

**[From the House of Deputies, Commission on Government and Public Security,
April 25, 2002]**

[Translation by Carlota McAllister]

**FROM THE COMMISSION OF GOVERNMENT AND PUBLIC SECURITY,
ACCOMPANYING THE PROJECT FOR THE FEDERAL
TRANSPARENCY AND ACCESS TO PUBLIC GOVERNMENT INFORMATION LAW**

Honorable Assembly:

The Commission of Government and Public Security of the LVIII Legislature, on the basis of the duties conferred on it by Articles 39, 44, 45, and others relevant to the Organic Law of the General Congress of the United Mexican States, and Articles 60, 65, 87, 88, and others regarding the Regulations for the Internal Governance of the General Congress of the United Mexican States, presents for consideration by the members of the House of Deputies, this opinion based on the following

Antecedents

FIRST. On July 11, 2001, Deputy Luis Miguel Jerónimo Barbosa Huerta, member of the Parliamentary Group of the Party of the Democratic Revolution, in a session of the Permanent Commission, presented an Initiative for a Law of Access to Information Related to the Administrative and Governmental Acts of the Executive Branch of the Union. The President of the Permanent Commission determined that: "It passes to the Commission of Government and Public Security of the House of Deputies."

Describing the grounds for this initiative, the author of the proposal notes that democracy must include some system of accountability so that civil society can have a real possibility of overseeing the government's actions by means of the right to information. He insists that compelling the government to hand over useful and truthful information in a timely fashion will serve as an antidote against abuses of power.

He notes that the right to information has not been developed in secondary legislation, and that in Mexican law numerous provisions on the subject of information exist, but that they are scattered in different places. Finally, he adds that such a situation requires firm action on the part of lawmakers, so that citizens may have the real possibility of exercising their right to information.

In the body of the initiative, the First Chapter proposes that the Law's objective be that of regulating free access to sources of information about the government's actions. In this proposal, the subject compelled by the law is the Federal Executive Branch, that is, the centralized public administration as well as the decentralized. The initiative establishes the principle of publicity of the actions of government, understood as the right of all persons to ask for and receive information without any obligation to explain the reasons for their interest.

In the Second Chapter, the initiative establishes exemptions to the exercise of the right to information and the criteria under which information is to be classified. The initiator proposes that both the Executive Branch, by means of a decree, and the Legislative Branch, by means of a Law, should be able to classify information for reasons of national security, defense, or external relations. Likewise, he suggests that information related to industrial, commercial, financial, scientific, or technical secrets be classified, as well as information that might put the functioning of the financial or banking system at risk, or compromise the legitimate rights of a third person. He establishes a ten-year period of classification. Finally, he notes that information regarding deliberative and consultative processes should not be made public prior to the moment when a decision is made, nor should information related to personal data that, if made public, could constitute an invasion of privacy.

In the Third Chapter, the initiative establishes the obligation of the agencies that comprise the Executive Branch to publicize information regarding their norms of competence, their functions, and the ways in which they relate to citizens. It also proposes that the agencies themselves make public the paperwork and procedures in which citizens must engage, as well as an annual report on the activities they have carried out.

The initiative establishes principles for the process of obtaining access to information in its Fourth Chapter. Here, it establishes that the procedure should be free of charge, except for the cost of the materials used to reproduce the information. The initiator proposes a period of ten working days for responding to requests for information, and the convenience of using any form of communication for delivering the information, such as: personal delivery; telephone; facsimile; regular, certified, or electronic mail; or the Internet. The Fifth Chapter establishes procedures for cases when information is denied, and allows individuals to make appeals for reconsideration.

The agency charged with ensuring that the right to information is respected would be the National Commission for Human Rights, as the body responsible

for protecting individual freedoms. The initiative foresees that the Commission will receive complaints, investigate presumed violations of the law, and formulate appropriate recommendations. Likewise, the Commission will promote the study, teaching, and popularizing of this right.

