

THE RIGHT TO KNOW AT THE STATE LEVEL

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Introduction

In 1977, when Article 6 of the Mexican Constitution was expanded, stipulating that, “the right to information will be guaranteed by the State,” it provided the constitutional basis for information rights in Mexico. However, it was only after the Grupo Oaxaca came on the scene that any actual legislation was passed. An unprecedented groundswell of public opinion forced the issue, and its turning point was the National Seminar on, “The Right to Information and Democratic Reform,” held in the state of Oaxaca on the 23rd and 24th of May, 2001.

This civil society-led process set the agenda that framed the issues and the substantive framework for the legislation that took shape as the Federal Law for Transparency and Access to Information (LFTAIPG in Spanish), approved on June 11, 2002.

Progress

Across the country, most of Mexico’s states followed up with their own legislation regarding transparency and public access to information in 2003 and 2004, and their main features are summarized in the table that follows. Unfortunately, lawmakers have not considered access to information to be strategically important; otherwise the federal law would have been made effective throughout the country and at every agency and level of government. Instead, each state was allowed to come up with its own set of regulations, producing different levels of information rights for citizens, depending on the state they are in.

The Mexican Freedom of Information Association (LIMAC, in Spanish) analyzed the state laws, identifying 17 indicators of rights to information access that measure the degree to which the laws approved had “teeth”, and to be able to make recommendations for improvements.¹ The indicators are summarized in Table 1.

¹ These indicators are based on actual legal provisions and practices that allow for quantification of measurable characteristics.

Table 1
Legal Indicators of the Right to Access Information

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| 1. Mandated Agencies |
| 2. Definitions |
| 3. Interpretation |
| 4. Access To Government Information: Includes Administrative And Procedural Documentation As Well As Official Budgets And Reports |
| 5. Limits On Citizens' Rights To Access Information |
| 6. Provisions For Public Versions Of Sensitive Documents |
| 7. Full Disclosure |
| 8. Proof Of Harm |
| 9. Information Available Free Of Charge |
| 10. Period Of Reserve: An Agency's Right To Declare Material Classified During Defined Time Period |
| 11. Modes Of Requesting Information |
| 12. Habeas Data: The Right To Know What Information Is Held About One's Self In A Data Bank Or Government Bureau |
| 13. Specified Agency Responsible For Enforcing The Law |
| 14. Presumed Approval: If A Petition Is Not Resolved By An Authority Within A Given Deadline, It Is Considered Approved |
| 15. Grievance Channels |
| 16. Regulatory Framework For Enforcement |
| 17. Statute Of Limitations |

Table 2 lists the 29 laws on transparency and access to public information in Mexico in existence at the time of the research: 28 state laws, plus the federal law of 2002. It indicates their dates of passage or publication; their ranking according to the indicators indicated in Table 1; and a brief assessment of how each might be improved.

