Transparency Reforms in Mexico: Theory and Practice

Jonathan Fox and Libby Haight

What difference does transparency make? Many who are committed to democracy and good government have high expectations of the power of the right to know. Yet it is not an all-powerful magic bullet. By itself, transparency cannot substitute for weaknesses in the rule of law or representative democracy. After all, many abuses of power are no secret. At the same time, if and when the right to know can become exercised effectively, it can serve as a powerful instrument to guide initiatives for change - and to reinforce other institutions of democracy. Transparent government reveals whether representatives really represent, whether functionaries actually function, and whether the system of justice is truly just.

Though the public's "right to know" was first recognized in Mexico's constitution in 1977, the first real tools to exercise that right were created in 2002, when the congress unanimously passed the Federal Law for Transparency and Access to Information (Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, or LFTAIPG). This lead to the creation of a new federal agency, known as the Federal Institute for Access to Public Information (Instituto Federal de Acceso a la Información Pública, or IFAI).

By the late 20th century, citizens' right to information about how they are governed had become widely recognized around the world, joining the freedoms of expression, association, and assembly as fundamental rights—as recognized in Article 19 of the 1948 United Nations Universal Declaration of Human Rights. Like the consolidation of the rule of law and other means of accountability, information rights are part of what some call a "second generation" of democratic reforms.[1] The public's right to know matters for at least four distinct kinds of reasons.

a. **Public oversight is needed to keep those in power honest.** When the citizenry elects its representatives, they are not giving those leaders a blank check. The quality of representative democracy depends on those representatives rendering accounts

[1] See, among others, María Marvan Laborde and Roberto Corona Copado, "El Instituto Federal de Acceso a Información Pública: una institución para la rendición de cuentas en México," in Ernesto Isunza Vera and Alberto Olvera (eds.), *Democratización, rendición de cuentas y sociedad civil: Participación ciudadana y control social* (Mexico: CIESAS/Universidad Veracruzana/Ed. Miguel Angel Porrúa, 2006).

and being subject to scrutiny. Yet the government's own oversight agencies are insufficient, because they are not "all-seeing". They are rarely willing and able to detect and act promptly on all possible violations of the public trust. The public's right to information about how their representatives make decisions, and how the public's money is spent, is crucial to be able to hold them accountable. However, accountability *after the fact* may be too little, too late. Here, the public's right to know is also important because the *risk* of disclosure can discourage authorities' malfeasance *before* it happens—and prevention is more efficient than rectification. As one of the founders of the field of public interest law, Louis Brandeis, put— in 1913— "Sunshine is the best disinfectant, electric light the best policeman."

b. Democratic participation requires citizens' informed participation. Democratic theorists have long agreed that in order for citizens to exercise their rights as *participants* in a democracy, they need reliable information about how the system works. Policy debates are often influenced by those problems that are actually named and measured—and by whom—and access to official data can help the public to learn whether certain problems even exist in the first place. The right to information disclosure can also reveal who are the real winners and losers from a given policy decision. Freedom of the press is, of course, fundamental here, since most citizens receive their information about how public authority is or should be exercised through the mass media. But, for the press to be able to do its job, the authorities must be obliged to disclose what they are doing, and journalists must have the right to investigate them. In other words, freedom of information is distinct from, yet can bolster, freedom of the press.[2]

c. Information access is crucial to guide reformers' strategies for change, both inside and outside the state. Here information rights play a very practical role. Democracies function best when the work of governance is enriched by the active participation of both civil society organizations and public accountability agencies that are committed to improving the performance of public institutions. Analysts refer to public oversight agencies as promoting "horizontal accountability", through the system of checks and balances, often encouraged by civil society actors that

[2] See Ernesto Villanueva, *Derecho de la información* (Mexico City: Universidad de Guadalajara/Ed. Miguel Angel Porrúa, 2006, 2nd ed.).

mobilize public opinion, which is referred to as "social accountability."[3] Yet even together, their leverage over the "powers that be" is inherently limited. In order to decide how to invest their limited resources, accountability agencies and public interest groups need reliable information in order to identify where the main problems are—and where their leverage might be greatest. In addition, obligatory public disclosure of government information can help to expose and weaken the opponents of accountability.

d. **The right to know helps to solve individual problems, as well as to promote the public good.** Most of the public discussion of information rights focuses on questions of public interest. Yet the experience in many countries indicates that one of the main contributions of information access reforms is that they also to help to address large numbers of individual problems. Citizens can exercise their information rights to access their personal medical records, to resolve tax or social security problems, or to learn about public programs that they have a right to access. This rationale for information rights is one of the least-discussed, yet it needs to be recognized in order to understand the range of possible citizen constituencies for transparency reforms.

The idea of the "right to know" encompasses two different kinds of strategies for promoting institutional transparency. The first involves mandatory disclosure, which takes the form of a set of minimum standards that public or private agencies must meet proactively, in terms of explaining to the public what they do. Data covered by obligatory disclosure requirements can range from government budgets to private sector emissions of toxic chemicals. These days such disclosure primarily takes place through the internet, and Mexico's IFAI regularly monitors federal agencies in terms of their compliance.

The second main strategy, in contrast, requires citizens themselves to take the initiative, by submitting specific information requests. Various countries, and even different states and agencies within Mexico, have created a wide range of processes for responding to information requests—some more user-friendly than others. In this context, Mexico's experience is distinct from many other countries' because it involved creating a special federal agency, dedicated to encouraging citizen information access, including the right to easily appeal if agencies deny their requests.

[3] For comparative analyses of accountability reforms, see, among others, John Mill Ackerman, *Organismos autónomos y democracia: El caso de México* (Siglo XXI-Instituto de Investigaciones Jurídicas/UNAM, forthcoming, 2007); Scott Mainwaring and Christopher Welna (eds.), *Democratic Accountability in Latin America* (Oxford: Oxford University Press, 2003); Guillermo O'Donnell, "Horizontal Accountability in New Democracies," *Journal of Democracy,* 9(3), (July 1998); and Enrique Peruzzotti and Catalina Smulovitz (eds.), *Enforcing the Rule of Law: Social Accountability in the New Latin American Democracies* (Pittsburgh: University of Pittsburgh, 2006).

Analysis of the progress and limitations of the exercise of transparency reforms shows that, in practice, the public sector, the mass media, the private sector and civil society are all *divided* about whether to encourage the right to know. In each sector, powerful interests stand to lose influence if government becomes fully open. If "information is power," then those who control information will lose power if access becomes fully democratized. Yet now that the principle of transparency has been so widely accepted, at least at the level of discourse, few policy-makers openly reveal their opposition to information rights. This poses a dilemma. Rather than eliminating opposition, the perverse effect of today's unprecedented level of ideological consensus tends to drive the forces in favor of secrecy into the background, underground. In other words, the *real* opposition to transparency is rarely transparent. So, look at what they do, not what they say.

To assess both progress and limitations in the exercise of information rights requires asking the question: "what counts" as transparency, and for whom? Because of the ongoing, behind-the-scenes conflict over how much to reveal to the public, it is fair to say that transparency is today an arena of contested terrain. This suggests the importance of "unpacking" the concept of transparency, specifying what is becoming transparent to whom.

Consider, for example, the difference between "downwards transparency"— from the state to society and "upwards transparency"— from society to the state. Consider as well the distinction between what one could call "clear transparency" vs. "opaque" or "fuzzy" transparency. "Clear transparency" reveals how institutions really behave in practice— what decisions they make, how they make them, where their money goes, and the tangible results of their actions. "Opaque transparency", in contrast, refers to information that is only nominally available (accessible in theory but not in practice), data whose significance is not clear, or "information" that is disseminated but turns out to be unreliable. This distinction between clear and opaque is grounded on the premise that clear transparency will produce losers as well as winners, and those losers— those whose power depended on their discretional control over information— will do what they can to merely *appear* to comply with Mexico's new combination of legal requirements and civic standards. Nevertheless, even clear transparency—by itself—does not guarantee accountability, which would require the intervention of *other* public sector actors, whose mission is to promote compliance with the rule of law.

Conventional wisdom assumes that transparency somehow inherently generates accountability. Indeed, the definition of accountability is also contested terrain these days—with powerful actors nominally accepting "responsibility" for mistakes without actually being held accountable. Indeed, the meaning of the term has not yet generated

a consensus. For some, accountability involves the process of requiring decision-makers to explain and justify their actions—sometimes known as "answerability".[4] For others, only processes that include the threat of actual sanctions for transgressions or poor performance would "count" as accountability. Analysts are only just beginning to go beyond treating transparency and accountability as synonyms, to ask: *under what conditions* does transparency generate accountability? Or, one could ask, *what kinds* of transparency lead to *what kinds* of accountability.