In the Seventh and final Chapter, the initiative specifies administrative misdeeds and sanctions as well as crimes related to the subject matter of the Law. Misdeeds include failing to hand over current or complete information or make public the institution's regulations, handing over protected personal information, and holding information without maintaining the conditions necessary for its security. Likewise, it establishes penal sanctions for those public servants who obstruct requesters' access to information, alter personal information without consent, or abuse their responsibilities by giving classified information to third parties.

SECOND. On November 30, 2001, the Federal Executive Branch presented an initiative for a Federal Transparency and Access to Information Law. In the December 4 session of the House of Deputies, the President of the House determined the following: "Let it pass to the Commission of Government and Public Security."

Describing the grounds for the Law, the Executive Branch notes that the Law can be considered part of the process of reforming the State, because its objective is to reform public institutions for purposes of continuing their democratization. Likewise, it affirms that accountability is a principle of administrative efficiency, because the publicity of information serves as an instrument for citizen oversight. By the same token, it suggests that this Law could become a means for fighting corruption, and adds that a State that produces a trustworthy flow of information creates greater certainty for those persons interested in investing in the country.

The initiator recognizes that the lack of a precise definition regarding the right to information and freedom of expression has hindered legislation on this matter. To make the reach of its proposal more precise, the Executive Branch notes that this Law regulates only one vector of the right to information, that which regards access to information about the State.

Among the principles that guide this project are those of the publicity of information; legality, as when the project specifies that public servants are compelled to respect its stipulations; the limitation of classified or confidential information; and the protection of personal information.

In the body of the initiative, the First Section is composed of five chapters that contain the shared obligations to be fulfilled by all the subjects compelled by the law, including the Executive, Legislative, and Judicial Branches; the administrative courts; and the autonomous constitutional bodies. The First Chapter contains the law's fundamental principles regarding the publicity of governmental information. It also establishes the law's objectives: ensuring that all persons have access to information; making public administration more transparent; guaranteeing the protection of personal information possessed by authorities; and promoting government accountability to citizens. Finally, it notes that when interpreting the Law, the principle of publicity should be favored.

In the Second Chapter, a series of obligations called "the obligations of transparency" are listed, referring to different bodies of information, possessed by subjects compelled by the law, that must be made public without any individual requests. Some of these bodies of information are: the working structure of each subject compelled by the law, with their catalogs of positions, salaries, and competencies; the contracts they sign; the results of any auditing of their activities; the permits and paperwork they process; and the reports they generate.

The concepts of classified and confidential information can be found in the Third Chapter. The Executive Branch proposes that classified information be considered all that which might compromise national security, public security, national defense, or international relations, as well as that which might harm the country's economic stability. In this same category would be included the information other laws consider classified: commercial, industrial, and banking secrets, as well as prior investigations and judicial files. To complement these stipulations, the Executive Branch suggests that the period of classification be twenty years long, renewable in cases where the original causes that gave rise to classification still exist.

In the Fourth Chapter, the Executive Branch puts forth stipulations for protecting personal information possessed by authorities, and thus establishes limits on the handing over of such information by the subjects compelled by the law. Likewise, it stipulates that authorities should put in place procedures for correcting and updating information about individuals.

Regarding the cost of access to information, Chapter Five of the initiative notes that it should be specified in the Federal Duties Law, and that it will be composed of the sum of the cost of the search, the cost of the materials of reproduction, and the cost of sending the information if this is necessary.

In the Second Section, the procedure for accessing information from the Federal Executive Branch is established. In each dependency and agency a liaison section will be created and charged with serving as a link to citizens, as well as an information committee, responsible for confirming the categorization of information and supervising everything to do with requests for access within the institution. The initiative establishes exemptions for certain administrative bodies in which the stipulations for creating an information commission would not apply, such as: the President's Chief of Staff, the Navy Chief of Staff, and the Center for National Research and Security, as well as other agencies charged with preventing and investigating federal crimes.

To promote the exercise of the right to information, the initiative establishes criteria for its categorization. Likewise, to rule on appeals made by individuals, it proposes to create a Commission for the Right to Information. This body would have an independent budget and autonomous operations and decision-making powers, and would be part of the Executive Branch; it would be composed of three commissioners who would remain in office for four years with the option of being reelected to one further term. In the same section, the initiative proposes two procedures: first, a procedure necessary for requesting information from dependencies and agencies of public administration; and second, a procedure for presenting appeals for reconsideration to the Commission for the Right to Information.

