



THE WORLD BANK

Implementing Right to Information A Case Study of Mexico



ACCESS TO INFORMATION WORKING PAPER SERIES

Implementing Right to Information Reforms

MEXICO

Yemile Mizrahi and Marcos Mendiburu

March 2012



© 2012 The International Bank for Reconstruction and Development / The World Bank
1818 H Street, NW
Washington, DC 20433 USA
Telephone: 202-473-1000
Internet: www.worldbank.org
E-mail: feedback@worldbank.org

All rights reserved.

A publication of the World Bank.

The World Bank
1818 H Street, NW
Washington, DC 20433 USA

The findings, interpretations, and conclusions expressed herein are those of the author(s) and do not necessarily reflect the views of the Executive Directors of the International Bank for Reconstruction and Development / The World Bank or the governments they represent.

The World Bank does not guarantee the accuracy of the data included in this work. The boundaries, colors, denominations, and other information shown on any map in this work do not imply any judgment on the part of The World Bank concerning the legal status of any territory or the endorsement or acceptance of such boundaries.

Rights and permissions

The material in this publication is copyrighted. Copying and/or transmitting portions or all of this work without permission may be a violation of applicable law. The International Bank for Reconstruction and Development / The World Bank encourages dissemination of its work and will normally grant permission to reproduce portions of the work promptly.

For permission to photocopy or reprint any part of this work, please send a request with complete information to the Copyright Clearance Center Inc., 222 Rosewood Drive, Danvers, MA 01923 USA; telephone: 978-750-8400; fax: 978-750-4470; Internet: www.copyright.com.

All other queries on rights and licenses, including subsidiary rights, should be addressed to the Office of the Publisher, The World Bank, 1818 H Street, NW, Washington, DC 20433 USA; fax: 202-522-2422; e-mail: pubrights@worldbank.org.

Table of Contents

Acknowledgements	4
Abbreviations and Acronyms.....	5
1. Introduction and Background	6
1.1. Methodology	7
1.2. Structure of this Paper	8
2. Passage and Provisions of the Law	9
2.1. Passage of Legislation.....	9
2.2. Key Provisions of the Law	12
3. How Operational is the Law? Organizational Structure and Established Implementation Measures	15
3.1. Implementing Rules and Structures	15
3.2. Communications and Outreach.....	16
3.3. Specialized Agency Overseeing Compliance with the ATI Law	16
3.4. Organizational Arrangements within the Executive Branch.....	18
3.5. Implementing Agencies: Selected Line Ministries	19
3.6. Budget	21
3.7. Training	22
3.8. Records Management	23
3.9. Information Technology	25
3.10. Proactive Disclosure	26
3.11. Monitoring and Evaluation	26
4. Use of the Law and Government Responsiveness	29
5. Broader Impact of ATI	37
5.1. Illustrative Cases of the Difficult Transition from Transparency to Accountability	37
5.1.1. Health Programs for HIV/AIDs: The Case of Pro-Vida	37
5.1.2. The Health Rights Campaign of the Women’s Network for the Common Good.....	38
5.1.3. The Customs Department Trust Fund	39
5.1.4. Farm Subsidies: The Case of PROCAMPO.....	40
6. A Culture of Openness.....	42
7. Conclusions	43
References	45
Authors	49

Acknowledgements

The authors would like to thank Juan Pablo Guerrero Amparan, Aranzazu Guillan Montero, Luis Esquivel, Jacqueline Peschard, Tania Sanchez Andrade, and Guadalupe Toscano for their insightful comments. The authors are also grateful to the time and information shared by several experts interviewed for this research (please see list in annex 1).

Abbreviations and Acronyms

ASF	Auditoría Superior de la Federación (Supreme Audit Institution)
ATI	access to information
CIDE	Centro de Investigación y Docencia Económica
CITCC	Comisión Intersecretarial para la Transparencia y el Combate a la Corrupción (Interministerial Committee Against Corruption)
CNDH	National Human Rights Commission
CSOs	civil society organizations
FDI	foreign direct investment
GDP	gross domestic product
IFAI	Federal Institute for Access to Information
IFE	Instituto Federal Electoral (Federal Electoral Institute)
MPs	members of parliament
OGP	Open Government Partnership
PAN	Partido Acción Nacional
PEMEX	Petróleos Mexicanos
POT	Portal de Transparencia (Transparency Portal)
PRD	Partido de la Revolución Democrática
PRI	Partido Revolucionario Institucional
SECODAM	Secretaría de Contraloría y Desarrollo Administrativo
SFP	Secretaría de la Función Pública (Secretary of Public Function)
SISI	Sistema Informatizado de Solicitudes de Información
UNAM	National University

1. Introduction and Background

In June 2002, President Vicente Fox (2000–06) signed a landmark transparency bill into law. The Federal Transparency and Access to Public Government Information law (hereafter called the access to information, or ATI, law), which is considered one of the most important reforms of his administration, came into effect a year later. Article 4 of the law explicitly states that the purposes of the law are to “increase transparency . . . and accountability so that citizens can evaluate the performance of government authorities . . . [and to] contribute to the democratization of Mexican society and the strengthening of the rule of law.”¹

Since then, the right of access to public information has been regulated, and a comprehensive information access regime has taken shape. Federal government agencies regularly publish information on their official Web sites. The number of requests for public information has increased consistently since 2003. Although records management remains an issue, some federal agencies have made significant improvements in their archive systems.

The ATI law passed in Mexico, and its implementation, offer several important lessons to be learned for nations seeking to increase government transparency and accountability. Nearly a decade since the implementation of the ATI law, Mexicans have access to public information that was simply not available before.² There is widespread recognition among scholars and development practitioners that the Mexican ATI law is among the most advanced of its kind in the world. Meanwhile, the establishment of the Federal Institute for Access to Information (IFAI, a federal agency responsible for safeguarding the right to public information and ruling on citizens’ appeals of denied information requests) is a milestone. At the time, almost no other country had established a similar institution to implement the right to access public information.³ Today, the IFAI is a well-established institution, and is widely recognized by most citizens.⁴ In addition, in 2007, a reform amending Article 6 of the Constitution explicitly guaranteed the right of access to information and established a minimum benchmark that federal and state governments needed to follow in their own ATI legislation.

¹ Article 4 of the law states six objectives:

- Allow any citizen to obtain public information through simple and expedient procedures.
- Increase government transparency by disseminating information generated by the federal administration.
- Guarantee the protection of personal information managed by federal government entities.
- Increase accountability so that citizens can evaluate government performance of the federal administration.
- Improve the organization, classification, and management of public records.
- Contribute to the democratization of Mexican society and to the enforcement of the rule of law.

² Salient examples include the publicity of police files related to federal investigations into crimes committed during the 1970s, disclosure of public trust funds previously classified as bank secrets, institutional e-mails, and so on. The law covers only federal agencies, not local and state government agencies. See Bookman and Guerrero (2009); and Fox and others (2006).

³ Tom Blanton, director of the National Security Archive at George Washington University in Washington, DC (one of the leading organizations advocating for ATI), has recognized that Mexico has been a leading example “in crafting an ATI law that can be successfully implemented.” This is in large part the result of the creation of the IFAI, a landmark institution that has become a model of good practice around the world (*El Universal*, Mexico, September 29, 2010).

⁴ A survey conducted by the IFAI in 2008 revealed that 66 percent of Mexican citizens know about the ATI law and 33 percent of citizens trust the IFAI, making it one of the most highly trusted institutions in the country (IFAI, 6 Informe de Labores al H. Congreso de la Unión 2008, June 2009).

In more recent years, as unemployment and public security issues have become important,⁵ the focus and priority to transparency has declined.⁶ Several key public agencies have received complaints for non-compliance with the IFAI's decisions to release information (Fox and Haight 2010b), and there have been attempts to overrule IFAI's decisions, which are final by law.⁷ But IFAI still maintains independence and resolves most information disputes in favor of information requesters.⁸

1.1. Methodology

The purpose of this paper is to examine the transparency reform and its implementation in Mexico, which might provide lessons to other countries embarking on similar endeavors and contribute to expanding the knowledge base for ATI practitioners and development partners. This paper is mainly based on personal interviews with multiple stakeholders and a desk review of primary and secondary sources, and official IFAI data. A full list of individual sources consulted for this paper is in annex 1.

As part of a larger study on the implementation of ATI laws in eight countries around the world, this document follows a common methodology to provide an overall assessment of key implementation measures and outputs from the ATI regime—in terms of proactive disclosure, responsiveness to requests for information, and shifts in accountability relationships. The paper looks at implementation in three sectors: social development, education, and public works (which in Mexico fall under the Secretary of Communication and Transport). These sectors were selected because they deliver important public services to large numbers of citizens and because, in most countries, they are vulnerable to corrupt practices due to the size of their budgets, high volume of procurements, and large number of beneficiaries.

Additionally, the study examines the institutional arrangements within the executive branch. Unlike the cases of Chile, Canada, and India,⁹ there is no “nodal” ATI agency (that is, an agency responsible for the implementation of the law and its coordination throughout the government) in Mexico. Instead, a specialized and semi-autonomous federal agency (the IFAI) was created to

⁵ Subsequent events, at both the international and national levels, have had repercussions for the ATI regime. By 2007 the Mexican economy was facing challenging conditions: its exports and foreign direct investment (FDI) were negatively impacted by the economic crisis in the United States, and violence linked to organized crime and drug trafficking was on the rise.

⁶ See, for example, the IFAI's president statement during an interview: “Transparency is no longer a priority of the government. The current administration has not yet issued a clear statement towards transparency” (*El Clarín Veracruzano*, Mexico, September 28, 2010).

⁷ In late 2008, after Congress approved a reform of the Criminal Procedures Code that classified all criminal investigations, the IFAI president criticized this reform and stated that “this is the first retrocession in matters of transparency” (*La Jornada*, December 18, 2008). See, also, an interview with Jacqueline Peschard, president of the IFAI: “What worries us at IFAI is that the authority of IFAI has been questioned. According to the Transparency and Access to Public Information Law, IFAI's resolutions are final. However, on several occasions, the Attorney General's Office has attempted to overrule these decisions by turning to the Administrative and Fiscal Federal Tribunal to review IFAI's decision, something neither the Transparency Law does nor the Constitution provides for in relation to transparency decisions” (*Revista Etcétera*, May 1, 2009). See also Bookman and Guerrero (2009: 47).

⁸ For an overview of the current state of the ATI system in Mexico, see Fox and Haight (2010b: 135).

⁹ In India, the nodal agency is the Department of Personnel and Training; in Canada, the Treasury Board Secretariat; and in Chile, the Comisión de Probidad del Ministerio de la Secretaría de la Presidencia. These agencies coordinate the implementation of the law at the central or federal government level.

oversee the implementation of the law. But the role of the Secretary of Public Function (SFP) is also examined in this study because it is responsible for public administration issues and for the internal control systems of the federal administration. In that capacity, the SFP is the federal agency responsible for the sanctioning of public officials who do not comply with information disclosure provisions. The SFP is also the entity in charge of the federal government's overall transparency agenda, including the implementation of international anticorruption conventions.

1.2. Structure of this Paper

Following this introduction, section II of this paper examines the passage and some provisions of the Mexican ATI law. It analyzes how the law came into effect, which stakeholders—both within government and within civil society—championed the law, and the context surrounding the law's approval in 2002. The section also describes the main provisions of the law.

Section III analyzes the operation of the law. It examines the organizational structure and new implementing measures that were introduced by the federal administration to comply with the law, including budgetary allocations, use of technology, records management, and monitoring and evaluation systems. It also analyzes in greater depth the role of the IFAI, a critical element of the law, both for its regulatory and oversight functions. Then, it examines how the law has been operationalized within selected federal agencies, as mandated by the law. Using IFAI data, section IV analyzes achievements in the implementation of the law since 2003, including in usage and compliance. Section V examines the relationship between transparency and accountability by discussing four illustrative cases.

Finally, section VI examines the response of federal agencies to the law after several years of implementation. The concluding section highlights the key aspects of the Mexican experience while drawing some lessons learned.

2. Passage and Provisions of the Law

As is the case in other countries that have introduced access to information (ATI) legislation, in Mexico the extent and scope of the law were significantly influenced by the events leading to the passage of the legislation as well as the interplay among different stakeholders.

In general, politicians, bureaucrats, and civil society leaders and organizations, including the media, are the most significant stakeholders involved in the discussion and approval of ATI laws. Although they all have different interests and incentives, when political conditions allow for the collaboration of these stakeholders, laws tend to be broad in scope, effectively balancing confidentiality and disclosure provisions.

In Mexico the political transition during the early 2000s and the arrival of a new generation of public officials to the federal government, some of them coming from the same “epistemic community”¹⁰ as civil society advocates of transparency and accountability, created a favorable environment for the introduction of access to public information legislation. This legislation, while progressive in scope, included important provisions to minimize potential bureaucratic resistance.

2.1. Passage of Legislation

Mexico’s political transition represented an extraordinary opportunity to introduce innovative governance reforms.

The election of President Vicente Fox in 2000 represented a turning point in Mexican politics. For the first time in more than seventy years, the Partido Revolucionario Institucional (PRI), which had held the presidency without interruption since 1929, lost the election to an opposition party, the Partido Acción Nacional (PAN), by a margin of 7 percent and with the participation of 70 percent of the electorate.¹¹ Capitalizing on his high levels of political support, newly elected President Fox had strong incentives to undertake bold initiatives that would distinguish his presidency from previous administrations and demonstrate tangible results early on.

In contrast to the “hyperpresidentialism” that had characterized governance in Mexico for decades, President Fox came to office with weaker executive powers.¹² He did not have control over the lower or upper houses of Congress, and even faced strong opposition within his own party. President Fox could not single-handedly pass legislation, or dictate public policy.

¹⁰ This concept was used by Gregory Michener (2010: Chapter 2, “Surrendering Secrecy in Mexico”).

¹¹ According to the Federal Electoral Institute (IFE), the PAN obtained 42 percent of the vote and the PRI 35 percent in the presidential elections (www.ife.org).

¹² See Starr (2006). For an analysis of the (informal/extraconstitutional) powers of Mexican presidents, see Whitehead (1995) and Weldon (1997).

