

THE MISSING LOCAL MODEL

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Some months ago, while preparing a presentation for an event about “Transparency and Technology” in the states, I conducted a simple experiment whose results revealed part of the problem in accessing information at the local level in Mexico. I wanted to know how the number of information requests had varied in the last two years, in ten states chosen at random. At the end of my brief study (which indicated a decrease, or, in the best of cases, a flagging of interest in the exercise of this right), the original question I posed ended up being irrelevant.

Initial responses to my information requests, made by telephone, can be classified into four categories: 1) “send me the request in writing”; 2) “look for the information on our website and if you do not find it, call again”; 3) “call later” (repeatedly); and (although I only got this from one local government, the answer is worth including because it came from the Mexico City government); 4) “what do you want it for?”.

In light of this situation, my presentation at the event sought to underline that the problem of local transparency is not a technological one. Or, it is, only as much as a phone, a file cabinet and a copier are considered technological tools that permit citizens’ access to public information.

If it is true that currently no single state serves as a model, it is because technological fetishism, obsession over bureaucratic procedures, and a contentious vision of the right to information have won over the desire to guarantee access through the generation of tools that make it easier for the petitioner. Rather than look for whom to blame for states’ lethargy on this issue, the present article seeks to identify how to overcome this stagnation.

The federal legislature would make a great contribution if the constitutional reform were approved. This reform would provide more detail to the currently limited Article 6 of the Mexican Constitution, and would establish a set of obligatory minimum standards for state and municipal governments. It would be equally desirable for state legislatures to take advantage of the eventual approval of this reform to move forward with a second generation of legal changes to their state transparency laws.

In addition, it is necessary that local Institutes for Access to Information (“local IFAls”, for their Spanish acronym) recognize the needs that are specific to information access processes. Rather than turn to the Mexican Federal Institute for Access to Information (IFAI) as a model, they should look at international best practices in local information access institutions. This would then confirm that best practices assure that whenever a citizen comes to a government official requesting information, they simply provide them with a copy of the document immediately rather than give them the runaround.

Institutional Strengthening

Although the impact of amending the Constitution to establish a set of minimum standards that would apply to the whole country has been overstated, the need to do so is unquestionable. The reform is needed, among other reasons, in order to head off the efforts of governors such as Jalisco’s Francisco Ramírez Acuña or Coahuila’s Héctor Moreira who have sought to implement counter-reforms that affect laws that already lack teeth.

In order for this reform to have an impact that goes beyond setting minimum requirements, state legislators need to recognize that most state level information laws were passed without much genuine care or interest in addressing substantive issues unique to information access. In response to the approval of the federal transparency law, competition between states to implement their own legal transparency framework was a double-edged sword: it ensured that states and municipalities addressed the issue, but did so through the development of local laws that were hastily put together.

At the time, it seemed that the majority of local laws were beautifully drafted pieces of legislation—full of great purpose. However, the reality was that most local laws left the power to decide when and how to make a document available, if at all, firmly in the hands of the bureaucracy. Most laws include procedures and requirements that permit the intimidation of petitioners, delays in releasing information, and evasion of any punishment for non-compliance. Such actions inevitably deter citizens from exercising their rights.

A second generation of reforms must begin by understanding that the dangers of transparency laws in Mexico have nothing to do with the information that a citizen might manage to obtain through their use. The real danger lies in the existence of laws that are never utilized—due to bureaucratic maneuvers designed to evade and discourage. What is

necessary are laws that are radically “pro-openness”, so that the notion that information truly belongs to the citizenry can become credible.

Generating Demand

The fact that a fundamental right is not exercised does not reduce its legitimacy. In a country like Mexico, with a long tradition of the patrimonial management of state resources (including access to information), it is more difficult to combat this trend if there is no significant and continuous volume of information requests submitted by the citizenry. In the words of Guillermo O’Donnell, we are facing “low-intensity citizenship” when it comes to matters of transparency.

In general, the lack of interest in public information has become a vicious cycle: the new right has not been adequately publicized; people are generally unaware of the public or private goods that could be obtained through an increased flow of information; and the few information requests that the authorities receive, no matter how simple, are given a bureaucratic and contentious treatment that eventually scares away potential petitioners. Similarly, it is important to point out that society’s interest in the matter has been less than expected.

That citizens request and value public information is a crucial requirement to make the transition from a society shrouded in opacity and stealth, to one where transparency and the existence of public information superhighways become pillars for development.

In the United States and Canada, for example, the business sector has become one of the most important groups of information petitioners. Businesspeople in these countries have learned that accessing public information can provide unique opportunities to do business with the government, or to increase their competitiveness within their industrial sector.

