

**THE FEDERAL INSTITUTE FOR
ACCESS TO INFORMATION
& A CULTURE OF TRANSPARENCY**

**CENTER FOR GLOBAL COMMUNICATION STUDIES
THE ANNENBERG SCHOOL OF COMMUNICATIONS
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Follow Up Report

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In the summer of 2007, the Center for Global Communications Studies's team of researchers – consisting of Benjamin Fernandez Bogado, Emilene Martinez-Morales, Bethany Davis Noll, and Kyle Bell – began a follow-up study to assess the effectiveness and usefulness of the recommendations generated by the Center's 2006 study¹ as well as to report on any institutional changes at the Federal Institute for Access to Public Information in Mexico (“IFAI”) and changes in the political and legal landscape.

In June 2007, the team visited IFAI, met with IFAI's commissioners, and conducted a set of working group discussions with (1) representatives of the obligated agencies and IFAI, (2) representatives from NGOs, and (3) representatives from the media. This summary report was prepared with information gleaned during those sessions as well as from background research conducted by the team. For more detailed background on this subject, please refer to the original report at <http://www.global.asc.upenn.edu/index.php?page=32>.

I. INTRODUCTION

Since February 2006, when the original report was published, several major political events have occurred, helping shape the current transparency landscape in Mexico. Not the least of these was the election in the fall of 2006 of Felipe Calderón as President, after a highly contested election. Soon after assuming the presidency on December 1, 2006, Felipe Calderón confirmed his commitment to transparency as one of the guiding principles of his administration, releasing a detailed description of the use of 150 million pesos requested as transition expenses. In the wake of a closely contested election, Calderón's moves sought to make an early emphasis on transparency. During a visit to Mexico on March 14, 2007, President Bush and Calderón

¹ David L. Sobel, Bethany A. Davis Noll, Benjamin Fernandez Bogado, et al., *The Federal Institute for Access to Public Information in Mexico and a Culture of Transparency*, Project for Global Communication Studies at the Annenberg School for Communication at the University of Pennsylvania, February 2006, http://www.global.asc.upenn.edu/docs/mex_report_fiai06_english.pdf.

reaffirmed a joint commitment to “democracy, transparency, and the rule of law.” Concurrently, Calderón has undertaken a series of reforms to fight organized crime and judicial corruption, looking to enact national measures to unify and reform a justice system seen as easily manipulated and lacking in transparency. And, during Transparency Week in June 2007, President Calderón promised to make transparency a key part of the fight against corruption and for a competitive economy in Mexico. He complimented IFAI for having achieved its status as a solid and trustworthy institution in such short time and reaffirmed his personal commitment to having the government demonstrate its commitment to the values and practices of transparency on a daily basis. The second great occurrence was the passage of a constitutional amendment, guaranteeing the public’s right to information at all levels of government. This will be discussed further below.

On the international front, May 24, 2007, the 4th International Conference of Information Commissioners met in Manchester, England, and published the Manchester Declaration on Access to Information.² The Declaration reaffirms that access to information is a universal right, as laid out in the Cancun Declaration.³ The Manchester Declaration called for a treaty promulgated by the Council of Europe to address access to information as a human right. The Declaration insists that civil society be meaningfully involved in the drafting of such a treaty and calls on civil society to continue to play a watch-dog role in the implementation of national laws and performance of information commissioners.

In the United States, in March 2007, the Senate Judiciary Committee held a hearing to explore ways to reform and re-invigorate America’s own forty-year-old freedom of information law. During the hearing, Mexico’s version was seen as a model to follow. Meredith Fuchs,

² See <http://www.freedominfo.org/documents/icic/Manchester%20declaration-final1.pdf>.

³ See http://www.justiceinitiative.org/db/resource2?res_id=102602 for the full text of the Declaration of Cancun, in English and Spanish.

General Counsel of the National Security Archive at George Washington University testified about the usefulness of a structure such as IFAI to serve as an ombudsgroup. And, senators were receptive to Katherine Cary's, General Counsel, Texas Office of the Attorney General, testimony about IFAI's electronic request system (known as SISI).

