

A CONFLICT OF INTEREST: ACCOUNTABILITY IN THE IFE

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Introduction

Mexico’s Federal Electoral Institute (IFE in Spanish) is an autonomous public agency, with its own legal identity and funding base. Its role is to fulfill the government’s obligation to organize federal elections, according to the constitutional principles of accuracy, legality, independence, impartiality and objectivity. It is a key institution in the development and strengthening of Mexico’s democracy, which is why it is crucial for the IFE to be transparent.

This article has three objectives. The first goal is to describe the procedures that allow citizens to exercise their right to access political and electoral information, following two policies: the Federal Law for Transparency and Access to Information (LFTAIPG in Spanish) and the IFE’s own Regulations on Transparency and Access to Public Information. The second goal is to give some examples of both progress and obstacles in the process. The third goal, by way of a conclusion, is to offer some perspectives and recommendations.

Information Access Procedures and Progress toward Them

In some ways, the IFE can be considered to be an institutional precursor to the concept of accountability in Mexico. In this process of democratic consolidation, the Institute opened its doors and exposed its work to public scrutiny, even before the LFTAIPG emerged. Later, in compliance with the new federal law, the IFE drafted its own transparency regulations, which simply broadened and solidified its original commitment to operating openly.

Anyone can file an information request with the IFE liaison office, which must respond within 15 working days. If the petitioner is not satisfied with the response, he or she can file an appeal with that office, and the IFE’s own Commission on Transparency and Access to Information will resolve the matter, based on the file assembled by the Technical Department.¹ If the petitioner does not agree with the Commission’s decision, he or she

¹ Appeals proceed in the following cases: if public information has been denied or if personal data needs to be modified or corrected; if the petitioner is dissatisfied with the response received; or if the petitioner feels the IFE has not adequately fulfilled its duties.

can request reconsideration a year later, and the Commission will determine whether the reasons for its original decision are still valid, or whether there is cause to reconsider.

It is also worth noting that the IFE, just as any other government agency subject to the LFTAIPG, has the right to classify information as “reserved” or “confidential”.^{2 3} The decision to classify information is made by IFE representatives as soon as it is generated or when there is a request for information. Information is classified as reserved— most frequently when it is related to deliberative processes and legal procedures that might be affected by disclosure— or confidential—when the issue at stake is about personal data. However, even this kind of information must be made public when the period of reserve is over or when any confidential information attached to a document has been protected.

The IFE’s regulations do not just require the Institute to disclose information; they also require political parties and “agrupaciones políticas nacionales” (national political groups, or APNs in Spanish) to do so. To ensure that this occurs, there is a specific procedure in which the IFE acts as intermediary between the applicant and the political organization; in response to a request, the organization must obtain the information and turn it over to the IFE. However, just as with the IFE, information held by parties or APN’s may be classified as reserved or confidential, so they may refuse to turn it in while requesting confirmation of such classification by the IFE’s Information Committee.⁴

Comparison of the LFTAIPG with the IFE’s Information Access regulations shows that in some ways, the IFE’s policies are better for citizens. For example, while the LFTAIPG establishes a maximum time period of 20 days for agencies to respond to information requests, the IFE allows 15 days. Furthermore, according to the IFE regulations, if the applicant feels the Institute is not fulfilling its duties in granting access to public information or personal data—that alone is grounds for filing an appeal.

In addition to the legal advantages that the IFE’s regulations offer, the conduct of the staff working at the Institute also offers advantages to citizens. According to the LIMAC Association’s study of constitutionally autonomous Mexican agencies, the IFE ranked

² In general, the following information is considered temporarily reserved: grievance procedures regarding the origin and application of finances for political parties and the APN; reports by the political parties and APN, as well as audits and verifications; procedures regarding the responsibility and misconduct of public servants and respective sanctions; information whose dissemination could cause serious damage to verification activities in regard to compliance with the Code, the regulations, agreements and resolutions approved by government bodies; and any information containing opinions, recommendations or points of view that form part of the deliberative process among IFE staff, until a definitive decision is made on the matter.

³ Information classified as confidential includes any that is turned in to the IFE by individuals and is already classified as such; and personal data that require the consent of the relevant individuals to transmit, distribute or commercialize it.

⁴ If a political party or an APN refuses to reveal information because it considers it reserved or confidential, it must explain the reasons for its refusal. In response, the Committee must confirm, modify or revoke that claim to special classification.

highest overall in terms of quality of service and received favorable comments regarding the legal quality of its responses.⁵ In addition, the Institute's Executive Offices, like its Office of Political Parties, the Legal Department, and Administration, have gradually opened their archives, which makes it easier for citizens to engage in dialogue with the institution, and thus exercise their right to know.

Limitations: A Few Examples

However, the process of accessing information in the IFE could still be improved. Information requestors still face administrative obstacles as well as informational gaps that make it difficult to achieve transparency and accountability, and even cast doubt on the Institute's commitment in this area.