1. Historical and Comparative Context

Just as public information has become increasingly recognized as fuel for democracy, without which it would run out of steam, secrecy and opacity have long been key instruments of authoritarian rule. In Mexico, the right to transparency has long been on the democratic agenda, though often under other names. Long before the internet, more traditional forms of public oversight were recognized as necessary to discourage the arbitrary exercise of authority. For example, free and fair elections, referred to by Mexico's historic revolutionary slogan "*sufragio efectivo*," depends on the counting of votes in public—for good reason, and more recently bolstered by transparent ballot boxes to assure voters that they were not stuffed in advance. Mexico's post-revolutionary system of governing agrarian reform communities, known as *ejidos*, gave the losing slate in leadership council elections the watchdog role of ejido oversight committee. In 1968, student protesters insisted that their leaders negotiate with the authorities in public. Human rights campaigns have long focused on the right to information about the disappeared: "*where are they?*" Beginning in 1979, elected councils of village leaders won the right to monitor hundreds of government food warehouses, as part of what is now called the Diconsa rural food supply program. In 1991, Mexican democracy campaigners made history with their pioneering independent monitoring of elections. In 1996, long-time environmental campaigners won improved information rights in the reform of the General Law for Ecological Balance and Environmental Protection.

Yet it was not until Mexico's recent experience with alternation in presidential power that official right-to-know discourse was translated into a comprehensive law that specified how

[4] See, among others, Andreas Schedler, "¿Que es la rendición de cuentas?," *Cuadernos de transparencia* No. 3., IFAI (2004); Alejandro Monsiváis (ed.), *Políticas de transparencia: Ciudadanía y rendición de cuentas* (Mexico: IFAI/Centro Mexicano para la Filantropía, 2005); Jonathan Fox, "Transparencia y rendición de cuentas: dos conceptos distintos y una relación incierta," in John Mill Ackerman (ed.), *Más allá del acceso a la información: Transparencia, rendición de cuentas y Estado de Derecho* (Instituto de Acceso a la Información Pública (IFAI)-Instituto de Investigaciones Jurídicas UNAM, forthcoming, 2007); Jonathan Fox, "Sociedad civil y políticas de rendición de cuentas," *Perfiles Latinoamericanos* No. 27, (January 2006); and Irma E. Sandoval, (ed.), *Corrupción y transparencia: Debatiendo las fronteras entre Estado, mercado y sociedad* (Mexico City: Fondo de Cultura Económica - Instituto de Investigaciones Sociales/UNAM, forthcoming, 2007).

those rights could be exercised in practice. The law emerged from an unusual convergence between civil society intellectuals, media opinion-makers, congressional leaders and legal reformers newly-embedded in the executive branch of government. After a vigorous debate, the issue had gained such a remarkably broad base of support that congress passed the final compromise version unanimously.[5] The law mandates a very explicit presumption in favor of disclosure. That is, unless in a category specifically covered by a clearly bounded exception, the law mandates that all documents and information produced by the federal government should be publicly accessible. In order to avoid the need for a new constitutional reform, the law was limited to the federal government, and the jurisdiction of the new agency (IFAI) was limited to the executive branch, though constitutional reform later re-entered the policy debate and was passed in mid-2007.

Compared to the majority of the 65 countries in the world with information rights laws, many of Mexico's federal provisions are strong and "user-friendly"— much more accessible than the US law, for example. Indeed, Mexico's law is one of the most comprehensive in the developing world. It was clearly the strongest until India followed up with a remarkably broad reform. India's law covers all levels of government— in contrast to Mexico's 2002 law, though this began to be remedied by the 2007 constitutional reform. India's law even includes modest fines for individual functionaries, to encourage them to respond promptly to public requests. India's reform was also preceded by many years of experience with state level laws, created in response to sustained mass social movements for information rights. Yet, in contrast to India, Mexico has a central federal agency charged with ensuring compliance and ruling on citizen appeals to government denials of information requests. In both countries, the national reform followed an electoral shift towards greater pluralism, and then emerged from mutually-reinforcing synergy between civil society activists and democratic-minded senior public servants.

Since Mexico's law was passed, many civil society organizations and journalists have worked to encourage its implementation. They monitor government agency compliance, file requests strategically to test the new system's efficacy, encourage media coverage, provide critical support to the IFAI, raise awareness in the states, and invest in training— so that more citizens can learn how to exercise their new information rights effectively.

[5] On the origins of the law, compare Juan Francisco Escobedo, *México: Poliarquía en construcción; Democratización, comunicación, información y gobernabilidad* (México, D.F.: Universidad Iberoamericana, 2004) and Sergio López-Ayllón, "La creación de la Ley de Acceso a la Información en Mexico: una perspectiva desde el Ejecutivo federal," in Hugo A. Concha Cantú, Sergio López Ayllón and Lucy Tacher Epelstein (eds.), *Transparentar al Estado: La experiencia mexicana de acceso a la información (*Mexico, D.F.: IIJ/UNAM, 2005).

2. Experiences with Information Rights in Practice: An Overview

Of the two main strategies designed to increase transparency and accountability in government operations, Mexico's transparency law addressed the first component involving obligatory disclosure requirements through a mandate that each government agency or program create a "transparency portal" on their respective websites. The information that agencies must publish is detailed in Article 7 of the LFTAIPG, which is designed to anticipate citizen demand for basic information about government operations. Recently, through an initiative of the IFAI, all federal executive branch transparency portals have been gathered together in one easily accessible location, with a standardized presentation across all agencies.[6]

The second main strategy involves the information request process, through which citizens themselves take the initiative to request specific kinds of federal government information, or specific documents. The IFAI, whose jurisdiction is limited to the executive branch, uses an electronic information request system called the System for Information Requests (Sistema de Solicitudes de Información, or SISI in Spanish). Requestors can easily fill out an on-line form to solicit information from a federal agency. The request then goes directly to the agency, which responds to the citizen through the same electronic system. Other federal agencies that are autonomous of the executive are subject to the law but not to the IFAI. They are known as "other mandated agencies" (or "otros sujetos obligados"—OSOs) and each has their own request process. These OSOs include the Chamber of Deputies, the Senate, the Federal Auditing Service, the Federal Electoral Institute, the Bank of Mexico, the Supreme Court (as well as highest electoral, agrarian, fiscal, and labor courts, and the federal judicial council), the National Human Rights Commission, Institute of the National Fund for Housing for Workers, as well as the Autonomous Metropolitan University (UAM), the Autonomous University of Chapingo, and the National Autonomous University of Mexico (UNAM).

As state and local governments are not subject to the LFTAIPG, and have been drafting and implementing their own transparency laws varying greatly both in depth and scope, several agreed to use an improved version of the SISI technology for the submission of information requests at the state level. Through agreements signed with the IFAI, an information request system known as "Infomex" has been adopted by the Mexico City government and the states of Chihuahua and Zacatecas, for example. Following the 2007 constitutional reform, local governments will now be required to meet certain

[6] See: http://portaltransparencia.gob.mx/pot/.

minimum standards similar to those established in the LFTAIPG, including requirements for using technology to facilitate the submission of information requests. It is expected that "Infomex" will become a standardized window for requesting information from all levels of government, once local transparency laws are brought in-line with the new constitutional reform.

It is important to point out that each agency decides how to respond to citizen requests—not the IFAI. Specifically, the LFTAIPG mandated that all federal government institutions create a "Liaison Unit" (Unidad de Enlace) to serve as the contact point between information requestors and the institution. Each agency also has an Information Committee (Comité de Información), which determines whether or not the information requested "exists", and whether or not it is considered confidential or otherwise "reserved".

In principle, the process of filing information requests with the executive branch is quite straightforward, especially for those citizens familiar with the internet. Both the IFAI and civil society organizations have produced useful manuals that clearly explain the procedures.[7] Yet filing a request is often not sufficient to actually access the information requested. This is in part because of the challenges involved in the crucial step of *formulating* the information request. It turns out that filing a successful information request requires that one already possess a great deal of knowledge about what one is looking for. This poses a classic "chicken-and-egg" problem.