As opposition parties began to win elections at the local and state levels in the 1990s, the press also began to adopt a more independent and assertive position vis-à-vis the government: journalists and media executives were increasingly unwilling to acquiesce to government pressures or to refrain from criticizing top government officials. Paradoxically, this political context of weaker executive powers provided the president with an unparalleled opportunity to introduce an ATI law.¹³

Several factors help explain the passing of the law during the Fox administration. First, this law was able to generate wide agreement across party lines; no political party could afford to oppose legislation promoting transparency and access to information. Second, the ATI law offered the president an opportunity to demonstrate his leadership skills and his commitment to governance issues. Third, the arrival of new actors to the federal government generated new and innovative channels of communication and dialogue between the government and civil society.¹⁴ Finally, the law also provided an opportunity to leave a lasting and symbolic legacy of this first PAN presidency.

As we will discuss further below, leaders of civil society organizations (CSOs), some media executives, and academics had been strongly advocating in favor of regulating the right to information since the mid-1970s. But it was President Fox who seized the initiative and moved quickly to draft a bill soon after coming into office.

In 2001 the government's draft bill was leaked to the press,¹⁵ sparking a debate among the academics, media practitioners, and CSOs who had been advocating for right to information legislation. In May 2001, a number of media executives, journalists, and academics formed a loose coalition—known as the Grupo Oaxaca¹⁶—that critiqued the government's bill and drafted an alternative transparency bill, lobbied members of Congress, negotiated with government officials, and organized conferences and public forums to disseminate information about the law and generate stronger bases of support, placing the topic on the public agenda. According to analysts, the group was able to play a prominent role because it moved away from mere criticism of the government's bill and adopted a more proactive position (Luna Pla 2009: 86).

This level of political engagement by CSOs, academics, and the media was not completely unprecedented in Mexico. In fact, Mexico had a strong network of CSOs that, since the 1970s, had been advocating for free elections, and which played a critical role in the adoption of a series of electoral reforms (Middlebrook, Cook, and Molinar 1994). After the first major electoral reform in 1977, successive reforms eventually led to the establishment of an autonomous federal electoral institution in 1990—the Federal Electoral Institute (Instituto Federal Electoral, IFE)¹⁷—and to the organization of free and transparent elections. Indeed, the IFE became an important precedent and model for the establishment of the Federal Institute for Access to Information (IFAI) in 2002.

¹³ For an analysis of the role the media played in the creation of a strong law in Mexico, see Michener (2010). See also Bertoni (2011).

¹⁴ For a discussion of this point and an examination of the context that led to the adoption and passage of the law, see Michener (2005).

¹⁵ For a comprehensive overview and analysis of the formulation and approval of the ATI law in Mexico, see Luna Pla (2009: 61).

¹⁶ The name was given by a reporter from *The New York Times* to refer to the group of lawyers, academics, and activists that met in the City of Oaxaca, Oaxaca State, in 2001 (*The New York Times*, New York, October 12, 2001).

¹⁷ In 1996 the IFE acquired full independence from the executive branch.

In the case of the ATI law, the political context generated a favorable environment not only for the collaboration of government officials and civil society, but also for cooperation between the media and academics in the promotion of an ATI law.¹⁸ In fact, the bill that the executive finally presented to Congress included many of the changes proposed by the Grupo Oaxaca.¹⁹ Since legislators wanted to discuss other changes before voting on the law, they invited several members of the Grupo Oaxaca to participate in the legislative discussion of the bill.²⁰ Once the Fox administration took the initiative in formulating a law, together with key technical experts from government, the legislators and Grupo Oaxaca became key actors in the final drafting and passing of the ATI law. In April 2002 Congress approved the bill unanimously. A few months later, the Grupo Oaxaca decided to dissolve.

The law was able to amalgamate a diverse coalition of support. While it was not the result of a broad-based social movement as in the case of India (Fox, García Jiménez, and Haight 2009) it was backed by a diverse coalition of actors. For the first time in decades, different—and competing—political groups (PAN, Partido de la Revolución Democrática [PRD], and PRI) that held divergent positions and had not been able to agree on major public policy reforms in the past, came together to promote greater transparency and access to public information. For the Fox administration, the transparency law promised to be a powerful tool to reveal past mismanagement and corruption cases; for the opposition parties, on the other hand, the law promised to be an important mechanism for scrutinizing public officials and keeping the new government in check.

For the academic community, pushing for a strong law was an opportunity to overcome ideological differences and to collaborate with a diverse array of national and international CSOs, all sharing a common interest in being better informed about government decisions and actions.²¹ And for the media, particularly the two leading national newspapers that championed the law—*Reforma* and *El Universal*—support of the ATI law was motivated by the need to assert a more independent position (Michener 2010: 22). Furthermore, by supporting a broader coalition in support of ATI reform, these two newspapers were able to demonstrate that ATI went far and beyond being a mere “media issue.” Finally, support for the law also offered an unprecedented opportunity to shed the press’s traditional reputation of submissiveness toward the government (Bertoni 2011: 11).

¹⁸ Since 1977, when major electoral reforms were first introduced in the country, there were several attempts to regulate the right to information in Mexico. But these efforts had not prospered. Some argue that the media at that time heavily depended on subsidies and other forms of control from the government. After 2000 the media and the academic community began to collaborate in efforts to distance the media from their reputation of subjection and lack of independence from government controls. See also Bertoni (2011: 11).

¹⁹ Luna Pla (2009: 119). The bill included some aspects of a previous bill that had been presented in 2001 by the left-leaning opposition party, Partido de la Revolución Democrática (PRD). According to Luna, the PRD’s bill was more limited in scope than that of the Grupo Oaxaca. Eventually, during the drafting of the final bill that was approved by Congress, the Grupo Oaxaca collaborated with the PRD (and PRI) legislators that had authored the original bill in 2001 (Luna Pla 2009: 96).

²⁰ This was quite unprecedented in Mexico, where civil society is formally not entitled to participate in the bill-making process. Unlike other countries, Mexico does not have a law of citizen participation in law making. In Mexico citizens can be consulted, but they are not invited to participate in drafting bills.

²¹ Academics from different universities were able to work together advocating for a strong transparency and access law. Members of the Grupo Oaxaca also collaborated with international organizations such as Article 19 and the Konrad Adenauer Foundation. See Escobedo (2002) and Ramirez Sáiz (2006).

The passage of the ATI law indeed represents a distinctive moment in Mexican politics. Over the past decade, no other reform initiative has been able to gather the level of political support achieved by this law.²²

2.2. Key Provisions of the Law

Strong consensus exists among scholars and development practitioners that the Mexican transparency law is well formulated and includes progressive provisions (Doyle 2002; Sobel and others 2006) that serve as models for similar legislation the world over. The Grupo Oaxaca played a critical role in shaping the text of the law, and helping eliminate a series of loopholes and exemptions included in previous draft bills.

Article 2 of the law states that information in possession of the state is public and that the government should follow the standard of “maximum disclosure” when responding to information requests. In Mexico, these provisions were indeed groundbreaking.

Like any other law, the ATI law was the product of negotiation among different stakeholders with particular incentives and interests. While the Fox administration championed the law, support for it was not homogeneous within the administration. The greatest concerns, according to government officials interviewed for this study, came from the armed forces, attorney general’s office, and secretary of finance. The law thus included provisions to reserve information based on national security concerns to prevent opposition, if not to gain support, from the armed forces. The secretary of finance raised concerns about the costs of implementation. To address this issue, a transitory article was introduced in the law stipulating that no additional resources would be assigned to federal agencies. The final version of the law embodies what was politically possible at the time it was introduced, and reflects the bargaining power and interests of different stakeholders.

The most important provisions of the law include:

- **Procedures for accessing information.** The law guarantees (Article 40) universal access by explicitly stating that “any person,” regardless of citizenship, can request public information without any requirement to either reveal his or her identity or justify the reason for the request.²³ Information requests are free; the government may only charge citizens the costs of document reproduction and shipment. The government has 20 days to respond to a public information request and the deadline can be extended for another 20 days in exceptional cases.
- **Proactive disclosure.** Article 7 establishes a list of relevant and useful information that federal government agencies need to proactively release to the public, including information about their functions and services; salaries of public officials; budget allocations; and

²² Actually, President Fox’s administration faced major political deadlocks and legislative stalemates on important reform issues, such as energy, education, and labor. For a discussion of this topic see, Wise and Pastor (2005: 135–60) and Delal Baer (2004: 101–13).

²³ This condition, combined with the Internet-based system of requests, in practice protects the requesters and virtually ensures anonymity. For an analysis of the main contents of the law see Luna Pla (2009); Bookman and Guerrero (2009); Banisar (2006); and Mendel (2009).

concessions, subsidies, permits, procurement contracts, and results of audit reports. The law also establishes that the questions most frequently asked by the public should be considered in the list of relevant public information to be disclosed proactively. It also establishes that information should be disclosed in a timely fashion, and that information should be reliable, truthful, and presented in a manner that is easy to comprehend.²⁴

- **Exemptions.** The law establishes that information in possession of the state is public; it can be reserved for a maximum of 12 years. This deadline can be extended as many times as needed provided the persistence of the causes that account for the classification of information in the first place. Classification requires proof of potential harm, and the law leaves the onus of proof on the government body that denies the requested information. Information related to human rights violations cannot be reserved. Partial disclosure is allowed.
- **Scope of coverage.** The transparency law applies to all three branches of government—the executive, legislative, and judiciary—as well as to the so-called “constitutional autonomous agencies” such as the IFE, Bank of Mexico, National University (UNAM), and National Human Rights Commission (CNDH). Yet, only federal executive agencies are bound by the law’s implementation mechanisms and thus fall within the IFAI’s jurisdiction. The congress, the judiciary, and the constitutional autonomous agencies are compelled by the law to design their own internal regulations and mechanisms to respond to information requests and to comply with the law.

The law excludes unions, political parties, and subnational governments from the transparency law. Parties and unions are national publicly funded organizations that are not explicitly subjected to the law. This exclusion appears to be a major concession given to legislators in exchange of supporting and passing the law within the government’s time limits. Another important limitation is the definition of the law as a federal—rather than general—law, which would have had wider implementation implications for all levels of government. The ATI law only binds government entities at the federal level. According to the Mexican federal system, States are responsible for passing their own ATI laws. Indeed, the biggest challenges to transparency and access to information in Mexico today are found at the state level.²⁵

²⁴ For a comparative analysis of the proactive disclosure provisions of several ATI laws, see Darbshire (2010).

²⁵ The governors of the states of Aguascalientes, Chihuahua, and Zacatecas, representing the three political parties, championed the constitutional reforms of 2007. But some states have actually sponsored ATI and transparency laws in their own states, which do not meet minimum transparency standards. For a comprehensive analysis of all state ATI and transparency laws, see Díaz Iturbe (2007).

- **Appeals mechanism and oversight institution.** The most innovative provision in the ATI law is the creation of the IFAI, an institution designed to serve as an intermediary between citizens and government agencies and tasked with guaranteeing the right of access to public information.²⁶

The IFAI acts as an administrative court and oversees the ATI law procedures. Citizens can appeal a federal agency's decision not to release public information or a response considered incomplete and/or unsatisfactory. The IFAI's decisions are binding and definitive for all federal agencies covered under the law. Federal officials cannot appeal the IFAI's rulings. Citizens, however, can resort to the federal courts to appeal an IFAI decision. The IFAI has 50 days to issue a resolution to an appeal.

Unlike other countries where information disputes are resolved in the courts, in Mexico, where the justice system is perceived as slow and costly, the establishment of the IFAI provided an alternative and more expedient mechanism to solve ATI disputes.²⁷ The appeals process is straightforward; citizens do not need to hire lawyers to appeal a federal agency's decision.

There are precedents for establishing specialized autonomous institutions to arbitrate in sensitive matters in Mexico, such as elections and human rights. For example, in 1990, as opposition to the ruling PRI strengthened and demand for clean elections increased, the IFE was established as a constitutionally autonomous body responsible for organizing elections and guaranteeing they were conducted freely and fairly.²⁸ Since the IFAI's establishment in 2002, two former IFE commissioners have been appointed to serve as commissioners to the IFAI, and several former IFE staff members have also served in key IFAI positions.

- **Enforcement mechanism.** While the IFAI's decisions are binding, it does not have sanctioning powers, and thus, it has limited enforcement capacity. In the event a federal agency does not comply with a resolution by the IFAI, the most the IFAI can do is to inform the SFP, the entity responsible for disciplining the federal public servants. The lack of sanctioning powers is considered to be one of the major weaknesses of the IFAI.²⁹

²⁶ Bookman and Guerrero consider that the creation of the IFAI is by far one of the most novel aspects of the law (Bookman and Guerrero 2009: 26). This institutional design has been replicated in other parts of the world, as in Chile in 2009.

²⁷ For an analysis of the justice system in Mexico, see Domingo (2000: 705–35); Buscaglia (2003); and Buscaglia (2007).

²⁸ An independent electoral tribunal—the Federal Electoral Tribunal—was also established to resolve electoral disputes. While the IFAI's decisions are definitive and binding, unlike the IFE and the Federal Electoral Tribunal, the IFAI does not have sanctioning powers.

²⁹ See interview with the IFAI commissioner María Elena Pérez-Jaen, who admitted that the IFAI “lacks teeth to sanction government officials who do not comply with IFAI's resolutions” (interview with MVS Noticias, September 2010, www.noticiasmvs.com). In 2010 an executive decree gave the IFAI the power to sanction individuals who misuse the IFAI's personal databases. Yet, it still does not have the power to sanction public officials who do not comply with the IFAI's decisions. See Abel Barajas, *Reforma*, Mexico, July 6, 2010.

3. How Operational is the Law?

Organizational Structure and Established Implementation Measures

This section focuses on the implementation of the law. First, it examines the supply side of implementation through an analysis of the formal institutions and the mechanisms that were established for requesting information. It then examines the demand side of implementation through an analysis of the use of the law.

