

INFORMATION, ARCHIVES AND DEMOCRACY

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In Mexico, the right to information was built into the Constitution in 1977, when Article 6, which protects the freedom of expression, was amended to include the phrase, “the right to information will be guaranteed by the State.” However, since no corresponding laws were passed to regulate such a right, it was not put into practice at that time. To do so, legislators would only have had to mandate the opening of government archives.

It was not until 2002, with the Federal Law for Transparency and Access to Information (LFTAIPG in Spanish), that legislation was created to operationalize Article 6, at least partially. Unfortunately, issues involving government records and archives were left out of the law—an omission that has resulted in a multitude of conflicts and created obstacles in the application of the law.

It is worth noting that the World Bank and the International Monetary Fund have promoted transparency around the world, in order to be able to better track how their money was being spent by recipients.¹

The LFTAIPG represented a 180-degree turn for public administration in Mexico. Without the benefit of any kind of previous infrastructure to build on, the country moved from a culture of secrecy to total openness. This has left the Mexican State completely exposed to the vicissitudes of transnational businesses and hegemonic nations. In the United States, classification of documents is determined by the office that generates the document, at its discretion. To this day there is documentation on World War I held by the US that we still cannot consult; moreover, with the Patriot Act, access to information has been suppressed in practice. The average time limit a document can be classified in Latin America is 25 years, and in some European countries that period is 40 to 100 years. In contrast, in Mexico the maximum time limit a document can be classified is 12 years.

When a new party came to power in Mexico after the same one had governed for decades, it was easy for the new government to open archives on the past; but it has been much more difficult for that same government to be transparent about its own actions. One

¹ Omar Guerrero, “Publicidad y secreto en la administración pública,” in Patricia Galeana (ed.), *Derecho a la Información y Archivos Públicos* (Mexico: 2005), p. 17.

clear example of this was its decision not to give citizens access to the ballots from the 2006 presidential election, even though it was a highly contested electoral process due to irregularities. Another, more recent example was the decision not to share information on the so-called “head hunters” who supposedly chose the members of Fox’s cabinet.

For any democracy, the right to information is a third-generation inalienable human right. In Mexico, its exercise implies a cultural revolution that cannot happen without access to official archives, the place where documents are kept— documents that are, in turn, the pillars of the LFTAIPG. Without legislation on archives that would transform depositories of old papers into efficient information centers, the LFTAIPG is incomplete.

Currently, the storage conditions for public archives and records are profoundly uneven from location to location. While some offices are in the process of automating their procedures and have digitized their holdings to make them accessible on the internet, others do not even have adequate physical space or the basic office furniture they need to organize their files, much less the trained personnel it would require.

There has been an increase in cases of agencies declaring they cannot produce requested information because the documents in question do not exist. In some cases there might be some merit to the declaration; in other cases the staff simply cannot find them. These conflicts are increasing as citizen demand expands—as people begin to realize how important and useful it is to exercise the right to information.

The Federal Institute for Access to Information (IFAI in Spanish) and the National Archive (Archivo General de la Nación or AGN in Spanish) have developed a set of guidelines for archival procedures—for topical as well as historical archives— guidelines that support, rather than replace the law. They require the application of sanctions, and not just administrative ones, if documents are disappeared, whether actively or by omission.

The legislation in question should define the historical basis of documents and establish the rationale for their classification. The designated handling for each kind of document should be specified, and the law should allow for the recuperation of all the documentation scattered among the various storage places pertaining to government agencies. It should also require the development of professionals in documentation sciences.

In an Archival Law, the first thing to establish is the preservation of documents, which requires its own budget line. Offices need sufficient financial, human and material resources so that documents do not get lost and files are organized into accessible information centers.

The federal budget should allocate resources specifically for archives. These should include a building specifically designed to preserve documents: without them, there is no information.

It is therefore necessary that the IFAI become a State agency, not a hybrid linked to the Ministry of the Interior whose structure has not changed from that of an institution of political control.

We need an information ombudsman's office. Individuals filling positions in this office need to be trusted by the public and recognized as having moral authority, and should be outside the government currently in office as well as the various political parties.

Today, the director of each administrative unit has the latitude to decide which documents can be classified and held back from public consultation, and can justify reserving information simply by arguing that the information requested jeopardizes national security or violates the privacy of individuals involved. Each agency is therefore a judge at its own trial; review procedures create a built-in conflict of interest.

We need to generate a culture of transparency, in which both the government and the citizenry realize how useful it is to operate transparently. In a political sense, the exercise of the right to information allows for the establishment of democracy as a way of life. Informed citizens are more participatory and can better defend their rights. Policymakers with organized files have greater capacity to make better decisions. In an economic sense, archives as information centers allow for an efficient government, a better use of resources, continuity in programs and accountability. Transparency diminishes corruption.

Making information public on the internet is without a doubt an important step for transparency. However, we need to remember that only an elite fraction of the population has access to the web and that electronic information can be manipulated if there are no corresponding back-up documents for proof. The future in archives and records is that they will be accessible electronically, but the original hard copy cannot be done away with, because physical documents are the binding deeds of history.

For all of these reasons, we need adequate legislation in the areas of archives and personal data—legislation that balances the right to privacy, the right to information, and State security. The LFTAIPG made the importance of archives visible, but we still need a law to preserve them and to facilitate access to them. All legislation is perfectible. Democracies are dynamic; dictatorships are static.

According to our Constitution, archival legislation corresponds to state jurisdiction, and some states developed legislation even before the LFTAIPG, when access to information was impossible.² All this legislation has to be updated so that it can be coordinated, something that has not existed up to now, due to the lack of a legal framework that would support a national system of archives and filing.

To further this end, we have proposed a constitutional reform. Based on Article 73, with absolute respect for our federalism and in the spirit of cooperation among the states, the reform would establish a shared authority in the regulation of public archives, in order to create a national archival system.

It is important that files throughout the country be handled within the same language of classification. Ideally, the International Standard Archival Description would be used, a normative system developed by the International Archival Council, the only institution of its kind in the world.³

The function of the State is registered in public records. A poor archival system undermines public memory, contributing to the loss of national identity and weakening the nation-state. On the other hand, information is power, and exercising the right to information is a way to control power; citizens can do this by monitoring the State through the information held in public records. This is the vital role archives play in democracy.

² Patricia Galeana, "Archivos Públicos," in Galeana (ed.), *Derecho a la información y Archivos Públicos* (México: LIMAC, 2005) p. 9.

³ An organization founded by Jaime Torres Bodet, when he was Secretary General of UNESCO.