For citizens' requests to be successful, they must know exactly where to direct them, otherwise they will be rejected. Agencies will reply with: "that's not our department". Some of these responses will also indicate which agency *should* be addressed. If an information request deals with an issue that involves more than one agency, then there is a risk that each one will tell the citizen to ask the other. Many citizen requests are directed to federal ministries, when the request involves a distinct agency *within* the ministry. Just in the executive branch, there are over 200 federal agencies to which one can direct an information request through SISI. How does one know which one to address? If one is interested in tax information, for example, it may seem logical to ask the Treasury Ministry—but they will reply that one must instead file the request with Tax Administration Service (SAT in Spanish), even though SAT is part of the Treasury Ministry.

A program such as Oportunidades, for example, is under the supervision of the Social Development Ministry, though the program itself has been given a certain amount of

[7] See www.ifai.gob.mx and www.mexicotransparente.org.mx.

autonomy in its operations. As a result, an information request about the program must be submitted directly to Oportunidades, rather than to the Social Development Ministry. Even though federal ministries have a great deal of information about their respective programs, they will often redirect requests about them. This diversionary tactic conflicts with the law, which explicitly states that government offices must release the information requested if it is in their possession.[8] While the Treasury Ministry frequently redirects requests for information, in the experience of the authors, the Ministry of the Economy tends to respond comprehensively, and responses from the Ministry of the Environment and Natural Resources clearly direct requestors where to turn. Moreover, if an information request deals with programs in which federal agencies fund state and local governments, there is a risk that each level of government will tell the citizen to ask the other.

The second kind of information that citizens need to increase their prospects for a successful information request is that they be familiar with how the government agency itself is organized. It helps if requestors can provide specific details about how to locate the information requested. For example, which office *within* the agency would most likely possess the information requested? Exactly what kind of documents do these offices tend to produce? How are these documents classified and what are they called? It helps to describe the information one is looking for in the same discourse that the agency uses. Basically, the more information that one can provide to assist the Liaison Unit in locating the document requested, the greater the chances of success. In other words, requests that include generalized questions such as, "How was it decided to build a road in "X" area and how will it affect the community?" will have little chance of receiving a successful answer. To increase the chances that information requests will produce answers to such questions, one must know beforehand which specific agency decided to build the road, and that one can also request access to an environmental impact study that might detail how nearby communities would be affected.

This complication is due in part to the fact that the law does not require agencies to *produce* information in order to respond to a request. They are only required to provide copies of pre-existing documents, when those documents respond to the question asked. At the same time, the representatives of each agency's Liaison Unit, who, in the end, are responsible for responding to information requests, are not necessarily familiar with the information produced by each office in their agency. Once the Liaison Unit receives the

[8] Article 3 of the LFTAIPG defines information subject to the law as: "Information: That which is contained in the documents, with any title, that are generated, obtained, acquired, transformed, or housed by any government body."

request, they then pass the request along to what seems to be the appropriate office or offices within the agency. The response given by that office is what is then forwarded on to the requestor. The Liaison Unit staff may not know whether or not that information is complete, or the best possible information available to respond to the request. Therefore, assisting the Liaison Unit in determining which documents would be the most appropriate to respond to the inquiry could help to produce a more complete response.

Requestors must therefore rely, to a certain extent, on the goodwill of each office in government agencies to provide the most complete, comprehensive, and accurate response to an information request. Few citizens possess sufficient knowledge about the information produced by each agency to be able to independently assess whether or not the agency has provided *all* the relevant information in its possession.

This raises the issue of agency claims that information requested "does not exist". Agencies are allowed, through the LGTAIPG, to respond to information requests by claiming that the requested information cannot be found, or is not a *type* of information produced within the institution, labeling the requested information as "non-existent". While these types of answers only represent a small portion of total agency responses to information requests, the trend is increasing over time. At the beginning, declarations of "non-existence" represented only around 3% of total agency responses, but in 2005 the proportion rose to 5% (or a total of 1,816 responses of that nature in the same year).[9] It is very difficult for a requestor to challenge an agency declaration that the information requested "does not exist", while government officials run little risk if they report that they looked for the information requested but could not find it.

3. Practical Lessons from Information Requests

3.1. Profiling Citizen Demand for Information

The number of information requests to the federal executive branch has been growing steadily since the law first went into effect. As indicated in Table 1, a total of 172,169 information requests had been submitted as of the end of 2006, the vast majority of them through SISI (they can also be submitted in writing).

[9] IFAI, *1er Informe de Labores al H. Congreso de la Unión*, 2003-2004 Annex 2.1, 2004-2005 Annex 1.4, 2005 Annex 1.2.

Table 1

Total Information Requests to Executive Branch 2003-2006

	Total	2003*	2004	2005	2006
Total requests to executive branch agencies	172,169	24,097	37,732	50,127	60,213

* Beginning June 12th, 2003

Source: IFAI, *Estadísticas SISI,* "Estadísticas de Solicitudes de Información: Resumen," available at: http://www.ifai.org.mx/textos/stats.xls, last accessed on February 12th, 2007, IFAI; *3er. Informe de Labores al H. Congreso de la Unión, 2005*, p. 9; and IFAI *2do. Informe de Labores al H. Congreso de la Unión, 2003-2004*, p. 27.

Between 2004 and 2005, the overall number of requests increased by almost 33%, and between 2005 and 2006, the overall number increased by just over 20%. These figures include requests for public information, as well as requests for access to or correction of personal data. Requests involving personal data represent around 10% of the total number of requests filed. It is important to note, however, that this 10% reflects a "self-classification" by the requestor. When asking for information through SISI, one is asked to classify the request in terms of whether it involves public information, or access to or correction of personal data. Sometimes requests for personal data are misclassified as requests for public information.

Several federal agencies consistently attract the highest level of citizen interest for public information. Based on the first three and a half years of operation, official IFAI data tells us that the most-solicited agencies are: the Mexican Social Security Institute, the Treasury Ministry, the Ministry of Public Education, the Ministry for the Environment and Natural Resources, and the Ministry of Public Administration. The top 20 most-solicited agencies are highlighted in Table 2.

Table 2

Top 20 Most Solicited Agencies in the Executive Branch

Executive branch agency	Accumulated total	No. of requests 2003*	No. of requests 2004	No. of requests 2005	No. of requests 2006
Mexican Social Security Institute	13,243	1,114	2,230	3,825	6,074
Treasury Ministry	8,385	1,570	2,068	2,247	2,500
Ministry of Public Education	6,991	1,061	1,413	2,042	2,475
Ministry for the Environment and Natural Resources	5,928	779	1,294	1,823	2,032
Ministry of Public Administration	5,238	696	1,065	1,659	1,818
Office of the Attorney General	4,678	528	1,138	1,524	1,488
Ministry of the Interior	4,619	694	1,011	1,406	1,508
Ministry of Health	4,603	474	858	1,312	1,959
Ministry of Transportation and Communications	4,365	636	964	1,297	1,468
Tax Administration Service	3,972	354	751	1,291	1,576
Foreign Relations Ministry	3,439	419	784	997	1,239
Office of the President	3,281	685	651	841	1,104
Ministry of National Defense	3,313	490	849	866	1,108
Federal Electricity Commission	3,372	536	740	1,037	1,059
National Water Commission	3,203	386	437	1,142	1,238
Federal Institute for Access to Public Information	3,101	329	630	987	1,155
Economy Ministry	2,824	422	636	776	990
Petróleos Mexicanos (Mexican Petroleum)	2,832	446	589	738	1,059
Ministry of Agriculture, Livestock, Rural Development, Fishery, and Nutrition	2,760	447	577	792	944
Institute for Social Security and Services for Public Employees	2,715	333	552	843	987
Totals for top 20 agencies	92,862	12,399	19,237	27,445	33,781
Percent of overall total number of requests to executive per year	53.94%	51.45%	50.98%	54.75%	56.10%

* Starting June 12th, 2003

Source: IFAI, *Estadísticas del SISI,* "Estadísticas de Solicitudes de Información: Resumen", available at: http://www.ifai.org.mx/textos/stats.xls, last accessed on February 12th, 2007, and IFAI, *3er Informe de Labores al H. Congreso de la Unión, 2005,* p. 11.