3.1. Implementing Rules and Structures

Title II of the law established, in general terms, the mechanisms that needed to be set up inside each federal agency to respond to information requests and to help the public seeking assistance, including guidance on how to refine a request for information or where to direct a specific request. More specific and detailed implementation provisions were defined in the law's implementing regulations, drafted by the Federal Commission for Regulatory Reform (Comision Federal de Mejora Regulatoria) in 2003.

Both the law and the implementing regulations direct each federal agency to set up a liaison unit (*unidad de enlace*, which is responsible for handling information requests and for uploading public information on the agencies' Web sites), and an information committee (*Comité de Información*, a collegial body responsible for reviewing decisions about classification of information inside each agency as well as reviewing the agency's responses to information requests, including those related to nonexistent information).

While each federal agency is responsible for appointing as many staff as it deems necessary to the liaison units, the information committees have to be integrated with at least three public officials: the head of the liaison unit, another official named by the head of the agency, and the internal control officer, who is functionally accountable to the Secretary of the Public Function (SFP) due to its internal control role within federal public administration.

In addition, the implementing regulations also mandate federal agencies to provide a physical space inside their agencies, and assign personnel to help citizens requesting assistance on how to search the agency's Web site and/or make a public information request.

A transitory clause in the law allowed federal agencies to take six months to establish the required infrastructure to comply with the law. Citizens could only begin to place information requests starting in 2003, a full year after the law was signed by President Fox. This provision, however, also explicitly stated that the "conformation of these structures . . . had to be conducted with the existing material, human and financial resources" and that no additional resources would be allocated for this purpose.

Setting up these structures across over 200 federal agencies involved the training of thousands of federal public officials. The Federal Institute for Access to Information (IFAI), together with the SFP, became the two main entities at the federal level responsible for training.

3.2. Communications and Outreach

Right after the IFAI's commissioners were appointed—and before mid-June 2003, when citizens could begin to make information requests—the IFAI identified key areas for the implementation of the law, including a communications and public outreach component to explain the contents of the law, communicate its relevance, generate public support, and minimize resistance to its effective implementation within different government agencies.

The IFAI's initial work plan had four main pillars: (i) to promote the law within all government agencies, persuade federal officials of the benefits of the law, and provide training; (ii) to work at the state level to disseminate information about the law throughout the country and persuade governors to pass similar laws in their states; (iii) to work with the media and civil society organizations (CSOs) and to disseminate information about the law and encourage citizens to make information requests; and (iv) to promote Mexico's experience in the international arena.

Since 2002, the IFAI has continued to play a key role in communicating and publishing information about the law; collaborating with media, academia, and civil society in awareness raising and research; and organizing forums and international conferences to disseminate information about the Mexican experience and exchange knowledge on international good practices and lessons learned.

3.3. Specialized Agency Overseeing Compliance with the ATI Law

As argued above, the most important mechanism established in the law was the creation of a separate federal agency—the Federal Institute for Access to Information (IFAI)—with operational independence and responsible for overseeing the law. The IFAI is a collegial body with collective decision-making structures that entail debate and deliberation among commissioners.³⁰ It is led by five commissioners named by the president, subject to no-objection by the senate. The commissioners serve for a period of seven years and are appointed in a staggered manner. One of the commissioners is designated as the IFAI's president by his or her peers for a two-year period.³¹

Article 37 of the Federal Transparency and Access to Public Government Information law (here called the access to information, or ATI, law) establishes the IFAI's responsibilities. The main

³⁰ The commissioners' rulings are taken to a (public) plenary session, where they are resolved by a majority of votes. At least three commissioners must be present to pass a resolution. See the IFAI's internal regulation (Reglamento Interno), Art. 7; Art. 9.

³¹ The IFAI president, together with the Secretaría de Acuerdos, (Resolutions Secretariat) is responsible for turning cases over to the commissioners. These cases are assigned in a random fashion, as they are received. Commissioners have technical staff to support them in their rulings, and they are entitled to request an audience with government authorities and/or requestors.

responsibilities include: promoting and disseminating the right of access to public information, resolving public information denials by federal government agencies, protecting personal data in control of the government, and overseeing the federal government's compliance with the ATI law.

The law assigns the IFAI other functions, too,³² which some experts interviewed for this study consider too demanding for the institute's budget and personnel.³³ For instance, it has a regulatory function, establishing and revising classification criteria and protecting personal data; a training function, enhancing the capacity of public officials to comply with the law and use information technology to receive and respond to information requests; and an education function, elaborating and publishing studies on the implementation of the law, organizing public forums for the discussion of topics related to ATI, and collaborating with other government and academic institutions to promote the right of access to public information.

In 2010 after the passage of the Federal Law of Personal Data Protection held by Private Entities, the IFAI's functions further expanded, giving the institute the responsibility to guarantee and oversee compliance with the new law, provide guidelines for the protection of personal data held by private entities, and resolve disputes about personal data protection within the entire national territory.³⁴

From the outset, the IFAI was provided with sufficient financial resources³⁵ (see budget section below). Although the IFAI does not enjoy constitutional autonomy like the Human Rights Commission or the Federal Electoral Institute (IFE)—and thus, it does not negotiate its budget directly with Congress, but rather presents it to the finance secretary, which in turn presents the federal budget to Congress—it does have budgetary and operational autonomy.

As part of its semi-autonomy, the IFAI was granted full authority and independence in its internal organizational structure and operation procedures, including its employment and personnel management policies.

The IFAI's personnel policy has been of particular importance for its effective functioning. It has granted the IFAI greater independence in hiring its own personnel, which has precluded its early bureaucratization.³⁶ Since 2003 the IFAI has been able to recruit a highly competent technical staff—most with college degrees. Despite some rotation of the IFAI's officials, well-trained and technically sophisticated staff continues in the agency. This has given the IFAI sufficient institutional continuity and stability to operate, despite disagreements among commissioners or controversies over some of its rulings.³⁷

³² Art. 37 lists all of the IFAI's functions

³³ Interview with Juan Pablo Guerrero, former IFAI commissioner, Mexico City, August 2010.

³⁴ See Ley Federal de Protección de Datos Personales en Posesión de los Particulares, Chapter VI, Article 38.

³⁵ Before the 2003 budget was allocated, the commissioners threatened to resign if Congress did not allocate sufficient funds to allow the IFAI to operate. In 2003 the IFAI was allocated close to \$18 million. This budget increased minimally over the years.

³⁶ The unionization of the IFAI employees was precluded by paying high salaries, above the minimum wage. Agencies that pay their personnel minimum salaries are compelled to form a union.

³⁷ But some criticisms have also been raised against the IFAI's hiring policies. According to John Ackerman, these policies stray from the ideal of a truly professionalized career civil service, particularly because new candidates to job postings are not subjected to an open competition, but are rather evaluated by ad-hoc committees where the immediate supervisor retains high discretionary power (Ackerman 2007: 44).

In addition to allocating adequate financial resources and granting the institute autonomy over its operations, the independence of the IFAI was guaranteed through the appointment of qualified commissioners.³⁸ Some recent appointments have been criticized in the media, leading to calls for a stronger system of checks and balances over the appointment process.³⁹ Disagreements between Commissioners on issues such as the nature of the relationship with government officials and CSOs have also been challenging for IFAI. As the number of appeals to IFAI increase, effectiveness and efficiency might also become challenging.⁴⁰

IFAI has tended to rely on informal contacts with government to ensure greater collaboration, particularly useful since IFAI lacks the enforcement powers to sanction officials who do not comply with its resolutions. Once the IFAI determines that the information in question should be released, it will try to work directly with the agency to “encourage compliance with the mandate, using the informal powers of persuasion” (Fox and Haight 2010b: 153).

3.4. Organizational Arrangements within the Executive Branch

The Secretaría de la Función Pública (Secretary of Public Function, SFP) is the federal agency responsible for coordinating the government’s internal control systems throughout the federal administration. As part of this responsibility, the SFP has the sole authority to investigate and discipline federal public officials for violation of administrative procedures. In cases of corruption or other criminal behavior, the SFP is obliged to turn the case over to the attorney general’s office for a criminal investigation and/or prosecution. Public officials who refuse to comply with the IFAI’s resolutions can only be disciplined and/or sanctioned by the SFP.

The SFP is also the federal agency in charge of “formulating and guiding the federal government’s policy on transparency and accountability.” Unlike other countries in the region, in Mexico there is no anticorruption commission or agency.⁴¹ The SFP is the institution responsible for anticorruption policies and regulations throughout the federal administration. It is in this general area of transparency and accountability that the responsibilities and functions of the IFAI and SFP intersect and, in some cases, even overlap.

A good working relationship between the IFAI and SFP is crucial for the effective implementation of the transparency law. When public officials refuse to comply with the IFAI’s resolutions, the institute’s attributions are limited to reporting these officials to the SFP and to recommending

³⁸ For an analysis of the challenges involved in the process of selecting candidates for autonomous regulatory bodies, see Sanchez Andrade (2009) and Ackerman.

³⁹ IFAI commissioners are appointed by the president, subject to the senate’s lack of objection. The senate can veto nominations within 30 days; otherwise, it is understood that the nominee is accepted. Despite the senate’s veto power, the president has strong leverage in the selection process of the IFAI commissioners. Moreover, the president is not obliged to disclose the list of potential candidates before they are turned over to the senate for confirmation.

⁴⁰ In recent years, the IFAI developed a new electronic tool called ZOOM to allow users to search previous information requests, government responses, and the IFAI’s resolutions. This tool allows not only users but also commissioners to identify precedents in previous rulings, thus making their rulings faster and more efficient.

⁴¹ There is an interministerial committee against corruption (Comision Intersecretarial para la Transparencia y el Combate a la Corrupción, CITCC), yet it does not have the scope and powers of an independent commission against corruption (for further information, see www.programaanticorruptcion.gob.mx/). Nonetheless, Mexico has shown its commitment to curb corruption by advancing anticorruption mechanisms and initiatives both at national and international levels. For example, Mexico is one of the founding members of the Open Government Partnership (OGP).

that they be sanctioned. The effectiveness of this measure depends on the readiness of the SFP to effectively sanction non-complying officials. Yet, the IFAI uses this measure only as a last resort, preferring instead to negotiate with government authorities and persuade them to comply.

During the first years after the establishment of the IFAI, the institute and SFP had a collaborative working relationship.⁴² IFAI's commissioners worked with the SFP's staff to develop an electronic information request and response platform (the SISI or Sistema Informatizado de Solicitudes de Información). This electronic system was highly instrumental in the effective implementation of the new law. By 2005 the SFP's secretary decided to hand over to the IFAI the management and operation of SISI.

SFP also helped set up liaison units and information committees within all federal agencies, and internal control officers in each federal agency, who are part of the agency's information committee, report to the SFP, rather than to the head of the agency where they work. The inclusion of the internal control officer in the information committee was purposely designed to increase the incentives of federal officials to comply with the law, as the internal control officer is the one responsible for supervising the compliance of federal public officials.

The arrangements, however, show that the lack of clear guidelines can be challenging. The SFP, for example, published a "Transparency Manual" for the federal administration that appears to overlap with the IFAI's transparency guidelines previously issued to all federal agencies. Although SFP has taken several measures to promote the law, it has also faced appeals for non-compliance to information requests.

Over the past few years, the relationship between the IFAI and SFP has changed. According to Fox and Haight, notably the SFP itself is one of the agencies against which most complaints for noncompliance with the IFAI resolutions have been filed (Fox and Haight 2010b: 153).

3.5. Implementing Agencies: Selected Line Ministries

As stated above, each federal agency is required to establish a liaison unit and an information committee to handle information requests. Depending on the number of requests each agency receives, it can appoint as many staff as needed to its liaison unit. For instance, the Instituto Mexicano del Seguro Social (Social Security Institute, the federal agency with the highest number of information requests—many of which are requests for personal data), has appointed a significant number of officials to its liaison unit and made substantial improvements in its own records management system to respond to the volume of information requests.

To date, no in-depth studies exist on the operationalization of the ATI law within particular federal government agencies. But interviews with staff of the liaison units and information committees in three federal agencies included in this study shed some light on the organizational arrangements for the implementation of the law.

⁴² The SFP—which at that time was called SECODAM—was first headed by Francisco Barrio, former governor of the state of Chihuahua. He was elected governor in 1992, in a state that had become one of PAN's bastions. After Barrio resigned to run for congressional office in 2003, his deputy, Eduardo Romero, became minister. Romero had served as Chihuahua's interior minister during the Barrio administration.

Once a request is received, the liaison unit coordinates the search for the requested information. First, it contacts the head of the unit responsible for that issue. If the head of the unit states that the information should not be disclosed, it directs the request to the agency's information committee. The committee then reviews the request and decides—following the IFAI's guidelines for classification of information—whether or not the information is public and should be disclosed. That decision goes back to the head of the unit and its liaison unit, who post the agency's response on the e-platform system (previously known as SISI, and now called INFOMEX—see section III.I)

In practice though, there is variation in the agencies' actual handling of information requests, including the extent of involvement of the head of the agency in decisions over the disclosure of information. There is also variation in the agencies' proclivity to disclose information and to comply with proactive disclosure provisions. That depends, in large part, on the agency's own leadership and organizational culture.⁴³ Both the IFAI and SFP are quite limited in their direct capacity to influence the performance of liaison units and information committees, and no network exists to allow liaison units in different agencies to share their experiences and learn from one another.

In the case of the secretary of education, the secretary of social development, and the secretary of communication and transportation, which are examined in this study, there is important variation in the management and processing of information requests. The number of personnel, their background, and resources assigned to the liaison units and information committees vary across these three federal agencies.

In the secretary of education, an agency that receives one of the largest numbers of information requests per year, the liaison unit has a total of less than 10 staff members. But as education in Mexico is decentralized, a large proportion of public information is managed at the state level, beyond the IFAI's reach. The secretary of communication and transportation, on the other hand, is a centralized agency with over 10 staff working in its liaison unit. Finally, the secretary of social development has only four staff members in its liaison unit, yet has a liaison unit for each of its programs. The conditional cash-transfer program Oportunidades, for instance, not only has its own liaison unit, but a specific citizen attention window through which most of the information requests and complaints are managed (Fox and Haight 2010b: 157; Hevia and Gruenberg 2010. Fox, Haight, and Palmer-Rubin 2011). This could explain why this secretary is among the federal agencies with the smallest number of information requests even though it manages important social programs that benefit millions of citizens.