In terms of the kinds of public goods that are generated by accessing information, Mexico’s states continue to be fertile ground for society to get organized and design systematic and sustained efforts to monitor their government officials on specific issue-areas, as well as create a “culture of accountability” in local government. Ideally, local transparency laws should also be the catalyst for the creation of “watchdog” groups (organizations dedicated to monitoring authorities) for each sector of government activity.

In other countries, local level watchdog groups monitor public budgets, restaurant health records, bar permits, water consumption by both public and private enterprise, toxic release inventories, construction permits, and much more. In Mexico, however, we are still stuck in a culture focused on generalized complaints lacking substance and criticism of our government officials, without taking any responsibility ourselves by using the oversight mechanisms that we have at hand.

Redefinition of Local IFAls

One need only compare the agenda for the plenary sessions of the Federal IFAl with information requests at the state and municipal level, to observe that, while the nature of the work is the same, user profiles and the sophistication of the issues to be resolved are quite different.¹

Beyond the complexity of the issues to be resolved, what is more important in these scenarios is the difference in the profile of the average information petitioner between the federal and local levels. Someone who requests information from a federal agency is more likely to have access to (and knowledge of) the internet, as well as a willingness to follow through on what can become a rather lengthy process. Whoever requests copies of the minutes from Fobaproa government board meetings, or connectivity contracts between Telmex and other companies (held by the Communication and Transportation Ministry), is someone who will be willing to fight to the end, even if it means waiting for a Supreme Court decision.² Such sophisticated users of the information request system are generally unafraid to reveal their identity, and are frequently willing to explain their cause in the mass media.

The situation is very different in a case where a neighborhood resident is affected by the opening of a new bar on their block, and requests a copy of the bar's government permit to sell alcohol. This type of information petitioner will probably feel threatened and intimidated if the authority asks for identification at the time of filing the request. Local IFAls must guarantee access to information through procedures that are sensitive to the unique needs and profile of the average local user. Part of the current problem in states

¹ Editors' note: Here the author is referring to the weekly public plenary sessions held every Wednesday at the Federal IFAl, wherein the five IFAl commissioners resolve citizen appeals on cases where the requester is unsatisfied with an agency response to an information request. In theory, state level information access institutes (local IFAls) share the same task of resolving disputes between information requestors and government agencies.

² Editors' note: Fobaproa refers to a public-private trust fund that was created to bail out the Mexican banking system following the 1994 peso crisis.

and municipalities is the training local IFAI staff receive—which is much more oriented toward rigid bureaucratic procedures (following the federal model), rather than stressing the need to be guided by the basic principles under which access to information should be protected and facilitated.

As simplistic as it seems, the best starting point on this issue is to stress that public officials should be aware that each information request they receive implies an obligation, not only to deliver the information requested, but also to do so in the most practical, simple and inexpensive way for the petitioner. For example, in the case of the small experiment described above, a phone call requesting something so simple as the number of information requests received to date, was answered by several state officials with an acknowledgement that the information was readily available, but could only be released if the request was submitted in writing. It is difficult to find a clearer example of how access to information is seen as a bureaucratic procedure, rather than a basic principle that must be fulfilled, and where it is acceptable to use common sense. What regulation would have been violated by giving out the number over the phone? Would that not have been the easiest and cheapest way of answering the question for everyone? These types of questions have yet to be posed by those who work in local transparency institutes.

It is never too late to start a training campaign, in which every public servant is told, 20 times, who is important in matters of public information. Once the bureaucracy is ready to respond to information requests with as few administrative procedures as possible, we will be ready for local IFAs to launch outreach campaigns and stimulate demand for citizens to start asking for what is rightfully theirs.

The Local Model

What is lacking right now are: better local access laws, citizen interest, and a generalized culture of transparency in local public administration. So, where should we begin? It is hard to imagine that any state governor is going to willingly give up their wide maneuvering space thanks to their current control over public information. Therefore, obviously, efforts to increase openness in government will have to come from civil society organizations and local opposition.

In Mexico, information openness has advanced primarily due to the fact that the right to know is a fundamental right. What is missing is a commitment to opening information access through public policies. Some states, such as Chihuahua and Nuevo León, have adopted programs geared toward the creation of “knowledge cities”. There are also incentives in place to promote information access as a means to increase competitiveness. Such “knowledge cities”, or states that promote entrepreneurial innovation, can only exist with strong relationships between public officials, businesses, universities and civil society that are grounded in high-speed information flows.

In the end, the existence of a fully-accredited local transparency model would give us a clear “we can do it” message, and would lead the way for counterparts.