JUSTICE IN MEXICO

Working Paper Series, Issue Number 5, 2006
www.justiceinmexico.org

The Challenge of Transparency: A Review of the Regulations Governing Access to Public Information in Mexican States

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ABSTRACT:
This text provides a critical review of the way in which access to public information began to be more open in Mexican states, as a result of the first state legislation on the matter. It compares the various models and procedures adopted by the states in light of an original theoretical proposal. The article is divided into two parts. The first describes the theoretical assumptions supporting the three levels of analysis used to compare state laws: one concerning the normative conditions for beginning the process of opening up public information, another referring to the organizational problems associated with this process and a third defining the jurisdictional sphere. In the second part, ten criteria drawn from these three levels of analysis are used to undertake a critical comparison of the status of access to public information in the Mexican federal regime. The conclusion is that this process is still incipient, incomplete and fragmented.
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SUGGESTED CITATION:
Merino, Mauricio. 2006. " The Challenge of Transparency: A Review of the Regulations Governing Access to Public Information in Mexican States ", Working Paper Series, Issue Number 5. Justice in Mexico Project. San Diego: UCSD Center for US-Mexican Studies and USD Trans-Border Institute.

THIS PROJECT IS MADE POSSIBLE THROUGH GENEROUS SUPPORT FROM
THE WILLIAM AND FLORA HEWLETT FOUNDATION

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INTRODUCTION

It is generally thought that Mexico decided to adopt the best practices of access to public information as a result of its transition to democracy. And it is a fact that the Federal Law of Transparency and Access to Public Information, passed two years after power switching in the president's office, was interpreted as a landmark in the history of Mexican public administration. From this perspective, the start of the process of opening up access to information was regarded as another stage in the consolidation of this regime. However, this opening up has been neither smooth nor homogenous throughout the country. Within the general aim of transparency, there have been problems of institutional design, operational difficulties and different legal points of view which, at the start of 2005, already constituted a set of new challenges and a complete research agenda.

The aim of this article is not to discuss the scope of this process in general, but rather to attempt to identify it within the much narrower context of the first regulations issued by Mexican states in order to become part of it. As we shall see further on, over time, the opening up of access to the information obtained and produced by the state has become both an individual right and a public policy. In both cases, however, we are barely at the start of a long road. And precisely because of this, it is useful at this point to find out about the main features of this process and the status of the regulations issued by Mexican states on this matter.

This text is divided into two parts: in the first, I attempt to identify the criteria I regard as being most useful for studying the way access to public information has been interpreted and in the second, I attempt to use these criteria to undertake a comparative examination of the state legislation passed to date in Mexico. I obviously provide an anticipation of the result: the outlook provided by these legislations is still, in general terms, incipient, incomplete and fragmented. One cannot yet speak of a transparency criterion shared by all states or of a mature policy implemented throughout the country. We are, as I said earlier, literally at the beginning of this road. Yet origins have a profound effect, meaning that it is important to determine how this new history has begun in local Mexican government.

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First: In Search of Criteria for Analysis

I.

Opening up public information undoubtedly reinforces the quality of democracy. In fact, access to timely, reliable information not only constitutes a basic condition for exercising fundamental rights but is also one of the most effective means of combating acts of corruption, counteracting the arbitrary exercise of political and administrative authority and giving citizens greater control over public affairs.[1] Transparency is an issue that permeates almost every level of a country's political and economic life. And it also constitutes, in its own right, one of the most important ethical principles for social coexistence.

However, and precisely because of its multidimensional nature, opening up access to public information is not an easy process. The literature on this subject is divided into at least three levels, which are not necessarily complementary: the first refers to the institutions that are essential for guaranteeing the right of access to public information. Simply put, this level concerns the construction of the legal regulations that lead to the opening up and design of the formal institutions responsible for making this possible. The second, derived from the former, concerns the organizational challenges derived from the law, in other words, not only the specific forms that these public institutions must adopt but also the impact of the process of openness on the routines of public organizations. And the third is located at the normative limits of the right to access to public information, which in turn raises at least two dilemmas that are extremely difficult to solve in practice: on the one hand, the one located at the subtle border separating public from strictly private and even intimate affairs[2] and another linked to the efficiency of some of the state's main functions, which require discretion and even secrecy in order to be successfully implemented. Each of these levels is important in itself yet at the same time, its relationship raises complex problems. Let us examine each one briefly, in search of criteria that will subsequently enable us to formulate a review of the current status of local governments in Mexico.

