

UC Santa Cruz

Reprint Series

Title

Transparency Reforms: Theory and Practice

Permalink

<https://escholarship.org/uc/item/7nf8b01r>

Authors

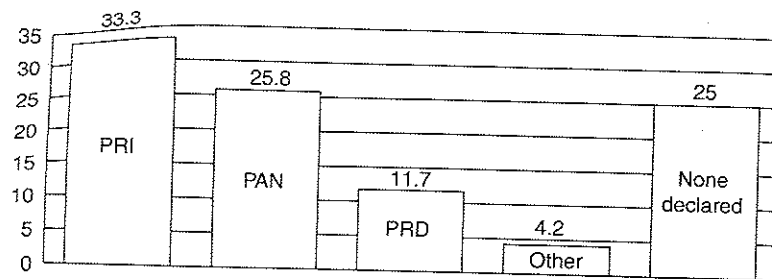
Fox, Jonathan A
Haight, Libby

Publication Date

2010

Peer reviewed

Figure 6.3. Electoral Preferences, Midterm Elections, 2009 (percent)



Source: Consulta Mitofsky, January 2009.

Note: PRI = Partido Revolucionario Institucional, Institutional Revolutionary Party; PAN = Partido Acción Nacional, National Action Party; PRD = Partido de la Revolución Democrática, Democratic Revolutionary Party.

and cooperation tends to diminish in election years. What happens next will depend on the results of these elections. The electoral prospects do not seem promising for the president's party. According to the latest opinion polls, the PRI will gain 34 percent of electoral preferences, compared with 26 percent for the PAN and 12 percent for the PRD (figure 6.3). If such polls turn out to be correct, Calderón's party will lose its stand as the largest party in the Chamber of Deputies, although it is doubtful that the PRI will be able to gain an absolute majority. Also, because the Senate's composition will remain unaltered, the PAN will continue as the main force in the upper house, keeping its veto power for any constitutional reform.

Notes

1. For a full description of possible alliances within Congress during the past four legislatures, see María Amparo Casar, "Los gobiernos sin mayoría en México: 1997–2006," *Política y Gobierno* 15, no. 2 (2008).

2. See Jaime Cárdenas, *Una Constitución para la democracia* (Mexico City: Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México, 2000), 298.

Chapter 7

Transparency Reforms: Theory and Practice

Jonathan Fox and Libby Haight

What difference does transparency make? Many who are committed to democracy and good government have high expectations of the power of the "right to know." Yet it is not an all-powerful magic bullet. By itself, transparency cannot substitute for weaknesses in the rule of law or representative democracy. After all, many abuses of power are no secret. At the same time, if and when the right to know can be exercised effectively, it can serve as a powerful instrument to guide initiatives for change—and to reinforce other institutions of democracy. Transparent government reveals whether representatives really represent, whether functionaries actually function, and whether the system of justice is truly just.

Though the Mexican public's right to know was first recognized in the Constitution in 1977, the real tools to exercise that right were created in 2002, when Congress unanimously passed the Federal Law for Transparency and Access to Public Government Information (*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*, LFTAIPG). This led to the creation of a new federal agency, the Federal Institute for Access to Public Information (*Instituto Federal de Acceso a la Información Pública*, IFAI).

This chapter is a substantially abridged, revised, and updated version of the authors' chapter published in *Mexico's Right-to-Know Reforms: Civil Society Perspectives*, ed. Jonathan Fox, Libby Haight, Helena Hofbauer, and Tania Sánchez Andrade (Mexico City: Fundar Centro de Análisis e Investigación AC and Woodrow Wilson International Center for Scholars, 2007), first published in Spanish and available online at www.fundar.org.mx. Thanks to Brian Palmer-Rubin for his research assistance. This research was made possible by support from the William and Flora Hewlett Foundation.

During more than seven decades of authoritarian, one-party rule, the operation of the Mexican government was shrouded in secrecy, which encouraged corruption and impunity. Information about the public sector was treated as the private property of individual officials, which was both cause and effect of a culture of mutual distrust between the citizenry and the government. In this context, Mexico's right-to-know reform has some potential to bolster the rest of its democratic institutions by strengthening its citizens' capacity to both participate in and oversee the governance process. Its right-to-know reform has also contributed to its institutionalization of political change by demonstrating that at least one issue can generate an effective consensus across its fractured political spectrum—not only with the 2002 law, but also with the subsequent mid-2007 all-party consensus on embedding bolstered information rights in the Constitution.

The implementation of this reform has been driven by the single most important new government agency created since the 2000 elections: the IFAI, which was designed to be an institutional intermediary between citizens and government agencies, dedicated to facilitating access to information about the executive agencies of the federal government. The IFAI is governed by five commissioners, is named by the president on rotating appointments, and is tasked with resolving disputes where information requesters feel that an agency response to a request was inappropriate (among many other responsibilities). Appeals cases are then decided by majority rule among the five commissioners.

Though the IFAI commissioners lack the formal constitutional autonomy status of the National Commission on Human Rights or the Federal Electoral Institute (Instituto Federal Electoral), they control their budget, and their appointments have been virtually untouchable. Moreover, as the controversies about the commission's and institute's performance have shown, institutional design formulas that appear to be promising in principle have not been sufficient to ensure their autonomy in practice. By comparison, the IFAI stands out as having managed to demonstrate a judicious track record during its first six years. In the process, it has become Mexico's ultimate authority on interpreting the new transparency law, and government agencies no longer monopolize control over what information to release and what to keep behind closed doors.

The Conceptual Context

By the late twentieth century, citizens' rights to information about how they are governed had become widely recognized around the world, joining the freedoms of expression, association, and assembly as fundamental rights—as recognized in Article 19 of the 1948 United Nations Universal Declaration of Human Rights. As with the consolidation of the rule of law and other means of accountability, information rights are part of what one could call a “second generation” of democratic reforms.¹

Governmental “right-to-know” reforms encompass two different kinds of strategies for promoting institutional transparency: The first involves mandatory disclosure, which takes the form of a set of minimum standards that public or private agencies must meet proactively, by explaining to the public what they do. The data covered by obligatory disclosure requirements can range from government budgets to private-sector emissions of toxic chemicals. These days such disclosure primarily takes place online, and Mexico's IFAI regularly monitors the compliance of federal agencies.

The second main strategy for promoting institutional transparency, in contrast, requires citizens themselves to take the initiative, by submitting specific information requests. Some civil society organizations take the right to know further by generating their own information about government performance, through independent policy evaluations, budget monitoring, and citizen report cards. Various countries, and even different states and agencies within Mexico, have created a wide range of processes for responding to information requests, some more user friendly than others. In this context, Mexico's experience is unusual because it involved creating a special agency dedicated to encouraging citizens' information access, including the right to easily appeal if federal agencies deny their requests.

An analysis of the progress toward and limitations on the exercise of transparency reforms shows that, in practice, the public sector, the mass media, the private sector, and civil society are all divided about whether to encourage the right to know. In each sector, powerful interests stand to lose influence if the government becomes fully open. If “information is power,” then those who control information will lose power if access becomes fully democratized. Yet now that the principle of transparency has been so widely accepted, at least on the level of discourse, few policymakers openly reveal their opposition to information rights. This poses a dilemma. Rather than eliminating opposition, the perverse effect of today's unprecedented level of ideological consensus tends to drive the forces in favor of secrecy into

the background—underground. In other words, the *real* opposition to transparency is rarely transparent.

To assess both progress toward and limitations on the exercise of information rights requires asking the question “What ‘counts’ as transparency, and for whom?” Because of the ongoing, behind-the-scenes conflict over how much to reveal to the public, it is fair to say that transparency is today an arena of contested terrain. This suggests the importance of unpacking the concept of transparency, specifying what is becoming transparent to whom.

