

PREFACE

After seventy years of rule by the Institutional Revolutionary Party (PRI in Spanish)— with its rather non-revolutionary, but decidedly institutional, culture of secrecy— it seemed that the arrival of the new millennium brought to Mexico a spirit of reform, in favor of the transition to democracy, as well as greater openness and transparency in public life. With Vicente Fox's government, countless hopes came—and left—tacked on to a system resistant to change. Opportunities to push for deeper changes were short-lived, capacities for action left much to be desired, and time-honored practices and privileges reproduced themselves. Yet even if the winds of change were ephemeral, they did leave Mexico with an exceptional tool: the Federal Law for Transparency and Access to Information (LFTAIPG in Spanish), which went into effect on June 12, 2003.

This book is a multidisciplinary effort to evaluate the scope and limits of the LFTAIPG. It includes the vision of leading experts on diverse subjects. In each issue area, the feasibility of access to information has been tested, by requesting information that, until recently—and in many cases, still— was considered “sensitive”. For each of these issues, citizens' access to government information potentially represents a lever for change towards more transparent, honest and accountable practices.

As the articles included in this volume highlight, this potential has not yet been fully realized. There are a series of problems and complications in the daily exercise of the right to information. Some of these complications are implicit in the very exercise of this right, whose legal, bureaucratic, programmatic and terminological framework is highly complex. Others stem from government resistance to the system itself, as well as gaps in the law, which together have resulted in the development of a patchwork of practices that seek to avoid providing requested information.

Despite the creation of a system with exemplary tools for accessing information about Mexico's federal government, the articles in this book demonstrate the implicit difficulty in actually exercising the right to know. Each author is a recognized expert in the issue area that they address—and even so, many of them had to request the same information several times to be able to obtain it. If the formulation of a question in an information request is not 100% clear and impossible to misinterpret, or is not addressed to the correct office, it will probably be denied, or, at the very least, the official response is less likely to satisfy the original request.

The first major obstacle is that one must both have a full command of official terminology and one must know the entire organizational chart of each federal agency. Therefore, the difficulty of access increases exponentially when ordinary citizens make the effort. Official government jargon is not taught in school, and is not used in daily life, unless one is a government employee. No citizen is obligated to master this language, except when they need to request information from the government about its programs and budgets.

The second implicit problem with the system is the inherent geographic (and sometimes linguistic) distance between the majority of the population and the federal government. For example, an indigenous community in the highlands of Chiapas might find information regarding the management of a river basin in their region to be fundamental to their livelihood and overall development. However, in addition to speaking a different language, without knowing official administrative terminology, or which office is responsible for dealing with the issue, such a community is unlikely to know the options that are (not) available to them for requesting important information electronically. Even if they knew about the right to information and about the LFTAIPG, it would simply be too complex to exercise it.

These two obstacles are clearly illustrated in a recent assessment carried out by the Federal Institute for Access to Information (IFAI in Spanish), which profiled users and information requests carried out through the electronic information request system (SISI in Spanish). From the implementation of the LFTAIPG through to November 6, 2006, only 60,900 distinct users submitted a total of 159,100 information requests. Of that total, 99,000 requests were submitted by only 8,500 individuals, most of who live in the Mexico City metropolitan area. In other words, almost two thirds of the requests submitted came from people who live in the same geographic region, who in turn have greater access to knowledge about the language and organizational structure of the federal government than people who live in other areas of the country.

Several of the articles in this volume touch on another “sore spot”, one that stems from the LFTAIPG itself, rather than from the efforts to apply it: the law allows officials to declare that the information requested “does not exist”. Whether the result of general disorder in agencies’ filing systems, or because officials decide that certain types of information should not be released—or potentially even in an attempt to make the process as “tiring” and complicated as possible, so requestors eventually give up—official claims that the requested information “does not exist” have become more and more common over time. IFAI statistics prove what many of the authors in this book suggest, not without a hint of sarcasm: in 2003, there were a total of 551 official agency responses that the information

requested was “inexistent”, which rose to 2,686 in 2006. Citizen appeals to the IFAI challenging these responses also increased proportionately during this time.