The Third Section of the initiative permits the other federal branches of government and the autonomous constitutional bodies to produce the necessary regulations or agreements so that, based on the principles that guide the law, they can establish the bodies and procedures that will guarantee access to information.

Finally, the Executive Branch proposes definitions for those behaviors of public servants that may incur liability, including most notably: the use, removal, concealment, or improper divulging of information in their charge; acting negligently, fraudulently, or in bad faith when fulfilling requests; and intentionally denying information considered public.

THIRD. On December 6, 2001, deputies Salvador Cosío Gaona, María Elena Chapa Hernández, Víctor Manuel Gandarilla Carrasco, Ney González Sánchez, José Antonio Hernández Fraguas, Beatriz Paredes Rangel, César Augusto Santiago Ramírez, Felipe Solís Acero, Martí Batres Guadarrama, Lorena Beauregard de los Santos, José Narro Céspedes, and José Manuel del Río Virgen, members of the parliamentary groups of the Institutional Revolutionary Party, the Party of the Democratic Revolution, and the Democratic Convergence

National Political Party, presented an initiative for a Federal Access to Public Information Law to the Plenary of the House of Deputies. The President of the House determined the following: "Let it pass to the Commission of Government and Public Security."

The initiative is divided into six chapters. In the first chapter, the general stipulations of the Law, notably their intent to consider the final part of article six of the Constitution as obligatory in the matter of the right to information, are established. It also puts forth the principle of the publicity of the activities of bodies compelled by the Law, which are the three federal branches of government, the autonomous constitutional bodies, and persons who act on behalf of the above.

The same chapter also includes definitions of public information, classified information, national security, and public interest. Likewise, it notes the obligation of each body to provide information about its structure and function, as well as information about the public servants that work there.

The concept of classified information is developed in the Second Chapter, which indicates that the Executive, Legislative, or Judicial Branches may classify information as long as it puts the State's security or individual lives at risk, as well as information regarding national defense, external politics, and scientific information that involves questions of national security. In this initiative, the period of classification is ten years.

The Third Chapter describes the procedure for access to information, stating that it should be free except for the cost of the materials of reproduction, and that the person requesting information is under no obligation to declare any particular interest in the information he seeks. Likewise, it establishes that the response to such requests must not take longer than ten working days.

The initiators propose that a National Institute of Access to Public Information be created as an autonomous body that would have authority in matters regarding the right of access to information. The Institute will be composed of five commissioners named by the House of Deputies and proposed by the Federal Executive Branch. The Institute's responsibilities will be: handling complaints about the denial of information by government bodies; ordering subjects compelled by the law to deliver information; applying appropriate sanctions; and a set of actions aimed at promoting the content of the law and the exercise of the right of access to information throughout society.

The Fifth Chapter proposes a procedure for presenting appeals. In the first instance, the appeal of a denial of information will be heard by the hierarchical superior, and in the second and last instance by the Institute. Finally, the Sixth Chapter specifies administrative misdeeds and sanctions. Among the first are destroying information, acting negligently, or providing too little, incorrect, or bad information.

FOURTH. Given that the three initiatives described in antecedents first through third all address the subject of access to public information, the undersigned have decided to combine the projects in order to emit a single ruling.

By agreement of the Executive Council of this Commission, a Working Group on the subject of Governmental Transparency was created, convening a group of technical advisers to carry out a synthesis of the previously mentioned initiatives, with the understanding that these contained many similarities of content with some differences of form. The Working Group produced a text that incorporates the points of convergence between the three presented initiatives and identifies those differences between the projects that could not be technically resolved and that, consequently, the undersigned had to resolve in order to reach a decision by consensus.