Beyond the number of personnel assigned to each liaison unit, leadership commitment can be evaluated by the profile that liaison units are given within the agency, the reporting lines of authority inside the agency (to whom liaison units report), and the engagement of high-level officials in the liaison units and information committees. For example, in the secretary of education, the secretary⁴⁴ appointed one of his closest collaborators and a high-ranking official to the information committee. Moreover, according to the agency's head of the liaison unit, the secretary has devoted important resources to train the secretary's large bureaucracy (the secretary of education is one of the largest federal agencies in the country). Similarly, in the

⁴³ For an analysis of how leadership and organizational culture impact government performance, see Thomas (2010).

⁴⁴ The secretary of education had served as the IFAI's president. This could largely explain the level of interest for transparency and access to information in the secretary.

secretary of social development, the agency's general counsel is a member of the information committee. In contrast, in the secretary of communication and transportation, the liaison unit appears to be far removed from the agency's top leadership. This is a subtle yet telling indicator of the importance given to ATI and transparency within the agency.⁴⁵

3.6. Budget

The level of government commitment to ATI legislation can be analyzed by examining the amount of resources devoted to its implementation. In Mexico, the effective implementation of the ATI law required the allocation of sufficient financial resources. Specifically, it entailed the funding of three distinct functions: (i) responding to information requests and appeals, (ii) complying with proactive disclosure provisions, and (iii) setting up and managing the IFAI. But the law only acknowledged—and did not guarantee—funding for the IFAI; all federal agencies were obliged to comply with the law using existing resources and personnel.

The IFAI has to submit its budget through the secretary of finance every year, and while no guarantees exist that it will be adequately funded every year, the IFAI has indeed received sufficient financial resources to operate since its creation in 2002.

In 2003 the IFAI was allocated \$17.9 million; in 2009 its budget increased to \$22.4 million, and in 2011 to \$38.1 million,⁴⁶ a substantial increase to allow the institute to comply with its additional responsibilities resulting from the 2010 Federal Law on the Protection of Personal Data held by Private Entities. Thus the IFAI is mandated with the protection and safeguarding of personal data, whether these data are managed by public or private entities.

According to the IFAI's data, on average, close to 65 percent of the IFAI's budget is allocated to personnel compensation and benefits. By 2010 the IFAI had a staff of 256 employees. As a result of the Law of Personal Data Protection held by Private Entities, the IFAI estimated that it would need to increase its staff to 430 by 2012 to fulfill the institute's new responsibilities.⁴⁷ Of the budget, 13.5 percent is allocated to general services (rental payments, operation and maintenance of technical equipment, and postal and utility services); 6.8 percent to advisory services and research assistance; 5.6 percent to public communication; 3.8 percent to information technology; and the rest to conferences, publications, travel, office furniture, and materials.⁴⁸

Aside from the budgetary allocations to the IFAI, it is difficult to estimate the actual costs of implementing the ATI law in Mexico, since there are no specific line items devoted to it in the federal budget. Each federal agency devotes different amounts of resources and personnel to comply with the law, depending in large part on the volume of information requests received.

To date, few studies exist that estimate the actual costs of implementation of the law at the federal level. One study has resorted to interviews and surveys in order to collect data on costs

⁴⁵ Some interviewees argued that including the counsel general in the agency's information committee can risk making the response to information requests overly legalistic and bureaucratic, leading to major delays.

⁴⁶ IFAI, Recursos Humanos y Presupuesto, March 2011 (document provided by the IFAI).

⁴⁷ Data provided by the IFAI, Dirección General de Administración, Mexico City, September 2010.

⁴⁸ Ibid.

(Hernández-Valdéz 2009). According to this study, the biggest expense for all federal agencies is personnel. Most agencies assign different types of personnel to respond to information requests and appeals. Aside from personnel, federal agencies' budgets are only minimally affected by complying with the law. "For most agencies, implementing an ATI law is possible by diverting existing assets, and as such, is a matter of people, not equipment" (Hernández-Valdéz 2009: 18). Moreover, the study also reveals that relatively few additional personnel are required to respond to information requests.

According to Alfonso Hernandez Valdez report, in 2007, in small agencies it took only one full-time staff member to respond to all information requests received, on average; in medium-sized agencies, the number rose to 2.5 full-time personnel; and in large agencies the number was 25 (it must be noted that these agencies employ thousands of employees). When the total costs (personnel and equipment) are taken into consideration, the costs of implementing the ATI law are negligible compared to what governments spend on publicizing their activities (Hernández-Valdéz 2009: 31). In sum, implementing ATI legislation does not appear to be that costly after all. This conclusion is shared by a study examining budgetary allocations for all federal proaccountability institutions (Cejudo and Sour 2007). This study demonstrates that the IFAI accounts for only 0.012 percent of all federal expenditures. More importantly, in 2006, the IFAI accounted for only 0.53 percent of all expenditures of the institutions responsible for accountability at the federal level. The IFE, in contrast, accounted for 26.7 percent of all expenditures.⁴⁹

Table 3.1 Expenditures of Federal Pro-accountability Institutions

Institution	Percentage (%)
Judicial branch	52.5
Legislative branch	13.9
Supreme audit institution	1.6
National Human Rights Commission	1.6
Federal Electoral Institute (IFE)	26.7
Secretary of Public Function (SFP)	3.0
IFAI	0.53
Total	100

Source: Cejudo and Sour 2007.

3.7. Training

The IFAI trains federal government officials on a routine basis to ensure adequate knowledge of the law and relevant tools. Such training is especially important given the high levels of staff

⁴⁹ But it must be taken into account that, in 2006, the scope of the IFAI and IFE's competencies was dissimilar—the IFAI's competencies were federal while the IFE's mandate was national. After 2010 the IFAI's mandate regarding the protection of personal data held by private entities became national.

rotation in federal agencies' liaison units. Between 2003 and 2011, the IFAI trained over 83,000 federal government officials,⁵⁰ from which 61,483 were trained through e-FAI, between 2006 and 2011.⁵¹ e-FAI is an online course developed by the IFAI for all federal government officials in 2006.

The training course consists of seven modules on transparency and access to information, including modules on the law and its implementing regulations; access to and protection of personal data; organization and conservation of archives; INFOMEX; and how to assist citizens who approach the agency to request information.

Finally, some federal agencies have also trained their own personnel, as they have designed their own internal mechanisms to more efficiently handle information requests, including by reorganization their data storage and records management systems.⁵²

3.8. Records Management

The most significant organizational challenge throughout the federal public administration is the absence of an adequate and reliable infrastructure for managing, processing, and storing information. Public servants are not used to keeping records, sharing information, coordinating among different units, or even documenting their activities. Furthermore, Mexico lacks adequately trained personnel in archival development.⁵³

Article 32 of the ATI law establishes that “the National Archive, in collaboration with the IFAI, will define criteria for cataloging, classifying and preserving administrative documents.” The same article also states that these two institutions will issue guidelines for the organization of archives in all federal government agencies, following international standards and good practices.

Coordination and collaboration between the National Archives and IFAI has faced challenges, in large part because the lines of responsibility of each entity have not been clearly defined, and because the National Archives is still governed by dated regulation that refers to the preservation of historic records, not the management of administrative documents. Nonetheless, since the approval of the ATI law in 2002, some regulations have been issued for the preservation and management of administrative records, and a new records law was adopted in 2012.⁵⁴

In 2004, the IFAI and the National Archives issued the “General Guidelines for the Organization and Conservation of Archives in Federal Government Agencies.” In 2007 the Constitutional amendment of Article 6 further mandated each of the three levels of government (federal, state, and local) “to preserve its documents in updated administrative archives” (Cejudo 2009).

⁵⁰ Data provided by the IFAI, Dirección General de Coordinación y Vigilancia de la Administración Pública Federal, June 2012.

⁵¹ Data provided by the IFAI, Dirección General de Coordinación y Vigilancia de la Administración Pública Federal, June 2012

⁵² The IFAI distributes a template to all agencies so that they can report all the measures they have adopted to guarantee citizens' right to public information and improve their performance (IFAI “Informe de Labores 2009”).

⁵³ See Flores Padilla 2005.

⁵⁴ Ley Federal de Archivos, 2012 (available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/LFA.pdf>).

This constitutional mandate is vital to the principle of maximum disclosure contained in the ATI law: without updated and reliable records, there is no guarantee that citizens can effectively gain access to public information.

Yet, in most government agencies, existing information is still dispersed and/or incomplete. One office might not have access to information developed by another office within the same agency and, frequently, information simply does not exist. Because responding to information requests requires—first and foremost—that one possesses the requested information, the absence of records actually gives government officials with limited commitment to transparency and access to information an excuse to deny information requests. As shown in table 3.2, throughout the years of implementation, a recurrent reason for denying information requests is that the information does not exist. Out of the total number of responses, the absence of information grew from 4.2 percent in 2006, to 6.1 percent in 2011, peaking in 2008, when it reached 8 percent.⁵⁵

Table 3.2 Percentage of Denials of Information Requests Based on Claims of Nonexistent Information

Year	Requests		Responses based on claims of nonexistent information	Percentage
	Entered	Processed		
2003–06	172,169	166,970	7,020	4.2
2007	94,723	92,494	4,222	4.5
2008	105,250	103,100	8,208	8.0
2009	117,597	116,247	8,289	7.1
2010	122,138	121,603	8,758	7.2
2011	123,293	124,670	7,621	6.1
Total	735,170	725,084	44,118	6.0

Source: IFAI, “Informe de Labores 2011”, 46.

While records management continues to be a weakness, some important efforts have already been introduced to organize public records in the federal government, particularly in those agencies that receive the largest number of information requests per year. The reorganization effort began with the most current records, and priority was given to those documents that were most frequently requested.

While much remains to be done in this area, one of the main lessons from the Mexican experience is that it is not necessary to have a full records management infrastructure before

⁵⁵ Calculated from the IFAI “Informe de Labores 2011.”

implementing an ATI law; much can be accomplished with a sustained incremental approach. In other words, lack of records management systems should be no excuse for preventing the adoption and implementation of access to information laws. Despite records management system constraints, the administration saw an opportunity for passing the law in 2002, and felt that the law could, in fact, become an incentive to motivate federal officials to introduce modern information management systems.⁵⁶

3.9. Information Technology

The development of an e-platform—the SISI, System for Information Requests—to handle information requests was one of the key innovations introduced by the IFAI.⁵⁷ This e-platform (the expanded version of which was renamed INFOMEX) both facilitated users' ability to make information requests, and allowed the IFAI to keep track of government agencies' responses to information requests and supervise their compliance with the law.⁵⁸

The Constitutional Amendment of Article 6 further required all government entities and municipalities larger than 70,000 inhabitants to install electronic systems so that all citizens could place information requests.⁵⁹

Requests to federal agencies can be placed electronically, and responses can also be provided electronically. The current system allows government officials to communicate with the user, clarify the request, or assist the user in refining his or her search. Users not satisfied with the official response can—through INFOMEX—turn to the IFAI for an appeal of their request.

The IFAI also developed a search engine called ZOOM that allows commissioners, government officials, and users to find resolutions by topic, agency, or date. This systematization of rulings enables the IFAI to develop interpretative guidelines based on precedent, using previous rulings as examples in similar cases. Similarly, users and government agencies can use the search engine to build their cases.

INFOMEX, ZOOM, and the Transparency Portal (more information on this portal in section III.J) have been successfully introduced and internalized by all federal agencies. In terms of technological infrastructure, the federal government's capacity to respond to information requests is well established.

Use of electronic requests and introduction of innovative information technologies has been largely responsible for the successful implementation of the law in Mexico. It allows individuals

⁵⁶ Personal interviews with members of Grupo Oaxaca, legislators, and former government officials responsible for drafting the law, Mexico City, September 2010.

⁵⁷ In 2007 this electronic system was recognized as one of the top 20 programs of the IBM Innovations Award in Transforming Government, administered by the Ash Institute for Democratic Governance and Innovation at the John F. Kennedy School of Government, Harvard University.

⁵⁸ Users can also make their requests in writing or by mail, but the mail is not always reliable in Mexico. When requests are presented personally in writing, in the liaison units, staff transfer those requests into the e-platform so that they can be registered by the system. If the requester wants the information to be delivered on paper, he/she needs to pay the reproduction costs.

⁵⁹ See Article 6 of the Constitution, chapter V. This constitutional mandate has encouraged states and municipalities to adopt the INFOMEX system and the IFAI has been sought to provide training, even when the mandate of the Institute is confined to the federal level.

making requests to communicate with the government on a regular basis, and the oversight agency to supervise and keep track of agencies' performance and compliance with the law.

3.10. Proactive Disclosure

The transparency law includes extensive proactive disclosure provisions. These meet an emerging international minimum standard on the types of information that should be included in proactive disclosure provisions.⁶⁰ Article 7 lists the information that federal government agencies are required to post on their Web sites. To comply with these provisions and make the formats for posting information uniform, the IFAI designed a central Web portal called Portal de Transparencia or POT (Transparency Portal). Each government agency is required to set a Web link to the POT on their Web sites. Although some government officials complain that uploading information can be sometimes challenging, and some civil society practitioners argue that POT is not always user friendly, it has significantly helped in the verification of compliance with proactive disclosure provisions.

To monitor federal agencies' compliance with proactive disclosure provisions, the IFAI had designed a methodology to evaluate the federal agencies' Web-based Transparency Portals. According to the IFAI, in 2004 federal government agencies scored, on average, 63 percent on their rate of compliance with proactive disclosure provisions. By 2011 this rate increased substantially, reaching an average of more than 85 percent.⁶¹

In 2011, the compliance rates of the federal agencies studied more closely in this report were as follows: the secretary of social development had a 78.58 percent compliance rate;⁶² the secretary of education, 90.2 percent; the secretary of public function, 80.5 percent; and the secretary of communications and transport, 77.8 percent.⁶³

3.11. Monitoring and Evaluation

The IFAI evaluates periodically the extent to which federal agencies comply with the obligations of the ATI Law. INFOMEX, ZOOM, and POT have generated an impressive volume of statistical information that not only allows the IFAI to keep track of all federal agencies' compliance, but

⁶⁰ According to Helen Darbishire's study on proactive disclosure provisions, a standard on minimum disclosure provisions is emerging for ATI legislation. These provisions include: institutional information; organizational information; operational information; decisions and acts; public services information; budget information; open meetings information; decision making and public participation; subsidies information; public procurement information; lists, databases, registers; information about information held; publications information; and information about the right to information (Darbishire 2010: 21).