Over time, despite slight shifts in rankings, the same 7-8 agencies have been receiving the most requests. The case that stands out for consistently receiving more information requests than any other is the Mexican Social Security Institute, which holds a great deal of personal data, such as medical and employment records.[10] Given the misclassification issue mentioned earlier, it is likely that the proportion of requests to the Social Security Institute for personal information is even higher.[11]

The vast majority of citizen demand for government information falls into the category of "public information". The IFAI requests that each Liaison Unit classify the nature of public information requests based on a pre-established list of possible kinds of questions asked. These categories include: organizational structure, salaries, information generated by the agency, subsidy programs, agency activities, information about contracts, expenditures, audits, personal information, and "other". The majority of requests have been classified to fall into the categories of "information generated by the agency", and "agency activities", as shown in Table 3. These categories include requests for information such as: procedures, permits, statistics, results of surveys, work plans, results of substantive activities, agendas of public employees, and "other".

Table 3
Most Commonly Requested Categories of Information

Category of request (as a percentage of total requests)	**2003***	**2004**	**2005**
Information generated by the agency	25.7%	32.1%	33.4%
Agency activities	17.0%	18.8%	20.4%
Total percentage	**42.7%**	**50.9%**	**53.8%**

* Starting on June 12th, 2006
Source: IFAI, *3er Informe de Labores, 2005*, pp. 13-14.

These data appear to imply that most people are filing information requests in order to gain a better understanding of how the government works. Much more research is needed to determine to what degree citizens' questions are actually being answered in practice.

[10] In 2005, of the 3,825 requests received by IMSS, 2,232 (or 58%) were for access to or correction of personal data. Source: IFAI, *3er Informe de Labores 2005*, Annex 1.1.
[11] No other agency receives as high a proportion of requests for personal information than the Mexican Social Security Institute. The closest is the National Polytechnic Institute, who received a total of 712 information requests in 2005, of which 295, or nearly 42% were for access to personal data. Of the top 20 most-solicited agencies, the second highest recipient of requests for personal data is the Office of the Attorney General. In this case, of the 1,524 requests submitted, 266 (or 17.5%) were for access to or correction of personal data. Source: IFAI, *3er Informe de Labores, 2005*, Annex 1.1.

3.2. Who is requesting information?

Many observers wonder: who is requesting information from the government? Unfortunately, the available data on requestors' age, gender, and occupation is too unreliable to generate an accurate profile. The reason is that requestors are asked to *self*-classify their activities into one of the following categories when filing a request: academia, business, media, government, or "other". Frequent requestors have found that their self-identification can affect their chances of receiving a response—most notably journalists. Many report that identifying themselves as journalists leads agencies to resist providing information. This pattern appears to have caused a drastic underestimate of the number of journalists requesting information in the SISI data.[12]

One ambiguity in the design of the information access system (SISI) involves the possibility of filing anonymous requests. Mexico's federal freedom of information law does not require requestors to provide proof of identity, which allows for the use of pseudonyms. Many possible information requests can touch upon controversial issues and requestors therefore may fear reprisals, notably in cases of whistleblowers and journalists.

This is one area where the internet offers a great advantage. If the information requested can be delivered electronically, then anonymity can be preserved. However, if the requestor files an appeal, then the use of an "invented identity" can potentially complicate the appeals process; if the IFAI calls a hearing, then the identity of the requestor could potentially be revealed.

The use of pseudonyms is particularly relevant because agencies have access to the personal information associated with each requestor's account in SISI. This is not obvious to requestors, however. When citizens register in SISI, they are asked to fill out a form with their personal information, but it is not clear to the user that agencies will have access to the data provided. While the IFAI treats this as personal data to be protected from release to the public, they are *not* able to keep this information from being viewed by the agency. At first, the IFAI tried to prevent agencies from accessing personal data in SISI accounts, however agencies insisted on knowing who was requesting information. The IFAI accepted this position, in the absence of a legal basis for defending the anonymity of requestors.

[12] For example, in 2005, only 8.6% of requestors self-identified themselves as being members of the media, which appears implausible (IFAI, *3er Informe de Labores,* 2005) p. 13.

3.3. Initial Agency Responses

How have executive agencies been responding to the increasing numbers of information requests they receive each year? Agencies are given a series of 9 options for categorizing their responses within SISI. They can be divided into two groups—responses that provide information in some form, and those that deny the request. The official categories of responses are:

a. Information provided in some form:

- *Delivery of information through electronic means*: This is perhaps the ideal type of response, because it implies that an electronic file has been delivered to the requestor through SISI, therefore it is without cost and the information is provided quickly. Additionally, since all information requests submitted through SISI are also public and searchable, responses provided in electronic form are publicly available for consultation in the future by any interested person (not just the requestor). This unique feature of SISI was recently bolstered by the development of a new search engine.[13]

- *Notification of date and location for pick-up:* This response implies that the information requested can only be provided in hard copy, on a CD, or other media format that cannot be transmitted through SISI. In these cases, the requestor has indicated that they will pick up the information from the office of the Liaison Unit. This response is often associated with requests for personal data, which can only be provided to the person to whom it belongs, and therefore identification is required to receive it.

- *Notification of delivery*: This response also implies that information has been provided but cannot be delivered through the internet. In contrast to the previous category, however, the information provided would not require identification, and therefore can be sent directly to the requestor for an additional fee.

- *The information is already publicly available*: This response implies that the request can be fulfilled by consulting information that is already publicly available. In these cases, the agency should indicate to the requestor where they can find the information requested.

[13] Called "Zoom", available at: http://buscador.ifai.org.mx/buscador

b. Information denied or procedural errors:

- *Denial because the information is reserved or classified*: In these cases, the Information Committee at the agency has deemed the information requested to fall under the definition of confidential or reserved, as defined by the LFTAIPG. They can also partially reserve information in cases where part of the request can still be provided.

- *The information requested does not exist*: This response implies that the agency has determined that they do not (or no longer) possess the information requested.

- *Request does not correspond to this Liaison Unit*: In these cases, the agency has determined that the request should be directed to a different agency, because the information requested is not their responsibility. These responses are quite common, partly because of the previously mentioned problems in identifying which agency would be the most appropriate for responding to the question at hand.

- *Request does not fall under the rubric of the law*: This response usually implies that the question asked is not related to transparency in government operations.

- *The request will not be processed*: These cases tend to imply that some sort of procedural problem prevents the request from being processed, or that the requestor has chosen to desist in the request.

In 2005, the proportions of responses for each of these categories are outlined on the next page in Table 4.

Table 4

Agency Responses to Information Requests, 2005

Category of agency response (as a percentage of total responses)	2005
Information provided	
Delivery of information through electronic means	60%
Notification of date and location for pick-up	2%
Notification of delivery	2%
The information is already publicly available	9%
Total proportion where information provided	**73%**
Information denied	
Request does not correspond to this Liaison Unit	15%
The information requested does not exist	5%
Denial because the information is reserved or classified	3%
The request does not fall under the rubric of the law	2%
The request will not be processed	2%
Total proportion of information requests denied	**27%**

Source: IFAI, *3er Informe de Labores, 2005*, Annex 1.2.
Note: The different annual reports do not permit comparison between years.

Clearly, the vast majority of information requests receive some sort of response where information is either provided, or the requestor is directed to where to find it. However, there are two major problems with relying on the agency's categorization of their response to determine how often people actually receive the information requested.

The first is related to misclassifications of the responses. Preliminary research indicates that there are a significant number of agency responses that are categorized as *delivery of information through electronic means*, when in fact the requests are being denied. This happens most frequently when the agency prepares a memo to explain why they are denying the information, but since they respond with a document sent through SISI, they classify the empty response as "delivering information". In other words, since they are attaching a file through the system, they classify the response as having "delivered information", when in reality the content of the attached file is an explanation of why the information is being denied or is considered "non-existent".

The second major problem with relying on agency categorization of their response, related to the above complication, is that these categories of response do not evaluate the *quality* or *relevance* of the information provided. Table 4 shows that, in 2005, 73% of the time requestors were provided with *some* kind of information, or were hopefully directed to an existing public source. However, without evaluating each of the actual responses, it

is impossible to know whether or not what was provided actually answered the question asked. Overall, these issues demonstrate that further research is needed in order to document to what degree agencies are actually responding to information requests.

3.4. Profiling Pro-active Government Disclosure

In addition to responding to direct information requests, agencies are also mandated by Article 7 of the transparency law to publish certain basic information about their activities and procedures. The IFAI has been monitoring the executive branch's compliance with these established requirements. The evaluation criteria measure the extent to which the information presented in their "transparency portal" is complete in terms of what is established in the law.[14]

These evaluations have been undertaken in three stages. The first was carried out by the IFAI in late 2003. These preliminary results were then shared with the agencies involved, without being released to the public. In early 2004, agency compliance with the mandatory disclosure requirements was re-evaluated, and these results were made public. Since then the IFAI has continuously monitored agency compliance.