One of the main limitations in accessing public information through the IFE has to do with access to personal data, which is classified as confidential information.⁶ For instance, in 2005, an information request was filed, asking for the resumes and other documents that candidates for offices in Congress must file, according to Article 178 of the Cofipe (Mexico's Federal Code for Electoral Institutions and Procedures).⁷ After a wait of several weeks, access was denied, on the basis that they contain personal data, and thus constitute confidential information. This is not a minor issue, since what was being denied was the right to examine, closely, information that was of public interest about people who could soon be representing Mexican citizens in Congress.

Another information request asked for the complete resumes of the IFE council members.⁸ The response was brief; it indicated that the Institute's web page included staff biographies. In order to understand this response better, the requestor followed up with an IFE representative, who explained that when it comes to transparency, resumes are considered private information, not public, so that their release—partial or total—can only be authorized by the individuals involved. Those particular individuals' personal information happens to be of public interest: they are public servants whose job is to

⁵ Libertad de Información-México (LIMAC), *Evaluación del servicio y calidad de la respuesta de organismos autónomos: Instituto Federal Electoral, Banco de México y Comisión Nacional de Derechos Humanos* (March, 2006).

⁶ Personal data is information that refers to a physical person who is identified or identifiable, such as ethnic or racial origin; physical, moral or emotional characteristics; personal and family life; residence and telephone number; economic situation; ideology and political choices; beliefs or religious or philosophical convictions; state of physical or mental health; sexual preferences; or anything else of an intimate nature.

⁷ Information request File Number 910, registered and sent to the IFE October 24, 2005. Editor's note: This request and its response (as well as those described in the following two notes) can be consulted in the IFESAI system. This system can be found at: <https://ifesai.ife.org.mx/ifesai/>.

⁸ Information request File Number 1126, registered and sent to the IFE December 21, 2005.

represent citizens in the Institute. However, because of these limits on data disclosure, the council members have the latitude to choose which parts of their general background, as well as education and work history, they will share with the public, the results of which can be found in their official web profiles.

Another information request asked for the number of members that the parties reported to the IFE, between 2000 and 2006.⁹ The IFE's Office for Political Parties responded that these organizations, although they are of public interest, are not obligated to turn in current membership lists to the IFE, which is why the IFE had no such information. This response was quite striking —both the gaps in the IFE's files where it should have had very basic and important information, and the Institute's justification of those gaps by claiming the parties are not required to provide regular updates.

Another limitation has to do with the time it takes for the Institute to respond to an application whose response warranted an appeal. The response to an appeal can take up to 100 working days: up to 60 for the Technical Department to assemble the file and present it to the Commission, and up to 40 days for the Commission to make a decision on it. Moreover, if the appellant wants to submit the case for reconsideration—one year after the first decision on the appeal—this takes about another 60 days.

The long waiting times tend to generate a vicious cycle that is hard to break. The appellant has to wait five months (if the appeal is granted) or 20 months (if the appeal is denied and the case is submitted for reconsideration) to gain access to the requested information —this is basically lost time for the appellant, even though the Institute is working on the case. This creates a situation in which, first, the citizen becomes exhausted and stops trying to exercise the right to access information; and second, the information originally sought loses relevancy with the passage of time such that the citizen loses interest. The huge machinery set in motion by the appeal process, then, ends up being useless to the interested parties.

Finally, another obstacle is related to the transparency commission within the IFE in charge of addressing citizen appeals to information requests. While the federal government's executive branch agencies have the IFAI— a separate institution to handle information access matters that involve them— the IFE, like other autonomous institutions, has a kind of parallel structure with practically the same functions. The problem is that the IFE, in the interest of maintaining its autonomy, has created its own internal information and

⁹ Information request File Number UE/06/00799 registered and sent to the IFE July 25, 2006.

transparency commission made up of electoral council members. It has, in short, created a structural conflict of interest, in which the same individuals must hold themselves accountable for their own decisions and behavior.

The IFE is a precedent-setting institution in Mexico in regards to accountability, thanks to the public interest work that it does. However, there is no reason to consider this process of creating new mechanisms finished; instead, it is continually evolving. Citizens and the Institute itself should look for ways to deepen the right to know and ways to hold authorities accountable, respectively, making processes transparent and making procedures easier and swifter, to encourage a better and deeper culture of transparency.

Conclusions: Perspectives and Recommendations

The IFE's legal advances in this area have been complemented by a clear commitment on behalf of the leadership of its various branches. However, paradoxically, the limitations to this commitment derive from Institute policies that can only be overcome if they are changed. Deadlines for responding to appeals could be shortened, personal information of certain representatives could be made available (if it is determined that they are of public interest), and remaining information gaps could be addressed.

Although the IFE's commitment in this sense has to deepen, citizen participation is also critical: they are the ones with the right to demand absolute and transparent accountability. The IFE should be fully complying with citizens' right to know; not only do its institutional credibility and trustworthiness depend on it, but so does democracy. On their end, citizens should be exercising their rights—continually, respectfully, clearly, and according to the law. In addition, both the Institute and private citizens should seek feedback from each other as a way to improve and to strengthen a culture of transparency.