lodged a complaint. In this context, the official concerned submitted her observations or defence, which are summarized in the decision as follows:

14 The CPLT's decision in this case was to reject the journalist's complaint on the grounds that the information was of a preliminary nature, the disclosure of which could affect the administration's deliberative privilege. In its legal reasoning, the CPLT refers to the complainant's status as a journalist, reiterating and supporting the PDI's argument that the publication of out-of-date information could lead to out-of-context questioning.

> (...) reiterating her opposition to the handing over of the information involving her, based, in summary, on the fact that the applicant has abused his right to public information, which makes her feel threatened, disturbed and deprived of her rights, since the applicant exercises this right in a way that deviates from the objectives for which it was created. On 16 December 2016, the claimant made a publication in the newspaper "El Ciudadano" –which she attaches– "disseminating actions that affect my reputation, without having any background information that would allow the validity of what is stated there, only through information obtained from a former professional of this Service who would act out of possible revenge, without considering the damage caused (...)". In this sense, she adds, the claimant's intention is to gather as much information as possible with the sole purpose of affecting his constitutionally guaranteed rights, since its disclosure affects his right to security, health and the sphere of his private life (Amparo Resolution Roll C4114-16, CPLT)[15].

In her rebuttals, the official expressed concern over an alleged misuse of the right of access to public information, where the applicant deviated from the aims and objectives for which the law was created. She also mentions that a recent publication by a media outlet is damaging her reputation. Again, the role of the journalist requesting public information is perceived as a risk or threat.

Something similar happened in November 2017, when a journalist made a request to the Superintendency of Securities and Insurance (*Superintendencia de Valores y Seguros,* SVS), the body that oversees the financial system. Without mentioning that he was a journalist, he asked for "access to the sanction resolutions that the SVS has applied to 9 people or companies. These are the people or companies that were investigated and sanctioned by the SVS on the basis of the information provided by the defence of Mr Sebastián Piñera during the investigation of the so-called 'Lan case'" (Amparo Rol C163-18, CPLT). The request is directly related to the then-incumbent president of Chile and a 2007 case in which the businessman was fined for breaching the duty to refrain from buying shares in the LAN airline while in possession of inside information.

The SVS –which became the Financial Market Commission in 2018– responded by stating that the sanction resolutions were "not public", citing Law No. 19,628 on the protection of personal data. It claims that the request was sent to the eight individuals involved (as one of them had died) and that six of them opposed the publication of the requested documents. The SVS therefore only agreed to hand over the two decisions to which the third parties did not object.

The journalist filed a complaint without mentioning his profession as a journalist. In order to improve the resolution, the Council again sought the opinion of the eight third parties involved. In their defence, the third party said:

> The applicant's status as a journalist and communicator leads one to assume that his intention is to include the requested information in a publication, which clearly puts his rights at risk which, according to the legal system, could only be affected by the commitment of the public interest, which in no case is seen in this case (...) The grounds for confidentiality in Article 21 No. 2 of the Transparency Law also concur, insofar as its publication, communication or knowledge of it clearly jeopardizes his private life as it is likely to affect

15 The CPLT's decision in this case was to uphold the journalist's complaint and to order *Gendarmería* to provide the information requested. In its legal reasoning, the CPLT does not refer to the complainant's status as a journalist.

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> his honor, that is to say, his dignity, prestige and credibility, as a result of the journalistic publication that presumably entails the disclosure of the requested information by a journalist (Amparo Resolution Case C163-18, CPLT)[16].

In this case, the third parties use the profession of journalist as an argument against access to information. In a proportionality analysis, third parties assume that the only reason for the infringement of their private sphere would be a "commitment to the public interest", which "in this case is in no way discernible". According to this line of argument, access to information on the illegal activities of individuals and companies linked to the President of the Republic would have no relation to the public interest. Once again, the practice of journalism is perceived as a risk or a threat.

Finally, public agencies also argue about the allegedly abusive nature of requests for access to information made by journalists. For example, in February 2018, a journalist submitted a series of requests to the Chilean Army without mentioning or referring to his professional status. He requested the minutes and decisions of court martial proceedings from September 1973, as well as the curricula vitae of military officers serving at the time. The Army granted access to the information, but informed him that, due to the volume of information, the cost of reproduction would be 95,000 Chilean pesos (approximately US$100). The applicant filed a complaint, stating that the amount was excessive and that he could not afford it. The Army filed its defence, stating:

> The claimant appears on the internet on the website he created www.diarioelmarino.c1 "About me - Diego Grez Cañete", stating that he was a student at the University of Chile during the years 2013 and 2015, subsequently participating in conferences abroad, collaborating with articles in various media, hosting radio programs, founding the digital newspaper "El Marino" –of which he is the owner and director– publishing three books of his own and receiving funding from the Ministry of the General Secretariat of the Government through the Media Fund (...) Furthermore, from the accompanying background information, it is clear that the applicant has made a real profession out of accessing public information, without appearing willing to accept the obligations that such conduct entails, and that this translates into assuming the direct reproduction costs, as a result of the multiple requests for public information that he has made to various bodies of the State Administration, in accordance with current regulations on the matter (Amparo Rol C809-18, CPLT)[17].