The publicly available results of these evaluations are presented in Table 5.

Table 5

IFAI Evaluation of Executive Branch Compliance with Mandatory Disclosure Requirements

	Overall average degree of compliance with Article 7 mandate for all agencies
February 2, 2004 - April 12, 2004	62.8%
End of year 2004	80.6%
End of year 2005	96.1%
As of July 6, 2006	96.1%

Source: IFAI, *3er Informe de Labores, 2005*, p. 33 and "Avance en el porcentaje de cumplimiento con las obligaciones de transparencia por dependencias y entidades de la Administración Pública Federal," IFAI, available at http://www.ifai.org.mx/evaluacion/anexo.xls, (accessed on February 14, 2007).

As Table 5 demonstrates, the degree of compliance with the public disclosure mandate has increased sharply. Currently, there are 200 agencies whose degree of compliance is

[14] "Criterios de verificación y evaluación del cumplimiento de las obligaciones de transparencia establecidas en el Artículo 7 de la Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental," Dirección General de Estudios e Investigación/Dirección General de Coordinación y Vigilancia de la APF, Secretaría de Acuerdos/Secretaría Ejecutiva, Instituto Federal de Acceso a la Información Pública, 2003, available at: http://www.ifai.org.mx/evaluacion/criterios.doc.

at 100%.[15] Only 3 agencies have been evaluated at less than 50% compliance, and an additional 5 agencies whose compliance is below 60%, listed in Table 6.

Table 6
Agencies with Compliance Below 60% in Mandatory Disclosure Requirements

Agency	Date of last evaluation	Overall compliance
Communication and Transportation Ministry	2/23/2006	58.2
Ministry of Public Education	10/7/2005	58.0
Center for Cinemagraphic Training	11/1/2005	56.9
National Institute for the Elderly	1/14/2005	55.1
Ministry of the Interior	3/9/2006	53.5
National Water Commission	4/25/2006	49.1
Federal Roads and Bridges	7/13/2005	45.3
Institute for the Technical Development of Public Finances	1/9/2006	-4.0

Source: Ibid.

Despite the overall high degree of compliance with publishing basic information on government websites, the IFAI evaluations are not assessing the *usefulness* of the information presented. Their evaluation is limited to whether or not the information presented is *complete* according to the terms of the law. In theory, the information required through Article 7 is some of the most basic, which details the operation of the agency and its programs. This should help to increase the level of transparency and accountability in their operations, without requiring that interested persons submit information requests in order to understand how a program works and what a particular agency has been doing with public funds. Many have pointed out that some of these requirements are highly technical, and therefore of little use to non-specialists. Additionally, agencies tend to publish vast quantities of raw data to comply with the mandate. Not only does this imply long waits to download the information, but it also makes it extremely difficult to digest if one is interested in broad trends or change over time. Since the majority of information requests fall into the categories of "information generated by the agency" and "agency activities", it appears that the Article 7 mandate is not completely satisfying citizen demand for basic information about government program operations.

[15] "Avance en el porcentaje de cumplimiento con las obligaciones de transparencia por dependencias y entidades de la Administración Pública Federal," IFAI, available at: http://www.ifai.org.mx/evaluacion/anexo.xls (Viewed February 14, 2007).

3.5. Government Bodies Outside the Executive Branch (Otros Sujetos Obligados, or OSOs)

While the 2002 law covers the entire federal government, the IFAI's jurisdiction is currently limited only to agencies within the executive branch. This means that the congress, the judiciary and autonomous federal agencies were mandated to develop their own procedures for implementing the law. Most of the OSOs provide access through processes similar to the IFAI, and have complied with the mandatory disclosure requirements.[16] The most notable difference with the IFAI's procedures involves the right to appeal. In the case of the IFAI, a group of commissioners rules on appeals, in a process similar to an administrative appeals court. For the other OSOs, appeals are judged by the same agencies whose denial of information provoked the appeal in the first place. This lack of third-party review of information denials is a major difference with the executive branch's process. In most cases the internal appeals processes for OSOs have yet to be subject to external evaluation. In addition, states and municipalities are not yet subject to the same requirements, and as a result their procedures, both for requesting information and for the appeal of a denial, vary widely in quality and scope. Some states have information access provisions that are at least as strong as the federal government is, but most are weaker.[17]

3.6. The IFAI's Appeals Process

Though it is very difficult to assess the quality and relevance of agency responses to information requests, one partial indicator of citizen satisfaction with the information provided by government agencies is the extent to which people file a formal appeal to the IFAI. However, not everyone who finds an agency response lacking will necessarily file a formal appeal.

The IFAI is the ultimate authority in determining whether or not an executive branch agency's response is legitimate. From the beginning, they have been clear in their position that *any* response, for whatever reason, can be sent to them for appeal. This includes both formal denials and *de facto* denials. Formal denials involve the classification or reservation

[16] See Sergio López-Ayllón and David Arrellano Gault, "Estudio en material de transparencia de otros sujetos obligados por la Ley de Transparencia y Acceso a la Información Pública," (Mexico: D.F.: CIDE, 2006) available at:http://www.ifai.org.mx/oso/informes/EstudioenMateriadeTransparencia.pdf and Benito Nacif Hernández, Diego Díaz Iturbe and Jorge Egren Moreno, "Informe de transparencia del poder legislativo en Mexico," (Mexico: Monitor Legislativo.CIDE, 2006) available at: http://www.monitorlegislativo.org/documentos/documentos/transparencia.pdf.

[17] See Eduardo Guerrero Gutiérrez and Leticia Ramírez de la Alba Leal, "La transparencia en México en el ámbito subnacional: Una evaluación comparada de las leyes estatales," in Sergio Lopéz-Ayllón (ed.), *Democracia, transparencia y constitución, Propuestas para un debate necesario* (Mexico: IIJ-UNAM/IFAI, 2006) and Mauricio Merino, "The Challenge of Transparency: A Review of the Regulations Governing Access to Public Information in Mexico States," *Justice in Mexico Working Paper Series*, Number 5, (2005), available at: www.justiceinmexico.org.

of information, whereas *de facto* denials involve a declaration of "non-existence" as well as incomplete or inappropriate responses. As of December 31, 2006, 8,241 appeals had been filed, which represents only 4.8% of the total number of information requests submitted.[18] The number of appeals filed to the IFAI is detailed below.

Table 7

Total Appeals Submitted to IFAI, and Proportion of Total Requests that are Appealed

	Accumulated total	2003*	2004	2005	2006
Total appeals filed with IFAI	8,241	636	1,431	2,639	3,535
Percent of total requests	4.8%	2.6%	3.8%	5.3%	5.9%

* Starting in August, 2003

Source: IFAI, *Estadísticas del SISI,* "Estadísticas de Solicitudes de Información: Resumen," available at: http://www.ifai.org.mx/textos/stats.xls, (last accessed on February 12, 2007), and IFAI, *3er Informe de Labores, 2005*, p. 16.

The appeals process is straight-forward and fairly simple, from the perspective of the requestor. Notably, citizens do not need lawyers or technical experts to file appeals. The use of the internet facilitates the appeals process. If a request is filed using SISI, whatever category of response that is given by the agency can be easily appealed with the click of a button. By simply filling out an electronic form, without having to use complex legal language, one can request that the IFAI intervene to determine whether or not the agency response was appropriate. Indeed, the IFAI itself is mandated to assist in transforming a complaint into a legally-grounded formal appeal, to help the appellant present the strongest possible case.

Once a request for a formal appeal has been submitted, a random system assigns one of the five IFAI commissioners to be the lead on the case. The lead commissioner then conducts an investigation, evaluating the validity of the agency's response and the requestor's rationale for appeal. Sometimes the IFAI's Research Department will support the commissioners through issue-specific investigations, whose results are incorporated in the final decision. Commissioners will often request additional information from both the requestor and the agency, which may also involve a hearing. The lead commissioner then takes a position on the case, and presents her/his arguments to the Plenary in public sessions held every Wednesday. The commissioners then vote, and a simple majority decides.

[18] IFAI, *3er Informe de Labores, 2005*, p. 15.

