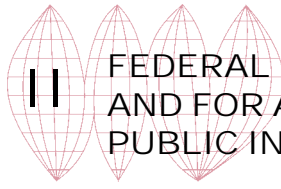


I TRANSPARENCY AND ACCESS TO PUBLIC INFORMATION

The eighties was a decade characterized by the political transition from authoritarian regimes to systems that over time were to become democratic; the nineties stand out as the period of “the advent of transparency and access to information”. Despite the fact that the very first legislation in terms of access to information came into being in 1776 –when Sweden passed the Freedom of Press Law– it has only been in the past ten years that these two topics, intrinsically linked, have been incorporated into the political agenda of a sizeable number of countries. At present, over 40 countries have established legislation that promotes access to information in the hands of government, and another 30 are undergoing the process of designing, discussing or adopting said regulations. Transparency and access to public information are two qualities inherent to a representative government. In fact, a democratic system should promote institutional channels for access to information that will enable society to be informed of and evaluate (on a periodic basis, not merely through electoral processes but through alternative ways of expressing preference) government management and the performance of civil servants. This is, obviously, in addition to guaranteeing clear and reliable rules to govern electoral competition and the rise to power.

Transparency and access to information are two mechanisms that foster accountability; both have a direct effect on the perfecting of the democratic system in that they allow for a multitude of stakeholders –including non-governmental organizations, civil society, academia, and State powers themselves– to bring down costs linked to the monitoring and supervision of those in power. Transparency and access to public governmental information both favor the creation of communication channels between State institutions and society. This enables society to scrutinize government administration in a critical, well-informed and periodic manner.





FEDERAL LAW FOR TRANSPARENCY AND FOR ACCESS TO GOVERNMENTAL PUBLIC INFORMATION

The promulgation of the Federal Law for Transparency and for Access to Governmental Public Information (LFTAIPG is the acronym for the name in Spanish) —on June 12, 2002— has at its core the objective of mending the shortcomings and legal voids stemming from the absence of specific regulations on access to public information. With the issuance of this Federal Law, LFTAIPG, Mexico has embarked on a process of change in the relationship between the government and those governed, and has forged ahead toward a new way to manage public service, “with open doors and facing society”. The right to access information, guaranteed by this legislation, will enable Mexico to move towards the consolidation of a more democratic government, one in which each and every one of its civil servants and public representatives will be held accountable to the citizens.

The LFTAIPG established access for all individuals to information in the hands of the State branches, autonomous constitutional bodies, federal administrative tribunals, and other federal bodies. Some of the primary objectives of the LFTAIPG are to: “render public administration transparent”; “foster accountability to citizens” –so they may evaluate the performance of government entities–, and, “contribute to the democratization of Mexican society and the full application of the Rule of Law” (LFTAIPG, Article 4). The attainment of these goals will contribute to increasing citizen trust in governmental institutions and will also lead to increasingly responsible political role-players involved in the process of designing and implementing public policy.

The LFTAIPG is a valuable piece of legislation, well conceived, well articulated, and unequivocal in its definitions and objectives, designed to ensure the rights of individuals to obtain information that is in the hands of government. It establishes that all government information is inherently of a public nature (Article 2), and instructs all government offices and entities to favor the “principle of publicity” (Article 6) over that of secrecy.¹ It grants citizens the right to seek the disclosure of information not already public through a straightforward request process (Article 40). In addition, the LFTAIPG grants any individual the right to appeal an entity’s decision to deny information (Article 49), and the right to take the case to court should said appeal be denied.

Going beyond establishing the public nature of practically all information either generated by or in the hands of the government, the Law provides a list of “transparency obligations” that each government office and entity must observe. Article 7 of the Law mandates the entities to publish –in a routine and accessible manner– all information relevant to everyday functions, budget, operations, personnel

¹ According to article 13 of the FOIA, the information that the government possesses can be considered “reserved”, (temporarily subject to exemptions of access) only if its dissemination can:

- I) Affect national or public security or national defense;
- II) Affect the conduct of the negotiations or international affairs, including the confidential information that other states or international organizations give to Mexico with that character;
- III) Damage the financial, economic or monetary stability of the country;
- IV) Put under risk life, security or health of any person, or
- V) Cause a serious damage to activities related to the verification of the fulfillment of the laws, prevention or persecution of crimes, the collecting of the contributions, the operations of migratory control, the procedural strategies in judicial or administrative processes while there is not a final resolution.



directory, wages, internal reports, and the signing of contracts and concessions. In addition to the LFTAIPG, the Regulations of the Law impose the specific mandate to update information relevant to the “obligations of transparency” for each and every one of the government offices and entities under the Federal Public Administration over a timeframe ranging from three months to one year.

The existence alone of legislation on access to public governmental information does not in and of itself guarantee the effective practice of a citizen’s right to access to information. In some countries, legislation does not provide mechanisms that strengthen access to information; other governments create obstacles or take advantage of legal voids to refuse the dissemination of the information they hold. Given these reasons, and in order to forge ahead successfully in the implementation of the right to access to information, some legislations foresee the creation of autonomous institutions responsible for monitoring the application of legislation on access to information in the hands of the government.



