

ELECTORAL OPACITY: THE BALLOT CASE

Irma Eréndira Sandoval

The case of the electoral ballots from the 2006 presidential elections represents a clear setback for transparency in Mexico. On August 8, 2006, *Proceso* magazine requested access to the information contained in the ballots used during the past presidential election. The magazine's goal was to submit the Federal Electoral Institute (IFE in Spanish) to a test of accountability, as well as to carry out a "citizen's recount". The IFE responded with the argument that the electoral ballots are not formally "documents", which can be requested using Mexico's freedom of information law, but rather, "only the material expression of the electorate's preference." Later, in its response to the appeal of its initial decision, the IFE denied access with the argument that opening up the ballots to public scrutiny would harm "social peace and public order." Finally, the Federal Electoral Tribunal (TEPJF in Spanish) ratified the IFE's decision by writing a new reserve category into the freedom information law. According to the Tribunal, the ballots are indeed public documents, but they are simply "unavailable" due to the conditions under which they are stored.

Each one of these decisions reflects highly questionable legal reasoning. First, the broad definition of "document" in Mexico's transparency law includes any material produced, used or in the possession of the government. If the electoral ballots are not "documents" it is difficult to imagine what they might be. Second, the claim that permitting an independent review of the electoral ballots would cause social disorder, is equivalent to suggesting that democracy itself is dangerous for Mexico. Citizens should have a right to vote in secrecy. But it is precisely because the ballots do not have any identifying marks that they should be made public so as to assure that the government authorities did their jobs correctly in counting the votes. Third, nowhere in Mexico's access law is "unavailable" information listed as one of the reserve areas. A freedom of information law grants a right to information to citizens. This is a right which can only be withheld if the information requested falls explicitly into one of the reserve areas in the law. Officials cannot simply make up new reasons to withhold information.

However, political concerns won out in the end. Instead of following the law, the electoral officials decided to use the law to serve the political purpose of not exposing the electoral results of 2006 to strict scrutiny. The concern was that reopening the ballots could possibly have revealed that the sitting president was not actually the candidate who received more votes on election day. Needless to say, such a decision sets a terrible precedent for the future development of transparency in Mexico.