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[1] For more information on this particular aspect, see, among others, Jesús Rodríguez Zepeda, *Estado y transparencia: un paseo por la filosofía política*. Instituto Federal de Acceso a la Información Pública, Cuadernos de Transparencia núm. 4, México, 2004; and Federico Reyes Heroles, *Corrupción: de los ángeles a los índices*. Instituto Federal de Acceso a la Información Pública, Cuadernos de Transparencia núm. 1, Mexico, 2004.

[2] An analysis of the separation between the public and the private is amply developed in Fernando Escalante, *El derecho a la privacidad*. Instituto Federal de Acceso a la Información Pública, Cuadernos de Transparencia núm. 2, Mexico, 2004; and Ernesto Garzón Valdés, *Lo íntimo, lo privado y lo público*. Instituto Federal de Acceso a la Información Pública, Cuadernos de Transparencia núm. 6, Mexico, 2004.

II.

It is essential to recognize the fact that the principle behind the idea of transparency is drawn from the development of liberal democracy.[3] Nowadays, no thinking person would deny the importance of access to public information as one of the main conditions for increasing the quality of democracy and affirming citizens' capacity for control over the exercise of public power.[4] However, this democratic conviction had not become a fully guaranteed right in most countries with a democratic tradition until the late 20th century.[5] Transparency is really a novelty which also arose as a result of an economic reflection: the factor that triggered this process was the globalization of markets and the need for more and better information on its actual functioning, based on the regulations and probity of each country. Consequently, the main promoters of the best practices of transparency have been, at least initially, large international economic organizations, led by OECD and the World Bank.[6]

It is no coincidence that in the late 1990s, the vice-president of the World Bank, Joseph E. Stiglitz, coined the term *economic policy of information* in the quest for a change in the dominant paradigm based on the balance of markets. For this author, the Nobel laureate in economics, the lack of or deficient information used to regulate economic relations and make decisions on the markets not only constitute an aggregated cost that cannot be properly calculated, but also prove that the underlying assumptions of the theory of general equilibrium are false. From this perspective, Stiglitz has criticized the so-called Neo-classical paradigm on the basis of which Western economic policy has been structured, at least since the Washington Consensus, but at the same time, has established the theoretical bases for the construction of a new economic paradigm capable of assuming the consequences of the asymmetries of information in the functioning of markets and in public policy design. This approach to the issue from an economic point of view warrants extensive

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[3] Jesús Rodríguez Zepeda aptly refers to the statement that the liberal state model was "the first to be subjected to citizens' demand for transparency and obedience." I would like to point out the following statement by this author: "There is a clear demarcation between the liberal states on the one hand and absolutist, totalitarian and authoritarian states on the other in issues regarding the restricted use of information, the force give to political secrecy, the suppression of basic freedoms such as those of conscience or expression, or the interests of the state's own interest that may counter those of citizens. One could even say that the state can be defined, in its most general terms, as a state limited or contained by citizens' basic freedoms: in other words, a transparent state." Jesús Rodríguez Zepeda, *Estado y transparencia: un paseo por la filosofía política*. Instituto Federal de Acceso a la Información Pública, Cuadernos de Transparencia núm. 4, Mexico, 2004, p. 25.

[4] In this respect, although Norberto Bobbio holds that the elimination of invisible power is yet another false promise of real as opposed to ideal democracy, he also reminds us of the obligation to publicize government acts, not only "to allow citizens to find out about the actions of those that hold power and therefore to control them, but also because making these public is in itself a form of control, an expedient that enables one to distinguish what is licit from what is illicit." Norberto Bobbio, *El futuro de la democracia.* Fondo de Cultura Económica, Mexico, 1996, pp. 37-38.

[5] An inventory of the laws of access to information from a comparative perspective is available in David Banisar, www.freeinfo.org/survey.htm.

[6] For more on this aspect, see Federico Reyes Heroles, *De los ángeles a los índices.* Instituto Federal de Acceso a la Información Pública, Cuadernos de transparencia núm. 1, Mexico, 2004.

debate, which I cannot engage in here. However, I am interested in pointing it out because of its implications for the position that states may take towards the challenge of transparency, since it is not the same to assume that their intervention can be justified in order to correct flaws in the market as to assume that asymmetries in information are an inevitable cause of public policies. Hence the economic but above all political importance of this debate.[7]

Nevertheless, it is a fact that during the past fifteen years, this issue shifted from economics to political criticism until it became virtually a sign of democratic identity.[8] But couched in these terms, transparency has demanded a far broader discussion, since it gradually stopped being regarded as an instrument aimed solely at guaranteeing access to public information in an economic sense and began to be studied in terms of the responsible use of this information by users and also as the beginning of a democratic system of control over the exercise of public power. In other words, the original idea of transparency was associated with accountability. And this, in turn, has been linked as much with the responsibility of civil servants as it has with the democratic culture of citizens.