This is, without a doubt, one of the more serious problems of the law, because it offers a free pass to the public official who decides—using standards not defined in the law—which information should be kept from the public.¹ The IFAI has played an important role in demonstrating how certain kinds of information *must* exist, due to an agency’s own administrative requirements, which obliges the agency to release the data in question, showing that the requested information does indeed exist. However, there have also been instances where both the IFAI and the government agency agree that certain requested information does not exist, when in reality it does. This happened, for example, when the Ministry of Finance discontinued the publication of Section 3 of the Budget documents, by neither passing it along to Congress nor making it available to the public. When citizens submitted information requests for this section of the Budget, Finance responded that the information “does not exist”. In the end, however, at the explicit request of the then Internal Controller, Finance eventually published Section 3 on their website.

Lastly, there are two serious omissions from the provisions of the LFTAIPG: access to information about federal funds that are transferred to state and local governments or decentralized agencies; and access to information about federal revenue. As many of the authors in this book point out: clarity, transparency and accountability about the resources at the government’s disposal are fundamental for the construction of democracy. A government that does not account for its money or how it is earned, hides the most central element of its operation behind thick walls. In addition, it implicitly denies what all citizens should know: public resources are public, because they come from the population or from resources that belong to the nation.

As of today, most of the funds in the Federal Budget Law are distributed among state and local governments or other decentralized agencies. Whether these resources are federal allocations to education, health and infrastructure, or revenue-sharing to states and municipalities, these transfers involve unimaginable amounts of money. However, the federal government has determined that its responsibility ends the moment that the resources are disbursed—whatever happens later on is someone else’s business. The federal government simply looks the other way, and the overall lack of will to condition

¹ Editor’s note: Chapter 3 of the LFTAIPG clearly establishes the legal criteria for determining whether or not information may be classified as reserved or confidential. When, in an attempt to prevent the release of certain information, a particular agency or public servant chooses to declare information as “non-existent”, they are stepping outside the LFTAIPG and applying extra-legal and discretionary standards for determining which information should or should not be made public.

spending on accounting for how funds are actually used is not only a serious problem in terms of transparency, but also in terms of the implementation of national policies. What good is it for the Health Ministry, for example, to design national policies if it does not have any reports that show how their policies are implemented in each state? In practice, federalism works as a shield to allow officials to declare key information “inexistent”. This shield will continue to operate until all the states have their own quality transparency laws.

When it comes to the issue of federal revenue, the situation is even worse. Federal income is not even mentioned in the LFTAIPG, even though this is the revenue that will eventually be spent by the government, and for which it will generate spending reports (albeit incomplete ones). Year after year, the Ministry of Finance conveniently underestimates the revenue that it will obtain from Mexican oil sales in the international market. This has allowed the government a huge margin of discretion over additional oil income. Furthermore, the tax benefits granted to large companies or wealthy individuals are covered by financial secrecy laws. However, these tax benefits imply that the government will not generate revenues that, under a different policy, would contribute to the public funds used for much needed social programs. The inability to access this information, which has a direct impact on the general population, places citizens in conditions of inequality before the law. It is unclear why the name of a beneficiary of the social program “Oportunidades” as well as the stipend she receives, are both considered public information, while tax exemptions are hidden by secrecy laws; they are both cases that cost the government money.

Transparency and access to information are never-ending issues. They are full of edges and shadows that will need to be understood, defined and resolved over many years to come. Mexico is only now starting down the path of building democracy. However, as in many other cases, the first stones laid are the most important. This volume presents the “state of the art” in terms of transparency in Mexico up to 2006. As such, it is an X-ray of the foundations of transparency and access to information in our country.

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