The possible resolutions to an appeal are: confirm, revoke, modify, *positiva ficta*, stay of the case, discard, "no show", and inappropriate. The IFAI classifies these outcomes into three categories: those that involve interpretation of the law (known as "core appeals"), those that are based on procedural issues (known as "procedural appeals"), and a unique category of appeals that draw attention to agency non-compliance with legally mandated time limits ("positiva ficta"). This last category represents a unique attribute of the Mexican law, because agencies that do not respond to the request within the established time limit are required to produce the information requested.

The trends over time regarding how the IFAI commissioners have ruled in appeals cases are presented in Table 8.

Table 8

Total Numbers of Appeals Decisions, by Category of IFAI Resolution, 2003-2005

Appeals decisions (absolute numbers)	Accumulated total	2003*	2004	2005
Core appeals				
Confirm	627	73	208	346
Modify	851	96	280	475
Revoke	914	86	305	523
Positiva ficta	25	8	11	6
Procedural appeals	1656	179	502	975

* Starting August, 2003
Source: IFAI, *3er Informe de Labores, 2005*, p. 18.

A resolution classified as "confirm" implies that the IFAI has determined that the agency's response was correct. In the case of "revoke", the IFAI has ruled on the side of the requestor. "Modify" implies that the IFAI neither completely accepts, nor completely rejects the response given by the agency, and rather mandates that the agency change their response in some way.

It is important to point out that the IFAI annual reports categorize "stays of the case" as "procedural appeals". However, these resolutions have often resulted in the release of a good deal of information, publicly through the newly bolstered searchability of IFAI resolutions through the new "Zoom" search engine. This is due to the fact that the many "stays of cases" imply that the agency has changed their position during the course of the appeal, thus granting access to the information requested.

The majority of appeals have required that IFAI Commissioners make substantive decisions

about whether or not the agency's response was appropriate. The proportions of appeals that result in the various categories of IFAI resolutions are presented in Table 9, which shows that in 43.3% of the cases, IFAI commissioners have either rejected or modified the agency's response. In only 15.4% of cases has the IFAI determined that the agency's argument was more valid than the complaint of the appellant. This trend indicates that IFAI commissioners tend to interpret the law in favor of disclosure.

Table 9

Proportions of IFAI Resolutions as Percentages of Total Appeal Decisions, 2003-2005

Resolutions to appeals (percentage of total appeal decisions)	**Percent of total appeals decisions**	**2003***	**2004**	**2005**
Core appeals				
Confirm	15.4%	16.5%	15.9%	14.9%
Modify	20.9%	21.7%	21.4%	20.4%
Revoke	22.4%	19.5%	23.4%	22.5%
Positiva ficta	0.6%	1.8%	0.8%	0.3%
Procedural appeals	40.7%	40.5%	38.4%	41.9%

* Starting August, 2003
Source: IFAI, *3er Informe de Labores, 2005*, pp. 18-19.

The decision of the commissioners then becomes obligatory for the agency, and sets a kind of precedent for future cases. Agencies are also permitted to file their own appeals through the judicial system to challenge IFAI resolutions. Of the 102 judicial appeals filed by executive branch agencies against an IFAI resolution, as of the end of 2005, the courts found in favor of the IFAI in 70 of those cases, while 15 were still undecided.[19]

All IFAI decisions are published on their website, including supporting documents, and have recently been made more accessible to the public through the new search engine. If an agency is required to release information, they are usually given 10 working days to respond and deliver. Table 10 highlights more specifically how often agencies are instructed to release information through IFAI resolutions.

[19] IFAI, *3er Informe de Labores, 2005*, p. 19.

Table 10

Frequency and Proportion of IFAI Resolutions that Instruct Agencies to Release Information

Resolutions with instructions	Accumulated total	2003	2004	2005	2006
Totals	3,186	275	680	1,153	1,078
% of total appeals filed	38.66%	43.24%	47.52%	43.69%	30.50%

Source: Information request no. 0673800018807.

Appeals involving agency claims that the information requested "does not exist" are difficult to resolve. Such claims are difficult to disprove, and the "burden of proof" falls squarely on the requestor. The IFAI has the capacity to investigate these matters, but the difficulties in overcoming a declaration of "non-existence" are formidable.

Not all government agencies have responded consistently to the new transparency reforms. One partial indicator of agency resistance is the number of appeals filed against an agency to the IFAI. The top 10 agencies in absolute numbers of appeals resolved by the IFAI are detailed in Table 11. All of these agencies are also on the list of the top 20 agencies who receive the most information requests.

Table 11

Top 10 Agencies in Absolute Numbers of Appeals Decisions by IFAI, 2003-2006

Agency	Number of appeals decisions by Agency (2003*-2006)	Proportion of appeals decisions as percentage of requests to each agency
Ministry of Public Administration	465	8.9%
Treasury Ministry	353	4.2%
Office of the Attorney General	349	7.5%
Ministry of Public Education	347	5%
Mexican Social Security Institute	345	2.6%
Tax Administration Service	285	7.2%
Communication and Transportation Ministry	222	5.1%
Foreign Relations Ministry	212	6.2%
Petróleos Mexicanos (Mexican Petroleum)	206	7.3%
Federal Electricity Commission	190	5.6%
Proportion of appeals decisions involving the top 10 agencies as percentage of total resolved appeals (2003-2006)	**38.3%**	

* Starting August, 2003.
Note: Figures are based on total appeals where the process has concluded and the IFAI commissioners have reached a final resolution. This implies a slight difference in comparison to the total number of appeals filed, as a number of appeals filed in 2006 had yet to be resolved.
Source: Information request no. 0673800018807.

3.7. Challenges to Compliance with the LFTAIPG and IFAI Mandates

Agency compliance with IFAI mandates to release information cannot be taken for granted. Indeed, the IFAI recognizes this challenge: "The Institute has the obligation to verify that agencies comply with the resolutions of the Plenary, in both time and form, so as to safeguard appellants' rights."[20] The IFAI has two systems for monitoring compliance, but they are incomplete. First, the IFAI records receipt of official agency statements that claim to have complied with an IFAI resolution. Second, IFAI's verification office only learns of inadequate responses when alerted by appellant complaints. The first indicator overstates compliance, and the second strategy is only a partial indicator of inadequate agency response to IFAI mandates. The IFAI does not itself receive copies of the information released in compliance with a mandate, and therefore cannot *verify* agency claims of compliance.

Citizens have two possible recourses if unsatisfied with an agency's response to an IFAI mandate. First, an appellant can request the IFAI's continued involvement in the case by making an official complaint to its Department for Coordination and Monitoring of the Federal Public Administration. Once a complaint is filed, IFAI staff intervenes directly with the agency to encourage compliance with the mandate. In addition, an appellant can file an appeal through the judicial system, to report that the agency has violated their rights. The time limit to file such an appeal is extremely limited (15 working days), which later becomes a rather arduous and costly legal process, and this path has rarely been followed.

These two options for challenging non-compliance with an IFAI mandate each have advantages and disadvantages. Judicial rulings have more power to induce compliance and offer a more tangible threat of consequences for continued non-compliance. The distinct disadvantage is that filing a judicial appeal requires highly technical legal expertise. In the case of filing a complaint with the IFAI, which can easily be done by email or phone, there is no time limit for requesting IFAI intervention. However, appellants must rely on IFAI staff's more informal powers of persuasion, since they lack the tangible threat of sanctions (as discussed in more detail below).

The IFAI has received a total of 320 complaints from appellants who were unsatisfied with agency responses to IFAI decisions.[21] However, this data appears to be incomplete, since many appellants deal with non-compliance more informally, through phone calls to the IFAI officials, who address them through some of the above-mentioned negotiation

[20] IFAI, *3er Informe de Labores, 2005*, p. 31.
[21] Information request no. 0673800018807.

and intermediation techniques. These 320 complaints refer only to those cases in which the initial attempts at resolution were unsuccessful, and therefore the complaints passed to a more formal process of investigation and resolution. These formal complaints to the IFAI represent 4% of the total number of appeals decisions (as of the end of 2006). The frequency of appellant complaints to the IFAI is rising over time, as highlighted in Table 12.

Table 12

Appellant Complaints to IFAI for Non-Compliance with IFAI Resolutions 2003-2006

Complaints of non-compliance filed with IFAI	Accumulated total	2003	2004	2005	2006
Totals	320	0	46	107	167
Proportion of total resolved appeals	4.1%	0%	3.2%	4.1%	5.5%

Source: Information request no. 0673800018807.