Consider, for example, the difference between “downward transparency,” from the state to society, and “upward transparency,” from society to the state. Consider as well the distinction between what one could call “clear transparency” and “opaque” or “fuzzy” transparency. Clear transparency reveals how institutions really behave in practice—what decisions they make, how they make them, where their money goes, and the tangible results of their actions. Opaque transparency, in contrast, refers to information that is only nominally available (accessible in theory but not in practice), data whose significance is not clear, or “information” that is disseminated but turns out to be unreliable. This distinction between clear and opaque is grounded on the premise that clear transparency will produce losers as well as winners—those whose power depends on their discretionary control over information. In this context, the losers will do what they can to merely *appear* to comply with Mexico’s new combination of legal requirements and civic standards—and they will have incentives to do what they can to roll back minimum transparency standards, if the political opportunity arises.² Nevertheless, even clear transparency—by itself—does not guarantee accountability, which would require the intervention of other public-sector actors whose mission is to promote compliance with the rule of law.

Conventional wisdom assumes that transparency somehow inherently generates accountability. Indeed, the definition of accountability is also contested terrain these days—with powerful actors nominally accepting “responsibility” for mistakes without actually being held accountable. Indeed, the meaning of the term has not yet generated a consensus. For some, accountability involves the process of requiring decisionmakers to explain and justify their actions—sometimes known as “answerability.”³ For others, only processes that include the threat of actual sanctions for transgressions or poor performance would “count” as accountability. Analysts are only just beginning to go beyond treating transparency and accountability as synonyms—to ask “*Under what conditions* does transparency generate

accountability?” or “*What kinds* of transparency lead to *what kinds* of accountability?”⁴

The Historical and Comparative Context

Just as public information has become increasingly recognized as fuel for democracy, without which it would run out of steam, secrecy and opacity have long been key instruments of authoritarian rule. Yet in Mexico, the right to transparency has long been on the democratic agenda—though often under other names. Long before the Internet, more traditional forms of public oversight were recognized as necessary to discourage the arbitrary exercise of authority. For example, free and fair elections, referred to by Mexico’s historic revolutionary slogan *sufragio efectivo* (effective suffrage), depends on the counting of votes in public—for good reason—and was more recently bolstered by transparent ballot boxes to assure voters that they were not stuffed in advance.

Yet it was not until Mexico’s recent experience with a change in the political party in power that the official right-to-know discourse was translated into a comprehensive law that specified how these rights could be exercised in practice. The law emerged from an unusual convergence between civil society intellectuals and media leaders, congressional leaders, and legal reformers newly embedded in the executive branch of government. After a vigorous debate, the issue had gained such a remarkably broad base of support that Congress passed the final compromise version of the law unanimously.⁵

The law mandates a very explicit presumption in favor of disclosure. That is, unless a document or information is in a category specifically covered by a clearly bounded exception, the law mandates that all documents and information produced by the federal government should be publicly accessible. To avoid the need for a new constitutional reform at the time the law was originally passed, it was limited to the federal government, and the jurisdiction of the new agency (IFAI) was limited to the executive branch. Yet because of these limitations, only four years later, the issue reentered the policy debate and a constitutional amendment was passed in mid-2007, which ostensibly extended minimum standards to all levels and branches of government. (On the basis of the limited results after the one year allowed for compliance by state governments, it turns out that in practice, Mexican constitutional reforms are not actually binding on the states.)

In comparison with the majority of the eighty-six countries in the world with information rights laws, many of Mexico's federal provisions are strong and user friendly—much more accessible than the U.S. law, for example.⁶ Indeed, Mexico's law is one of the most comprehensive in the developing world—it was clearly the strongest until India followed up with a remarkably broad reform. Yet, in contrast to India, Mexico has a central federal agency charged with ensuring compliance and ruling on citizen appeals to government denials of information requests. In both countries, the national reform followed an electoral shift toward greater pluralism, and then emerged from mutually reinforcing synergy between civil society activists and democratic-minded senior public servants.

Since Mexico's law was passed, many civil society organizations and journalists have worked to encourage its implementation. They monitor government agency compliance, file requests strategically to test the new system's efficacy, encourage media coverage, provide critical support to the IFAI, raise awareness in the states, and invest in training—so that more citizens can learn how to exercise their new information rights effectively.

An Overview of Experiences with Information Rights

Of the two main strategies for public access to information about government operations, Mexico's transparency law addressed the first component of obligatory disclosure requirements through a mandate that each government agency or program create a "transparency portal" on its Web site. The material that agencies must publish, which is detailed in Article 7 of the LFTAIPG, is designed to provide basic information about government operations. Recently, through an initiative of the IFAI, all executive agency transparency portals have been gathered together in one location, with a standardized presentation across all agencies.⁷

The second main strategy involves the information request process, through which citizens themselves take the initiative to request specific kinds of information from the federal government. The IFAI, for the federal agencies in its jurisdiction, uses a Web-based system for information requests known as INFOMEX (which is also available to state governments to facilitate online access to information at the state level). Requesters can easily fill out an online form to solicit information from a federal agency. The request then goes directly to the agency, which responds to the citizen through the same electronic system. Other federal agencies that are auto-

mous from the executive and are subject to the law but not to the IFAI, known as "other mandated agencies" (*otros sujetos obligados*), have their own request processes; they include Congress, the Senate, the Federal Auditing Service, the Federal Electoral Institute, the Bank of Mexico, the Supreme Court (as well as the highest electoral, agrarian, fiscal, and labor courts, and the federal judicial council), the National Human Rights Commission, and the Institute of the National Fund for Housing for Workers, as well as the Autonomous Metropolitan University (Universidad Autónoma Metropolitana), the Autonomous University of Chapingo, and the National Autonomous University of Mexico (Universidad Nacional Autónoma de México).

Though state and local governments are not subject to the LFTAIPG, several have worked with the IFAI to utilize INFOMEX at the state level (e.g., Mexico City, Chihuahua, and Zacatecas). The 2007 constitutional reform requires all state governments to use electronic tools to facilitate the submission of information requests.

It is important to point out that each government agency decides how to respond to citizen requests—not the IFAI. Specifically, the law mandates that federal institutions create a liaison unit (*unidad de enlace*) to serve as the contact point with citizens. Each agency also has an information committee, which determines whether or not the information requested "exists," and whether or not it is considered confidential or otherwise "reserved."

Practical Lessons from Information Requests

In principle, the process of requesting information from the executive branch is quite straightforward, especially for those citizens familiar with the Internet. Both the IFAI and civil society organizations have produced useful manuals that clearly explain the procedures.⁸ Yet filing a request is often not sufficient to actually access the information requested. This is in part because of the challenges involved in the crucial step of *formulating* the information request. In practice, filing a successful information request requires that one already possess a great deal of knowledge about what one is looking for. This poses a classic chicken-and-egg problem.

For citizens' requests to be successful, they must know exactly where to direct them; otherwise agencies will reply "That's not our department." If an information request deals with an issue that involves more than one agency, then there is a risk that each one will tell the citizen to ask the other.

Many citizens' requests are directed to federal ministries, when their request involves a distinct agency *within* the ministry. Just within the executive branch, there are more than two hundred federal agencies to which one can direct an information request through INFOMEX.

Even though federal ministries have a great deal of information about their respective agencies and programs, they will often redirect requests about them. Yet the law explicitly states that a government office must release the information requested if it is in its possession (Article 3 of the LFTAIPG defines information subject to the law as "information: that which is contained in the documents, with any title, that are generated, obtained, acquired, transformed, or housed by any government body"). Responses vary. Though the Treasury Ministry frequently redirects requests for information, in the experience of the authors, the Ministry of the Economy tends to respond comprehensively, and responses from the Ministry of the Environment and Natural Resources often clearly direct requesters where to turn. Moreover, if an information request deals with state and local government programs that are funded by federal agencies, there is a risk that each level of government will tell the citizen to ask the other level.