In Article 33, the LFTAIPG provides for the creation of the Federal Institute for Access to Public Information (IFAI is the acronym for the name in Spanish), which officially began operating in June of 2003. The IFAI is responsible for enforcing and ensuring application of the LFTAIPG in the Federal Executive Branch, and is the body responsible for promoting and disseminating the right to access to information and for settling refusals from the authorities to respond to petitions for access to information. At the same time, the IFAI is mandated to safeguard the confidentiality of personal information in the hands of government offices and entities. To ensure compliance of this mandate, the IFAI is empowered to carry out functions entailing settlement and regulation, monitoring and coordination, and the operation and management of promotion and dissemination activities.

Since the creation of the IFAI, any Mexican citizen interested in requesting information that is in the hands of the federal government has three options to do so, by:

1. Visiting the IFAI Service Center, where qualified personnel and computer equipment is available to assist and guide petitioners.
2. Going directly to the Secretary of State of Government Office where one wishes to obtain information from. The individual must then go to the special office called “Liaison Office”. Every government office, per LFTAIPG mandate, must operate one of these offices to provide guidance for requesting information.
3. Accessing <http://informacionpublica.gob.mx> through the Internet from any point in the country or abroad, and clicking on “System for Information Petitions”. (SISI)



We would underscore that the last mechanism mentioned for accessing government information, known as the SISI in Spanish, is an innovation at the international level, given that very few countries offer such a user-friendly means for citizens to request public governmental information via the Internet. The IFAI has provided consultancy service to government officials from Canada, Germany, Great Britain, the Czech Republic and Peru, just to mention some countries, interested in setting up systems to access information similar to the SISI. The electronic revolution has had an effect on access to information, turning the government into a disseminator of information, thus recovering the values that now support the provisions of an open government. The IFAI is wholly immersed in this current, facilitating for citizens access to information in the hands of government through remote communication means, as is the case with the SISI.

In only six months of operation —June through December 2003— over 24,000 petitions for information have been submitted; of these, 93% have been submitted through the SISI:

Requests	JUNE (12 TO 30)	JULY	AUGUST	SEPTIEMBER	OCTOBER	NOVEMBER	DECEMBER (01 TO 11)	TOTAL
Electronic requests	4,674	3,887	4,388	2,961	2,881	2,733	751	22,275
Written requests	426	343	255	265	233	198	82	1,802
Total number of requests	5,100	4,230	4,643	3,226	3,114	2,931	833	24,077
Electronic answers	1,519	4,287	3,995	3,265	2,899	2,303	1,069	19,337
Written answers	95	357	263	269	214	158	94	1,450
Total number of answers	1,614	4,644	4,258	3,534	3,113	2,461	1,163	20,787
Appeals	17	83	69	145	146	103	44	607

The SISI is a universal system that manages petitions for information and personal data in accordance to the provisions of the LFTAIPG, its Regulation and the guidelines issued by IFAI. Petitioners, government parties responsible and the IFAI can all use the SISI, which provides statistical information to the Institute itself, and can be used as support for the Annual Report that the IFAI authorities must submit to the Legislative Branch.

The SISI has emerged as the most efficient means of communication, linking society, government offices and entities and the IFAI through registering all petitions for access to information in documents that remain in the hands of entities of federal public administration, regardless of the mechanism employed by the petitioner; that is to say, either through the Internet, through postal service, or physically visiting the appropriate Liaison Office.

The SISI operates based on six stages that comprise the process for access to information from the time that the individual submits his or her petition, then the internal process for handling said petition, through the delivery of information and possible appeal before the IFAI:

Phase 1: Petition – The individual must submit his or her petition to the SISI or draft it in print and send via postal service, or hand deliver at the Liaison Office for it to be typed

and processed within the system. In all cases, the SISI will assign a folio number for followup purposes.

Phase 2: Reception and investigation – The government office or entity receives said petition and turns it over to the corresponding administrative unit. Said unit investigates if the requested information is available and determines its nature, which can be public, reserved or confidential. The government office or entity in question receives the petition, and turns it over to the corresponding administrative unit for investigation concerning the existence of the information requested and its nature, which can be public, reserved or confidential. When the information requested exists and is public, this administrative unit sends said information to the Liaison Office and indicates, where applicable, the cost entailed according to delivery mode.

Phase 3: Response, delivery options and delivery – The government office or entity notifies the petitioner of the response to the petition. If it is negative, the petitioner will be advised of the option of an appeal before the IFAI. In the case of an affirmative response, the SISI will notify the petitioner of the means available for copying the information and the cost of copying the information, as well as of different means of delivery and their respective costs. The system issues a slip with a bank identification code through which payment can be made.

Phase 4: Notification of payment – Once payment has been made, the bank automatically notifies the SISI of said payment; the government office or entity can know at all times which petitioners have covered the cost of copying and delivering the information in question, so that said information can then be copied and issued.