II. IFAI TODAY

On March 15, 2007, Jacqueline Peschard was named commissioner to replace Horacio Aguilar Álvarez. She was the Electoral Councilor for the General Counsel of the Federal Electoral Institute (Instituto Federal Electoral or IFE) of México. In *La Jornada*, IFAI's Commissioner President, Alonso Lujambio, remarked that the Peschard's appointment sent a "clear political message: IFAI is taken seriously." Peschard explained that her move from IFE to IFAI felt like a natural next step, as after the right to vote, the right to access to information is of utmost importance in a developing democracy.⁴ In 2006, Alonso Lujambio Irazábal began a two-year term as President of IFAI. The other commissioners are María Marván Laborde, Alonso Gómez Robledo Verduzco, and Juan Pablo Guerrero Amparán.

IFAI and the obligated agencies have handled a remarkable number of requests since the passage of the law. Between June 2003 and June 2007, more than 218 thousand information requests were filed. In 2006, IFAI received 3533 appeals, a 33% increase over 2005. Since 2003, the agencies that have received the most requests have been the Mexican Institute of Social Security, the Secretary of Finance and Public Credit, the Secretary of Public Education, the Secretary of the Environment and Natural Resources, the Ministry of Public Administration, and the Attorney General of the Republic.⁵

⁴ Mendez, Alfredo, "Se toma en serio al IFAI, mensaje al ratificar a Peschard: Lujambio," *La Jornada*, 22 March 2007, <http://www.jornada.unam.mx/2007/03/22/index.php?section=politica&article=019n2pol>.

⁵ See IFAI, 4to. Informe de Labores al H. Congreso de la Union, 2006, page 11. <http://www.ifai.org.mx/Gobierno/#estadisticas> for a more details.

IFAI continues to work on ways to streamline the appeals process, by studying, for example, the classification of information at the agencies and the particular issues that have arisen in the appeals. IFAI also implemented ZOOM, which is a searchable database of thousands of information requests, responses, and appeal results.⁶ This is a very useful new tool for accessing valuable information. In addition, with support from the Hewlett Foundation and IFAI, the International Center for the Study of Transparency and Access to Information (Centro Internacional de Estudios de Transparencia y Acceso a la Información) (CETA), a non-profit autonomous organization dedicated to generating and furthering the culture of transparency, was set up. Its priorities are research, training, evaluation, diffusion of information, and advertising. It uses its methodologies to research the right of access to information and accountability, providing independent research to aid the work of IFAI.

In 2006, we recommended that IFAI continue and augment its work at the state level, as we found that IFAI needed to engage parts of the population that are currently underrepresented in usage of the Transparency Law. This challenge remains. As the original report on usage of the government information request system (SISI) noted, the majority of Mexican citizens still lack internet access. According to the report,

While requests for information can be submitted in person or by mail, 92% of all current requests are made via the Internet. Access to the Internet, then, is perhaps the best indicator of whether individuals or entities are likely to exercise their rights under the Transparency Law.⁷

Awareness of the law remains low: while the number of those who know nothing about the law has dropped from 88% in 2003 to 51% in a 2006 poll, this is still far too high.

⁶ See <http://buscador.ifai.org.mx/buscador/bienvenido.do>

⁷ David L. Sobel, Bethany A. Davis Noll, Benjamin Fernandez Bogado, et al., *The Federal Institute for Access to Public Information in Mexico and a Culture of Transparency*, Project for Global Communication Studies at the Annenberg School for Communication at the University of Pennsylvania, February 2006, http://www.global.asc.upenn.edu/docs/mex_report_fiai06_english.pdf, 49.

Furthermore, a large number of requests (41.1%) come from Mexico City, while an additional 12.5% come from the neighboring State of Mexico. As a result of a lack of internet access, many constituents miss out on the fastest, as well as the most responsive and anonymous method of accessing public information. On a positive note, internet usage nationwide is rapidly on the rise. The original report cites 11.8% of the country as internet users.⁸ More recent statistics from AMIPCI, the Mexican Internet Association, place the number at 23.7 million users, or over 21% of the population of 108.7 million.⁹ The project entitled “IFAI Comunidades,” promoted by IFAI (IFAI Communities) represents a significant effort to meet this need. This project brings together people in their communities to seek ways to use the Transparency Law for their communities. The groups have successfully requested information about health studies, hydroelectric projects, protection of the environment, monetary donations from Petroleos Mexicanos (Pemex) to oil communities such as Tabasco, etc. The idea behind the project is that a community that organizes to seek information that is relevant to their everyday life is a powerful thing.