Based on the proposed laws already described, the deputies in the Commission of Government and Public Security of the 58th Legislature present the following

Considerations

I. The undersigned, members of the Commission of Government and Public Security, consider the Congress of the Union, using the ordinary procedure for creating law established in Article 72 of the Constitution, competent to legislate in the matter of access to public information, a consideration grounded in Fraction XXX of Article 73, and the final part of Article 6, both of the Political Constitution of the United Mexican States.

Fraction XXX of Article 73 of the Constitution grants Congress the ability to pass the necessary laws for fulfilling the responsibilities the Constitution assigns to the powers of the State. Among these responsibilities is that described in the final part of Article 6 of the Magna Carta itself, which establishes the state's obligation to guarantee the right to information. This guarantee implies, among other things, passing legislative stipulations that ensure citizens' access to public governmental information.

As legislators, we know the importance the incorporation of the right to information in our highest juridical ordinance held in its moment. This reform was part of a very broad constitutional amendment to incorporate the Legislative Branch, some of its responsibilities, and electoral regulations. Nonetheless, we are also conscious of the practical difficulties previous legislatures have faced in passing secondary legislation on this subject. This lacuna has prevented citizens from fully exercising this constitutional right, among other reasons because the Permanent Constitution did not indicate the range of what should be understood as the right to information.

The Supreme Court of Justice of the Nation has presented its opinion regarding what should be understood as the right to information as well as the actions the Legislative Branch should take with regard to this right. The Court indicated that interpreting the Permanent Constitution to include the right to information as a social guarantee that complements freedom of expression implies that the State must permit the free flow of political ideas in all media of communication. In addition, the highest juridical body has recently established that while in its original interpretation the right to information is recognized as a political right, this concept has expanded. Thus, in one thesis, the Supreme Court of Justice extended the reach of the right to information and established that this right required “authorities to refrain from giving the community manipulated, incomplete, or false information, on pain of committing a serious violation of individual guarantees, in the terms of Article 97 of the Constitution” (*Seminario Judicial de la Federación y su Gaceta*, novena época, tomo III, June 1996, p. 503).

Since then, in other cases the Supreme Court “has expanded the understanding of this right, treating it also as an individual guarantee, limited, as is logical, by national interests and those of society, as well as by respect for the rights of third persons” (*Seminario Judicial de la Federación y su Gaceta*, novena época, tomo IX, April 2000, p. 72).

Thus, in conformity with the interpretation of the highest juridical body, the right to information is an individual right with different manifestations. One of these is clearly the right of access to public information, which must be guaranteed by the State by means of specific legislation. In conclusion, both the interpretation of Article 6 and Fraction XXX of Article 73 of the Constitution, as well as the interpretation made by the Supreme Court on this subject, grant Congress the ability to pass a law that regulates access to public information.

II. A democratic society depends on citizens’ ability to evaluate their government, which, to be effective, requires that citizens possess sufficient

facts to make reasonable and informed judgments and that their opinions can be expressed and compared with those of other citizens. For this reason, a democratic State is obligated to guarantee these basic freedoms.

The more citizens know about the functions and activities of authorities, the more they will possess the facts necessary to exercise their right to evaluate authorities. Access to public information is thus a necessary condition for the full democratic development of the state as well as for the public powers to be accountable for their actions. For this reason, the undersigned recognize that the more and the better the information provided by the State's bodies, the better the conditions for citizen evaluation of government and citizen decision-making, regarding both the actions of the State itself and private activities.

Finally, international experience shows that in those countries where norms that allows citizens access to public information have been put in practice, indicators of corruption tend to go down and the administrative efficiency of the state is thus substantially increased. In this way, this Law will serve as a powerful tool for reducing illegal practices that may arise in the exercise of public service, and as a fundamental instrument for the administrative development of the state.

III. The three initiatives we have studied agree about the elements a Law of Access to Public Information must contain, even though each one presents slightly different alternatives to address these elements. In the first place, the Law's range of application must be defined, that is, it must specify which subjects will be compelled to obey it. All three agree that these subjects must be all bodies or institutions of the Mexican State that generate or hold public information.

Second, the initiatives propose to delimit certain exemptions to the principle of access to information. In this way, they recognize that the right of access is not unlimited and that it admits of certain reservations related to the protection of national security, public security, or private life.

