

FREEDOM OF INFORMATION LEGISLATION: THE FEDERAL TRANSPARENCY LAW IN MEXICO

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Freedom of Information

- ▣ FOI laws stem from the fundamental premise that all information held by governments and governmental institutions is in principle public and may only be withheld if there are legitimate reasons, such as privacy or security.



United Nations Standards

- ▣ The UN subscribed to principles of freedom of information as early as 1946. The Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly in 1948. Article 19 of this Declaration is binding on all States as a matter of customary international law and guarantees the right to freedom of expression and information.



UN (cont.)

- ▣ The International Covenant on Civil and Political Rights (ICCPR), a legally binding treaty, was adopted by the UN General Assembly in 1966 and, as of July 2007, had been ratified by 160 States. This instrument provides similar guarantees to those found in UDHR.
- ▣ It is important to note that these international instruments, when adopted, **were not necessarily meant to include the freedom to access information** but were rather open to interpretation.



Regional Standards– Organization of American States

- ▣ Article 13 of the American Convention on Human Rights (ACHR), a legally binding treaty, guarantees freedom of expression in terms similar to, and even stronger than, the UN instruments. In Article 13 of the ACHR we can find the declaration of Chapultepec (1994), which explicitly recognizes the right to information as a fundamental right, which includes the right to access information held by public bodies.
- ▣ In October 2000, the Inter-American Commission approved the Inter-American Declaration of Principles on Freedom of Expression, which is the most comprehensive official document to date on freedom of expression in the Inter-American system.



OAS– Objectives of the Declaration

- ▣ The preamble states: CONVINCED that guaranteeing the right to access to information held by the State will ensure greater transparency and accountability of government activities and the strengthening of democratic institutions; the declaration recognizes that 1) Every person has the right to access information about himself or herself or his or her assets whether it be contained in databases or public records (if necessary to correct it); 2) Access to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.



Article 19 of the *Public's Right to Know: Principles of Freedom of Information Legislation*

1. Maximum Disclosure- There should be a presumption in favor of disclosure subject to only a few exceptions.
2. Public Bodies should be under an obligation to disclose information.
3. Public Bodies must actively promote an open government.
4. Exceptions should be clearly and narrowly drawn and subject to a strict harm and public interest test.



(cont.)

5. Request for information should be processed rapidly and fairly and an independent review of any refusals should be independently available .
6. Individuals should not be deterred from making requests for information by excessive cost.
7. Meetings of public bodies should be open to the public.
8. Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.
9. Individuals who release information on wrongdoings (whistleblowers) must be protected.



Creation of the Federal Transparency Law in Mexico

- ▣ In 2002, the government of then president Vicente Fox (2000-2006) of the PAN (National Action Party) passed the Federal Law of Transparency and Access to Public Government Information, which gave rise a year later to the creation of the Federal Institute on Access to Information (IFAI) and a system of requests for information that covers more than 200 federal offices.



Main Aims of the Law

- ❑ Provide that which is necessary so that all persons have access to information through simple and expeditious procedures;
- ❑ Make public administration transparent by disclosing the information generated by subjects compelled by the Law;
- ❑ Guarantee the protection of the personal information possessed by subjects compelled by the Law;
- ❑ Encourage accountability to citizens, so that they may evaluate the performance of subjects compelled by the Law;
- ❑ Improve the organization, classification and handling of documents, and Contribute to the democratization of Mexican society and the full operation of the Rule of Law.
- ❑ In interpretations of this Law, the principle of publicity of information possessed by subjects compelled by the Law must be favored (Art.6).



Creation and Objectives of the Federal Institute on Access to Information (IFAI)

- ▣ The IFAI has the duty to interpret the law as an administrative legislation;
- ▣ To accept and settle appeals brought by individuals requesting information;
- ▣ To establish and oversee the criteria for the classification of information as confidential;
- ▣ To provide individuals with guidance regarding requests;
- ▣ To provide technical support to the agencies and entities for developing and carrying out their information programs;



(cont.)

- ▣ Oversee compliance by agencies
- ▣ To develop studies and investigations intended to publicize and broaden awareness of the substance of this Law;
- ▣ To prepare and propose an annual budget to be sent to the Secretariat of Treasury;



Amendments

- ▣ The 2007 amendment elevated the right to public information to the level of the constitution and this year's passage of the Federal Law for the Protection of Personal Data Held by Private Parties expanded the IFAI's authority and responsibilities



Observations

- ▣ According to UNESCO, this constitutional guarantee on freedom to information is probably the most detailed and comprehensive in the world, only after Sweden.
- ▣ A study by the Open Society Justice Initiative suggested that the failure to provide any answer to a request was lower in Mexico than in any of the other 13 countries surveyed. Mexico was also among the best performers in terms of percentage of requests met by a positive answer.



Observations (Cont.)

- ▣ Legislation vs. Implementation
- ▣ The CPI for Mexico was 3.1 in 2009 and 3.3 in 2010.
- ▣ The public will have to undergo a change in mentality with regards to the question of government transparency, and not see the government as a block, but as a web of different agencies and offices.
- ▣ The best way to make sure the laws are implemented and enforced is by actually using the system of access to information.



Hvala.