Table 2
Access to Information Laws in Mexico

| | State / Publication date | Ranking; steps forward and back |
|----|--|--|
| 1 | Aguascalientes July 30, 2002 | 24th Needs an implementing agency and provisions for public versions of documents |
| 2 | Baja California August 12, 2005 | 5th Needs public versions and interpretation |
| 3 | Baja California Sur February 23, 2005 (Approved by Congress) | 20th Needs an implementing agency, habeas data and interpretation |
| 4 | Campeche June 30, 2005 (Approved by Congress). | 1st Outstanding in its incorporation of public versions; this law fulfills almost all the indicators' criteria except for the reserve period and grievance channels |
| 5 | Chihuahua October 15, 2005 | Of those that have been recently approved, this is among the highest ranking ; needs to incorporate provisions for public versions |
| 6 | Coahuila November 4, 2003 | 16th Needs public versions, period of reserve, implementing agency and habeas data |
| 7 | Colima March 1, 2003 | 8th Needs interpretation, reserve period and public versions |
| 8 | Federal District May 8, 2003 | 2nd (after its reform) Should improve limitations on citizen access and the list of mandated agencies |
| 9 | Durango February 25, 2003 | 11th Should improve provisions for public versions, reserve period and grievance channels |
| 10 | State of Mexico April 30, 2004 | 12th Should improve public versions and channels for requesting information |
| 11 | Federal Law June 11, 2002 | 14th Should improve public versions, proof of harm and reserve period |
| 12 | Guanajuato June 29, 2003 | 19th Should improve public versions, period of reserve and constructive approval |
| 13 | Guerrero October 10, 2005 | Of the more recent laws, this ranks at the bottom of the list ; should improve its public versions and implementing agency |
| 14 | Jalisco January 22, 2002 | 7th Should improve public versions, definitions and limitations on citizens' rights |
| 15 | Michoacán August 28, 2002 | This marks midway in the rankings ; Should improve interpretation, public versions and reserve period |
| 16 | Morelos August 27, 2003 | 3rd Should improve public versions and period of reserve |
| 17 | Nayarit June 16, 2004 | 6th Should improve public versions and period of reserve |
| 18 | Nuevo León February 21, 2003 | Next to the bottom ; However, its principle of no-cost access and its modes of request are noteworthy |
| 19 | Puebla August 16, 2004 | Third from the bottom ; Interpretation, proof of harm, period of reserve and constructive approval all need to be improved |
| 20 | Querétaro September 27, 2002 | 17th Needs to improve interpretation, period of reserve and habeas data |
| 21 | Quintana Roo May 31, 2004 | 13th Needs to improve period of reserve and constructive approval |
| 22 | San Luis Potosí March 20, 2003 | 22nd Needs to improve interpretation, public versions, proof of harm, period of reserve and habeas data |
| 23 | Sinaloa April 26, 2002 | 4th Interpretation, period of reserve and grievance channels could be improved |
| 24 | Sonora February 25, 2005 | 9th Could improve interpretation and proof of harm |

(Continuation)

| | State / Publication date | Ranking; steps forward and back |
|----|---------------------------------|--|
| 25 | Tamaulipas November 25, 2004 | 21st Needs to improve public versions, period of reserve and implementing agency |
| 26 | Tlaxcala August 13, 2004 | 23rd Needs to improve public versions, proof of harm, implementing agency and constructive approval |
| 27 | Veracruz June 8, 2004 | Last place. Its only good features are its definitions |
| 28 | Yucatán May 31, 2004 | 18th Should improve public versions, period of reserve, responsible agency and constructive approval |
| 29 | Zacatecas July 14, 2004 | 10th Should improve interpretation, period of reserve and channels for requesting information |

Limitations

Currently, information rights advocates have two main concerns. The first is that the rest of the states must pass transparency and right to know laws; to date, Chiapas, Hidalgo, Oaxaca and Tabasco have yet to do so.² The second concern is the latent temptation of new state governments to roll back the laws with postponements or modifications, which instead of opening up channels of information would actually create legal pretexts for denying information access.

Additionally, in order for there to be adequate access, citizens need supporting laws regarding government records and protection of personal data. This would constitute the ideal right-to-know triad: Archives-Access-Habeas Data.

Perspectives

There is a golden rule in law: “a right you don’t use is a right you will lose.” Only to the extent that society integrates this right to access information as part of the basic platform for decision-making in improving their quality of life will it be able to consolidate its place in the Mexican legal system.

Initially, people thought that this set of rights would only be useful for journalists looking for ways to attack the government, but that has not been the case. Access to information is productive for journalism in general in the sense that it becomes more professional and journalists get better information. However, so far in Mexico, those who have most

² Editor’s note: Since this study was completed, those states did pass information laws.

exercised this right are academics, for research purposes, and above all, ordinary citizens who increasingly see this right as a means to learn about public affairs, and especially about the issues that affect them directly in their daily lives.

Conclusions and Recommendations

Since we lack a federal law that would regulate local as well as federal governments (including autonomous agencies), the very least we should ask of the laws we do have is that they take into account the 17 criteria listed above as minimal standards to guarantee the right to information established in our constitution.³

Now that Mexico has innovative laws on transparency and access to information, the larger challenge is to exercise these rights effectively in practice. We need to educate the population about their rights, starting in the schools, so that they become part of people’s culture and daily lives, so that those who use their information rights can improve their quality of life and make informed decisions.

³ Editors’ note: Since this article was written, in mid-2007, a constitutional amendment was passed that requires the state laws to meet a set of minimum information access standards.