A third point of agreement regards the nature of procedures for access to information. The projects propose simple processes, at low cost, that do not require individuals to indicate any specific interest in or use for the information they seek. In addition, they agree on the need to establish the obligation that the bodies of the State publish a set of basic information without a prior request being made.

Fourth, the Law requires an institutional plan for guaranteeing the exercise of this right. That is, the creation of a body to which individuals may have recourse

when authorities do not respond to them, or when their response is not favorable. Finally, the three initiatives propose a catalog of behaviors that may give rise to liability on the part of public servants with regard to the information under their charge.

To synthesize, the initiatives agreed on the fundamental principles of access to information and presented differences of nuance with regard to the specific procedures for achieving it.

IV. The Structure of the Law:

a) The objective of the law proposed in this opinion is to lay out the procedure by which individuals may seek access to information generated or held by the State's bodies. The State as a whole is compelled by the provision contained in the final part of Article 6 of the Constitution, such that the Law must include all those bodies of the State that are recognized in the Political Constitution, that is the public powers and the so-called autonomous constitutional bodies.

The Law establishes that in each of the subjects it compels a procedure for access to information and a body charged with handling requests will be established, except in the case of the Executive Branch, for which these matters are already stipulated in the proposed decree. When information is denied, the individual may in the last instance appeal the decision before the Judicial Branch by means of an appeal trial. In addition, the definitions for certain forms of conduct by public servants that may incur liability are included.

b) The Law is comprised of four sections, 64 articles, and eleven transitory articles. The First Section, which is comprised of five chapters, contains the stipulations common to all subjects compelled by the Law. In turn, the fourth section contains the responsibilities in matters of access to information that correspond to public servants in all Branches and the autonomous constitutional bodies.

The Second Section of the Law, in contrast, contains four chapters that apply exclusively to the Executive Branch. The first two chapters contain the institutional design for this Branch and the last two establish the procedure for access to information and the procedure for appeal to the Federal Institute for Access to Information. Finally, the Third Section of the law is comprised of a single chapter that lays out the principles the Legislative and Judicial Branches, the autonomous constitutional bodies, and the administrative courts must obey when they establish their own procedures and instances in matters of access to information.

The transitory articles establish the principle of the gradual entry into force of the Law's obligations.

c) The Law is constituted by three main ideas:

The first idea refers to the obligation of the State's bodies to place at the disposition of citizens a set of information that will allow citizens to acquire direct knowledge of the functions, actions, achievements, structures, and resources granted to these bodies. We emphasize that this information must be available on a permanent basis and without requiring individuals to make a specific request. The point is to achieve the greatest possible transparency with regards to, among other things, the assignment of budgets, their amounts, and their disbursement; observations made by comptrollers or the higher bodies auditing the budget's development; the salaries and benefits of public servants; working programs; paperwork and services; normative standards; subsidy programs; concessions and permits; public contracts; and information on the economic, financial, and public debt situation.

This set of information, which must be made available to the extent possible on the Internet to ensure greatest availability, will allow citizens to evaluate the most important indicators of public administration on a permanent basis. These activities, moreover, will reduce the costs of making the Law operative, because rather than processing individual requests, a permanent means of consultation will be made available.

In addition, the Law incorporates the duty of the subjects it compels to provide this information, as much as possible, with additional explanation in order to make its use and comprehension easier, and allow its quality, trustworthiness, relevance, and veracity to be evaluated.

It is important to emphasize three specific obligations in this context. The first belongs the Federation's Judicial Branch, when the Law indicates that sentences must be made public once they are passed. Second, the Federal Electoral Institute is instructed to make public its reports and the results of audits by national political associations and political parties as soon as the auditing process is complete. Third, the subjects compelled by the Law are obliged to make public all information regarding the amounts and the persons to whom public resources are granted for any purpose.