Also, for citizens to increase their prospects for a successful information request, they should be familiar with how the government agency itself is organized. It helps if requesters can provide specific details about how to locate the information requested. It helps to specify which office *within* the agency that is most likely to have the information, and to use the agency's own discourse when naming types of documents or data.

These issues come up because the law does not require agencies to *produce* information in order to respond to a request. They are only required to provide copies of preexisting documents, when those documents address the question asked. Requesters must therefore rely, to a certain extent, on the goodwill of each office in government agencies to provide the most complete, comprehensive, and accurate response to an information request. Clearly, few citizens possess sufficient knowledge about the information produced by each agency to be able to independently assess whether or not the agency has provided *all* the relevant information in its possession.

This raises the issue of agency claims that the requested information "does not exist." The law allows agencies to respond to information requests by claiming that the requested information cannot be found or that is not a *type* of information produced within the institution. Information request denials based on agency claims of "nonexistence" are growing over time, both in absolute terms and as a share of total requests, reaching 5.9 percent in 2008.⁹

Table 7.1. Total Information Requests to the Executive Branch, 2003–8

Total	2003 ^a	2004	2005	2006	2007	2008
372,142	24,097	37,732	50,127	60,213	94,723	105,250

Source: Instituto Federal para el Acceso a la Información Pública. "Estadísticas del SISI." <http://www.ifai.org.mx/Gobierno/#estadisticas>.

^aInformation access system operations began June 12, 2003.

Without inside information, it is very difficult for citizens (or IFAI commissioners) to question these claims, and officials run little risk if they report that they looked for the information requested in their archives but could not find it.

Profiling Citizen Demands for Information

The number of information requests to the federal executive branch has been growing steadily since the law first went into effect. As indicated in table 7.1, a total of 372,142 information requests had been submitted as of the end of 2008, the vast majority of them electronically (they can also be submitted in writing). These figures include requests for public information, as well as requests for access to or correction of personal data in possession of the government. Several federal agencies consistently attract the highest numbers of requests. On the basis of the IFAI's first five years of operation, the most solicited agencies are the Mexican Social Security Institute, the Ministry of Public Education, the Treasury Ministry, and the Health Ministry. Requests to the top twenty most-solicited agencies represent 57 percent of the total requests submitted to date.¹⁰ The largest number of requests is directed to the Mexican Social Security Institute, which holds a great deal of personal data, such as medical and employment records. Overall, however, most requests are intended to get a better understanding of how the government works.

Who Is Requesting Information?

Many observers wonder about who is requesting information from the government. Unfortunately, the available data on requesters' age, gender, and occupation is too unreliable to generate an accurate profile. The reason is that requesters are asked to self-classify themselves when filing a request, in terms of whether they come from academia, business, media, government,

or “other.” Frequent requesters have found that their self-identification can affect their chances of receiving a response—most notably journalists. Many report that identifying themselves as journalists leads agencies to resist providing information. As a result, the official IFAI data are likely to understate of the number of requests for information that come from journalists. Of those who self-identify, approximately two-thirds are male, more than 45 percent are in the Federal District, and more than 11 percent are government officials.¹¹

One ambiguity in the design of the information access system involves the possibility of filing anonymous requests. Mexico’s federal freedom of information law does not require requesters to provide proof of identity, which allows for the legitimate use of pseudonyms. Many possible information requests can touch upon controversial issues, and requesters therefore may fear reprisals, notably in cases of whistleblowers, journalists, or citizens concerned about corruption. This is one area where the Internet offers a great advantage. If the information requested can be delivered electronically, then anonymity can be preserved. However, if the requester files an appeal, IFAI hearings call for their personal appearance to give testimony and therefore anonymity is lost.

Initial Agency Responses

How have executive agencies been responding to the increasing numbers of information requests they receive each year? The INFOMEX system gives agencies nine options for categorizing their responses. They can be divided into two groups—responses that provide information in some form, and those that deny the request. In 2007, approximately 70 percent of responses implied that information was provided in some form, though not necessarily through INFOMEX, and the remaining 30 percent involved some form of denial of the request, according to the official data.¹² However, there are two major problems with relying on the agencies’ categorization of their responses to determine how often people actually receive the information requested.

The first major problem is related to misclassifications of responses. Some agency responses are categorized as having provided the information requested, when in fact the request has been denied in one form or another. This happens most frequently when the agency prepares a memo to explain why it is denying the request, but because they respond with a document sent through INFOMEX, they can classify the empty response as “delivering information.”

The second major problem with relying on agencies’ categorizations of their responses is that these categories do not indicate the *quality* or *relevance* of the information provided, in the case of an ostensibly positive response from the agency. Without evaluating the content of the actual requests and responses, it is impossible to know whether or not what was provided actually answered the question asked. These issues demonstrate that further research is needed to document to what degree agencies are actually responding to information requests. In 2008, the IFAI’s Coordination and Oversight office carried out a detailed study that examined a representative sample of 1,700 agency responses to citizens, taking into account “multiple” requests—those that included requests for more than one document. In these cases, the IFAI found that the actual rate of agency claims that information was “nonexistent” actually reached 31.5 percent of responses.¹³

Profiling Proactive Government Disclosures

Agencies are also mandated by Article 7 of the transparency law to publish basic information about their activities and procedures. The IFAI has been monitoring the executive branch’s compliance with these established requirements. The evaluation criteria measure the extent to which the information presented in their “transparency portal” is complete in terms of what is established in the law.¹⁴ The IFAI finds a high degree of compliance with the publication of basic information on government Web sites. However, these evaluations do not assess the *usefulness* of the information presented. Their monitoring is limited to whether or not the information presented is *complete* according to the terms of the law. Most consultations of these official Web sites focused on administrative issues, including the directory of agency staff (24.9 percent), contracts (20.8 percent), staff salary data (17.0 percent), and information on organizational structure (9.3 percent).¹⁵

Federal Government Institutions outside the Executive Branch

Although the 2002 law covers the entire federal government, the IFAI’s jurisdiction is currently limited to agencies within the executive branch. This means that Congress, the judiciary, and autonomous federal agencies were mandated to develop their own procedures for implementing the law. Most of them provide access through processes similar to the IFAI, and they have complied with the mandatory disclosure requirements.¹⁶ The most notable difference with the IFAI’s procedures involves the right to appeal. In the case

of the IFAI, a group of commissioners rules on appeals, in a process similar to an administrative court of appeals. For the federal institutions not covered by the IFAI, citizens' information access appeals are adjudicated by the same agencies whose denial of an information request provoked the appeal in the first place. This lack of third-party review of information appeals from the *otros sujetos obligados* is a major difference from the IFAI process, and it became a subject of controversy in the context of the Federal Electoral Institute's denial of public access to the actual ballots cast in the 2006 presidential election. The institute's information committee ruled against media efforts to get an independent recount, ostensibly on the grounds that the voters' cast ballots did not constitute "public documents." In addition, states and municipalities were not subject to the same requirements until the 2007 constitutional reform, and as a result, their procedures, for both requesting information and the appeal of a denial, vary widely in quality and scope. Some states have information access provisions that are at least as strong as the federal government, but most are weaker.¹⁷

The IFAI's Appeals Process

Though it is very difficult to assess the quality and relevance of agency responses to information requests, one partial indicator of citizen satisfaction with the information provided by government agencies is the extent to which people file a formal appeal to the IFAI. For requesters, the appeals process is straightforward; citizens do not need lawyers or technical experts. Indeed, the IFAI itself is mandated to assist in transforming a complaint into a legally grounded formal appeal, to help the appellant present the strongest possible case. However, not every citizen who finds an agency response lacking will necessarily file a formal appeal.