In its response, the public agency makes it clear that it has conducted a thorough external review of the applicant's background, journalistic work, and funding. The Army then uses this data to argue for the aforementioned reproduction costs. The Army also adds that "the applicant has made a real profession out of accessing public information". This is an irrefutable fact: access to information is indeed a journalists' profession.

16 The CPLT's decision in this case upheld the journalist's complaint and ordered the Financial Market Commission to provide the information requested. In its legal reasoning, the CPLT does not refer to the complainant's status as a journalist and goes on to emphasize that "decisions imposing sanctions are public insofar as they are administrative acts pronounced by a body of the State administration in the exercise of its powers".

17 The CPLT's decision in this case was to uphold the journalist's complaint and to order the Army to provide the requested information, adjusting the costs of reproduction to reflect their value. In its legal reasoning, the CPLT does not refer to the applicant's status as a journalist.

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4. Discussion and conclusion

The aim of this study was to understand the elements that are negotiated in this relationship between journalists and public agencies, in the context of a dispute over access to public information. To this end, it was decided that the most appropriate corpus for analysis would be the decisions of the Councils for Transparency in cases brought by journalists against state public agencies, where access to information is requested by the former and refused by the latter. This is a common methodological approach in legal sciences, but innovative in journalism studies. A comparative perspective was also adopted, considering the resolutions of the Transparency Councils of Chile and Spain. Both councils are autonomous bodies created by the respective Transparency Law, as independent bodies, guarantors of the right of access to information and a source of doctrine on access to information for the countries under study. The comparative perspective was founded upon the premise that, in the context of examining two analogous transparency systems, the distinguishing characteristics would become evident. This supposition was subsequently validated.

The results demonstrate that, in Spain, journalists formally introduce themselves to the CTBG, clearly identifying their role while requesting that their professional status be given due consideration. In other words, the status of journalist is not trivial for the applicant, since it would require the public agency and the CTBG to consider the role of journalism and the press in the legal discussion of an access to information case. In support of this argument, journalists have cited a wide range of legislation and jurisprudence. These include Article 20.1.d) of the Spanish Constitution, resolutions of regional bodies, European Union directives and the doctrine of the European Court of Human Rights[18]. In conclusion, in the resolutions analyzed, Spanish journalists recognize themselves as essential to democracy and demand that the state recognize this by safeguarding their right to access information in the public interest.

Law 19/2013, of 9 December, on transparency, access to public information and good governance in Spain, does not provide for a status of special legal protection for journalists in a process of access to information. However, its articles do not completely exclude its applicability. Article 17.3 states that, in the process of requesting information from the State, "the applicant is not obliged to justify his request for access to information". This first definition excludes the requirement to give a reason or motive for requesting information, so the requested agency is not entitled to refuse the request simply because no reason is given. Nevertheless, Article 17.3 goes on to say that the applicant "may state the reasons for requesting the information and that these may be taken into account in the decision". In this way, the law establishes that although there is no obligation for the applicant to state a reason or motive, this does not prevent the requested agency from taking it into account if it is presented.

It should be emphasized that in Spain, the special consideration given to the press because of its role in a democratic society is supported by case law. According to Sierra-Rodríguez (2024), journalists have a "prominent position" in the exercise of

18 They refer particularly to the judgement Magyar Helsinki Bizoeság v. Hungary, of 8 November 2016, §§ 164-170. This judgement grants an essential role to journalists and NGOs as holders of the right to information. It refers to the safeguards that should be conferred on the work of the press. "The manner in which public watchdogs carry out their activities may have a significant impact on the proper functioning of a democratic society. It is in the interest of democratic society to enable the press to exercise its vital role of "public watchdog" in imparting information on matters of public concern." And it continues: "Thus, the Court considers that an important consideration is whether the person seeking access to the information in question does so with a view to informing the public in the capacity of a public "*watchdog*."