The second main idea of the Law consists of the right of individuals to seek information from the subjects compelled by the Law. The Law's design

establishes a detailed procedure applicable to the dependencies and agencies of the Federal Public Administration. Likewise, it allows the Legislative and Judicial Branches, the autonomous constitutional bodies, and the administrative courts to implement, through regulations or general agreements, the procedures for access to information best suited to their own characteristics.

The third main idea of the Law refers to the creation of institutions responsible for its application and interpretation. For the Federal Executive Branch, it stipulates that a Federal Institute of Access to Public Information, a body that will be analyzed further in this opinion, will be established. With regard to the other subjects compelled by the Law, the Law allows each of them to establish the instance they consider appropriate to serve the same function.

d) Classification. In the Third Chapter of the First Section of the proposed Law, the concepts of classified information and confidential information are defined. While the principle that should guide both actions by authorities and the interpretation of this Law is that of publicity rather than withholding, it is indispensable for the State's bodies to have the juridical tools necessary to limit access to information, which, depending on its nature and use, could be potentially damaging to institutions or persons.

Classified information is that which cannot be made public until the time allotted for its classification has expired, or until the reasons that gave rise to its original classification no longer exist. This category includes information that could compromise the health and/or physical integrity of persons, national security, public security, or national defense, as well as that which could harm the country's economic stability. We also emphasize that this Law does not supersede the stipulations in other ordinances that contain provisions regarding the existence of classified information, such as recognized secrets--commercial, prosecutorial, or banking--as well as the withholding of information during the period in which other juridical or administrative procedures are still developing.

The definition of the concept of confidential information provided in this Law, moreover, states that it is that information which individuals provide to authorities as such. In this case, the information may be made public only if the individual expressly gives his consent. To complement this definition, the Law envisions a mechanism for the protection of personal information in the hands of authorities and a form by which individuals may seek to update or correct this information. This is an essential and complementary element of the Law, because no public interest can be placed above the protections individual rights guarantee to all Mexicans.

In any case, we note that the exemptions envisioned in the Law meet the international standards commonly accepted in this area, and are always justified by the balance between the right to information and the protection of the public interest.

In addition, we note that, with regard to the reasons for classification described in the initiative, it will not be enough for the content of the information to be up-to-date for it to be considered a matter subject to classification, such as national security or public security. An element of harm that justifies the assertion that divulging the information could seriously affect a State functions or endanger the life, security, or health of person must also be present.

We recognize, moreover, that some of the concepts used in classification lend themselves to a broad range of interpretation. Such is the case, for example, of the concepts of national security, public security, and national defense. Regarding these concepts, we note that on the one hand, while no universally accepted definition exists, general criteria on the basis of which any interpretation, especially those made by the body charged with applying the Law, must be made, do operate in the domain of International Law and Constitutional Law. On the other hand—and this is a critical point—these concepts are not applied in a juridical void, and for this reason existing legislation on these matters should be considered in the Law's interpretation, in order to provide these concepts with a specific content. Nonetheless, to ensure greater juridical certainty for individuals and guide interpretation of the Law, a concept of national security that incorporates the generally accepted criteria in this matter is included.

The classification of information as proposed in the Law does not have an absolute value. It is very clearly established, therefore, that the period of classification may be up to 12 years, subject to extension only in exceptional cases with clear justification. This means that competent bodies may classify information for a reasonable period to safeguard protected interests, but once the period of classification is over, or the reasons that gave rise to its classification cease to exist, the information will be declassified and pass into the public domain. Likewise, classified information must be catalogued and cared for so as to guarantee its preservation and prevent its destruction.

In other words, classified information has a special status in two senses. While on the one hand it is kept out of the public domain for a fixed period, on the other its preservation is ensured by a special set of rules. Thus the balance between the state's legitimate interests and the right to information is once again guaranteed.

e) Procedures for access to information. The Second Section of the proposed Law develops the procedures that should be followed within the Executive Branch in detail. The Law creates two instances in each area of public administration, as well as the Attorney General of the Republic's Office. The first is the liaison section, which is charged with providing a link between individuals and its own dependency. This section will receive and process the requests it receives, do what is necessary to deliver the information requested, and keep a record of requests it has handled, among other duties. The Law also creates an information, the duties of which are to confirm, modify, or revoke the classification of information by the heads of the administrative units, to coordinate activities in its area in order to deliver the information as the Law establishes, and to do what is necessary to find the documents requested.