The IFAI commissioners have the mandate to rule on whether or not an executive branch agency's response is legitimate. They meet weekly, in public sessions, to rule on citizen appeals. From the beginning, they have been clear in their position that *any* response, for whatever reason, can be sent to them for appeal. This includes both formal denials and de facto denials. Formal denials involve the classification or reservation of information, whereas de facto denials involve a declaration of nonexistence as well as incomplete or inappropriate responses. As of the end of 2008, more than 19,000 appeals had been filed, which represents only 5.1 percent of the total number of information requests submitted.¹⁸ The number of appeals filed to the IFAI is detailed in table 7.2.

Table 7.2. Total Appeals Submitted to the Instituto Federal para el Acceso a la Información Pública (IFAI), and the Proportion of Total Requests That Are Appealed, 2003–8

Measure	Accumulated						
	Total	2003 ^a	2004	2005	2006	2007	2008
Total appeals filed with the IFAI	19,020	635	1,431	2,639	3,533	4,864	5,918
Percentage of total requests	5.1	2.6	3.8	5.3	5.9	5.1	5.6

Sources: IFAI, *6to Informe de Labores al H. Congreso de la Unión, 2008* (Mexico City: IFAI, 2009), 20; and Information Request 067380005909.

^aThe IFAI commissioners began adjudicating appeals in August 2003.

The commissioners' possible responses to appeals fall into these categories: confirm, modify, revoke, *positiva ficta* (de facto positive), stay of the case, discard, "no show," and inappropriate. The IFAI classifies these outcomes into three broader categories: those that involve application of the law (known as "core appeals"), those that are based on procedural issues ("procedural appeals"), and *positiva ficta*, a unique category of appeals that draws attention to agencies that do not respond to the request within the legally mandated time limit required to produce the information requested.

The trends over time regarding how the IFAI commissioners have ruled in appeals cases are presented in table 7.3. A resolution classified as "confirm" implies that the IFAI has determined that the agency's response was correct. "Modify" implies that the IFAI neither completely accepts nor

Table 7.3. Total Numbers of Resolved Appeals, by Category of Resolution, by the Instituto Federal para el Acceso a la Información Pública (IFAI), 2003–8

Resolutions to Appeals	Total	2003 ^a	2004	2005	2006	2007	2008
Core appeals							
Confirm	3,154	73	209	346	524	803	1,178
Modify	3,847	96	280	475	652	1,181	1,174
Revoke	2,884	86	305	523	581	657	703
<i>Positiva ficta</i>	318	8	10	2	14	86	189
Procedural appeals	7,826	179	505	979	1,618	2,045	2,548
Total decisions	18,029	442	1,309	2,325	3,389	4,772	5,792

Source: IFAI, *6to Informe de Labores al H. Congreso de la Unión, 2008* (Mexico City: IFAI, 2009), 20.

^aThe IFAI commissioners began adjudicating appeals in August 2003.

completely rejects the response given by the agency, and rather mandates that the agency change its response in some way. In the case of “revoke,” the IFAI has ruled on the side of the requester.

It is important to point out that the IFAI annual reports categorize “stays of the case” as “procedural appeals.” However, many “stays of the case” imply that the agency has changed its position during the course of the appeal, which in effect grants access to the information requested. This means that these kinds of resolutions have often resulted in the release of a good deal of information to the public through the newly bolstered “searchability” of IFAI resolutions using the “Zoom” search engine.

The majority of appeals have required that IFAI commissioners make substantive decisions about whether or not the agency’s response was appropriate. The proportions of appeals that result in the various categories of IFAI resolutions are presented in table 7.4, which shows that in 37.3 percent of the cases, IFAI commissioners have either rejected or modified the agency’s response. The commissioners have ruled fully in favor of the agency in only 17.5 percent of cases. Overall, they tend to interpret the law in favor of disclosure. However, as noted above, appeals involving agency claims that the information requested “does not exist” are difficult to disprove, and the burden of proof falls squarely on the requester.¹⁹ The IFAI does sometimes rule against the agency in such cases, but has not exercised its potential capacity to carry out its own independent investigations of agency claims of “nonexistence.”

Table 7.4. *Proportions of Resolutions by the Instituto Federal para el Acceso a la Información Pública (IFAI) as Percentages of Total Appeals Resolved, 2003–8 (percentage of total resolved appeals)*

Resolutions to Appeals	Total	2003 ^a	2004	2005	2006	2007	2008
Core appeals							
Confirm	17.5	16.5	15.9	14.9	15.5	16.6	20.3
Modify	21.3	21.7	21.4	20.4	19.2	24.8	20.3
Revoke	16.0	19.5	23.4	22.5	17.1	13.8	12.1
Positiva ficta	1.8	1.8	0.8	0.3	0.4	1.1	3.3
Procedural appeals	43.4	40.5	38.4	41.9	47.7	43.7	44.0

Sources: IFAI, *3er Informe de Labores al H. Congreso de la Unión, 2005* (Mexico City: IFAI, 2006), 18–19; IFAI, *4to. Informe de Labores al H. Congreso de la Unión, 2006* (Mexico City: IFAI, 2007), 19–20; IFAI, *5to. Informe de Labores al H. Congreso de la Unión, 2007* (Mexico City: IFAI, 2008), 23–24; IFAI, *6to Informe de Labores al H. Congreso de la Unión, 2008* (Mexico City: IFAI, 2009), 20–21.

^aThe IFAI commissioners began adjudicating appeals in August 2003.

In a notable example of the IFAI ruling against an agency, one 2007 case involved a controversy over conflicting government agency reports regarding the cause of death of an elderly Nahua woman, Ernestina Ascencio Rosario, in rural Veracruz. Family members reported that before she died, she told them that she had been brutally gang-raped by soldiers. This was confirmed by the first state medical examiners’ report, but the official story later changed. Before federal agencies had made public their findings, President Felipe Calderón declared to the press that she had died from chronic gastritis. In this context, a citizen asked the president’s office for the information that provided the basis for his claim. That office reported that an “exhaustive search” did not produce any such information. The citizen filed an appeal, noting “since this involves a presidential declaration on such a sensitive issue, there must be some document that supports it.” The official response claimed that the law applied only to documents, and therefore did not include conversations with other government officials. The IFAI commissioners accepted this point, but they ruled in favor of “modifying” the government’s claim on strictly procedural grounds, insofar as the claim of “nonexistence” and its legally required supporting document had not been properly delivered to the requester. In addition, the IFAI ruling included a reconstruction of the key events of the case, including press accounts, noting that the IFAI found it “surprising” that there were no relevant documents to support the president’s declarations, especially in light of both the state government’s medical report and a prior initial report by the National Human Rights Commission that supported the victim’s family’s allegations. The IFAI resolution went even further, noting that “for the President of the Republic to make a judgment regarding a tragic event, while the investigation was still ongoing, without the documentary [evidence] needed to support his declarations, conflicts with the principle of public disclosure and the goals of the [public information] law.” Three of the five commissioners dissented from this last claim, however, arguing that it went beyond IFAI’s mandate. In the end, the president’s office fulfilled the procedural requirement while the mystery behind the case continued.²⁰

Once the IFAI commissioners have made their decision, their ruling becomes obligatory for the agency, and it sets a kind of precedent for future cases (note, however, that the Mexican judicial system is generally not precedent based). Agencies are also permitted to challenge IFAI resolutions by filing their own appeals through the court system. Of the forty-five judicial injunctions filed by executive branch agencies against an IFAI resolution during 2007, for example, the courts found in favor of the IFAI in twenty-six of those cases, while fifteen were still unresolved.²¹

Table 7.5. Frequency and Proportion of Resolutions by the Instituto Federal para el Acceso a la Información Pública (IFAI) That Instruct Agencies to Release Information, 2003–8

Measure	Accumulated						
	Total	2003 ^a	2004	2005	2006	2007	2008
Total number of resolutions	7,202	275	680	1,153	1,395	1,945	1,754
Percentage of total appeals filed	37.87	43.24	47.52	43.69	39.48	39.99	29.64

Sources: IFAI, *Estadísticas del SISI*, www.ifai.gob.mx; and Information requests 0673800076608, 0673800018807, and 0673800026809.