A. Constitutional Reform

On March 6, 2007, a constitutional reform initiative on the issue of transparency passed unanimously after less than three months of deliberation in Congress. The constitutional amendment was, by all accounts, the greatest accomplishment in the area of access to information in Mexico of 2007. It guarantees the public’s right to information at all levels of government. It requires all state transparency laws to be standardized around certain basic principles within one year and gives the states two years to implement an electronic mechanism

⁸ *ibid.*

⁹ See <http://www.amipci.org.mx/>.

for simple anonymous submission of information requests. IFAI's SISI program is an example of such a program, though it was not mentioned in the amendment.

The constitutional amendment changes the Sixth Article of the Constitution to reflect the right of free and unfettered access to government information (third clause), all of which, by nature, belongs to the public (first clause). Such information may only be withheld for reasons of public interest and for the length of time set by law (first clause). The fifth clause reads, "The obligated subjects must preserve their documents in up-to-date administrative archives and publish, through available electronic means, complete and current information about management indicators and usage of public resources." The amendment passed was published in the Official Reporter on July 20, 2007, after being ratified by all the states in one and a half months.

As we reported in 2006, the development of access to information has been uneven across the states. By mid-2007, all 31 states, as well as the Federal District, had passed transparency laws.¹⁰ But, the laws varied widely in effectiveness and in their basic principles. For example, Tabasco, the last state in the country to pass such a law, did so in December of 2006. However, the law was, according to commentators, beholden to personal and political interests. The amendment extends the right to access from the federal and state level to the municipal level. By requiring states to systematize and standardize the collection and archiving of information, the amendment goes a long way towards ensuring more consistent rights across the states.

The constitutional reform movement began in November 2005, when the First Annual National Transparency Congress was convened in Guadalajara. At that meeting, three governors

¹⁰ See <http://www.ifai.org.mx/test/eym/estatales.htm> And, for general information on events at the state level see: <http://www.ifai.org.mx/test/eym/edos.htm>

– from Aguascalientes, Chihuahua, and Zacatecas, representing three different political parties, PAN, PRI, and the PRD, respectively, signed the Declaration of Guadalajara along with Maria Marvan, IFAI’s then president, calling for and proposing constitutional reform. The public declaration proposed a concrete route towards development of transparency at the state and municipal level. The signatories explained that while they understood a general Transparency Law that applies to the states may not be practical, generalized practices and norms were needed and the best formula for such a generalization was a constitutional reform.

In November of 2006, five governors (from Aguascalientes, Chihuahua, Distrito Federal, Veracruz, and Zacatecas) came together at the Second Annual National Transparency Congress to form the Chihuahua Initiative and propose a draft reform. The governors presented the document to the Political Coordination Assembly in the House of Representatives (Camara de Diputados). The Assembly then adopted the reform as its own and – sponsored by representatives from eight political parties – the reform was presented to the full House. It was passed in the House in March 2007 and in April it passed the Senate.

From the beginning of this process, and at each step of the way, IFAI played an integral role in bringing key players together to draft the proposal and submit the proposal to Congress. Civil society members also gathered together to discuss provisions which should be in the new reform, leading to the adoption of many of the substantive amendments civil society desired. This was a remarkable effort on the part of IFAI, the governors, representatives from the various political parties, and members of civil society. The passage of the constitutional amendment and the involvement of so many players in that passage is a testament to the vibrancy of the collaborative partnership that originally advocated for the Transparency Law.¹¹

¹¹ The Initiative, as well as the text of the edits to the Sixth Article can be found at the following address: <http://www.indetec.gob.mx/News/files/Nueva%20obligacion.pdf>.

The amendment requires states to implement electronic information request systems. This requirement may be problematic, as funds are often lacking at the state level to comply with government mandates, especially when they require special expertise and incur additional expenses. However, via Infomex, the IFAI intends to help states implement the necessary systems. Infomex is a flexible system offered by IFAI to local governments to facilitate the submission of FOI requests to local governments. Funded by the World Bank, this program allows IFAI to implement through local governments an electronic request system. As of October 2007, the following states had implemented it: Chihuahua, Distrito Federal, Aguascalientes, Nuevo León, Morelos, Baja California, Jalisco, Tamaulipas, Veracruz, Coahuila, Hidalgo and Tabasco. Conversations had begun with Zacatecas, Baja California Sur and Chiapas.

In our 2006 report, we also recommended that the focus, in the short term at least, should be on operational issues and reform, rather than legislative changes. Now, the constitutional amendment will require legislative changes. Care should nonetheless be taken to avoid undermining any of the key provisions currently in place.

