



EXCMO. AYUNTAMIENTO  
DE  
ALMENDRALEJO  
(BADAJOZ)

OFICINA TÉCNICA

Document 2  
Translated from the Spanish original

AYUNTAMIENTO DE ALMENDRALEJO	
REG. N.º 9166	
Fecha 21-11-2007	

MATTER: SENDING ANSWER TO RELATIVE WRITING ON REQUEST OF INFORMATION. -

In relation to the request of documents carried out by means of writing presented in this Town hall with date September 21, 2007, registered n° 11027, relatively to "Fulfillment of the established in the Municipal Regulation of Spilled and Treatment", by the present there is enclosed report issued by the General Secretariat of the town hall on the right to information of the citizens.

Almendralejo, on November 21, 2007



Fdo. José M<sup>a</sup> Ramírez Moran

26/11/07

29/11/07

D. FÉLIX LORENZO DONOSO.  
PLATAFORMA CONTRA LA CONTAMINACIÓN DE  
ALMENDRALEJO.  
C/GUADALUPE N° 17. CIUDAD.-

## **REPORT OF THE GENERAL SECRETARIAT OF THE TOWN HALL OF AMENDRALEJO ON THE RIGHT TO INFORMATION OF THE CITIZENS**

### **I - PRECEDENTS.**

By D. Félix Lorenzo Donoso, acting in representation of the Platform against the Contamination of Almendralejo, there appears writing directed to the Mayor - president of the Town hall in which it is requested communicate to him the number of companies or industries forced to obtain the authorization of spilled according to the established in the Regulation of Spilled and Treatment; communicate to him the number of provisional authorizations that have been granted; communicate to him the number of definitive authorizations that have been granted; communicate to him if alcohol they count it at present with proper treatment system and, in affirmative case, indicate him if they have the necessary licenses, there is specified the system used for the achievement of this proper treatment, and copy of the last realized analyses before the effluent ones are spilled to the public sewerage; communicate to him the number of sanctions imposed by infractions to the Municipal Regulation of Spilled and Treatment, as it is established in articulated of the same one. Also it is requested communicate to him the number of sanctions to the Town hall in the last ten years for spilled to the river bed of the creeks of the Stings and Harnina, anyone that there should be the causes and the qualification that has been given them, as well as the quantities of the same ones.

### **II. - JURIDICAL CONSIDERATIONS.**

Inside the right to information on the part of the citizens it is included, the right to the access to files and registers, the right to know in any moment the state of procedure of the procedures and to obtain copies of the documents contained in it, the right to identify the authorities and officials and the right to obtain information and orientation about the juridical or technical requisites.

The article 70.3 of the Law 7/1985, of April 2, Regulatory of the Bases of the Local Regime (from now on LBRL) establishes that all the citizens have right to obtain copies and supporting certifications of the agreements of the Local Corporations and his precedents, as well as to consult the files and registers in the terms that there arranges the legislation of development of the article 105.b) of the Constitution. In the same sense the article 207 of the Royal decree 2568/1986, of November 28, which approves the Regulation of Organization, Functioning and Legal system of the Local Corporations (from now on ROF).

The right of the citizens to obtain copies and certifications and to consult the files and registers, constitutes the most intense declaration of the right to obtain information, since it allows the delivery to the citizens of documents that reproduce the agreements and resolutions and his precedents, as well as the contemplation and personal and direct examination of registers and files; it is conceived not only with this major intensity, but with major legitimated largeness, since it is recounted to all the citizens and not only to the neighbors.

To these effects the article 230 as regards 229 of the ROF establishes that it will exist in the administrative organization of the Entity an Information office that will canalize all the activity

related to the advertizing on the call and commands of the day of the sessions of the Plenary meeting, contained of the sessions and of all the agreements of the Plenary meeting, Local Governing body and resolutions of the Mayor and representative Councilmen. The securing of copies and supporting certifications of municipal agreements or precedents of the same ones, as well as the consultation to files and registers, will be requested to the said Office, which, of office, will realize the negotiations that are precise so that the petitioner obtains the information needed in the term as brief as possible and without it supposing dullness of the tasks of the municipal services.

To effects of looking for a rationality in the service of this information service, it arranges the article 230.2 of the ROF that the supply of the same one will do to itself in the term as brief as possible and without it supposing dullness of the tasks of the municipal services

The information requests will have to be reasoned, unless they refer to the securing of certifications of agreements or resolutions that, in any case, will be able to be obtained by means of payment of the corresponding charge (article 230.4 of the ROF). Also, the request will have to assemble the requisites demanded by the article 70.1 of the Law 30/1992, of November 26, of Legal system of the Public administrations and Common Administrative Procedure (from now on LRJ-PAC).

The same recognition of the article 70 of the LBRL is established in the article 37.1 of the LRJ-PAC, on having admitted that the citizens have right to gain access to the registers and to the documents that, being part of records, act in the administrative files, anyone that is the form of expression... whenever the above mentioned documents fit to procedures finished in the date of the request.

The refusal or limitation of this right, in everything all that affects the safety and defender of the State, the inquiry of the crimes or to the intimacy of the persons, will have to happen by means of motivated resolution (article 70.4 LBRL). In the same sense the article 37 LRJ-PAC, which it specifies more, the access to the documents that contain data regarding the intimacy of the persons will be allocated to these, the year of the rights that establish the previous paragraphs will be able to be refused when reasons of public interest prevail, for interests of third worthier of protection or when it is arranged by a Law, motivated resolution having to in these cases be dictated.