⁶¹ IFAI, "9 Informe de Labores 2011": 60-61.

⁶² It is interesting to note that the two previous years, Sedesol's compliance rate had been at least 10 points higher. However, in 2011, Sedesol scored low (below 60%) in the financial part of the transparency obligations. Indeed, IFAI considered that in 2011 Sedesol did not publish adequately information related to salaries, subsidies and procurement. (Data provided by the IFAI, Dirección General de Coordinación y Vigilancia de la Administración Pública Federal, August 2012).

⁶³ Data provided by the IFAI, Dirección General de Coordinación y Vigilancia de la Administración Pública Federal, June 2012

also to analyze data, evaluate trends, and make recommendations to improve federal agencies' performance.

Federal agencies have incentives to comply with the transparency law because their response to information requests is permanently monitored by the IFAI. Through INFOMEX, the IFAI keeps track of all information requests received by each agency, the time the agency takes to respond, and the number of requests that are appealed to the IFAI. Moreover, heads of agencies have an incentive to be well evaluated, as the IFAI's evaluations are public. No agency wants to be listed as a poor performer.

The IFAI has developed monitoring indicators to assess the extent to which federal agencies fulfill the procedures established in the law and provide responses to information requests, as well as to evaluate the effectiveness of the classification of information. Different methodologies are used to assess compliance and analyze the state of access to information in Mexico.⁶⁴ For example, quantitative and qualitative analyses have been conducted on the responses provided through INFOMEX and the quality of services provided by the liaison units. Another strategy consists in cross-checking information obtained from POT against other electronic systems such as Compranet (an e-procurement platform). The IFAI also relies on the "mystery shopping" methodology (*usuario simulado*) to monitor and assess the quality of the services provided by liaison units to individuals that make information requests.

Official figures on the extent to which public agencies provide information in response to individuals' requests show an overall positive response rate. But these figures have some caveats (Fox, Haight, and Palmer-Rubin 2011: 8, 15). First, federal agencies themselves are responsible for categorizing their responses as positive or negative. Second, the official data do not address the quality of the information response (for example, sometimes the information provided is incomplete or presented in a complex technical language). Given these limitations, in 2008, the IFAI conducted a pilot monitoring exercise to assess the consistency, opportunity, reliability, and completeness of more than 11,000 information requests. The study found that 83 percent of positive responses were satisfactory and approximately half of the responses provided by federal agencies were positive.

The IFAI also monitors individuals' appeals, and has recently started to monitor the process through which the IFAI mandates a federal agency to disclose information following an appeal to a denial of information. This new monitoring system assesses the delays of federal agencies in acting upon the IFAI's resolutions, as well as whether the agency actually provides a response to the requester. This will help have a more comprehensive assessment of compliance.

A few independent evaluations have been conducted, although there is no overall external assessment of the ATI regime yet (Fox, Haight, and Palmer-Rubin 2011: 14–26, 43–46). Independent evaluations of the responses provided by federal agencies to information requests

⁶⁴ Minutes of the videoconference meeting held between the IFAI and Chile's Council for Transparency (CPLT) on March 30, 2011, as part of the Knowledge Exchange Pilot Project between the IFAI and CPLT supported by the World Bank Institute.

confirm the high level of satisfaction of requests, although the number of positive responses is lower than the official figures.⁶⁵

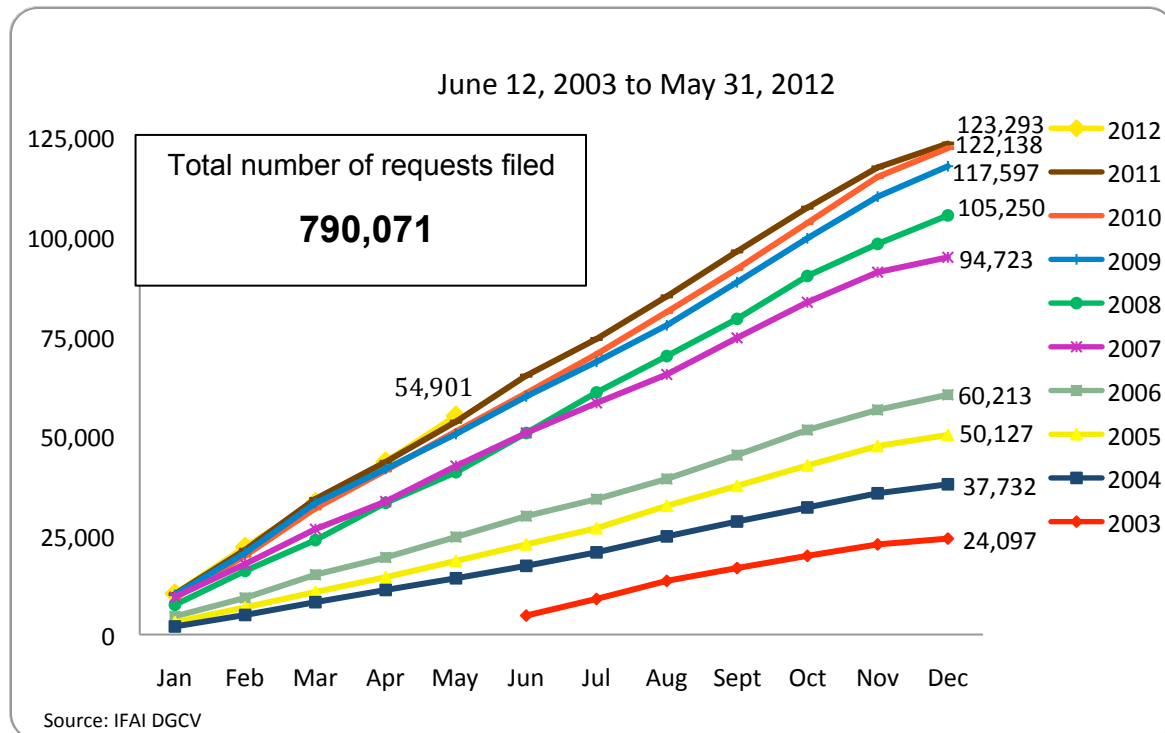
⁶⁵ In addition the National Transparency Survey, developed by Centro de Investigación y Docencia Económica (CIDE), allows for assessment of each Mexican state and ATI oversight body at the state level, the quality of the respective ATI legislation, the fulfillment of the obligations of the state law, and the institutional capacity and competencies of each oversight body.

4. Use of the Law and Government Responsiveness

From a purely statistical perspective, the volume of requests for information and the rates of government's response to these requests have been remarkable. In 2003, the first year the law came into effect, more than 8,000 users submitted information requests. As figure 4.1 shows, since 2003 the number of information requests received by the federal government increased consistently. From 2003 to 2012 (May), the federal government has received a total of 790,071 information requests.⁶⁶

Figure 4.1. Total Number of Information Requests

Source: IFAI.



According to the IFAI, 95.9 percent of all requests were received electronically.⁶⁷ Of the total information requests received by the federal government, up until December 2011, 91.5 percent received a positive response: either the information was provided or the requestor was

⁶⁶ Information provided by the IFAI. The government, by law, is asked to assist requestors in formulating their requests so that they are less vague and therefore have more chances of receiving a positive response. This provision is called *suplencia de la deficiencia de la petición* ("improving the deficiencies of the request").

⁶⁷ The rest are received by phone or in person.

directed to where the information could be found.⁶⁸ By way of comparison, in Australia, during 2004–05, the government received 39,265 information requests but only responded to 67.2 percent of them. Indeed, the volume of information requests and responses in Mexico are proportional to those received by the U.S. government, which has greater capacity and resources to respond to public information requests (Ackerman 2007: 18). As John Ackerman notes, compared with other countries that have implemented their access to information (ATI) laws, these numbers are highly positive (Ackerman 2007: 18).

In terms of effectiveness, the federal government responded to public information requests in 13.6 days on average,⁶⁹ well below the limit of 20 days established by the law. Furthermore, from 2003 to 2011, the government denied information requests on the grounds that the information did not exist in only 6 percent of cases⁷⁰ (see table 3.2).

Since the law came into effect, the number of appeals received by the IFAI also grew consistently. As figure 4.2 shows, from 2003 to May 2012, the IFAI received a total of 42,261 appeals, which represent around 5.3 percent of the total number of requests. In only 23.4 percent of those cases, the IFAI confirmed the decision of the federal agency—that is, it ruled against the requestor and in favor of the government (see table 4.1).⁷¹

Figure 4.2. Total Number of Appeals to the IFAI

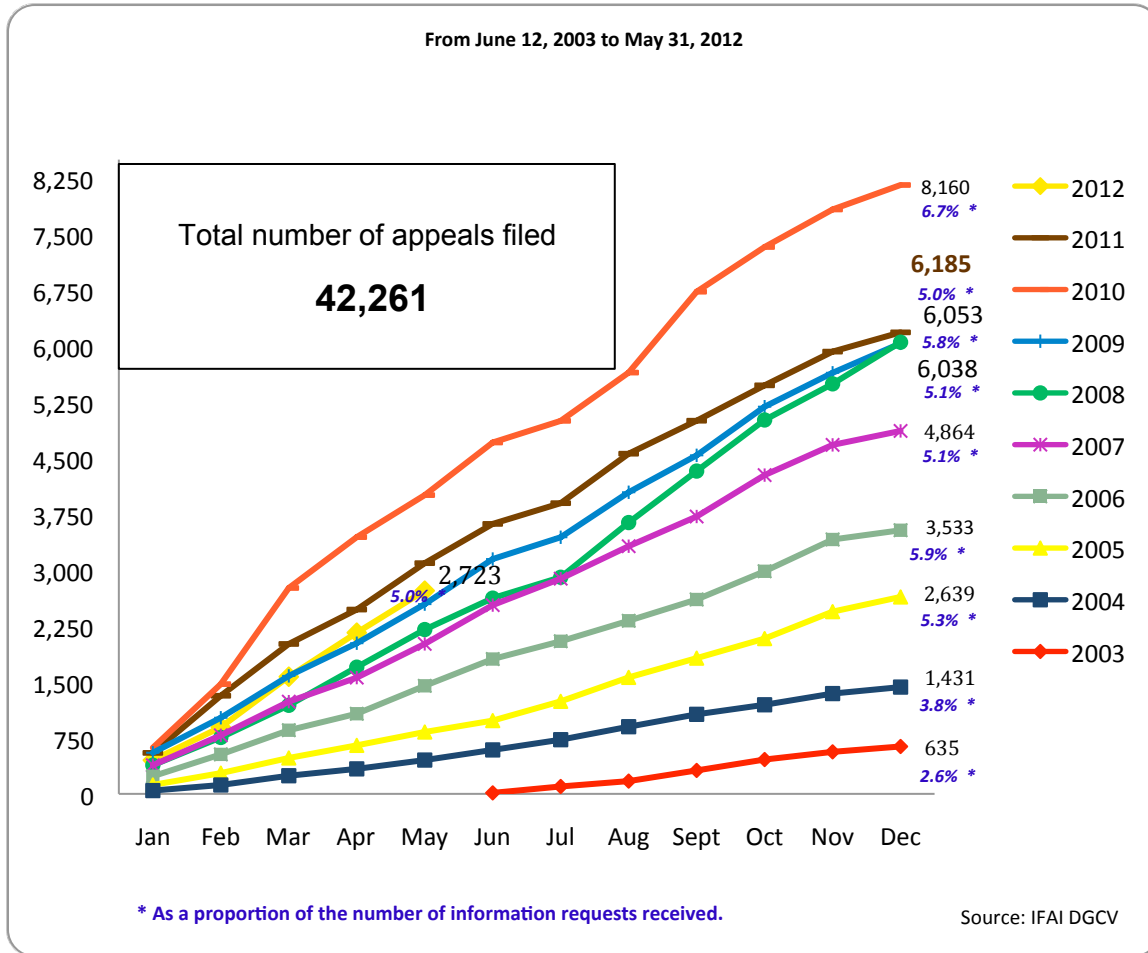
⁶⁸ IFAI, “9 Informe de Labores 2011.”:20 It is important to note that a negative response—that is, a denial of the information request—also counts in this statistic as a response.

⁶⁹ IFAI, “9 Informe de Labores 2011”: 20.

⁷⁰ *Ibid.*: 46.

⁷¹ Data provided by the IFAI. As mentioned above, appeals to the IFAI are straightforward; users do not need to hire lawyers. Yet, some users interviewed for this paper complain that they often need to resort to legal assistance to write their appeals to the IFAI, because in complex cases, the government tends to give lengthy and complicated answers to justify denials of information requests.

Source: IFAI.



