

# TRANSLATION

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## Republic of Panama Superintendency of Banks

### GENERAL RESOLUTION SBP-RG-0001-2016 (dated 23 December 2016)

#### On the classification of information kept by the Superintendency of Banks for the application of Law 6 of 2002

#### THE SUPERINTENDENT OF BANKS in use of his legal powers, and

#### WHEREAS:

Due to the issuance of Decree Law 2 dated 22 February 2008, the Executive Branch reedited Decree Law 9 dated 26 February 1998 and all of its amendments as a consolidated text, and this text was approved by means of Executive Decree 52 dated 30 April 2008, hereinafter referred to as the Banking Law;

Articles 42 and 43 of the Political Constitution establish, respectively, the basic guarantees of any person to access his/her personal information and to request public access or collective interest information when it is kept in public databases or registries and, in the case of the second guarantee, as long as its access has not been limited by written disposition or mandate of Law;

Although the above rights acquired constitutional status in 2004, they had already been developed in Law 6 of 2002 “whereby transparency rules for public management, *Habeas Data* and other provisions were prescribed”;

Pursuant to Law 6 of 2002 and other existing regulations at that time, and because the SBP deemed it appropriate and convenient, the Superintendency of Banks described, and informed the public of, the information it kept, according to the categorization of the information (free access, confidential, restricted or classified), by means of General Resolution SB 2-2004 dated 16 September 2004;

During the time General Resolution SB 2-2004 has been in force, the contents of, and terminology in the various legal documents have been updated according to the referred reforms to the Constitution, the Banking Law and the new Law on Public Procurement. Consequently, it is again necessary and convenient for the Superintendency to prescribe provisions for the classification of the information it maintains, to conform with the new legal framework;

The term “confidentiality” in Law 6 of 2002 is associated with the medical and psychological data of people, the private lives of individuals and the information relevant to minors, while in the Banking Law, it refers to the information on bank customers and their transactions;

On the other hand, when Law 6 of 2002 prescribes provisions on “reserved” information, it delegates its scope to the relevant provisions of different regulatory frameworks, such as the banking law and applicable regulations for the prevention of money laundering. Therefore, regarding the Superintendency of Banks, the information handled as “reserved” information is that of confidential nature within the Banking Law, the Trust Law and the Law for the prevention of money laundering, the financing of terrorism and financing the proliferation of weapons of mass destruction;

Article 110 of the Banking Law further develops the right of administrative confidentiality for the information associated with the individual customers of banks, obtained by the Superintendency of Banks in the discharge its duties, that may only be disclosed when required by competent authority during the course of a criminal proceeding pursuant to existing legal provisions;

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From the point of view of guarantees, this is a dialectical and peaceful debate between two persons acting in perfect equality facing a third party that has authority and, therefore, the exception in Article 110 of the Banking Law takes effect against an individual whose information is required during the course of a criminal process; and

Pursuant to the provisions of Article 13 of the Banking Law, the Superintendent is responsible for the administration and management of the Superintendency's daily affairs and, according to subparagraph 27 of Article 16, he/she is authorized to decide all technical matters which are not expressly reserved for the Board of Directors or another authority;

## RESOLVES:

**ARTICLE 1. FREE ACCESS INFORMATION.** As the provisions of Article 11 of Law 6 of 2002 are admitted, free access information is defined as any topic of administrative character related to the functions and public actions of the Superintendency of Banks, including information on recruitment and appointment of employees, payroll, representation expenses, travel expenses, emoluments or per diem payments, as well as statistical information.

Regarding Public Procurement, the governing norm is the Transparency Principle in Articles 17 and 18 of Law 22 of 2006, whereby transparency rules for public management, *Habeas Data* and other provisions are prescribed.

Free access information will be available to the public through the relevant technology channels and media, and it may be furnished to interested parties in print and free of charge as provided for in Law 6 of 2002. Certified information is excepted, requiring the requestor must comply with the formality and costs provided for in the Proviso of Article 4 of the aforementioned regulation.

**ARTICLE 2. CONFIDENTIAL, RESTRICTED ACCESS AND CLASSIFIED INFORMATION.** For the application of Law 6 of 2002, classified, restricted access and confidential information is defined as follows:

1. **Confidential information:** For the purposes of Articles 1 and 13 of Law 6 of 2002, it is any information on medical or psychological data or the private lives of people, including their family issues, marital activities or sexual orientation, their criminal and police records, their correspondence and telephone conversations and those conversations conducted through electronic or audiovisual means. This classification applies especially to the officials of the Superintendency of Banks, including their individual records and human resources files.

Classified information cannot be revealed under any circumstance, but it may be placed at the disposal of the owner pursuant to Article 42 of the Political Constitution and Articles 3 and 13 of Law 6 of 2002.