Through these two instances the process of handling requests for access will take place as follows: the individual goes to the liaison section of the area he considers relevant to the information he is seeking; the liaison section sends his request to the head of the administrative unit responsible for such information, and in cases where the information is neither classified nor confidential, delivers it to the individual. If, however, the information is classified, it is immediately sent to the Information Committee of this area to determine whether the classification is justified or whether it should be lifted. The process will be completed within a maximum period of twenty days, which is the time limit during which the requester should wait for a response to his request.

Evidently, this goal of this plan is to avoid forcing individuals to visit innumerable administrative offices or obliging them to be aware of the exact physical office where the documents they seek are located. That is, individuals will be attended to and their requests handled entirely through the window of access until they receive a response.

A great deal of debate, moreover, has taken place over how to treat authorities' failures to respond. In one case, *positiva ficta* was proposed, in another, *negativa ficta*. In both cases, the goal was to give individuals greater certainty and guarantee the greatest possible access to information. Those who have signed this opinion consider that *positiva ficta* would compel authorities to give requesters a response since, if this hypothetical became real, the Institute could order the dependency or agency to grant access to the information in a time period no greater than ten working days, covering the costs of reproduction of the informational material, unless the Institute determines that the documents in question are classified or confidential.

To ensure fullest compliance in this matter, the obligation of ensuring that the Regulations establish an expeditious procedure for rectifying the failure of dependencies and agencies to provide information has been given to the Executive Branch. Thus, individuals may present proof as described in Article 17 of the Federal Administrative Procedures Law, which has been sent to them by the relevant liaison section, or instead they may present a copy of their request, on which the date of its presentation to the dependency or agency appears. In the latter case, the procedure will ensure that the dependency or agency has an opportunity to demonstrate that it responded to the individual on time and in an appropriate manner.

As the instance that receives appeals, the Executive Branch will be provided with a Federal Institute of Access to Public Information, which in the first instance may revisit the individual's request and, when necessary, ratify or rectify the decision made by the Information Committee in this area. In the last instance, the individual may contest the Institute's decision and appeal it to the Judicial Branch, which will then make a definitive ruling.

f) To ensure that the Institute works effectively, the Law proposes that it be autonomous in its budget, operations, and decisions. It will be headed by five commissioners. To qualify, commissioners must have reached the minimum age of thirty-five; previously engaged in activities pertaining to the Law's subject matter; and must not have served as the head of any federal dependency or occupied any elected office or position as a party leader for at least a year before they are named to the Institute.

In the debate preceding this opinion, one of the most controversial points was that regarding the participation of the Legislative Branch in the designation of Commissioners. We reached a broad consensus that these officers must have the greatest possible political support. Nonetheless, there were questions as to the constitutionality of the Legislative Branch's intervention in this process, especially given the Supreme Court of Justice of the Nation's interpretation of this matter. For this reason, we chose to establish a new form that would respect the principle of the balance of powers but still permit them to collaborate without violating the Constitution and its interpretation by the country's highest court. This new legal figure allows the Senate to object to the nominations made by the Executive Branch without detriment to the constitutional duties granted to this body in Fraction II of Article 89 of the Constitution.

The Institute will thus have autonomy on various levels. On the first level, its autonomy will be constantly renewed by virtue of the Institute's independence of decision, administration, and budget; its requirements for nomination and

dismissal; the staggering of commissioners' periods of service; the Institute's obligation to account for its activities in the form of a report to Congress; and the full transparency of the Institute's operations. This implies that for purposes of its decisions, the Institute will not be subjected to any other authority, making them with full independence. On the second level, because the Judicial Branch of the Federation will remain the guarantor of the constitutional order, the initiative retains constitutional jurisdiction as the ideal means of protecting the fundamental rights recognized in the Constitution, by means of the process of appeal which is the last instance available to the parties to the case. In other words, the Institute's decisions are subject to judicial review.