The article 37.6 of the LRJPAC enumerates the files, documents and records for whose access will be necessary to bear in mind his specific dispositions (classified matters, data access sanitary ware, files regulated by the legislation of electoral regime, files for ends exclusively statistical, Civil and of Convicts and Rebels Log, I access for Deputies, Senators, members Legislative Assemblies of the Autonomous regions, councilmen or provincial deputies). To the above mentioned procedures it would be necessary to add foreseen in the Law 27/2006, of July 18, by that there are regulated the rights of access to information, of public participation and of access to the justice on the subject of Environment, that in what fond has to this matter basic character (Third Final Disposition) and that, in this matter, in which it was possible to include the precedent established in the formless present, does not modify in the substantial thing the indicated in this one, since his article 10.2.a) is required that the request should be formulated in a precise way and in the article 13.1.b), c) and d) it establishes that the public authorities will be able to refuse the environmental information requests when the request is clearly unreasonable, that the request is

formulated in an excessively general way and that refers to material during preparation or to documents or unfinished data.

Nevertheless, it will be necessary to analyze the requests in every concrete case, but with general lines the indiscriminate requests cannot be understood like a reasoned request. Although the information securing does not need to credit the interested party condition, to exhibit the purpose for which it is needed, at least it has to be reasoned to what he answers, so more that I legitimize the year of a right it might be considered to be a right abuse. A request, like that is formulated in the writing that is an object of this report, in vague and generic terms, deserves to be refused, bearing in mind that the article 37.7 of the LRJ-PAC determines that the right of access to files and registers will be exercised so that there does not turn out to be affected the efficacy of the functioning of the public services, having to such a purpose formulate individualized request of the documents to be consulted, without it being necessary to formulate generic request.

Since it establishes the STSJ of Cantabria of November 18, 1996, *"an equitable interpretation of the right of the neighbors has to stretch to a major and better information, but with the necessary nuances «not to fall down in the absurdity of which it could endure a dedication and special laboriousness of the Administration towards determined administered» putting on top the right of the neighbor to the legitimate interests and general rights that the Town hall represents. Monopolizing, if the records are different, voluminous, ancient, etc., the activity or tasks of the officials, which we suppose would have scarcely the necessary ones, with incidence or blocking of the normal administrative march"*.

The Room of the Contentious - Administrative of the TSJ of Castile and León in Judgment of April 1, 2004 establishes: *"Therefore, of the special thing till now it is possible to deduce that the right to information has extreme and is enough to state it in spite of examining the said articles 105.b) of the Constitution, 37 of the LRJ-PAC, 70.3 of the LBRL, 207 of the ROF and, in particular to the arranged in the article 37.1 of the LRJ-PAC to the effect that «the access right will be exercised by the individuals so that there does not turn out to be affected the efficacy of the functioning of the public services»..."*.

The article 35.c) LRJ-PAC gathers the right to obtain sealed copy of the documents that they present contributing it together with the originals, as well as the return of these, except when the originals should act in the procedure.

Independent from the general right to information and from access to the files and registers, there is recognized the right to know the procedure of the procedure in those who should have the interested parties condition. In this sense, the citizen who should have the interested party condition in records, can know in any moment the state of procedure of the records or procedure, which can only be demurred in case of interested parties plurality and when the juridical arranging should protect others for some certain reason.

Also has the right to obtain sealed copies when it is processed as documents presented by the proper citizens.

In the terms in which the information is requested and without reasoning the motive and finality of the same one, more than the year of the right to information on the part of the neighbors or citizens, one would try to exercise a local inspection of the governmental bodies that only fits - in our case - to the councilmen. If the right to information and access to files and administrative registers has his constitutional recognition (Art.105. b) CE) and the concrete development for the citizens in the LRJ-PAC and in the local ambience in the LBRL, the right to information and to the access to files and registers of the members of the Local Corporations it is an essential budget and it is part of the faculties that integrate the right to take part in the public matters on the part of the citizens through his representatives.

The Supreme Court establishes in repeated jurisprudence which are the proper functions of the Councilman's charge pointing out that *"this effective participation in the public performance is evident in a wide scale of concrete matters between which it is necessary to emphasize the right to the inspection of the municipal performances and to the control, analysis, study and information of the necessary precedents, working in the municipal services, so much for this control work how for to research with a view to decisions to adopt in the future... the securing of information about matters of municipal competition it is a necessary way so that the Councilmen could, with sufficient knowledge, exercise the proper functions of his charge"* (logged in' others the SSTs of March 26, 1987 and give on November 8, 1988).

In view of all that it precedes it is possible to formulate the following one,

### III. - CONCLUSION

The request does not assemble the conditions demanded by our juridical arranging for the year of the right to information on the part of the citizens, since it is possible to view affected the efficacy of the functioning of the public services, there is not formulated individualized request of the documents to be consulted but generic, the motives of the above mentioned information nor are reasoned, by what the same one can be refused.

The agreements and resolutions of the governmental bodies of the Town hall of Almdralejo surrender to the obligatory advertizing in the terms that are established in the articles 70.2 of the LBRL and 229 of the ROF.

Almdralejo, on November 21, 2007

EL SECRETARIO GENERAL



Fdo. Jesús Hernández Rojas.

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