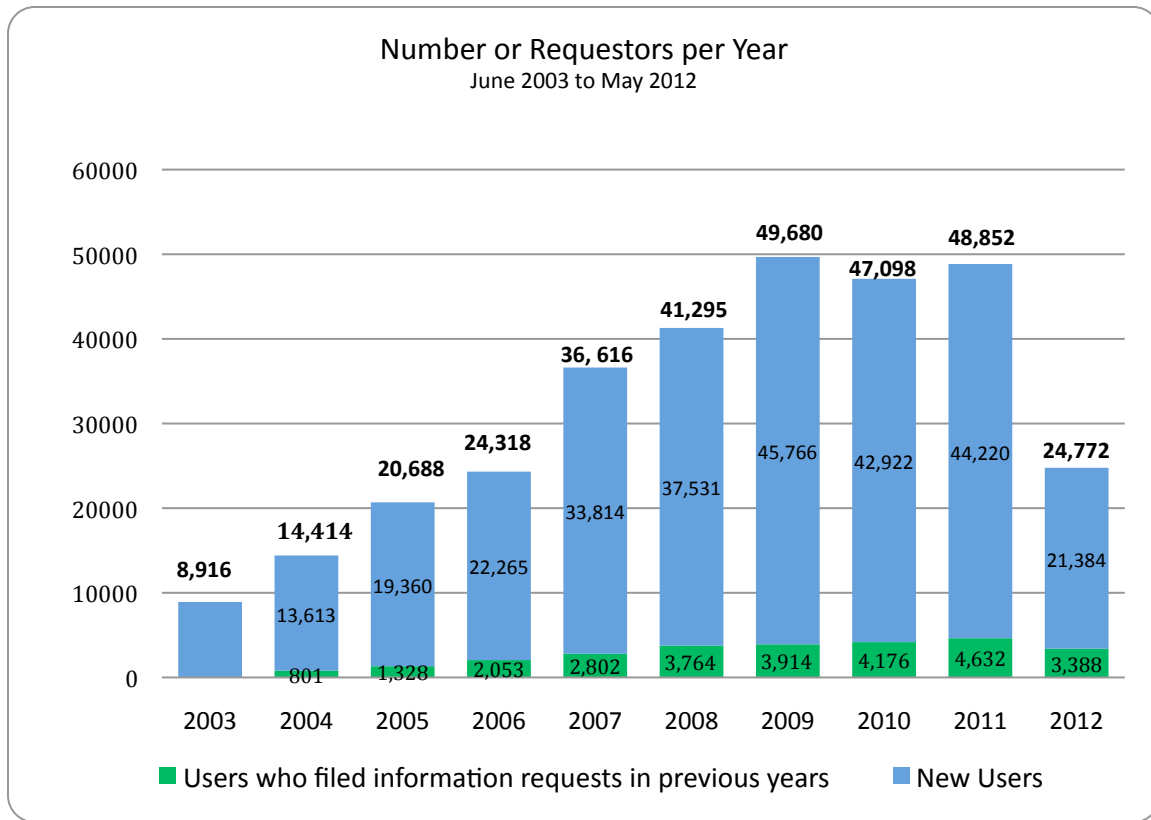
According to the IFAI's data, most information requests are filed by new users (see figure 4.3). Yet the majority of requests are concentrated, both regionally and professionally. Most users (more than 50 percent) are concentrated in Mexico City's metropolitan area; 74.6 percent of users have college degrees or postgraduate degrees.⁷² Although users are not required to identify themselves, some do. According to official data, the majority of users are academics (31.4 percent), business people (17.9 percent), government officials (11.5 percent), and journalists (8.2 percent). The remaining requests are made by civil society activists and other unspecified users.⁷³ These data reveal that a relatively small percentage of users place most of the information requests.

Figure 4.3. Total Number of Requests, by New Users

Source: IFAI.

⁷² Data from the IFAI, "9 Informe de Labores 2011"

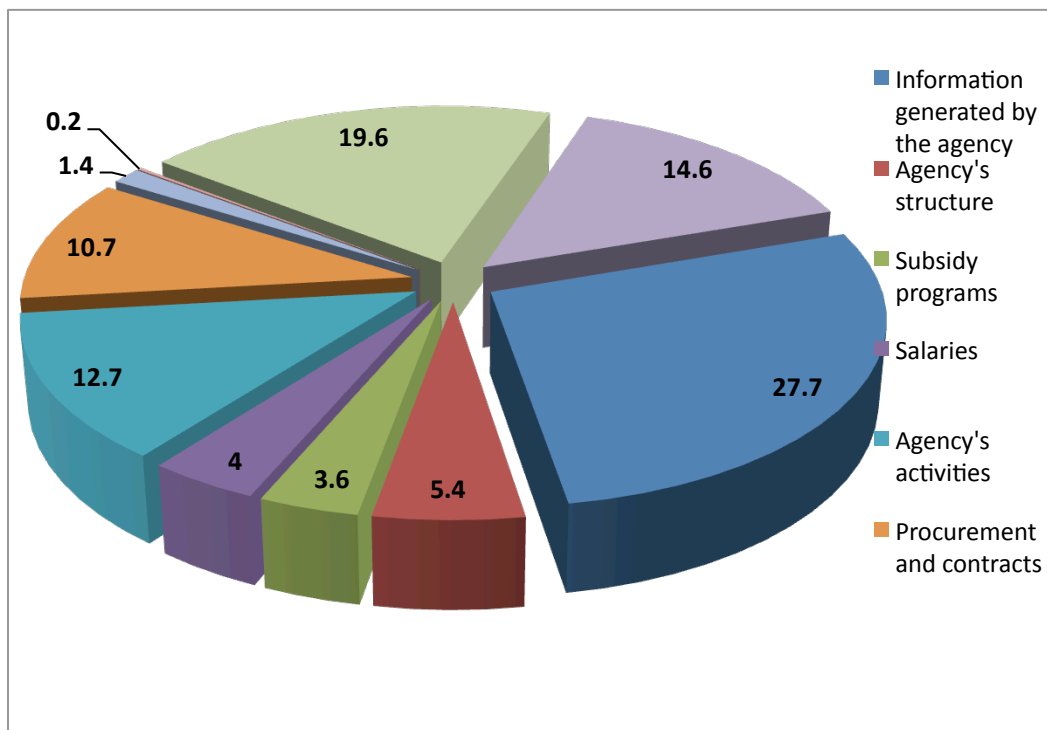
⁷³ Often journalists prefer not to identify themselves because they believe this will increase their chances of obtaining the information requested. According to Jonathan Fox and Libby Haight, many journalists report that identifying themselves as journalists leads agencies to resist the request. The consequence of this is that official IFAI data on the number of journalists' requests may be underrepresented. See Fox and Haight (2010b: 144).



In 2011, the largest percentage of requests (27.7 percent) involves information generated by the agencies themselves, such as legal procedures, statistics, and results of opinion surveys; 19.6 percent of requests refer to personal data, and another 12.7 percent refer to information about the agency’s activities, such as work plans and project results. Requests about procurement information represent 10.7 percent of total requests. Only 4 percent of total requests refer to the remuneration of public officials and another 3.6 percent to the agencies’ subsidy programs, such as list of beneficiaries, eligibility requirements, and information about results of these programs (see figure 4.4).⁷⁴ As mentioned earlier, the low volume of requests related to information about social programs is in large part due to the existence of grievance-redress mechanisms, such as the Citizen Attention Windows in Oportunidades that provide beneficiaries this information. For the most part, individuals do not request information about social programs through the ATI law.

⁷⁴ IFAI, “9o Informe de Labores 2011”: 23.

Figure 4.4. Information Requested, by General Topic in 2011



Source: IFAI.

When analyzing the IFAI resolutions, it becomes clear that the IFAI tends to rule in favor of the requester more often than in favor of the government. On average, from 2003 to May 2012, the IFAI confirmed the federal government—that is, ruled that the government’s information denial should be upheld—in only 19 percent of cases. The rest of the resolutions were either to revoke the government’s initial denial or to modify the government’s response (32.5 percent of cases). The remaining 48.5 percent of the IFAI resolutions were either dismissed⁷⁵ or admitted and then dismissed as the conflict was resolved (table 4.1).

Table 4.1. Resolution of Appeals (June 2003–May 2012)

Confirms	Modifies	Revokes	Admitted and dismissed (conflict resolved)	Dismissed	In process	Total of appeals
8,062 (19.%)	8,213 (19.4%)	5,529 (13.%)	5,094 (12.%)	14,355 (34.%)	1,008 (2.4%)	42,261

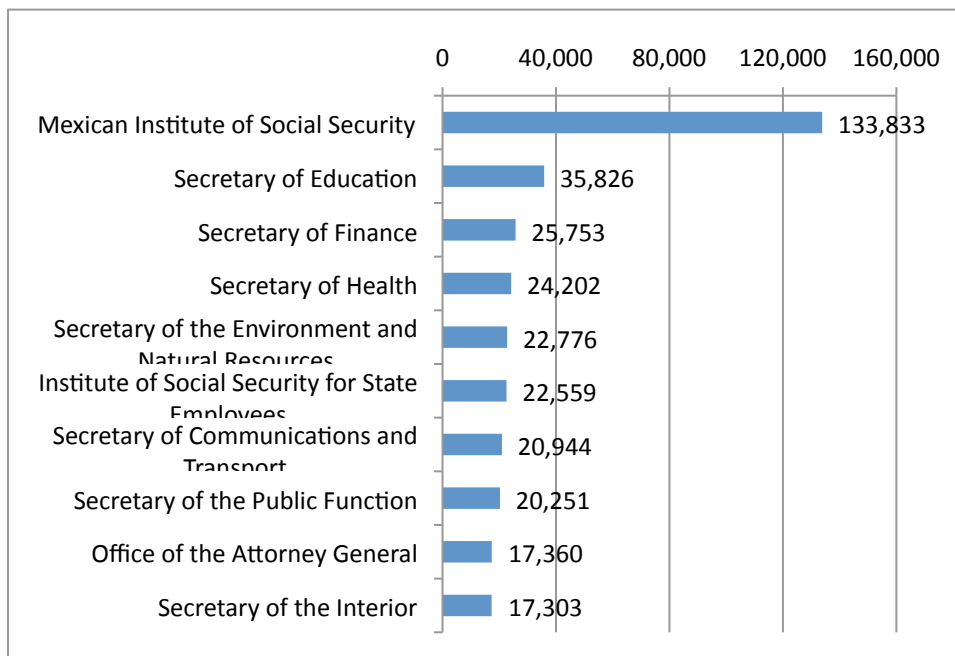
Source: IFAI, DGCV June 2012.

⁷⁵ Many of the so-called admitted and dismissed cases or *sobreseimientos*, as they are called in Spanish, result when the government decides to disclose the information being requested *before* the IFAI issues a resolution.

An indicator of federal agencies' level of compliance with the law is the number of requests they receive and the proportion of responses that are appealed to the IFAI. A higher proportion of complaints indicate that agencies are reluctant to provide the requested information, or citizens are not satisfied with the response received. Conversely, a lower proportion of complaints relative to the number of information requests might indicate that citizens are satisfied with the responses given. Of course, citizens may be unsatisfied and yet refuse to complain due to lack of confidence that their grievance will be redressed.

The federal agencies that receive the highest number of information requests since the law came into effect are listed in figure 4.5. The Social Security Institute is, by far, the federal agency with the largest number of requests, many of them on personal data. Three of the four federal agencies closely analyzed in this paper are included in this list: the secretary of education (second place), secretary of communications and transport (seventh place), and secretary of public function (SFP, eighth place).

Figure 4.5. The Ten Federal Public Administration Agencies that Receive the Most Requests for Information (June 2003 to May 2012)



Source: IFAI.

In terms of requests that result in appeals to the IFAI, the 10 federal agencies with the largest number of appeals between 2003–12 are listed in table 4.2. Not surprisingly, the Social Security Institute tops the list of federal agencies with the highest numbers of requests that result in appeals to the IFAI. But in proportion to the total number of information requests received by the agencies, the SFP—the very agency responsible for the enforcement of the IFAI’s decisions—is at the top of the list, with 9.0 percent of requests resulting in appeals. The secretary of

communications and transport, and secretary of education are also included in this list, with a rate of 5.8 percent and 4.7 percent respectively.⁷⁶

Table 4.2. The Ten Federal Agencies Receiving the Highest Number of Appeals Decisions by the IFAI (2003–2012)

Agency	Resolved Appeals	Appeals decisions as percentage of total information requests to each agency	Appeals as percentage of aggregate total number of appeals to all federal agencies
Mexican Social Security Institute	5,787	4.3	13.7
Secretary of Public Function	1,819	9.0	4.3
Secretary of Education	1,694	4.7	4.0
Office of the Attorney General	1,433	8.2	3.4
Secretary of Finance	1,275	4.9	3.0
Institute of Social Security and Service for Public Employees	1,265	5.6	3.0
National Cancer Institute	1,222	36.4	2.9
Secretary of Communications and Transportation	1,209	5.8	2.9
Secretary of Health	1,164	4.8	2.8
Tax Administration Service	1,010	7.2	2.4

Source: Fox and Haight 2010b: 151; updated with data provided by IFAI.

While this information sheds light on users’ demand for public information and rates of government compliance with the law, there are some limits to what statistics can reveal. Statistical information does not show the informal mechanisms often used by the IFAI officials to try to persuade government agencies to disclose the information the IFAI considers to be public.

It also does not reveal about the quality of data. Agencies might often reply to information requests by issuing information that is difficult—if not impossible—to interpret as it is published in PDF format and therefore difficult to reuse. Or, they might respond with pages and pages of legalistic argumentation that is virtually impossible to decipher.⁷⁷ This method of evading a proper reply is possible because the law establishes that information needs to be disclosed “in

⁷⁶ This list comes from data collected by Fox and Haight (2010b: 151), and it has been updated with information provided by the IFAI. It should be noted that in 2011 this list included for the first time the National Cancer Institute, with 36.4 percent of requests resulting in appeals. This is the result of an atypical situation in which one single requester, using two different names, filed more than one thousand appeals and a similar number of requests in a three month period, which paralyzed the access to information system in the National Cancer Institute. IFAI learned that the requests and appeals had been filed by a National Cancer Institute former employee, who was resentful with the Institute. Acknowledging the facts, IFAI’s plenum determined that its was a case of an abusive use of the right to access information. (This information was provided by José Luis Marzal, Director of Coordination and Oversight at IFAI. E-mail, August 22, 2012)

⁷⁷ Interview with a leader of a civil society who has made numerous requests for public information, Mexico City, September 2010.

the format in which it exists.” In such cases, when agencies comply with the terms of the law but not with its spirit, disclosure does not necessarily lead to greater transparency.

It is important to note that, as will be discussed in more detail below, the disclosure of information, and the revelation of corruption or mismanagement does not necessarily lead to proper investigations or sanctions.