Creating a new administrative instance within the Federal Executive Branch serves four functions. The first is to make the Institute the regulative body in matters of information for the federal government. The second is to resolve any disagreements that may arise between individuals and the administration by means of a procedure conducted in the form of a trial, like the procedures conducted by administrative courts. The Institute will be the last instance of appeal for government authorities, but its decisions will be subject to judicial review. The third function is to ensure respect for the Law and, when necessary, to report violations of the Law to internal bodies of review. Finally, the fourth function is to promote the exercise of the right of access to information among citizens and create a new culture of handling information among public servants as well as citizens.

Among the duties of the Institute are: interpreting this Law within the administrative arena; establishing and revisiting criteria for the classification of information; producing recommendations for public servants in the area of the Executive Branch as to how to comply with the Law; giving advice to individuals about how to formulate requests for information; explaining the benefits of public handling of information; and cooperating with the other subjects compelled by the Law. In addition, the Institute must deliver an annual report on its activities, with data on requests for access to information.

Likewise, by serving the function of collaborating with the other branches and the autonomous bodies, as well as local and municipal instances respectively, the Institute may eventually produce homogenous criteria for the Law's application.

In summary, the Institute will prevent areas of the Federal Executive Branch from being distracted from their normal obligations, but will also guarantee that the same criteria are applied across the domain of federal public administration.

g) The Third Section allows the Legislative and Judicial Branches and the autonomous constitutional bodies to design their own procedures, as long as these comply with the principles established in the Law. This decision recognizes that organization and functions are different in each branch as well as in the autonomous bodies, and that flexibility is thus required in determining which procedures are best suited to their internal organization and functioning.

h) Finally, the proposed law lays out a chapter of sanctions for public servants who use, destroy, hide, or alter information improperly. It also establishes sanctions for those who act negligently, fraudulently, or in bad faith in fulfilling requests, as well as for intentionally denying information considered public.

Likewise, it lays out sanctions for those who hand over classified or confidential information, or who do not deliver information when ordered to do so by the Institute or an equivalent body.

While the undersigned do not believe that respect for the Law will depend on the severity of these sanctions, but rather on a gradual change in the way in which public information is handled, we consider it indispensable to legally establish the causes and consequences of failure to comply with the Law. We point out that both the criteria for classification of information, as well as the time limits within which it must be delivered, represent new demands on all the subjects compelled by the Law, and for this reason emphasize the set of sanctions that require negligence, fraud, or bad faith to be applied to public servants.

Based on the preceding, the undersigned members of the Commission of Government and Public Security submit for consideration by the Plenary of the House of Deputies the following proposed:

Decree

SINGLE ARTICLE: The Federal Transparency and Access to Public Government Information Law has been drawn up as follows:

[Text of the law]

Deputies: Armando Salinas Torre (signator), President; José Antonio Hernández Fraguas (signator), secretary; Víctor Manuel Gandarilla Carrasco, secretary; José Guillermo Anaya Llamas (signator), secretary; Luis Miguel G. Barbosa Huerta (signator), secretary; Manuel Añorve Baños (signator), José Francisco Blake Mora (signator), Tomás Coronado Olmos (signator), Arturo

Escobar y Vega, Omar Fayad Meneses, Ricardo Francisco García Cervantes, María Teresa Gómez Mont y Urueta (signator), Federico Granja Ricalde (signator), Lorenzo Rafael Hernández Estrada, Efrén Nicolás Leyva Acevedo (signator), Miguel Angel Martínez Cruz, Rodrigo David Mireles Pérez, José Narro Céspedes (signator), Ricardo A. Ocampo Fernández, Fernando Ortiz Arana, Germán Arturo Pellegrini Pérez (signator), José Jesús Reyna García, Eduardo Rivera Pérez (signator), Jorge Esteban Sandoval Ochoa, César Augusto Santiago Ramírez, David Augusto Sotelo Rosas, Ricardo Torres Origel, Jaime Vázquez Castillo (signator), Néstor Villarreal Castro (signator), Roberto Zavala Echavarría (signator).