^aThe IFAI commissioners began adjudicating appeals in August 2003.

IFAI rulings are published online, including supporting documents. If an agency is required to release information, it is usually given ten working days to respond and deliver. Table 7.5 highlights more specifically how often agencies are instructed to release information through IFAI resolutions. In 2009, the IFAI began publishing indicators of the timeliness of agencies' responses to its mandates to release information.

Not all government agencies have responded consistently to the new transparency reforms. One partial indicator of resistance is the number of citizen appeals of information request denials filed with the IFAI against an agency. The top ten agencies in absolute numbers of appeals resolved by the IFAI are listed in table 7.6. All these agencies are also on the list of the top twenty agencies that receive the most information requests. The final column reveals a wide range in the degree to which different agencies' information request denials provoke citizen appeals, including an especially high rate of contentiousness involving the Ministry of Public Administration, the federal government's principal "good governance" agency.

Challenges to Compliance with the LFTAIPG and IFAI Mandates

Agency compliance with IFAI mandates to release information cannot be taken for granted. The IFAI has two systems for monitoring compliance, but they are incomplete. First, the IFAI records the receipt of official agency statements that claim to have complied with an IFAI resolution. Second, the IFAI's verification office only learns of inadequate responses when alerted by appellant complaints. The IFAI does not itself receive copies of the information released in compliance with a mandate, and therefore it cannot verify agency claims of compliance.

Table 7.6. The Top Ten Agencies in the Total Numbers of Appeals Decisions by the Instituto Federal para el Acceso a la Información Pública (IFAI), 2003–8

Agency	Total Resolved Appeals ^a	Appeals Decisions as Percentage of Total Information Requests to Each Agency
Mexican Social Security Institute	1,405	3.2
Ministry of Public Administration	1,050	9.9
Ministry of Public Education	911	5.2
Office of the Attorney General	816	9.1
Treasury Ministry	727	5.1
Communication and Transportation Ministry	623	6.7
Tax Administration Service	578	7.9
Petróleos Mexicanos	490	8.1
Institute for Social Security and Services for Public Employees	468	5.8
Ministry of the Interior	452	5.1
Proportion of resolved appeals to top ten agencies as a percentage of the total resolved appeals		39.5

Sources: Information requests 0673800005909 and 0673800026809.

Note: The figures are based on total appeals where the process has concluded and the IFAI commissioners have reached a final resolution.

^aThe IFAI commissioners began adjudicating appeals in August 2003.

Citizens have two possible recourses if they are dissatisfied with an agency's response to an IFAI mandate. First, an appellant can request the IFAI's continued involvement in the case by making an official complaint to its Department for Coordination and Monitoring of the Federal Public Administration. Once a complaint is filed, IFAI staff work directly with the agency to encourage compliance with the mandate, using their informal powers of persuasion, because they lack the tangible threat of sanction. In addition, appellants can file an appeal through the courts, to report that the agency has violated their rights. This arduous legal path has rarely been followed.

The IFAI received a total of 669 complaints from appellants who were dissatisfied with agency responses to IFAI decisions, through 2008 (table 7.7).²² However, these data appear to be incomplete, because many appellants deal with noncompliance more informally, through telephone calls to IFAI staff. These complaints refer only to those cases in which the initial attempts at resolution were unsuccessful, and therefore the complaints began

Table 7.7. *Appellant Complaints to the Instituto Federal para el Acceso a la Información Pública for Noncompliance with Its Resolutions, 2003–8*

Measure	Accumulated						
	Total	2003	2004	2005	2006	2007	2008
Totals	669	0	46	107	167	187	162
Percentage of total resolved appeals	3.5	0	3.2	4.1	5.5	3.8	2.7

Sources: Information requests 0673800018807, 0673800076508, and 0673800064109.

a more formal process of investigation and resolution. They represented 3.5 percent of the total number of appeals decisions. The specific agencies that stand out for having received the most complaints for noncompliance with IFAI mandates to release information include the Ministry of Public Education, the Attorney General's Office, and the Ministry of Public Administration (Secretaría de la Función Pública, SFP), as indicated in table 7.8.

One of the main constraints on the appeals process involves the IFAI's lack of capacity to enforce its decisions. Instead, the IFAI must forward its recommendations for sanctions to the SFP. This is because the transparency

Table 7.8. *Top Ten Agencies with the Most Complaints for Noncompliance with the Instituto Federal para el Acceso a la Información Pública's Resolutions Where Instructed to Release Information, 2004–8^a*

Agency	Accumulated Total Complaints	Total Appeals with Instructions	Percentage of Total Appeals Decisions Involving Instructions to Agency
Ministry of Public Education	46	357	12.9
Office of the Attorney General	34	249	13.7
Mexican Social Security Institute	30	420	7.1
Ministry of Public Administration	29	251	11.6
Foreign Relations Ministry	24	185	13.0
Treasury Ministry	22	233	9.4
Office of the President	19	227	8.4
Petróleos Mexicanos— Exploration and Production	19	122	15.6
Communication and Transportation Ministry	18	232	7.8
National Water Commission	17	125	13.6

Sources: Information requests 0673800076508 and 0673800064109.

^aNo complaints for noncompliance were registered for 2003.

law relies on the Law of Responsibilities of Public Servants to sanction non-compliance, through the SFP's Offices for Internal Control. This system is designed to hold staff responsible for individual transgressions. However, because of the "many hands" involved in any given policy decision, it is often extremely difficult to charge any one specific individual for agency noncompliance with an IFAI mandate.²³ Notably, the SFP itself is one of the agencies that most frequently ignores IFAI decisions, as shown in table 7.8. In practice, relying on the SFP system to sanction noncompliance with IFAI mandates has had limited tangible results, allowing senior staff to evade responsibility.²⁴

The IFAI's leaders faces a challenge here. On the one hand, for their decisions to have credibility, the potential for sanctions is necessary. On the other hand, the IFAI's capacity to function depends heavily on collaborative working relationships with agencies, notably with each agency's information committees and liaison units. Within the IFAI, there is a strong desire to cooperate with agencies in their responses to citizen requests and in their encouragement of compliance with IFAI resolutions in those cases where the commissioners have decided in favor of disclosure. Rather than create an environment of adversarial conflict between the IFAI and executive branch agencies, IFAI staff members prefer to try persuasion.²⁵

The Recent Evolution of Mexico's Information Policy Debate

The information policy debate has many different dimensions and involves an increasing number of actors. At the broadest level, however, key changes in terms of public debate have unfolded in three major arenas: the role of the IFAI itself, the new debate over a "second generation" of information reforms, and the question of how to resolve the commitment to public disclosure with the right to privacy. It is useful to examine each of these three arenas.

The first major development to note in the information policy debate since the 2002 federal law is that the IFAI itself has become a major actor in its own right. In the course of its brief and unprecedented trajectory, it has established a significant degree of public credibility, especially with the media and the intelligentsia. In contrast to the rest of the federal government, the IFAI was built from scratch *after* Mexico's historic 2000 elections, and therefore it did not directly inherit the burden of the legacy of the past. It has demonstrated an uneven degree of independence from executive

authority, but its commissioners recognize that their credibility depends in part on the *perception* of autonomy.²⁶

Second, the difference between state and federal standards for information rights raised broader issues of federalism.²⁷ Most state laws are significantly weaker than the federal law—in some cases, they more closely resemble “state secrets” laws than tools for citizen access (e.g., Oaxaca, Guerrero). To ensure that Mexico’s different public institutions meet a shared minimum standard, many observers agreed that a constitutional reform would be necessary. Governors from all three major political parties, as well as the IFAI’s own commissioners, led the call for such a constitutional amendment.²⁸ The reform was approved unanimously in Congress and quickly ratified by the states in mid-2007, in spite of persistent polarization in the political party system. Not coincidentally, perhaps, the constitutional reform does not cover the transparency of public funds used by private entities, such as political parties and governmental trust funds (*fideicomisos*).²⁹ As of the end of the one-year period allowed for compliance with this constitutional mandate, however, none of the states with very low information rights standards had improved them. In the notable case of Queretaro, the state actually weakened its information access system following the constitutional reform, and Jalisco’s information agency was seriously threatened. Notably, the federal Attorney General’s Office declined to exercise its legal opportunity to challenge the constitutionality of Queretaro’s rollback of information rights standards, sending a subtle but powerful signal to other state governments.