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the right to free communication of truthful information, although this is a right guaranteed to all persons. "This has been reaffirmed by the Constitutional Court (Tribunal Constitucional, TC) over the years, on the basis that the media are a normal channel for the formation of free public opinion, which is a prerequisite for the exercise of other fundamental rights and for the functioning of democracy" (pp. 380-390)[19]. On the other hand, and more specifically in the context of the right of access, case law recognizes that the status of journalist is not irrelevant to the administration when requesting information from the State under Law 19/2013 of 9 December: "The application of restrictions on access to information –Article 14.1.d) Law 19/2013– must be carried out with caution and with restrictive criteria that do not undermine the objectives of transparency in the activities of public bodies. When the person requesting information is a journalist, these precautions must be doubled in order not to compromise the freedom of expression and the free communication of information by the media, which are fundamental rights protected by the Constitution" (STS 454/2021, of 25 March).

Despite this preferential right of journalists under Spanish constitutional doctrine, and the explicit invocation of this special protection of the right to information –and of the role of journalism in a democratic society– in none of the decisions analyzed does the CTBG grant the complainant a status of greater protection for fulfilling a legally recognized role. The CTBG does not refer to these arguments, even when the public authority does so in the defence phase.

In contrast, the results of this study indicate that in Chile, the majority of journalists did not disclose their identities during the process, neither in the submission of the request nor in the complaint exposé. Furthermore, they did not present arguments requesting preferential treatment for fulfilling the function of informing. On the contrary, in 10 out of 13 cases, the applicant's status as a journalist was used as an argument for refusing access to information. In this respect, it is interesting to note that the right of access to information in the context of journalistic work is literally described as harmful to the functions of the State and seen as a risk to its decisions and procedures. It is also claimed that the requests made by journalists are abusive in nature, as they repeatedly submit multiple requests to the State, precisely in the exercise of their function to inform the public.

Article 11(g) of Law 20.285 enshrines the principle of non-discrimination, which stipulates that "the bodies of the State Administration must provide information to all persons who request it, under equal conditions, without making arbitrary distinctions and without requiring an explanation of the reason or motive for the request". This article is more restrictive than Spanish law in that it not only rules out the obligation to give a reason but also prohibits all forms of arbitrary discrimination. A review of cases in Chile reveals that the CPLT employs this principle to address instances where public agencies utilize the journalistic function as a basis for refusal. In instances where the applicant adopts a passive role, as observed in the Chilean context, the universality of the right of access to information tends to favor the applicant. In contrast, in Spain, where the journalist applicant adopted a more proactive and assertive stance, their efforts proved unsuccessful, as they did not receive

19 Sierra-Rodríguez (2024) mentions Constitutional Court rulings that recognize this prominent position of journalists in the exercise of the right to communicate truthful information, such as STC 6/1981, of 16 March, and 30/1982, of 1 June. To this end, it is important to stress that the CC rules out the existence of a privilege for journalists, pointing out that the rights recognized in article 20.1 of the CE are of general application, but accepts a privileged position in favor of information professionals. STC 6/1981 states that the right to communicate is for the benefit of all citizens, "although in practice it serves above all as a safeguard for those who make the search for and dissemination of information their specific profession".

the special protection they sought. In summary, the analysis corroborates the literature's findings that the experiences of journalists accessing information as public interest applicants are arduous and unsatisfactory.

A further noteworthy finding of the present comparative study was the clearly divergent attitudes of journalists in the two countries. What motivates Spanish journalists to mention their profession and argue legally about their role in democracy? What prevents Chilean journalists from doing the same? To answer these questions, it would be essential to refer to one of the key concepts in journalism studies: professional roles, a set of values, ideals and practices that make up the journalistic culture of a country, a medium or a particular type of reporting. According to Mellado (2020), far from being static, journalistic roles are situational, dynamic and fluid, as they cannot be understood outside a meaningful context. Future studies could use qualitative methods to deepen the findings of this research, conducting in-depth interviews that help to describe and understand specific information practices and, in particular, how journalists perceive that they can overcome the obstacles to fulfilling their mission.

Finally, it is important to mention the limitations of the study. Despite the selection method's objective of encompassing the entire universe of cases since the establishment of the two councils, it exhibited a fundamental limitation inherent to the system of access to information in both countries. The principle of universality of the right of access to information means that in Chile and Spain, the applicant's profession is not registered. Therefore, to identify a complaint filed by a journalist, the words "journalism" or "journalist" must be explicitly mentioned throughout the text of the resolution. This indicates there may be cases in both countries that were filed by journalists but could not be identified in this study due to the absence of explicit mention.

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6. Conflict of interest

The author declares that there is no conflict of interest contained in this article.

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