

U.S.-MEXICO FUTURES FORUM

Mexico's Right-to-Know Reforms

by Jonathan Fox

Mexico's laws and official political discourse now emphasize transparency. Citizens' "right to know" is assumed to encourage more accountable governance. But what difference have these reforms made in practice, and how do we know?

After the historic presidential elections in 2000, the momentum for institutional change quickly stalled. Once incoming president Vicente Fox proved unable to assemble a working majority in Congress, the "reform of the state" dropped off his list of priorities. National regulatory agencies remained weak and ineffective. Democratic electoral change at the subnational level — widely credited with helping to drive the national transition in the 1980s and 1990s — turned out to produce relatively little in the way of innovative democratic governance. Impunity for human rights violations persisted.

The "Forum for a Transparent Oaxaca" focused on improving public access to government information in Oaxaca.

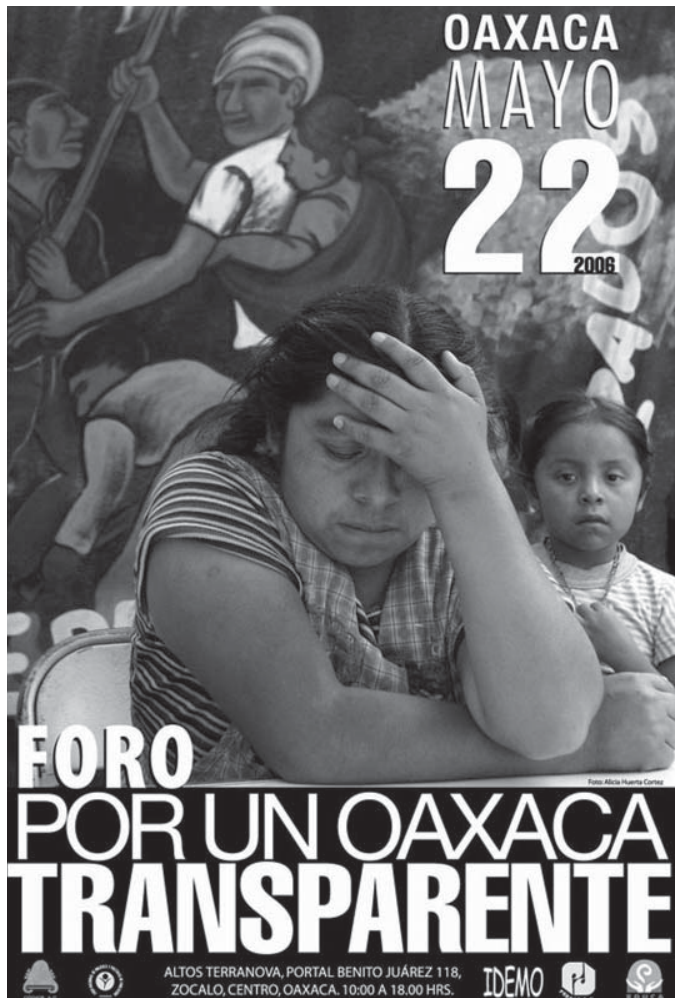


Photo by Alicia Huerta Cortez

Against this backdrop, which can be described more as regime transition than state transformation, Mexico's public information access reform stands out as the most clear-cut qualitative break with past patterns of national governance since the end of one-party rule. In 2002, a coalition of media and civil society elites forged an unusual consensus among Mexico's normally fractious political parties and were able to persuade Congress to unanimously pass a potentially powerful federal transparency law in 2003. Unlike so many new laws, this one was backed by a brand-new agency, unburdened by the PRI's legacy, with a powerful voice and substantial institutional capacity: the Federal Agency for Public Information Access (IFAI).

By the time of the 2006 presidential election campaign, national political rhetoric was peppered with newly obligatory references to transparency and accountability, as even old-fashioned politicians attempted to retool their images by appropriating the discourse of good governance. While the term is new to national politics and still sounds a bit bureaucratic to many, the concept of accountability has long been contested in Mexico, from Zapata's call for the rule of law to the 1968 student movement.

The transparency law mandates a very explicit presumption in favor of disclosure. That is, the law requires that all documents and information produced by the federal government should be publicly accessible — unless they fall into a category specifically covered by a clearly bounded exception. In addition, the IFAI includes a robust system for citizens to appeal information denials by government agencies. The appeals tribunal is made up of the IFAI's governing council, which has sided with citizens more often than with government agencies.