In preparation for the implementation of legislative reform under the constitutional amendment, IFAI charged the Center for Economic Teaching and Research (Centro de Investigación y Docencia Económicas) (CIDE) and the Research Institute of the National Autonomous University of Mexico, known as the UNAM, with developing a Code of Best Practices. A group of federal and state legislators, officers of access to information around the country, specialists and public servants from IFAI gathered in Puebla in July to begin to put together the contents of the Code of Best Practices. It was published in October of 2007 and is

meant to serve as a guide in the amendment of the state and federal laws in response to the new constitutional reform.¹²

In the 2006 study, we observed that for a deeply ingrained, robust culture of transparency to be established in Mexico, IFAI must involve state and municipal governments to promote transparency on the local level. We noted that the activities of the state and municipal governments are closer to the daily lives of average citizens, and thus the benefits of transparency can best be demonstrated at the local level through the disclosure of information held by those entities. Indeed, fomenting transparency at the state level is an integral part of IFAI's role in advocating and disseminating information about the law to the public. The constitutional amendment goes a long way to providing for standard norms across the country and it represents a major step in what is nonetheless bound to be a difficult and long journey promoting transparency at the local level.

B. Autonomy

In 2006, we also noted the importance of IFAI's continued autonomy. We recommended a Committee for the Protection of IFAI's Autonomy, which would advocate for the transparency process as well as for IFAI's continued autonomy. While such a committee was not created a consensus may be forming that IFAI should have autonomous status under the Constitution, similar to the constitutional autonomous status of Federal Electoral Institute ("IFE") and the National Commission for Human Rights ("CNDH").

IFAI has a substantial reservoir of moral authority, built up since its inception. We reported on this in 2006. One important safeguard on IFAI's autonomy is the fact that decisions

¹² IFAI's information on the Code of Best Practices: <http://www.ifai.org.mx/TemasTransparencia/transparenciaRepublica>; To view the code: http://www3.diputados.gob.mx/camara/004_transparencia/03_unidad_de_enlace/009_cultura_de_la_transparencia/01_codigo_de_buenas_practicas_y_alternativas_para_el_diseno_de_leyes_de_transparencia_y_acceso_a_la_informacion_en_mexico

against the agencies cannot be appealed. To change that provision now would be disastrous as it would be seen as a move to weaken IFAI.

One important issue, however, is how to ensure proper checks and accountability for IFAI. Proper accountability should be a means for ensuring that IFAI maintains its moral authority and hence its autonomy. Though IFAI itself, along with countless members of the civil society, has done a remarkable job of advocating for transparency, an outside ombudsgroup should be considered. This will ensure that IFAI's legitimacy is continually reinforced in the public's view. Moreover, IFAI still needs to push for formal recognition of the definition for budgetary autonomy in Congress and with the President.

III. IFAI'S RELATIONSHIP WITH THE OBLIGATED AGENCIES

In our 2006 report, we noted the critical partnership between IFAI and the obligated agencies. We made several recommendations for strengthening that partnership and making it as functional as possible.

Among agency representatives, there is still a great need for more specialized training. In addition, the liaison units (Unidades de Enlace) are facing cultural and budgetary problems within their agencies. Some agency representatives expressed a desire for more expertise-sharing between the agencies. There is a sense at the agencies that IFAI and the public are not sufficiently versed in the bureaucratic intricacies of each agency's business. This leads to requests which are difficult if not impossible for the liaison units to honor.

IFAI continues to make efforts to reach out to the obligated agencies. There is a recognition at IFAI that the major challenge now is for it to improve its relationship with the agencies. The change of administration caused a change of the guard when a number of the liaison units (Unidades de Enlace) were replaced. Due to this, a lot of training on how to answer

petitioners and appeals, how to classify information has been necessary. IFAI characterized the new personnel as receptive. However, a much more consistent and deep dialogue is needed.

IFAI continues to convene regular groups to meet and discuss issues. It has also now successfully launched the Portal of Transparency Obligations (The Portal can be found at <http://www.portaltransparencia.gob.mx/>). Pursuant to Article 7 of the Transparency Law, all obligated agencies must provide certain information on their websites. The Portal contains easily obtainable information about the many different federal agencies subject to the Transparency Law. And, the affiliated government websites feature prominent references to the Portal or links to IFAI's websites. In addition, IFAI noted a decrease in agency responses to requests indicating "no information." Despite what may seem like a list of complaints, the meetings with the agency representatives were productive and positive. Many constructive suggestions were shared and exchanged.