Table 4.3. The Ten Federal Agencies with the Highest Number of Complaints for not Complying with IFAI’s Resolutions to Disclose Information (2004–2008)

Agency	Total Accumulated Complaints	Total IFAI Resolutions with Instructions	IFAI Resolutions with Instructions that Result in Complaints as a Percentage of IFAI Total Resolutions
Secretary of Education	46	357	12.9
Office of the Attorney General	34	249	13.7
Mexican Institute of Social Security	30	420	7.1
Secretary of Public Function	29	251	11.6
Secretary of Foreign Affairs	24	185	13.0
Secretary of Finances	22	233	9.4
Office of the Presidency	19	227	8.4
Pemex, Exploration and Production	19	122	15.6
Secretary of Communications and Transport	18	232	7.8
National Water Commission	17	125	11.6

Source: Fox, Jonathan, Libby Haight, and Brian Palmer-Rubin (2011): 41.

5. Broader Impact of ATI

The law has increased transparency in the country, and information that was impossible to obtain 10 years ago is now available. For instance, disclosures about officials' expenditures on per diems have led to significant reductions in these types of spending. But having more information does not necessarily mean greater accountability, unless disclosure translates into sanctions or policy changes, as the cases below illustrate.

Greater transparency is only the first link in the accountability chain (Fox 2007b: 663–71). Advancing from transparency to greater accountability requires the involvement and effective coordination of several accountability institutions.⁷⁸

5.1. Cases Studies

A few illustrative cases reveal the challenges of increasing accountability, even when a legal ATI framework exists, information is disclosed, and civil society organizations (CSOs) are effective. While civil society pressure (including from the media) has triggered corrective actions in some cases, sanctions need to be enforced to ensure government accountability.

5.1.1. Health Programs for HIV/AIDs: The Case of Pro-Vida

In 2002 the Chamber of Deputies approved an increase of 600 million pesos to the Secretary of Health's budget for health programs. The head of the Budget Committee arbitrarily changed the approved budget and allocated resources that were earmarked for the purchase of retro-viral medications for patients suffering from HIV/AIDS to an anti-abortion nongovernmental organization (NGO, Pro-Vida).

FUNDAR, a think tank/NGO in Mexico, conducted an investigation into the transfer of these funds. Along with a coalition of six other CSOs, FUNDAR requested information on all the financial reports Pro-Vida had submitted to the secretary of health. The secretary released all the information requested. The investigation showed numerous irregularities in the use of funds, such as payments to fictitious organizations, disbursement not related to health programs (such as purchases of Mont Blanc pens), and excessive expenditures on publicity campaigns. The NGOs then turned to the press and began a media campaign to demand an official investigation into this case and the eventual sanctioning of all public officials involved in the case.

As a result of this campaign, and the strong social pressure that resulted as many other civil society organizations and newspapers joined the campaign, Pro-Vida was requested to return all the transfers received from the secretary of health. In addition, the secretary of health cancelled all future transfers already approved to this organization, and Pro-Vida was banned from

⁷⁸ Fox 2007a; for an analysis of the institutional architecture for accountability at the federal level in Mexico, see Merino, López Ayllón, and Cejudo (2011).

receiving public resources. The SFP charged the head of Pro-Vida a fine of 13 million pesos, but no public official was investigated or sanctioned.⁷⁹

5.1.2. The Health Rights Campaign of the Women's Network for the Common Good⁸⁰

In Mexico most information requests are made by a small number of individuals, heavily concentrated in urban areas. But in Guerrero, a poor southern state characterized by strong social capital, rural organizations have used ATI rights to improve the living conditions of low-income rural citizens.

In 2007, in Guerrero, a peasant women's health rights campaign, the Women's Network for the Common Good, affiliated with the Union of Communities of Eastern Coyuca de Benítez and Western Acapulco (Unión de Pueblos, or UP), decided to organize a campaign to hold the federal government accountable for provision of health services through the government's conditional cash-transfer program, Oportunidades. This program is controlled directly by the federal government, even when services are provided at the local level. Program recipients are entitled to receive regular cash payments upon children's attendance to school, regular preventative health check-ups, and lectures. Oportunidades is one of the most carefully monitored and evaluated social programs in the country, and it includes several mechanisms to increase transparency and facilitate social oversight. But by using their ATI law, rural organizations were able to identify some limitations.

In the communities of Eastern Coyuca de Benítez and Western Acapulco, Oportunidades recipients were confronting problems with public health services. In particular, women complained about a lack of medicines and supplies in rural health centers, the frequent absence of doctors and nurses, and the fees requested for any prescription and basic supplies. Additionally, community leaders reported that Oportunidades beneficiaries were asked to make "voluntary contributions" to cover the costs of health centers' electricity, gas, potable water, and basic maintenance.

The Women's Network presented a request for information. They wanted to know the rules governing basic public health services in rural communities, which services were supposed to be provided, and whether or not they required any fees. They also requested information on the list of medicines and supplies that health centers were supposed to have in stock, and the number of doctors and nurses that needed to be present at the health centers. Finally, they wanted to know how health centers spent the resources transferred from the federal government.

The federal government provided the information requested, including a series of health-related laws, ministry regulations, and program operating procedures that clearly defined the basic health services to which rural communities were entitled. This included lists of specific medicines, supplies, and services that health centers were mandated to provide free of charge.

⁷⁹ See Gozzo (2006)..

⁸⁰ This case is extracted from Fox, García Jiménez, and Haight (2009).

But the federal government could not provide information on the administration of resources in specific health centers in the Coyuca region, because the state government manages those centers (although funding comes from federal sources). In contrast to federal officials, state health officials were more reluctant to disclose financial information and refused to provide the necessary data on funds earmarked for basic maintenance and supplies.

The campaign involved hundreds of women. A substantial volume of information was duly provided to the community, although it had only a marginal impact on the quality of public health services or the management of health centers at the local level.

5.1.3. The Customs Department Trust Fund

In Mexico public trust funds (*fideicomisos*) are among the mechanisms used by some public officials to keep public funds out of the public eye. Traditionally, trust funds are among the institutions most resistant to disclosing information about their financial operations. According to a study (Sandoval 2008), 589 public trust funds were operating in Mexico by 2007. They managed a significant amount of resources—close to 3 percent of Mexico’s gross domestic product (GDP). Managers of public trust funds resort to the argument that technically they are not public institutions and thus are protected by Mexico’s “bank secrecy laws.” In practice, most of these trust funds do not have sufficient control mechanisms and have escaped public oversight.

In 2004 Congress passed an important reform granting the country’s Supreme Audit Institution (*Auditoría Superior de la Federación*, ASF) legal attribution to audit trust funds, as this is an institution that manages public funds.⁸¹ But trust fund managers continued to allege their rights to secrecy.

By 2005 the ASF had identified significant deviation of resources in financial transfers made to some trust funds related to the Customs Department (an entity within the secretary of finance). The secretary refused to reveal financial information on such transfers, alleging that the trust funds were private entities and thus protected by bank secrecy laws. In 2005 the IFAI received an appeal to review the secretary’s decision to withhold the information. The IFAI ruled that the information was public and therefore had to be released because the origin of the resources was public, even if invested in a “private” trust fund.

The secretary of finance released the requested information. The information revealed that the trust fund managed resources in a discretionary manner and that a significant amount of resources could not be accounted for. The ASF issued a series of recommendations to the secretary of finance, including the reposition of those resources, while the SFP began an investigation.

Although the issue was publicized in the national press, there were no sanctions. IFAI and several NGOs, academics, and legislators led advocacy to mandate the disclosure of trust funds’ financial reports, whenever these trust funds receive public resources.

⁸¹ The ASF reports to Congress; it is the equivalent of the United States General Accounting Office (GAO).

5.1.4. Farm Subsidies: The Case of PROCAMPO

In 2007 the Mexican NGO FUNDAR requested information from the Ministry of Agriculture on the list of recipients of PROCAMPO, the largest federal farm subsidy program in the country, designed to increase agricultural productivity, support the poorest farmers, and reduce the high levels of inequality in Mexico's rural sector.

The Ministry of Agriculture responded to this information request, but the information was incomplete and delivered in unreadable formats. The NGO appealed to the IFAI, which resolved in favor of the NGO and directed the Ministry of Agriculture to release the complete list of recipients and provide the documents in a machine-readable format.

The deficiencies of PROCAMPO have been thoroughly analyzed and discussed in various academic forums and publications. As a Centro de Investigacion y Docencia Economica (CIDE) researcher points out, although the federal government spent significant resources on farm subsidies, these subsidies did not bring about greater competitiveness in the country's agricultural sector, a sustainable increase in the production of basic grains, or improvements in the living conditions of the poorest farmers (Merino 2010a: 53, 75). Even the ASF claimed in 2006 that it was difficult to conclude that the farm subsidy program had fulfilled its objectives. In its audit of PROCAMPO, the ASF recognized that farm subsidies were heavily concentrated in the richest northern states, and that 53 percent of PROCAMPO subsidies had been distributed to farmers who owned more than 5 hectares of land, while the smallest landholders (those who own less than 1 hectare) had only received 0.6 percent of all subsidies during that year.⁸²

After obtaining the information from the Ministry of Agriculture, FUNDAR—along with other NGOs and academics—launched a project called “Farm Subsidy in Mexico,” which systematized and ordered the information and posted it online in an easily searchable format (www.subsidiosalcampo.org.mx). The Web site database, publicly launched in 2008, allows citizens to search the list of beneficiaries of farm subsidies over the past 15 years and to compare payments and distributional patterns across states (Fox and Haight 2010a: 141).

This information confirmed that the bulk of farm subsidies had not been allocated to the country's poorest and smallest farmers, as the program originally intended, but to the wealthiest farmers in the country (Merino 2010a: 53). Moreover, an analysis of the list of recipients revealed that beneficiaries did not always meet the recipients' selection criteria. The news intensified the pressure on the Ministry of Agriculture to revise the program's operating rules and to clean up its list of recipients.

Soon after the scandal broke, the president and the minister of agriculture acknowledged that “it was imperative to review the list of beneficiaries and to allocate farm subsidies more strategically, to those farmers who needed the subsidies the most” (Merino 2010b).

In February 2010 another investigation led by a group of academics revealed further irregularities in the list of beneficiaries (*El Diario de los Mochis*, April 1, 2011). Again a high-level official resigned, and the government announced a review and reform of PROCAMPO's rules of operation. The government established a minimum of 1,300 pesos (\$100) and a ceiling of

⁸² ASF 2008: tomo IV. The ASF instructed the Ministry of Agriculture to review PROCAMPO's rules of operation to correct the program and revert the concentration of farm subsidies in the country.

100,000 pesos (\$8,000) per farmer per harvest cycle. But the government did not introduce incentives to ensure compliance with the new operating rules of PROCAMPO (Fox and Haight 2010a: 140). Neither were sanctioning mechanisms introduced (*El Universal*, February 15, 2010).

In this regards, the ASF has continued to issue recommendations to the Ministry of Agriculture. In 2009 the ASF found that 577 public officials from the Ministry of Agriculture had received PROCAMPO subsidies and “requested from these officials to return the funds that were allocated to them” (*El Diario de los Mochis*, April 1, 2011).

Although the accountability impact of transparency reforms depends on the institutional setting and the effectiveness of check-and-balances and accountability agencies, these cases suggest that transparency can have a significant impact on the daily life of the citizens and communities that exercise their right of access to information. In this regards, an effective ATI law can unleash a powerful movement of bottom-up accountability, as well as trigger formal oversight institutions to take action.

6. A Culture of Openness

As the cases discussed above demonstrate, the implementation of the access to information (ATI) law has been effective in disclosing valuable information to the public. But success has also generated resistance on the part of some federal government agencies and officials. Transparency reforms demand a cultural shift in society, and changes in bureaucratic culture take time.

A survey of midlevel federal public officials commissioned by the Federal Institute for Access to Information (IFAI) in early 2007 revealed mixed results. Sixty percent of public officials interviewed acknowledge that “officials in some units within their agencies believe they own the information they generate and do not share it, even with other units in the same agency.” Seventy-eight percent of public officials also recognized that Mexico’s bureaucratic culture needed to change. While the majority of officials interviewed in the survey (59 percent) believed the transparency law contributed to increasing transparency and access to information, only 30 percent considered it contributed to modernizing the administration and 7 percent to reducing corruption. The vast majority of public officials (77 percent) complained that public information requests are not well formulated (Probabilística 2007).

The implementation of ATI legislation may generate resistance on the part of public officials, especially as they become more aware of the potential risks of information disclosure. Moreover, although official data indicate that federal agencies have received more than hundreds of thousands of information requests and that the vast majority of these have been duly processed, looking at the number of requests that are processed or the complaints that are ruled in favor of the requestor says little about the smaller number of requests that are denied. A single refusal to comply can be more significant than thousands of routine information requests that obtain a positive response.

7. Conclusions

The Mexican law has been recognized by experts and practitioners around the world as one of the strongest information laws. Moreover, the Federal Institute for Access to Information (IFAI) has been recognized as an example of good practice for ensuring compliance with the law and ruling on individuals' appeals to government denials of information requests. Indeed, since 2003, other countries in Latin America, including Honduras and Chile, have created similar specialized access to information (ATI) oversight agencies.

Individuals have more opportunities to access information about the operations and management of government agencies. Civil society organizations (CSOs) such as those of the *Colectivo por la Transparencia* have played a key role and made significant inroads in using the ATI law, obtaining valuable information about the operation and financial management of important government programs. They have used this information to demand greater accountability. Looking at the past 9 years of implementation, and notwithstanding the resistance of some government agencies to disclose information, the implementation record of the Access to Information and Transparency Law at the federal level is a positive one. The number of information requests has increased consistently, and most of these requests receive positive replies. Similarly, most of the appeals to the IFAI are resolved in favor of the requester.

The overall conclusion from the Mexican case, however, is that greater information is not necessarily synonymous with better accountability. Information, while critical, is only the first link in the complex chain of accountability. Effective accountability requires the disclosure of information to generate effective administrative reforms, corrective actions, and actual sanctioning of public officials who abuse their power.

Aside from political will and commitment on the part of public authorities, government accountability heavily relies on the constant and unyielding demand of civil society. Continuous exercise of the right to access information and the use of disclosed information to advocate for greater accountability are critical for maintaining the pressure for greater transparency and accountability. For that, capacity building among potential users and other demand side actors, especially vulnerable groups and poor communities is very important. Stable democracies rely on trust between government and civil society, but some level of distrust is healthy for accountability relationships to exist.