Third, the debate over how to reconcile public information rights with the right to privacy is more incipient but very significant for the future. In contrast to the constitutional amendment’s mandate for minimum national standards across different levels and bodies of government, the issues here are less clear-cut. There *are* direct trade-offs between individuals’ rights to privacy and the public’s right to know. In some cases, the right to privacy of personal data that is in public records may seem straightforward, as in the case of individuals’ medical and tax information. However, the question of public disclosure of information about the destination of government subsidies has entered into conflict with laws that favor the confidentiality of business-related information—as in the high-profile case of Mexico’s banking secrecy laws. This issue has revealed a major imbalance in the federal law—though government agencies must disclose how their budgets are allocated, private actors that receive public funds are not required to be publicly accountable. (Notable examples of official transparency in this arena

are the innovative reports of the Office of the Federal Superior Auditor regarding the public accounts for 2005. These reports highlight how large companies were able to avoid paying federal taxes, with large-scale macroeconomic effects, though apparently all was well within the law; no specific names were mentioned.)³⁰ The question of public access to property records raises similar issues, because individuals’ rights to privacy can conflict with the public’s interest in exposing “inexplicable enrichment” or revealing public officials’ potential conflicts of interest. As in so many policy issues involving the more technical side of information access, the devil will be in the details.

The Culture of Transparency

In principle, many can agree on the importance of “the culture of transparency”—perhaps because it can be understood in so many different ways. This is a broad umbrella term that refers to changes in the beliefs, practices, and expectations, embedded in both the state and society, about the public’s right to know. Clearly, this idea goes beyond legal formalities, because legal changes do not automatically create a widely shared recognition that government information belongs to the citizenry, rather than being the patrimony of officials. The term implies that attitudinal changes are needed for functionaries to accept the public’s right to know—especially because, in practice, the threat of tangible sanctions for noncompliance is so weak. A 2007 survey of more than 1,200 federal officials regarding their attitudes toward information access reforms revealed substantial skepticism, to say the least. The survey was based on a random sample of administrators at the rank of area head or director-general. More than 43 percent agreed with the statement “most information requests are used by requesters for some personal benefit,” and 30 percent reported that since the information law went into effect, “some officials save fewer work-related documents.” When asked when information should be “protected” from the public, 45 percent agreed with “when the superior has not authorized its release,” and 53 percent agreed with “when we suspect that the information will be used to attack the entity.”³¹ These attitudes help to explain the growing issue of agency claims that information requested “does not exist.”

To promote the culture of transparency also implies a series of changes in civil society, involving the horizontal spread of the right to know as part of the broader “right to have rights.” Mexico’s years of civil society

mobilization, reinforced by the IFAI's public media campaigns, appear to have made a difference. According to a major public opinion survey, when asked "Do you or do you not have the right to access the information generated by the government," 89 percent responded in the affirmative. Their reasons included "because I am Mexican" (25 percent), "because I pay taxes" (14 percent), "because it's the government's obligation" (22 percent), and "all of the above" (27 percent). The survey also reported that 64 percent had heard of the IFAI. Yet only 15 percent reported that they had requested information from the government.³²

Changes in the culture of transparency within civil society involve not only new expectations but also new practices. Here, the effective exercise of information rights requires significant investments in learning—involving both the technical side of *how to make requests* and the broader strategic question of *what to request*. This involves incorporating the exercise of information rights into broader campaigns in defense of the public interest. Increasingly, civil society organizations are making this investment in learning how to use the new tool kit. The tangible effects, though promising, remain incipient and vary widely across issue areas.

Even IFAI commissioners have expressed concern about what they consider to be the narrow social base of those who actually use the official information request system. As of the end of 2008, approximately 7,000 distinct individuals accounted for more than half the total information requests submitted via the formal executive branch request system.³³ These data suggest that the information request system is largely a domain of specialists, engaging a relatively small number of citizens. There is much truth to this, and there is a long way to go before a substantial fraction of the citizenry learns how and why to exercise its information rights. Yet these data also suggest a somewhat incomplete picture of the degree of civil society resonance of the right to know, for three reasons.

First, for many of those who use the system even just once, if it resolves a major issue for that individual, then that certainly "counts" as impact. Moreover, it is important to consider that the "right to know" goes beyond the exercise of formal information rights through filing requests through the IFAI. On the one hand, thanks to obligatory disclosure requirements, a significant amount of basic information about government programs is now publicly available without the need for a formal request. On the other hand, civil society organizations take the right to know one step further, with their own independent monitoring and evaluation of the public sector.

Second, even if many information requests originate from a few thousand

specialists, such as journalists and civil society activists, the impact of their requests is magnified by their capacity to disseminate their findings through the mass media and in their strategic roles as opinion makers. And third, Mexico's public sector also includes other tools for information access, including new "citizen attention" programs and social audit processes. Some of these innovations combine information access and ombudsman functions, as in the case of the Citizen Attention Office of Mexico's flagship social program, Oportunidades, which each year receives more information requests than the *entire* executive branch covered by the IFAI. Thus, in 2006, Oportunidades received more than 87,000 "citizen demands" for information, including complaints, in contrast to the 60,000 information requests directed via the IFAI.³⁴

This contrast suggests that information access systems that are specifically tailored to the needs of Mexico's lowest-income citizens can generate a very substantial demand. In addition, the thousands of complaints about government abuse that Mexicans file with state and federal human rights commissions also constitute a demand for a kind of transparency—a call for one government agency to officially recognize that the fact that another agency violated human rights is a demand for "answerability." (The mandate of official human rights commissions is limited to transparency—shining a public spotlight by naming, investigating, and verifying citizen claims. There is little evidence that they have actually contributed to reducing human rights violations or impunity.)

Changes in the culture of transparency, in both state and society, should be measured not only in terms of changing expectations and standards of openness but also in terms of attitudes toward secrecy and the withholding of public information. Tolerance for official secrecy reflects the other side of the coin of the culture of transparency. Now that such practices are against the law, when will they be seen and treated as illegitimate violations of the public trust? In other words, if we understand the culture of transparency as grounded in actual practices, change will be slow if functionaries can continue to reject the new norms with impunity.

Conclusion

How does the experience of information rights in practice in Mexico inform our understanding of the right to know? This brings us back to the broader context, in which the right to know is both an instrument that the public can

use as well as a "safeguard," in the sense of a mechanism that can protect the public from abuses of power.³⁵ From this perspective, one of the main potential effects of the right to know unfolds in an arena that is impossible to measure with precision, involving those abuses of power that do *not* happen, thanks to the risk of scandal and possible formal or informal sanctions.

We also need to recognize that the term "safeguard"—in Spanish, *can-dado*, literally meaning "padlock"—has multiple meanings. Locks are tools whose effectiveness depends greatly on those who deploy them. First and foremost, one has to find the key and know how to use it. So far, one of the main characteristics of practical experiences with transparency and the right to information access is that their impact depends both on the capacity to exercise the right and on the capacity to *act* on the basis of the information that is made public. This is why the strength of any institutional safeguard depends to a great extent on its place within the *entire* system for the protection of citizens' rights, just as any chain is only as strong as its weakest link. When we consider the right to know in this context, its impact depends greatly on the capacity of all the other public institutions whose mission is to promote and defend public accountability and the rule of law.