2. **Restricted access information:** For the application of Article 14 of Law 6 of 2002 within the Superintendency, the following information is included in this category:
  - a. Annual reports, letters, correspondence and documents related to diplomatic, commercial or international negotiations of any nature, including information and drafts of the Memoranda of Understanding entered into by the Superintendency of Banks and other domestic or foreign supervisory bodies;
  - b. Documents, files and transcriptions provided to the country and/or the Superintendency by friendly countries, as a result of criminal, police or other investigations.

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Restricted access information cannot be revealed within ten years of its classification as such, unless the reasons for its restricted access cease to exist prior to ten years or the period is extended under the provisions of Law 6 of 2002.

For purposes of the above, the restricted information will be classified as such from the moment it is obtained and, if it should be determined at any time that there are no longer reasons to justify its restricted access, the Superintendency will issue a Resolution to that effect.

3. **Classified information:** For the application of Article 15 of Law 6 of 2002 on "classified" information within the Superintendency's framework, the following access and information rules are applicable:

a. For the Banking Law, the information associated with individual bank customers obtained by the Superintendency in discharging its duties, must be kept under strict confidentiality and may only be revealed when it is required by competent authority in the course of a criminal proceeding pursuant to existing legal provisions.

The Superintendency, including its staff and external auditors, advisors, appointed interim administrators, receivers, and liquidators, must keep all information that has been furnished or obtained pursuant to the Banking Law under strict confidentiality. Therefore, the Superintendency may not reveal the information to third parties unless it is required to do so by competent authority in accordance with the Banking Law. The reports or documents that, according to the Banking Law and their nature, are public and those that must be submitted in compliance with the laws on the prevention of money laundering, the financing of terrorism and related crimes are excepted from the above;

b. Any information obtained in connection with the Trust Law also enjoys confidentiality;

c. Any information obtained in connection with the Law for the prevention of money laundering, the financing of terrorism and financing the proliferation of weapons of mass destruction must be kept under strict confidentiality and can only be revealed to the Public Ministry, criminal investigation officers and jurisdictional authorities in accordance with existing legal provisions.

In connection with this Law, the Superintendency may not inform the customer or third parties that the information, including suspicious transactions reports submitted to the Financial Analysis Unit for the Prevention of Money Laundering and the Financing of Terrorism, has been requested or provided;

d. Public officials, including those working for the Superintendency of Banks, that have access to information discussed herein due their official position, are warned and will be warned that they are bound by the confidentiality rules even after they cease to be public officials.

**ARTICLE 3. OTHER CLASSIFIED INFORMATION CASES.** The following administrative files are also considered classified information:

a. Punitive administrative processes, including documents resulting from, among others, denunciations, claims, complaints, reports, statements, evidence or communications that, at the same time, give rise to other documents, resolutions, sanctions or recourses. The above is without prejudice to the provisions of Article 189 of the Banking Law that authorizes the Superintendent to publish the sanctions made according to the Banking Law;

b. Those containing information on bank accounts;

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- c. Those related to the examination and supervision of banks, trust companies, and other activities, entities and economic groups under the legal regulation and supervision of the Superintendency of Banks, as well as corrective measures and measures involving the seizure of administrative and operating control, reorganization or compulsory or voluntary liquidation;
- d. Those accompanying or supporting license applications, changes or cancellations of banking and/or trust licenses;
- e. The Memoranda of Understanding entered into by the Superintendency of Banks and other domestic and foreign supervisory bodies, as well as the information obtained for compliance with their provisions;
- f. All other supporting material containing aspects related to the above items, e.g. reports, aide-memoires, recordings, tapes, internal communications or technological information.

Without prejudice to the above, administrative files may be made available, as applicable, to verified interested parties and their representatives.

**ARTICLE 4. ILLEGALITY OR DENIAL OF INQUIRY.** In the event the Superintendency does not hold the required free access document(s) or registry(ies), it will so inform the requestor. Should the Superintendency be aware that another institution holds or may possess the requested or similar document(s), it will so inform the requestor.

For any denial of information due to classification or restriction as defined by the Law, the Superintendent will issue the denial through a Substantiated Resolution indicating the legal grounds for denial.

In order to submit information on individual bank customers required by competent authority in accordance with existing legal provisions, the existence of a current criminal proceeding against the individual for which the information is required must be confirmed.

**ARTICLE 5. REPEAL.** This General Resolution repeals General Resolution SB 2-2004 dated 16 September 2004 in its totality.

**ARTICLE 6. ENACTMENT.** This General Resolution will be effective as of its publication in the Official Gazette

Given in the city of Panama on the twenty-third (23<sup>rd</sup>) day of December, two thousand sixteen (2016).

## FOR COMMUNICATION AND ENFORCEMENT

Ricardo G. Fernandez D.  
Superintendent