Archiving, however, remains a paramount problem at all levels of government. In the fall of 2007, IFAI began a survey of public officials to learn and understand more about the state of each agency's archive. IFAI is studying and looking carefully at the problem. While much progress has been made, the lack of professional archivists, lack of funds, and lack of training all have hindered the development of a reliable archiving solution. Archiving documents that have been created since the passage of the law, while not a simple process, has been manageable. Most of these documents are electronic. On the other hand, historic documents remain unorganized and completely impenetrable.

While much work has been done, including training and regulations, the need for a common language, norms, and strategy is great. In addition, the whole task of archiving will go nowhere if a budget is not developed for it. Commissioner Juan Pablo Guerrero expressed the

important point, echoed throughout our discussions, that without archives, access to information cannot be guaranteed.

IV. IFAI'S RELATIONSHIP WITH THE END USER

A. Civil Society

In our 2006 report, we recommended that civil society organizations, with the support of foundations and other independent organizations, should reengage in the collaborative partnership that originally advocated for the Transparency Law. We explained that this partnership should continue to work to strengthen and solidify the Law and a culture of transparency in Mexico.

To its great credit, civil society has remained incredibly engaged in the process of developing the use and knowledge of the Transparency Law. As noted above, civil society was productively engaged with the reform to the Constitution. CIDE, an academic institution which focuses on public policy, economics and the law, will be working at the state level helping states comply with the constitutional reform (<http://www.cide.edu/>). Fundar, an interdisciplinary and independent institution dedicated to furthering democracy and citizen participation, has focused on evaluating government responses to information requests and the subsequent appeals process, as well as on training other organizations and individuals to analyze governmental information that is released (<http://www.fundar.org.mx/>).

And, members of civil society remain actively involved in critiquing the Transparency Law. For example, concern has been expressed that the Transparency Law has not made an impact in the areas of elections, human rights, and federal bailouts. The appeals process at IFAI is also seen as limited because IFAI cannot insist on compliance with its decisions. Practically, placing the enforcement power in the Ministry of Public Administration has not resulted in a

great amount of enforcement, in turn resulting in a lack of public confidence on IFAI's ability to enforce its decisions.¹³ In addition, in 2007, IFAI's reputation took a beating in the eyes of civil society, whether warranted or not, due to a perception that the selection of IFAI commissioners is not as transparent as possible and because IFAI did not (and, indeed, could not) engage in the controversy surrounding IFE's vote recount decision in the wake of the disputed 2006 presidential election. The sense remains however that IFAI has done a remarkable job fulfilling its many responsibilities under the Law.

In sum, civil society continues to serve as the one real check on IFAI's power. This type of check is essential to a democratic institution. Such a check does not reduce an institution's power, rather it strengthens and legitimizes it.

B. The Media

As we noted in 2006, the media is critical to both publicizing public interest information and to promoting overall governmental transparency. We recommended that NGOs establish a formal links with journalists interested and willing to publish public interest stories as well as a focus on fostering investigative reporting.

More journalists are making more regular use of the law. However, these journalists continue to report that the system for gathering information through the Transparency Law is too slow and frustrating to make a big difference in their every day reporting. Nonetheless, media coverage over 2007 did focus on several specific high-profile information requests, denials, and orders issued by IFAI to turn over contested information. Among the contentious revelations in the press, the Federal Electoral Institute (IFE) was shown to have denied 50% of information requests submitted through the freedom of information act. A recent request for personal

¹³ See http://www.fundar.org.mx/PDF/derecho_saber/4.pdf; Boletín informativo año 3 / número 2 / mayo-agosto de 2007 http://www.mexicotransparente.org.mx/m_t/pdf/BOLETIN%20MT%208.pdf

identification of military deserters sparked a debate over the line between protecting identity and guaranteeing access to public information, an area of concern left open for further discussion.

V. CONCLUSION

As we wrote in 2006, we remain deeply impressed with the level of dedication to transparency we saw in Mexico. During our meetings, we heard substantially more productive comments than negative ones and sensed a great desire to see this remarkable movement towards transparency to become entrenched. In a real way, the level of political and public support for the constitutional amendment indicates a long-lasting and extraordinary commitment to transparency, something that is at the core of a culture of transparency.