To conclude, the effectiveness of the right to know also depends on processes of learning, within both civil society and the public sector. The fact that a second generation of constitutional reforms moved forward in 2007 to raise Mexico's minimum national standards for transparency indicates that this process of learning has made advances in a short period of time. The translation of new official discourse into actual state practices, however, is an arduous and contested process. The construction of any right is a long-term process, and the right to know is no exception.

Notes

1. For the view of one IFAI commissioner, see María Marvan Laborde and Roberto Corona Copado, "El Instituto Federal de Acceso a Información Pública: Una institución para la rendición de cuentas en México," in *Democratización, rendición de cuentas y sociedad civil: Participación ciudadana y control social*, ed. Ernesto Isonza Vera and Alberto Olvera (Mexico City: Centro de Investigaciones y Estudios Superiores en Antropología Social / Universidad Veracruzana / Miguel Ángel Porrúa, 2006).

2. For further discussion of the political economy of winners and losers in the transparency process, see Archon Fung, Mary Graham, and David Weil, *Full Disclosure: The Perils and Promise of Transparency* (Cambridge: Cambridge University Press, 2007).

3. See, among others, Andreas Schedler, "Conceptualizing Accountability," in *The Self-Restraining State: Power and Accountability in New Democracies*, ed. Andreas

Schedler, Larry Diamond, and Marc F. Plattner (Boulder, Colo.: Lynne Rienner, 1999); and Jonathan Fox, *Accountability Politics: Power and Voice in Rural Mexico* (Oxford: Oxford University Press, 2007).

4. For further conceptual discussion, see Jonathan Fox, "The Uncertain Relationship between Transparency and Accountability," *Development in Practice* 17, nos. 4–5 (August 2007); and Jonathan Fox, "Transparencia y rendición de cuentas," in *Más allá del acceso a la información: Transparencia, rendición de cuentas y Estado de Derecho*, ed. John Ackerman (Mexico City: Siglo XXI / Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México / CETA, 2008).

5. On the origins of the law, compare Juan Francisco Escobedo, *México: Poliarquía en construcción; Democratización, comunicación, información y gobernabilidad* (Mexico City: Universidad Iberoamericana, 2004); and Sergio López-Ayllón, "La creación de la Ley de Acceso a la Información en México: Una perspectiva desde el Ejecutivo federal," in *Transparentar al Estado: La experiencia mexicana de acceso a la información*, ed. Hugo A. Concha Cantú, Sergio López Ayllón, and Lucy Tacher Epelstein (Mexico City: Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México, 2005).

6. For a full list, see Roger Vluogels, "Overview of the 86 FOIA Countries," September 22, 2008, www.freedominfo.org.

7. See <http://portaltransparencia.gob.mx/pot/>.

8. See <http://www.ifai.gob.mx> and <http://www.mexicotransparente.org.mx>.

9. See <http://www.ifai.org.mx/Gobierno/#estadisticas>. See also Juan Pablo Guerrero (IFAI commissioner), "Sobre el grave problema de la respuesta de 'inexistencia de la información' (o la incompetencia del sujeto obligado) ante solicitudes de acceso a entidades y dependencias de la Administración Pública Federal," unpublished document, January 30, 2009.

10. IFAI, "Estadísticas del SISI," www.ifai.gob.mx.

11. See IFAI, *5to Informe de Labores al Congreso de la Unión, 2007* (Mexico City: IFAI, 2008), www.ifai.gob.mx.

12. IFAI, "Estadísticas del SISI," www.ifai.gob.mx.

13. Personal email communication, Juan Pablo Guerrero, IFAI commissioner, January 30, 2009. Combined with other agency responses that did not produce information, such as "it's not our department" and claims of confidentiality, the total share of negative responses to requests with multiple components reached 60 percent. This finding is consistent with an independent comparison of the content of information requests and agency responses, also based on a representative sample, which found that the quality of responses dropped sharply in the cases of complex requests. See Kate Doyle, Jesse Franzblau, and Emilene Martínez-Morales, "FOI in Practice: Measuring the Complexity of Information Requests and Quality of Government Responses in Mexico," National Security Archive, Washington, D.C., <http://www.gwu.edu/~nsarchiv/mexico/>.

14. For a recent independent evaluation of government information sites, see Política Digital, "Ranking de portales de transparencia: La medición 2009," <http://www.politicadigital.com.mx/?P=leemoticia&Article=934>.

15. IFAI, *5to Informe*, 19.

16. See Sergio López Ayllón and David Arrellano Gault, "Estudio en material de transparencia de otros sujetos obligados por la Ley de Transparencia y acceso a la Información Pública" (Mexico City: Centro de Investigación y Docencia Económicas, 2006), www.ifai.gob.mx, under "estudios"; and Benito Nacif Hernández, Diego Díaz

- Iturbe, and Jorge Egren Moreno, "Informe de transparencia del poder legislativo en Mexico" (Mexico City: Monitor Legislativo, Centro de Investigación y Docencia Económicas, 2006), <http://www.monitorlegislativo.org>.
17. See Eduardo Guerrero Gutierrez and Leticia Ramírez de la Alba Leal, "La transparencia en Mexico en el ámbito subnacional: Una evaluación comparada de las leyes estatales," in *Democracia, transparencia y constitución: Propuestas para un debate necesario*, ed. Sergio López-Ayllón (Mexico City: Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México, and IFAI, 2006); and Mauricio Merino, *The Challenge of Transparency: A Review of the Regulations Governing Access to Public Information in Mexico States*, Justice in Mexico Working Paper 5 (Mexico City: Justice in Mexico, 2006), <http://www.justiceinmexico.org>.
18. IFAI, *5to Informe*, 23.
19. See, e.g., the test case detailed by Jonathan Fox and Libby Haight, "The Electoral Use of Federal Funds in the 2004 Oaxacan Elections," in *Mexico's Right to Know Reforms: Civil Society Perspectives*, ed. Jonathan Fox, Libby Haight, Helena Hofbauer, and Tania Sánchez (Mexico City: FUNDAR / Woodrow Wilson International Center for Scholars, 2007), 210–13.
20. On the debate, see Miguel Ángel Granados Chapa, "Las muertes de Doña Ernestina," *Reforma*, July 9, 2007. For the official account, see the full IFAI ruling, July 4, 2007, at <http://www.ifai.org.mx/resoluciones/2007/1494.pdf>.
21. IFAI, *5to Informe*, 25.
22. Information request 0673800018807.
23. On "the problem of many hands," see Dennis Thompson, *Political Ethics and Public Office* (Cambridge, Mass.: Harvard University Press, 1987).
24. See Ernesto Villanueva, "Transparencia acotada," *Proceso*, no. 1557, March 10, 2006.
25. Interviews, IFAI Office for Coordination and Monitoring of the Federal Public Administration, November 2006.
26. A November 22, 2006, debate among the commissioners about how to address possible conflicts of interest led to a 3–2 vote in favor of a "soft" approach.
27. See Mauricio Merino, "Muchas políticas y un solo derecho," in *Democracia, transparencia y constitución*, ed. López-Ayllón.
28. See, e.g., the "Declaración del Foro 'La Transparencia a la Constitución,'" January 31, 2007; and Ricardo Becerra and Alonso Lujambio, "Por que constitucionalizar?" in *Democracia, transparencia y constitución*, ed. López-Ayllón.
29. See Miguel Pulido, "Reflexiones sobre el dictamen de Reforma al artículo 6° constitucional aprobado en la Cámara de Diputados," *Mexico Transparente* 3, no. 1 (January–April 2007): 10–11. www.mexicotransparente.org.mx.
30. These examples are reported by Carlos Acosta Córdova, "Desastre hacendario," *Proceso*, no. 1589, April 15, 2007; see also www.asf.gob.mx.
31. For the details, see Probabafística, *La cultura de los servidores públicos alrededor de los temas de transparencia y acceso a la información: Encuesta* (Mexico City: IFAI/CETA, 2007), <http://www.ifai.org.mx/SitiosInteres/estudios>.
32. Carolina Pacheco Luna, *Cultura de la transparencia: Primera encuesta de acceso a la información pública en México* (Mexico City: LIMAC, 2006), 67–68, 72, 80. See also David Sobel, Bethany A. Davis Noll, Benjamin Fernández Bogato, TCC Group, and Monroe Price, *The Federal Institute for Access to Public Information in Mexico and*

a Culture of Transparency (Philadelphia: Project for Global Communication Studies, Annenberg School for Communication, University of Pennsylvania, 2006).