Phase 5: Delivery or sending – When the government office or entity has copied and sent the information requested, the SISI will inform the petitioner of the date on which the information was sent and, when applicable, the tracking number. In any case, information delivered via electronic means will at all times be free of charge.

Phase 6: Appeal – If the petitioner decides to submit an appeal when information is denied, the SISI facilitates this process through electronic means. The petitioner can also submit in print and send in or personally call at the IFAI. In the latter two cases, the IFAI will incorporate the information on the individual requesting an appeal through the SISI. IFAI will study the case and notify said individual within the period established.

The process for consultation or changes to personal information through the SISI requires authentication of the petitioner's identity.



In keeping with Article 12 of the Universal Declaration on Human Rights “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.” Democracy is developed and justified within the framework of the respect of the privacy of the individuals that are a part of it. A genuinely free society can only take shape based on the recognition of the privacy and autonomy that is due to all citizens.

The protection of personal information is founded on controlling said information to guarantee the protection of the individual who is risking transmitting said personal information, and not on the protection per se of the intimacy of private life. Subparagraph II of Article 3 of the LFTAIPG defines personal information as: “[...] the information relevant to an individual, identified or identifiable from another, information pertaining to ethnic or racial origin, or information pertaining to physical, moral or emotional traits, his or her family and sentimental life, address, telephone number, patrimony, ideology and political opinions, religious or philosophical beliefs or conviction, state of physical or mental health, sexual preference and other similar issues related to his or her privacy”.

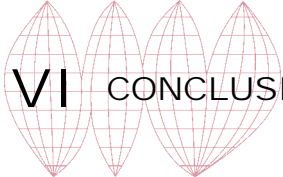
Access to information pertaining to personal information contained in public archives is dealt with by the LFTAIPG in Article 24, a provision stipulating that only the interested party and his or her representatives can request a Liaison Office for access to personal information contained in governmental databases. Said information will be submitted to the interested party within ten working days to be counted from the date the request was received by the LFTAIPG, in clearly understandable format, or the interested party will be notified in writing that the personal information system does not contain information pertaining to petitioner. If delivery or correction of personal information is refused, an appeal can be submitted to the IFAI. The same applies in the case of lack of compliance to the timeframes established by Law.

In keeping with Article 37 of the LFTAIPG, the IFAI is empowered, among other things, to establish and review the criteria for classification and de-classification, and is responsible for the custody of reserved and confidential information (Subparagraph III) and to establish the guidelines and general policies for the management, security and protection of personal information that is in the hands of government offices and entities (Paragraph IX). In this regard, the IFAI is the institution responsible for safeguarding the protection of personal information and for avoiding the dissemination, distribution and/or marketing of the personal information contained in the information systems of the government parties responsible.

V ACCESS TO STATE AND MUNICIPAL INFORMATION

The IFAI seeks to promote and establish collaboration and support at the state and municipal levels with the objective of exchanging experiences and fostering the development of standards and institutions in matters of transparency, access to information and the protection of personal information. Thirteen states of the federation already have laws to ensure access to information, namely: Aguascalientes, Coahuila, Colima, the Federal District, Durango, Guanajuato, Jalisco, Michoacan, Morelos, Nuevo Leon, Queretaro, San Luis Potosi and Sinaloa. Several other states (Chiapas, Hidalgo, Puebla and Veracruz, among others) are undergoing the process to adopt legislation on the matter. The state of Colima stands out, given that in addition to legislating access to information, it seeks to enforce a Law for the protection of personal information —the first such legislation in the country. As regards the local sphere, the municipalities of Guadalajara, Monterrey, Queretaro and Turreon already have regulations on transparency and access to information in place.





VI CONCLUSION

The IFAI is creating mechanisms geared to fostering transparency and accountability in Mexico: the obligations concerning transparency imposed by the LFTAIPG and verified by the IFAI contribute to clarifying the scope of this matter, placing Mexico among the countries with the highest standards at the international level. The heading on classification provides for the creation of a registry of all documents produced by the government, which will in future simplify access to public information. On the other hand, it states that the period for reserving information is counted from the time said information is generated and not from the time of the classification of the document. Lastly, the establishment of access fees is an attempt to prevent the cost of copying and sending information from becoming a deterrent to transparency.

The LFTAIPG and the IFAI exert positive effects for Mexico in the economic and political arenas. Doubtless, a more transparent State will consequently be a more efficient one. This improved State efficiency will not only be reflected in the long term through strengthening the public treasury –the heritage of all Mexicans– but also the economy as a whole. This can be explained when we witness the cost of corruption in our economy rising to several percentile points of GDP. Upon reducing corruption, these recourses can be channeled to productive and social activities.

In the political sphere, and within the framework of the democratization process, the IFAI guarantees the right to access information and thus fosters a process of democratic consolidation through which each and every one of the country's civil servants is to be held accountable to the citizens. Accessing information is one of the most important tasks on the national democratic agenda, in the understanding that democracy seen as government participation depends on the capacity of the citizens to take part in public life. Hence, the IFAI is taking part in the construction and strengthening of accountability, has a positive effect on administrative efficiency and fosters appropriate conditions for citizens to supervise governmental spheres.