The reasons why appellants complain to the IFAI when they are unsatisfied with an agency's response to an IFAI resolution can vary from substantive complaints that the information was not provided or was incorrect, to more procedural issues related to the agency's means of delivery of the information. Data on the nature of appellant complaints to the IFAI is only available for 2005. The majority of complaints filed with the IFAI are because the requestor did not receive the information as mandated by the resolution, at least not within the official time period, as detailed in Table 13.

Table 13

Types of Complaints to IFAI for Non-Compliance with Resolutions in 2005

Reason for complaint	Amount of complaints per category	% of total
Response was not given	39	36.1%
The information delivered was incomplete*	31	28.7%
The information delivered does not match what was requested	19	17.6%
The manner in which the information was delivered was not what was requested*	11	10.2%
"Other" (specific to nature of resolution)	4	3.7%
Miscalculated reproduction or delivery costs	2	1.9%
Information delivered outside of established time frame	1	0.9%
Given additional requirements to receive the information	1	0.9%
TOTAL	108**	100.0%

Source: IFAI, *3er Informe de Labores, 2005*, Annex 5.4.

* One case was classified using both of these categories. For the purposes of this table, this case was tabulated only under the category of "the information delivered was incomplete".

** Note: The 2005 *Annual Report* lists an extra case of complaint for non-compliance, not included in the response to the information request detailed in Table 12.

Six agencies stand out for having received the most complaints for non-compliance with IFAI mandates to release information, highlighted in Table 14 below. These top six agencies with the most formal complaints for non-compliance represent only 3% of the total number of IFAI resolutions where agencies were mandated to release information. However, what is particularly notable in this scenario is the fact that the agency in charge of rendering sanctions for non-compliance with IFAI mandates, is also the agency that has itself received the most formal complaints for non-compliance, as discussed in further detail below.

Table 14

Top 6 Agencies with Most Complaints for Non-Compliance with IFAI resolutions where Instructed to Release Information, 2004-2006

Agency	Accumulated total complaints 2004-2006*	% of total appeals decisions involving instructions to agency 2004-2006
Ministry of Public Administration	21	17.4%
Foreign Relations Ministry	17	16.8%
Federal Electricity Commission	14	16.9%
Ministry of Public Education	13	8.2%
Pemex Exploration and Production	11	18.6%
Treasury Ministry	11	9.6%

* Calculations were performed only for the period 2004-2006 as no complaints were registered for 2003.
Source: Information request no. 0673800018807.

One of the main constraints on the appeals process involves the IFAI's lack of capacity to enforce its decisions. The IFAI itself cannot punish agencies or individuals that fail to comply with a resolution. Instead, the IFAI must forward its recommendations for sanctions to the Ministry of Public Administration. This is because the transparency law relies on the Law of Responsibilities of Public Servants to sanction non-compliance. The IFAI must use the Ministry of Public Administration's formal channels for presenting complaints against public employees, through their Offices for Internal Control. This system requires sanctions to specify individual staff to be held responsible. However, because of the "many hands" involved in any given policy decision, it is often extremely difficult to charge any one specific individual for agency non-compliance with an IFAI mandate.

In practice, relying on the SFP system to sanction non-compliance with IFAI mandates has had limited tangible results. Dr. Ernesto Villanueva highlights this point in a recent article published in a leading national newsmagazine:

> "...analysis of IFAI's resolutions on appeals shows that, in 2004, only 9 of 465 attended cases ordered sanctioning procedures. In 2005, only on 24 of 1,065 occasions was the Ministry of Public Administration involved for the purposes of sanctioning someone who did not comply with the IFAI's mandates. This represents only 2% of cases presented in two years...
>
> ...Although in two years, the IFAI has shown or requested the intervention of the Ministry of Public Administration, within their power, to sanction public employees in 33 cases, this has only happened in 3 cases!... Strangely, none of the three sanctioned individuals are high level officials, meaning, Directors General or above; instead they are mid-level or operational staff. This shows two major issues: on one hand, the Ministry of Public Administration is not in compliance with the law, and only addresses less than 10% of reported cases; and on the other hand, by minimally complying with the law, the Ministry of Public Administration relaxes by dealing only with personnel in the Liaison Units, who, in reality, are mere messengers with only the authority to provide information.
>
> The Ministry of Public Administration, therefore, fulfills only selectively its function, in less than 10% of cases, and with prejudice against the weakest parts of governmental structure who are sacrificed merely for complying with the instructions of their superiors."[22]

IFAI's leadership faces a challenge here. On the one hand, for their decisions to have credibility, the potential threat of sanctions is necessary. On the other hand, the IFAI's capacity to function depends heavily on collaborative working relationships with agencies, notably with each agency's Information Committees and Liaison Units. Internally within the IFAI, there exists a strong desire to cooperate with agencies in their responses to citizen requests, and in their encouragement of compliance with IFAI resolutions in those cases where the commissioners have decided in favor of disclosure. Rather than create an environment of adversarial conflict between the IFAI and executive-branch agencies, where the IFAI threatens the agency with sanctions each time they do not comply fully with a resolution, they prefer to try persuasion.[23] The 2005 IFAI *Annual Report* highlights this point, when discussing the actions routinely taken in cases of agency non-compliance.

[22] Ernesto Villanueva, "Transparencia acotada," *Proceso*, No. 1557, March 9 2006, translation from original Spanish by the authors.

[23] Interviews with staff at IFAI's Office for Coordination and Monitoring of Executive Branch Agencies.

They report:

> "These actions, whose main goal is to ensure that agencies comply with IFAI resolutions, include: telephone calls and email correspondence; drafting of compliance reports; verification and analysis of the information requested and provided; verification of compliance with reproduction and delivery methods; and meetings."[24]

Yet all parties know that the threat of tangible sanctions through the Ministry of Public Administration has been rather empty.

4. The Recent Evolution of Mexico's Information Policy Debate

The information policy debate has many different dimensions and involves an increasing number of actors. At the broadest level, however, key changes in the terms of public debate have unfolded in three major arenas: the role of the IFAI itself, the new debate over a "second generation" of information reforms, and the question of how to resolve the commitment to public disclosure with the right to privacy.

a. The first major development in the information policy debate since the 2002 federal law is that the IFAI itself has become a major actor in its own right. In the course of its brief and unprecedented trajectory, the IFAI has established a significant degree of public credibility, especially in the media and intelligentsia. In contrast to the rest of the federal government, the IFAI was built from scratch *after* Mexico's historic 2000 elections, and therefore it did not inherit the burden of the legacy of the past. Though the IFAI lacks the constitutionally-based degree of official autonomy held by several other federal institutions, it has demonstrated a significant degree of independence from executive authority. Moreover, the IFAI's commissioners recognize that their credibility depends in part on the *perception* of autonomy.[25]

b. Second, the multiplication of information access reforms throughout Mexico's states and municipalities has raised the issue of how to assure that the citizenry can exercise their rights to transparency effectively in spite of the diversity of

[24] IFAI, *3er Informe de Labores, 2005*, p. 32, translation by the authors.
[25] See "Presentación de la propuesta para reducir el riesgo del conflicto de interés en el Instituto Federal de Acceso a la Información Pública," presented by the Commissioner Juan Pablo Guerrero Amparán, in the IFAI Plenary session of the 25, October, 2006. However, a subsequent debate among the commissioners about how to address possible conflicts of interest, lead to a 3-2 vote in favor of a "soft" approach. See also "Acuerdo que fija las reglas en materia de impedimentos, excusas y recusaciones," presented by Commissioner Alonso Lujambio, whose proposal is found under the Annex of point 5.02. The vote was held on November 22, 2006.

policies involved.[26] In a few cases, state laws are stronger than the federal law, as in the case of those that cover political parties. More often, however, state laws are significantly weaker than the federal norms—in some cases more closely resembling "state secrets acts" than tools for citizen access. To meet the challenge of ensuring that Mexico's different public institutions meet a shared minimum standard, many observers agreed that a constitutional reform was necessary. Governors from all three major political parties, as well as the IFAI's own commissioners, led the call for such a constitutional amendment.[27] The reform was approved unanimously in congress and quickly ratified by the states in mid-2007.[28]

c. The debate over how to reconcile public information rights with the right to privacy is more incipient but very significant for the future. In contrast to the constitutional amendment's mandate for minimum national standards across different levels and bodies of government, the issues here are less clear-cut. There *are* direct trade-offs between individuals' right to privacy and the public's right to know. In some cases, the right to privacy of personal data that is in public records may seem straightforward, as in the case of individuals' medical and tax information. However, the question of public disclosure of information about the destination of government subsidies has entered into conflict with laws that favor the confidentiality of business-related information—as in the high profile case of Mexico's banking secrecy laws. This issue has revealed a major imbalance in the federal law—while government agencies must disclose how their budgets are allocated, non-government actors that receive public funds are not required to render accounts to the public.[29] The question of public access to property records raises similar issues, since individuals' right to privacy can conflict with the public's interest in exposing "inexplicable enrichment". A strict legal right to confidentiality could also prevent the public from learning about their public officials' potential conflicts of interest. As in so many policy issues involving the more technical side of information access, the devil will be in the details.