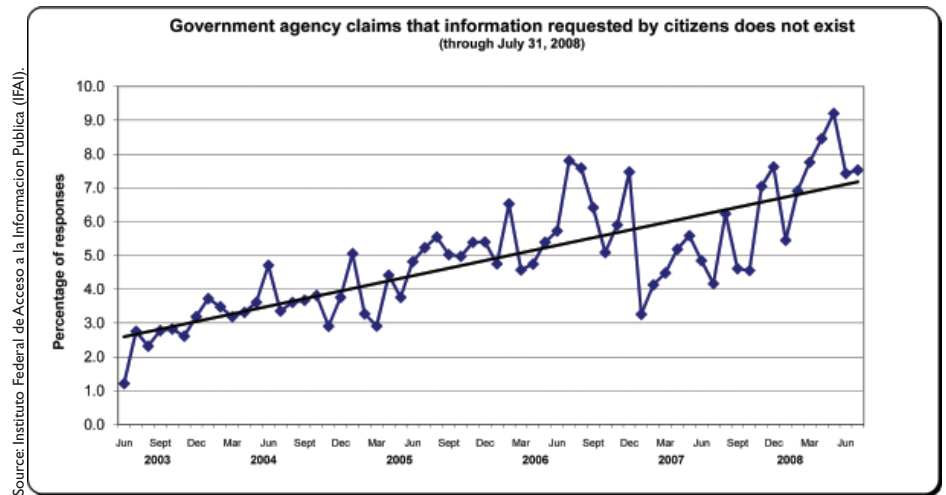
The IFAI uses an electronic information request system called the System for Information Requests (Sistema de Solicitudes de Información or SISI). Requesters can easily fill out an online form to solicit data from a federal agency. The request then goes directly to the agency, which responds to the citizen through the same electronic system. Citizen demand has been increasing steadily, with more than twice as many requests in the past year as in the system's first year.

But there have been a few catches. In principle, the information request process is quite straightforward for those familiar with the Internet. Both the IFAI and civil

society organizations have produced useful manuals that clearly explain the procedures. Yet filing a request is often not enough to actually access the information requested. This is in part because of the challenges involved in the crucial step of formulating the request. It turns out that filing a successful request requires one to already know a great deal about what one is looking for. This poses a classic “chicken-and-egg” problem. Citizens need to know exactly where to direct their requests; otherwise they will be rejected because agencies can reply with: “that’s not our department.”

The second catch is that in order to achieve a quick consensus on the founding law and to avoid the need for a new constitutional reform, Congress limited its scope to the federal government, and the IFAI’s jurisdiction was limited to the executive branch. This meant that much of the state, including the judicial and legislative branches, as well as state and local governments, ended up with lower standards for public access. In response to these loopholes, Congress followed up with a constitutional reform in mid-2007, intended to raise the bar. Little actual compliance has followed, especially among the more opaque state governments.

Third, it turns out that government agencies are increasingly responding to citizen requests with claims that the information does not exist. Such claims are very difficult to disprove, especially since the information law was not accompanied by a rigorous archives law. Moreover, even when the IFAI tribunal rules in favor of citizens, agencies have learned that the IFAI has no independent capacity to issue sanctions for noncompliance. Indeed, the federal agency that is responsible for such sanctions, the



The rising number of claims that documents “do not exist” points to bureaucratic resistance to transparency reforms.

Ministry of Public Administration, is itself the agency with the highest rate of noncompliance with IFAI rulings in favor of disclosure.

Testing the Transparency Reform

Many civil society organizations have recognized that in order to put the transparency reforms to work and unearth information that is relevant, they must make substantial investments in learning the system. Thanks to support from the Hewlett Foundation, this researcher was able to participate in several applied research exercises that were designed to uncover the strengths and limitations of the information access reforms. The following section outlines findings from three of these studies, some of which are still in progress.

The first exercise was an attempt to track an internal government document produced by the Oaxaca state branch of the federal Social Development Ministry (Sedesol). The document detailed the state government’s systematic use of federal anti-poverty funds to bolster allied social organizations during the run-up to the 2004 governor’s election. Although the study named names, it was simply filed away by higher-

ups in Mexico City, and impunity persisted. The document — leaked to this researcher by a federal official who prefers to remain anonymous — appeared to constitute a useful case to test the federal information law. We knew it existed, and we could request it with its exact title and date (information request: 0002000016905).

The Ministry claimed that the document did not exist, declaring in its official response that the report requested was not an “official document” — and could not be — because of the nature of its contents. Sedesol argued that it would be prohibited from preparing such a report because it documents illegal activities. According to Sedesol, it would never commission a study that addressed the electoral use of social programs because such activity is against the law. University of California, Santa Cruz research project associate Libby Haight filed an appeal, including a copy of the document in question with an electronic footprint that showed it had been created on a Sedesol computer (Appeal file number 730/05). The IFAI tribunal rejected the ministry’s claim that it could not, by definition, be an official document because

of its content. Yet the tribunal also ruled that there was inadequate proof that it was an official document. It is not clear whether providing additional information about the document's origins would have persuaded the tribunal, but doing so would have put the whistleblower at risk. In the end, the IFAI tribunal ratified the government's denial of responsibility for the document. The broader lesson was that, when it comes to official "declarations of nonexistence," the burden of proof falls squarely on the requester.