References

- Ackerman, John M. 2007. "El Instituto Federal de Acceso a la Información Pública: Diseño, Desempeño y Sociedad Civil." Programa Interinstitucional de Investigación-Acción sobre Democracia, Sociedad Civil y Derechos Humanos, Mexico.
- ASF (Auditoría Superior de la Federación). 2008. "Informe del Resultado de la Revisión y Fiscalización Superior de la Cuenta Pública 2006." México, tomo IV.
- Banisar, David. 2006. "Freedom of Information and Access to Government Records around the World." Privacy International, United Kingdom. http://www.freedominfo.org/documents/global_survey2006.pdf.
- . 2011. "The Right to Information and Privacy: Balancing Rights and Managing Conflicts." WBI Governance Working Paper Series, World Bank Institute, Washington, DC.
- Bertoni, Eduardo. 2011. "Libertad de Expresión. ¿Tres Palabras Inofensivas? Leyes de acceso a la información y rol de la prensa." Working Paper, World Bank Institute, Washington, DC.
- Bookman, Zachary, and Juan Pablo Guerrero. 2009. "Two Steps Forward and One Step Back: Assessing the Implementation of Mexico's Freedom of Information Act." *Mexican Law Review* 1 (2).
- Buscaglia, Edgardo. December 2003. "Controlling Organized Crime and Corruption in the Public Sector." Forum on Crime and Society 3 (1/2).
- . 2007 "Judicial Corruption and the Broader Justice System." *Forum* 2 (2).
- TI Global Corruption Report. 2007.
- Cejudo, Guillermo M. 2009. "La Construcción de un Nuevo Régimen de Rendición de Cuentas en las Entidades Federativas." Auditoría Superior de la Federación, Serie Cultura de la Rendición de Cuentas, Number 12, Mexico.
- Cejudo, Guillermo M., and Laura Sour Vargas. March 2007. "Cuánto Cuesta Vigilar al Gobierno Federal?" CIDE Working Paper 189, Centro de Investigación y Docencia Económica, Mexico.
- CIDE and UNAM (Centro de Investigación y Docencia Económica and National University). 2007. "Código de Buenas Prácticas y Alternativas para el Diseño de Leyes de Transparencia y Acceso a la Información Pública." IFAI, Mexico. www.fpchiapas.gob.mx/transparencia/im/IFAICIDEUNAM.pdf.
- Concha Cantú, Hugo, Sergio López Ayllón, and Lucy Tacher Epelstein. 2004. "Transparentar al Estado: La experiencia Mexicana de Acceso a la Información." UNAM, Mexico.
- Darbishire, Helen. 2010. "Proactive Transparency: The Future of the Right to Information?" Governance Working Paper Series, World Bank Institute, Washington, DC.
- Delal Baer, M. January/February 2004. "Mexico at an Impasse." *Foreign Affairs* 83 (1): 101–13.
- Díaz, Vanessa, and Jose Maria Bringas Valdivia. "Los costos del IFAI." Revista Etcetera.
- Díaz Iturbe, Diego Ernesto (coordinator). 2007. "Métrica de la Transparencia." IFAI-CIDE, Mexico. www.metricadetransparencia.cide.edu/MetricaTransp2007.pdf.
- Domingo, Pilar. October 2000. "Judicial Independence: The Politics of the Supreme Court in Mexico." *Journal of Latin American Studies* 32 (3): 705–35.
- Doyle, Kate. 2002. "Mexico's New Freedom of Information Law." The National Security Archive, June 10. www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB68.
- Escobedo, Juan Manuel. July 2002. "Movilización de Opinión Pública en México: el caso del Grupo Oaxaca y la Ley Federal de Acceso a la Información Pública." Paper presented at the I International Latin American Political Science Congress, Salamanca, Spain. www.juridicas.unam.mx/publica/librev/rev/decoin/cont/2/art/art3.pdf.
- Estavillo Flores, María Elena, Leonardo Martínez Flores, and Rebeca Escobar Briones. November 2006. "Evaluación del impacto económico de la ley federal de transparencia y acceso a la información pública gubernamental." AEQUUM—Asociación Civil Centro de Estudios sobre Equidad y Desarrollo, Mexico. <http://portal.funcionpublica.gob.mx:8080/wb3/work/sites/SFP/resources/LocalContent/1449/2/07.pdf>.

- Flores Padilla, Georgina. 2005. "Perspectivas de los Archivos del Gobierno Mexicano con la Ley de Transparencia y Acceso a la Información Pública Gubernamental." *Razón y Palabra* 44 (March–April).
- Fox, Jonathan. 2007a. "Accountability Politics. Power and Voice in Rural Mexico." Oxford Studies in Democratization, Oxford University Press.
- . August 2007b. "The Uncertain Relationship between Transparency and Accountability." *Development in Practice* 17 (4–5): 663–71.
- Fox, Jonathan, and Libby Haight. 2010a. "Farm Subsidy Recipient Lists: A Case of Clear or Opaque Transparency." In *Subsidizing Inequality: Mexican Corn Policy since NAFTA*, ed., Jonathan Fox and Libby Haight. Washington, DC: Woodrow Wilson International Center for Scholars.
- . 2010b. "Transparency Reforms: Theory and Practice." In *Mexico's Democratic Challenges: Politics, Government, and Society*, ed., Andrew Selee and Jacqueline Peschard. Washington, DC: Woodrow Wilson International Center for Scholars.
- Fox, Jonathan, Libby Haight, and Brian Palmer-Rubin. 2011. "Proporcionar transparencia: ¿Hasta qué punto responde el gobierno mexicano a las solicitudes de información pública?" *Gestión y Política Pública* 20 (1).
- Fox, Jonathan, Carlos García Jiménez, and Libby Haight. 2009. "Rural Democratization in Mexico's Deep South: Grassroots Right-to-Know Campaigns in Guerrero." *Journal of Peasant Studies* 36 (2).
- Fox, Jonathan, Libby Haight, Helena Hofbauer, and Tania Sanchez Andrade. 2006. *Mexico's Right to Know Reforms: Civil Society Perspectives*. Washington, DC: Woodrow Wilson International Center for Scholars.
- Gill, Juliet, and Sallie Hughes. June 2005. "Bureaucratic Compliance with Mexico's New Access to Information Law." *Critical Issues in Media Communication* 22 (2): 121–37.
- Gozzo, Gaia. 2006. "El caso PROVIDA: deudas pendientes con la transparencia y la justicia." FUNDAR, Centro de Análisis e Investigación AC, Mexico. www.fundar.org.mx/fundar_1/site/files/CasoProvida.pdf.
- Guerrero, Amparan, Juan Pablo, and Mayli Sepulveda Toledo. *The Right to Information for Marginalized Groups. The Experience of Proyecto Comunidades in Mexico 2005–2007*. Hewlett Foundation Report.
- Hernández-Valdéz, Alfonso. 2009. "Budgeting Implications for ATI Legislation: The Mexican Case." Access to Information Working Paper Series, World Bank Institute, Washington, DC.
- Hevia de la Jara, Felipe. December 2007. "Between Individual and Collective Action: Citizen Participation and Public Oversight in Mexico's Oportunidades Program." *Institute of Development Studies Bulletin* 38 (6).
- Hevia de la Jara, Felipe, and Gruenberg Christian. 2010. *Continuidades y reformas en el sistema de atención ciudadana del Programa de Desarrollo Humano Oportunidades*. Mexican Development Rural Research Reports, Reporte 11, Woodrow Wilson Center for International Scholars, Washington, DC.
- INDEXA. Estudio sobre el Impacto de la Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental en el sector de desarrollo social, diciembre de 2009.
- Lagunes, Paul. May 2009. "Irregular Transparency? An Experiment Involving Mexico's Freedom of Information Law." Paper presented at Yale University, United States.
- López Ayllón, Sergio, and Alí Bernardo Haddou Ruiz. 2007. "Rendición de cuentas en los órganos reguladores autónomos: algunas consideraciones sobre el diseño institucional de las autoridades reguladoras en México." *Gestión y Política Pública*. CIDE XVI (1).
- Luna Pla, Issa. 2009. *Movimiento Social del Derecho de Acceso a la Información*. México City: Instituto de Investigaciones Jurídicas, UNAM.
- Mendel, Toby. 2009. *El Derecho a la Información en América Latina. Comparación Jurídica*. UNESCO.
- . 2011. "Amending Access to Information Legislation, Legal and Political Issues." WBI Governance Working Paper Series, World Bank Institute, Washington, DC.
- Méndez Lara, Marcos (coordinator). 2009. *El derecho a saber, ¡hagámoslo valer! Experiencias y retos para el acceso a la información pública en Guerrero Unicam-Sur*. Mexico.

- Merino, Mauricio. 2010a. "Los programas de subsidios al campo. Las razones y sinrazones de una política mal diseñada." In *Subsidizing Inequality: Mexican Corn Policy since NAFTA*, ed., Jonathan Fox and Libby Haight. Washington, DC: Woodrow Wilson International Center for Scholars.
- . 2010b. "Defectos de Fontanería." *El Universal*, February 17.
- Merino, Mauricio, Sergio López Ayllón, and Guillermo Cejudo, eds. 2010. *La Estructura de la Rendición de Cuentas en México*. UNAM and CIDE.
- Michener, Gregory. 2005. "A Singular Success for the Fox Administration? The Press, Epistemic Communities and the Passage of Mexico's Remarkable Access to Information Law." Paper presented at 2005 Conference of the Southern Political Science Association, New Orleans, January. www.allacademic.com//meta/p_mla_apa_research_citation/0/6/7/2/8/pages67282/p67282-1.php.
- . 2010. "The Surrender of Secrecy: Explaining the Emergence of Strong Access to Information Laws in Latin America." PhD Dissertation, University of Texas, Austin. www.freedominfo.org/2009/05/freedom-of-information-legislation-and-the-media-in-latin-america.
- Middlebrook, Kevin, M. Cook, and J. Molinar, eds. 1994. *The Politics of Economic Restructuring: State-Society Relations and Regime Change in Mexico*. California: Center for U.S.-Mexican Studies, University of California Press.
- Pardo, María del Carmen. 2010. "Los mecanismos de rendición de cuentas en el ámbito ejecutivo del gobierno." In *La Estructura de la Rendición de Cuentas en México*, ed. Mauricio Merino, Sergio López Ayllón, and Guillermo Cejudo. Mexico: UNAM and CIDE.
- Pastor, Manuel, and Carol Wise. December 2005. "The Lost Sexenio: Vicente Fox and the New Politics of Economic Reform in Mexico." *Latin American Politics and Society* 47 (4).
- Peschard, Jacqueline. 2008. "Transparencia, rendición de cuentas y acceso a la información en México." Paper presented at the XIII Congress of the CLAD, Buenos Aires, Argentina, September 4–7.
- Probabilística. 2007. *La cultura de los servidores públicos alrededor de los temas de la transparencia y acceso a la información: Encuesta*. México: IFAI/ CETA.
- Puddephatt, Andrew. 2009. "Exploring the Role of Civil Society in the Formulation and Adoption of Access to Information Laws. The Cases of Bulgaria, India, Mexico, South Africa, and the United Kingdom." Access to Information Working Paper Series, World Bank Institute, Washington, DC.
- Ramírez, Darío. 2009. "Relevos opacos en el IFAI." *El Universal*, September 15.
- Ramírez Sáiz, Juan Manuel. 2006. "Organizaciones Cívicas en Información Pública Gubernamental en México: El Grupo Oaxaca y el Colectivo Juan Ciudadano." *Asian Journal of Latin American Studies* 16 (105).
- Sánchez Andrade, Tania. 2009. "Building Legitimacy and Trust. Transparency, Accountability and Citizen Participation in the Nomination and Appointment of Heads of Autonomous Agencies and Those of Limited Autonomy." *Artículo XIX/FUNDAR*, June.
- Sandoval, Irma Eréndira. 2008. "Rendición de Cuentas y Fideicomisos: El reto de la Opacidad Financiera Auditoría Superior de la Federación." Serie Cultura de la Rendición de Cuentas, Number 10, Mexico.
- Sobel, David L., Noll Davis, A. Bethany, Benjamin Fernández Bogado, TCC Group, and Monroe E. Price. February 2006. *The Federal Institute for Access to Public Information in Mexico and A Culture of Transparency*. A Report for the William and Flora Hewlett Foundation.
- Starr, Pamela K. November 2006. "Challenges for a Post-election in Mexico. Issues for U.S. Policy." CSR No. 17, Council on Foreign Relations.
- Thomas, Paul G. 2010. "Advancing Access to Information Principles through Performance Management Mechanisms." WBI Working Paper, World Bank Institute, Washington, DC.
- Weldon, Jeffrey. 1997. "The Political Sources of Presidentialism in Mexico." In *Presidentialism and Democracy in Latin America*, ed. Scott Mainwaring and Matthew Shugart. Cambridge: University of Cambridge, Cambridge University Press.
- Whitehead, Laurence. 1995. "An Elusive Transition: The Slow Motion Demise of Authoritarian One-Party Rule in Mexico." *Democratization* 2 (3):

Official Documents

IFAI Annual Reports to Congress, years 2003–10.

Probabilística, “La cultura de los servidores públicos alrededor de los temas de la transparencia y acceso a la información: Encuesta,” IFAI/ CETA, México, 2007.

Ley Federal de Archivos, 2012.

Ley Federal de Protección de Datos Personales en Posesión de los Particulares, 2010.

Ley Federal de Transparencia y Acceso a la Información Gubernamental, 2002.

Presupuesto de Egresos de la Federación, Análisis administrativo económico del gasto programable.

Reglamento a la Ley Federal de Transparencia y Acceso a la Información Gubernamental, 2003.

Reglamento Interior del Instituto Federal de Acceso a la Información Pública, 2006.

Authors

Yemile Mizrahi holds a PhD in political science from the University of California, Berkeley. She has more than 20 years of experience conducting research and analysis, designing and evaluating governance programs, delivering training, and providing technical assistance to government officials and civil society organizations on strategies for increasing transparency and accountability. Dr. Mizrahi works as an independent consultant in Washington, DC.

Marcos Mendiburu is a senior development specialist at the World Bank, where he is team lead of the Access to Information Program at the World Bank Institute.