[26] See Mauricio Merino, "Muchas políticas y un solo derecho," in Sergio Lopéz-Ayllón (ed.), *Democracia, transparencia y constitución, Propuestas para un debate necesario* (Mexico: IIJ-UNAM/IFAI, 2006).

[27] See, for example, the "Declaración del Foro 'La Transparencia a la Constitución'", January 31, 2007 available at: http://www.ifai.gob.mx/eventos/2007/Invita_foro.pdf, and Ricardo Becerra and Alonso Lujambio, "¿Por qué constitucionalizar?" in Sergio López-Ayllón (ed.), *Democracia, Transparencia y Constitucion, Propuestas para un debate necesario* (Mexico: IIJ-UNAM/IFAI, 2006).

[28] For updates and discussion of best practices for bolstering state laws, see www.ifai.gob.mx.

[29] Notable examples of official transparency in this arena include the innovative reports of the office of the Federal Superior Auditor regarding the Public Accounts for 2005. These reports highlight the manner in which large companies were able to avoid paying federal taxes, with budgetary impacts of national significance, though apparently they operated within the law (no specific names of firms were mentioned). See Carlos Acosta Córdova, "Desastre hacendario," *Proceso*, No. 1589, April 15, 2007. See also www.asf.gob.mx.

5. The Culture of Transparency

In principle, many can agree on the importance of "the culture of transparency", in part because it can be understood in many different ways. This is a broad umbrella term that refers to changes in the beliefs, practices and expectations, embedded in both the state and society, about the public's right to know. Clearly, this idea goes beyond legal formalities, since legal changes do not automatically create a widely-shared recognition that government information belongs to the citizenry, rather than being the property of government bureaucrats. The term implies that attitudinal changes are needed for public officials to accept the public's right to know – especially since, in practice, the threat of tangible sanctions for non-compliance is so weak. To promote the culture of transparency also implies a series of changes in civil society, involving the horizontal spread of the right to know as part of the broader "right to have rights".

Mexico's years of civil society mobilization, reinforced by the IFAI's public media campaigns, appear to have made a difference. According to a major public opinion survey, when asked, "do you or do you not have the right to access the information generated by the government?" 89% responded in the affirmative. Their reasons included "because I am Mexican" (25%), "because I pay taxes" (14%) and "because it's the government's obligation" (22%) and "all of the above" (27%). The survey also reported that 64% had heard of the IFAI. Yet only 15% reported that they had requested information from the government.[30]

Changes in the culture of transparency within civil society involve not only new expectations, but also new practices. Here, as the essays that follow suggest, the effective exercise of information rights requires significant investments in learning—involving both the technical side of *how to make requests*, as well as the broader strategic question of *what to request*. This involves incorporating the exercise of information rights into broader campaigns in defense of the public interest. Increasingly, civil society organizations are making this investment in learning how to use the new toolkit. The tangible impacts, though promising, remain incipient and vary widely across issue areas—hence the value of the many issue-based assessments that follow.

Even IFAI commissioners have expressed concern about what they consider to be their narrow social constituency, in terms of those who actually use the official information

[30] Carolina Pacheco Luna, *Cultura de la transparencia: Primera encuesta de acceso a la información publica en México* (Mexico City: LIMAC, 2006) pp. 67-68, 72, 80. See also David Sobel, Bethany A. Davis Noll, Benjamin Fernández Bogato, TCC Group and Monroe Price, *The Federal Institute for Access to Public Information in Mexico and a Culture of Transparency* (Philadelphia : University of Pennsylvania, Annenberg School for Communication, Project for Global Communication Studies, 2006).

request system. The 159,100 requests received as of November 6, 2006 were submitted by 60,900 different people, and 8,500 of those individuals submitted three or more, accounting for 62% of the total number of requests.[31] These data suggest that the information request system is largely a domain of specialists, engaging a relatively small number of citizens. There is much truth to this, and there is a long way to go before a substantial fraction of the citizenry learns how and why to exercise their information rights. Yet these data also present an incomplete picture of the degree of civil society resonance of the right to know, for several reasons. First, for many of those who use the system even just once— if it resolves a major issue for that individual— then that certainly "counts" as having had an impact. Second, even if many information requestors are journalists and civil society activists, the impact of their requests is magnified by their capacity to disseminate their findings through the mass media, and in their strategic roles as opinion-makers. Third, Mexico's public sector also includes other tools for citizen access to information, including agencies' obligatory disclosure requirements, as well as a growing new system of "citizen attention" windows and social audit mechanisms. Some of these offices combine information access and ombudsman functions, as in the case of the Oportunidades program's Citizen Attention program, which each year receives more information requests than the *entire* executive branch receives.[32] In addition, the thousands of complaints that Mexicans file with state and federal human rights commissions also constitute a demand for a kind of transparency. These claims are calls for one government agency to admit that another government agency violated human rights, and therefore are demands for "answerability". To then actually end impunity would be a separate issue. The mandate of official human rights commissions is limited to providing information—shedding a public spotlight by naming, investigating and verifying citizen claims.

Changes in the culture of transparency, in both state and society, should be measured not only in terms of changing expectations and standards of openness, but also in terms of attitudes towards secrecy and the withholding of public information. Tolerance for official secrecy reflects the other side of the coin of the culture of transparency. Now that such practices are formally against the law, when will they be seen and treated as illegitimate violations of the public trust? In other words, if we understand the culture of transparency as grounded in actual practices, change will be slow if officials can continue to reject the new norms with impunity.

[31] Juan Pablo Guerrero Amparán, "¿Qué reforma es necesaria?," presented at "La transparencia a la Constitución," Universidad Iberoamericana, January 30-31, 2007.

[32] In 2006, for example, the Oportunidades social program received more than 87,000 "citizen demands" for information (including complaints), in contrast to the 60,000 information requests directed via the IFAI. ("Atención Ciudadana: Informe Anual, 2006," Programa Oportunidades, unpublished document). The fact that, by definition, all of those Oportunidades information requestors are citizens in extreme poverty, helps to round out the "social profile" of citizen demand for public information in Mexico.

6. Conclusions

Before turning to the broad array of practical experiences that are synthesized in the following chapters, it is worth asking: how should these practices inform our understanding of the right to know? This brings us back to the broader context, in which the right to know is both an instrument that the public can use as well as a "safeguard", in the sense of a mechanism that can protect the public from abuses of power.[33] From this perspective, it is possible that one of the main impacts of the right to know unfolds in an arena that is impossible to measure with precision, involving those abuses of power that do *not* happen, thanks to the risk of scandal and possible formal or informal sanctions.

We also need to recognize that the term "safeguard"—in Spanish, "*candado*," literally, "padlock" - has multiple meanings. Locks are instruments whose effectiveness depends a great deal on who deploys them. First and foremost, one has to find the key and know how to use it. So far, one of the main characteristics of experiences with transparency and the right to information access is that its impact depends both on the capacity to exercise the right, as well as on the capacity to *act* on the basis of the information that is made public.

This is why the strength of any institutional safeguard depends a great deal on the *entire* system of protection of rights that it is part of, just as any chain is only as strong as its weakest link. When we consider the right to know in this context, its impact depends a great deal on the capacity of all the other public institutions whose mission is to defend public accountability.

To conclude, the effectiveness of the right to know also depends on processes of learning, within both civil society and the public sector. The fact that a second generation of constitutional reforms moved forward in 2007, to raise Mexico's minimum national standards for transparency, indicates that this process of learning has advanced a great deal in a short period of time. The construction of any right is a long-term process, and the right to know is no exception.

[33] See the papers on the subject of institutional "safeguards" presented at the international seminar "Candados y derechos: Protección de programas sociales y construcción de ciudadanía," sponsored by the United Nations Development Program, Mexico City, April 25-27, available at: www.seminarioprotecciondeprogramas.org.mx/.