The second exercise involves a network of rural women's civic and social organizations in the Costa Grande region of Guerrero, which has tried to use federal and state information access reforms to address concerns about the performance of their local public clinics, including issues of quality and access to care. By federal law, the government is required to cover the clinics' operating expenses, such as electricity and the cost of a basic set of medicines which are to be distributed free of charge. However, citizen monitors discovered that, in practice, the free medicines are rarely available, and participants in the government's flagship welfare program, Oportunidades, are obliged to pay the clinics' electricity bills through so-called "*cooperaciones*." In principle, it should be possible to "follow the money" from congressional national health budget appropriations, to the state government, to the regional health districts and down to the clinics. In practice, the funds nominally allocated for medicines for the public clinics disappear into the black hole of the state government budget. After a year, several rounds of requests, a victory in the IFAI appeals process, internally contradictory budget data and steep fees for documents with numerous irrelevant or blank pages, the state government finally promised to provide the disaggregated budget data that would show the missing links from the health district to the local clinics, by line item. But the health ministry wanted to charge more than US\$1,600 for the documents, which included a 60 percent tax on the 20 cents per page fee. Community organizers and their advisors were offended. Not only did they lack the money to pay the fees, they also considered them to be illegitimate (indeed, the taxes and fees clearly violated the newly established constitutional standards). Grassroots organizers are now concentrating on strengthening their capacity to monitor the quality of, and public access to, health service delivery, gathering their own evidence to identify broader patterns of violations of health rights.

This example illustrates a wider problem. Budget information is one of the transparency issues that has generated the most sustained civil society attention in Mexico, based on efforts by the national watchdog group

FUNDAR to track budget earmarks for preventing maternal mortality and to address HIV/AIDS. Yet in all the cases where federal funds were disbursed to state governments, as in the case of health programs, it proved impossible to "follow the money."

The third exercise was inspired by the Environmental Working Group's (EWG) U.S. farm subsidy database, which reveals the high concentration of farm subsidies in a small number of large corporate farms. In Mexico, the government spends substantially more on agriculture per capita of its rural population than do most Latin American countries, but a huge proportion of these funds are captured by a few large producers in a small number of northern states. With technical support from Libby Haight, Mexican *campesino* advocates and right-to-know activists partnered with EWG and FUNDAR to launch the first farm subsidy database in a developing country (see <http://subsidiocalcampo.org.mx>). As in the U.S., this database takes vast official lists of subsidy recipients that are nominally public and uses a software platform to make access user-friendly — even to the point of seeing what payments were received by specific individuals and companies.

The new FUNDAR database currently covers just two of the largest direct payment programs, which together account for less than half the federal agriculture ministry's budget (which itself leaves out water and electricity subsidies, which are also concentrated among privileged northern producers). However, these two payment programs — both originally justified in terms of compensation for Mexico's acceptance of free trade — represent over 70 percent of direct payments to farmers in Mexico. In the future, the site will include information about Mexico's many other agricultural subsidy programs.

Meanwhile, a month before the site was launched, Mexico City's lobby for state agriculture ministries charged in a presentation to the president that the idea of reforming farm subsidy policy to "take away from the rich to give to the poor... sounds like anachronistic populism and demagoguery that would provoke conflicts that undermine the country's stability." It is too soon to tell whether user-friendly public access to data about who gets what from the farm subsidy system will actually inform the policy process, given the readiness of powerful vested interests to mobilize. In the end, the effectiveness of the database may depend on the media's capacity to "name and shame," as journalists trying out the new system begin to uncover the long list of politicians receiving farm subsidies.



Photo from Associated Press.

Stacks of legal documents await declassification as part of the push toward transparency.

Conclusions

To conclude, one of the main lessons from these three experiments is that campaigns for the “right to know” are broader than efforts to use transparency reforms. The right to know goes beyond access to government documents. To really “know” what the government is doing requires independent civil society monitoring of the policy process to generate reliable and independent information about the public sector’s performance. While information alone is not enough, the combination of independent policy monitoring and institutional transparency tools can potentially bolster broader reform strategies.

The fact that a second generation of constitutional reforms designed to raise Mexico’s minimum national

standards for transparency moved forward in 2007 indicates that this process of learning has advanced significantly in a short period of time. Yet as these three snapshots of applied research experiences indicate, directly affected stakeholders are only just beginning to get involved in efforts to harness transparency reforms to right-to-know campaigns. Indeed, the construction of any right is a long-term process — and the right to know is no exception.

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Selected online resources on information rights in Mexico:

IFAI: Federal Institute for Public Information Access
www.ifai.gob.mx

FUNDAR: Center for Research and Analysis
www.fundar.org.mx

Mexico Transparency Collective
www.mexicotransparente.org.mx

Right to Know
www.derechoasaber.org.mx

Open Mexico
www.mexicoabierto.org

Mexican Center for Environmental Law
www.cemda.org.mx

Farm Subsidy Database
subsidiosalcampo.org.mx/

Government external evaluations of social programs:
www.coneval.gob.mx

Note: Most Mexican states and large cities have their own online information access portals.