33. Juan Pablo Guerrero Amparán, "Sobre el grave problema de la respuesta de 'inexistencia de la información' (o la incompetencia del sujeto obligado) ante solicitudes de acceso a entidades y dependencias de la Administración Pública Federal," January 30, 2009.

34. Programa Oportunidades, "Atención Ciudadana: Informe Anual, 2006." See also Fox, *Accountability Politics*. The fact that, by definition, all these Oportunidades information requesters are citizens (mothers) living in extreme poverty reveals a more complete picture of the "social profile" of citizen demand for public information in Mexico. This "Citizen Attention" office is an excellent example of a "targeted transparency" initiative, a reform strategy that differs from general request-based approaches because it is designed to provide specific kinds of information with specific groups of interested stakeholders. See Fung, Graham, and Weil, *Full Disclosure*.

35. See the papers on the subject of institutional "safeguards" presented at the international seminar "Candados y derechos: Protección de programas sociales y construcción de ciudadanía," sponsored by the United Nations Development Program, Mexico City, April 25–27, 2007, <http://www.seminarioprotecciondeprogramas.org.mx/>. Also see David Gómez Álvarez, ed., *Candados y contrapesos: La protección de los programas, políticas y derechos sociales en México y América Latina* (Guadalajara: ITESO / UN Development Program, 2009).

Mexico's Democratic Challenges:
Politics, Government, and Society

Edited by Andrew Selee and Jacqueline Peschard

Woodrow Wilson Center Press
Washington, D.C.

Stanford University Press
Stanford, California

EDITORIAL OFFICES

Woodrow Wilson Center Press
One Woodrow Wilson Plaza
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-3027
Telephone: 202-691-4029
www.wilsoncenter.org

ORDER FROM

Stanford University Press
Chicago Distribution Center
11030 South Langley Avenue
Chicago, IL 60628
Telephone: 1-800-621-2736

© 2010 by the Woodrow Wilson International Center for Scholars
All rights reserved
Printed in the United States of America on acid-free paper ∞

Library of Congress Cataloging-in-Publication Data

Mexico's democratic challenges : politics, government, and society / edited by Andrew Selee and Jacqueline Peschard.

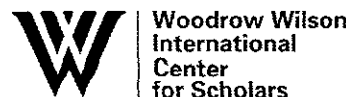
p. cm
Includes index.

ISBN 978-0-8047-7161-0 (hardcover) — ISBN 978-0-8047-7162-7 (pbk.)

1. Mexico—Politics and government. 2. Democracy—Mexico. 3. Political participation—Mexico. 4. Civil society—Mexico. I. Selee, Andrew D. II. Peschard, Jacqueline.

JH1281.M475 2010
320.972—dc22

2010004898



The Woodrow Wilson International Center for Scholars is the national, living U.S. memorial honoring President Woodrow Wilson. In providing an essential link between the worlds of ideas and public policy, the Center addresses current and emerging challenges confronting the United States and the world. The Center promotes policy-relevant research and dialogue to increase understanding and enhance the capabilities and knowledge of leaders, citizens, and institutions worldwide. Created by an Act of Congress in 1968, the Center is a nonpartisan institution headquartered in Washington, D.C., and supported by both public and private funds.

Conclusions or opinions expressed in Center publications and programs are those of the authors and speakers and do not necessarily reflect the views of the Center's staff, fellows, trustees, or advisory groups, or any individuals or organizations that provide financial support to the Center.

The Center is the publisher of *The Wilson Quarterly* and home of Woodrow Wilson Center Press and *dialogue* television and radio. For more information about the Center's activities and publications, including the monthly newsletter *Centerpoint*, please visit us on the web at www.wilsoncenter.org.

Lee H. Hamilton, President and Director

Board of Trustees

Joseph B. Gildenhorn, Chair
Sander R. Gerber, Vice Chair

Public members: James H. Billington, Librarian of Congress; Hillary R. Clinton, Secretary of State; G. Wayne Clough, Secretary of the Smithsonian Institution; Arne Duncan, Secretary of Education; David Ferriero, Archivist of the United States; James Leach, Chairman of the National Endowment for the Humanities; Kathleen Sebelius, Secretary of Health and Human Services

Private citizen members: Charles E. Cobb Jr., Robin Cook, Charles L. Glazer, Carlos M. Gutierrez, Susan Hutchison, Barry S. Jackson, Ignacio E. Sanchez

Contents

List of Tables and Figures	ix
Foreword— <i>José Woldenberg</i>	xiii
1 Mexico's Democratic Challenges <i>Andrew Selee and Jacqueline Peschard</i>	1
Part I: The Evolving Political System	
2 Citizens' Values and Beliefs toward Politics: Is Democracy Growing Attitudinal Roots? <i>Alejandro Moreno</i>	29
3 The Restructuring of the Party System in the Wake of the 2006 Elections <i>Jean-François Prud'homme</i>	50
4 Federal and Local Electoral Institutions: From a National to a Fragmented System <i>Jacqueline Peschard</i>	68
5 The 2006 Elections: Democratization and Social Protest <i>John M. Ackerman</i>	92

Part II: Institutions in Transition?

6	Executive-Legislative Relations: Continuity or Change? <i>María Amparo Casar</i>	117
7	Transparency Reforms: Theory and Practice <i>Jonathan Fox and Libby Haight</i>	135
8	Reforming Civil-Military Relations during Democratization <i>Raúl Benítez Manaut</i>	162
9	Federalism and the Reform of Political Power <i>Tonatiuh Guillén López</i>	187
10	The Justice System, 2000–2007 <i>José Ramón Cossío Díaz</i>	203

Part III: The Changing Nature of State-Society Relations

11	Taming the Diaspora: Migrants and the State, 1986–2006 <i>David R. Ayón</i>	231
12	Struggle and Resistance: The Nation's Indians in Transition <i>Rodolfo Stavenhagen</i>	251
13	The Role of Civil Society <i>Mariclaire Acosta</i>	268
14	Churches, Believers, and Democracy <i>Roberto Blancarte</i>	281
15	Democratic Antipoetry <i>Jesús Silva-Herzog Márquez</i>	296
	Contributors	307
	Index	313

Tables and Figures

Tables

1.1	Composition of the Chamber of Deputies by Political Party, 1982–2009	5
2.1	Views about Politics, Selected Years	42
2.2	Confidence in Institutions	43
2.3	Support for Political Systems	43
2.4	Changes in Values and Beliefs at a Glance	44
2.5	Contrasting Views about Democracy, Government, Politics, and Parties	45
2.6	Perceptions about the Political Environment	45
2.7	Views on the Essentials of Democracy	46
2.8	Views about Democracy	46
2.9	Contrasting Values and Priorities	47
3.1	Results of the 2006 Legislative Elections	58
3.2	The First- and Second-Place Parties, 2000, 2003, and 2006	60
4.1	Local Electoral Reforms, 1996–2007	75
6.1	Distribution of Power in the Chamber of Deputies, 1946–2006	119
6.2	Distribution of Power in the Senate, 1946–2006	120