This difficult combination led at least to the two political dimensions of accountability described by Andreas Schedler: that referring to civil servants' obligation to be answerable for what they do and that concerning citizens' power to sanction the results of management.[9] However, the practical implementation of this idea implies extremely difficult conditions. Civil servants' ethical commitment to accountability is not enough: what is required is the construction of rules of the game that promote and guarantee the opening up of access to information, together with the guarantee that these rules will actually be enforced. On the other hand, it is also essential that citizens not only obtain the right to gain access to information but also use it increasingly to reinforce the means of participation and democratic control over power.

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[7] Joseph E. Stiglitz states that, "The most notable aspect (of this issue) is probable the controversies over development strategies, in which the policies of the Washington Consensus, based on the fundamentalism of the market (the simplistic view of competitive markets with perfect information that is inappropriate for developed countries but particularly harmful for developing countries) has prevailed at international economic institutions since the early 1980s. Elsewhere I have documented the failures of these policies in development, both in the handling of the transition from communism to a market economy and in crisis management. Ideas matter and it is hardly surprising that these policies, based on models that are so far from reality, should have failed so often.2 Cfr. *Information and the Change in the Paradigm in Economics.* Prize lecture. December 2001. Colombia Business School, New York, p.518. For a broader discussion on this issue, see also *El malestar en la globalización.* Taurus, Mexico, 2002.

[8] See Guillermo O´Donnell, "Horizontal Accountability in New Democracies", in *The Self-Restraining State: Power and Accountability in New Democracies,* eds. Andreas Schedler, Larry Diamond and Marc F. Plattner. Boulder and London: Lynne Rienner Publishers, 1999, pp. 29-51.

[9] These two dimensions refer to the terms *answerability* and *enforcement.* The former refers to "the obligation of politicians and civil servants to report in their decisions and to justify them in public." Andreas Schedler, *¿Qué es la rendición de cuentas?* Instituto Federal de Acceso la Información Pública, Cuadernos de Transparencia No. 3, Mexico 2004, p. 12. And the latter describes "a set of activities oriented towards the observance of the law" (*idem,* p. 16), or rather, "the capacity to sanction politicians and civil servants in the event that they have failed to comply with their public duties." (*idem,* p. 12).

In this respect, the two aspects proposed by Andreas Schedler refer both to the formal content adopted by institutions charged with guaranteeing the process of openness and the way in which citizens react to these institutions. Although the principle of transparency lies at the base of this combination, its conversion into legal obligations and procedures can be as casuistic as the circumstances of each place and moment. At the same time, the variables that affect the use of public information can be as vast as those that determine political culture and the behavior of citizens in general. Hence the enormous difficulty of establishing finished parameters for rating the validity of an institutional design in particular above any other, since although the principle may be the same, the way it is translated into legal regulations and institutions may be very different.

Nevertheless, from this first level of analysis, one can gather that compliance with the principle of transparency requires, at the very least: *a)* the existence of a legal framework aimed at guaranteeing access to public information, *b)* a set of information obligations on the part of the civil servants and public organizations that exercise public power; *c)* a well-defined system of laws to guarantee that citizens can effectively have access to public information; and *d)* a system for sanctioning civil servants who fail to be accountable, at least as regards the information they handle; and *e)* citizens and social organizations interested in obtaining public information. This first list contains the minimum requirements for assuming that a process of opening up access to public information has indeed begun. In the opposite sense, though, it can also serve to recognize the fact that this process has not begun or that, despite having being implemented, it contains obvious shortcomings in terms of a basic institutional interpretation.

III.

The design of the norms, obligations and legal procedures required to guarantee formal access to public information is not the only problem faced in the practical implementation of the principle of transparency. The second level of analysis is of an organizational order and refers to the difficulties and resistance experienced by the organizations bound by the regulations concerning access to information to adapt to compliance with the latter. Simply put, these are changes that must be introduced into the routines of public organizations so that they can be in a position to effectively meet the obligation to inform.

From an organizational point of view, transparency poses enormous challenges. The point is that it involves not only permitting access to the information compiled and produced by public entities but also modifying the way the latter work. It constitutes an almost complete break with the traditional bureaucratic model, according to which public administration operates under parameters imposed by rigid legal regulations and performs functions that are only linked with the public in the sense of offering

timely results, yet whose processing belongs to a sphere reserved for those that control this bureaucracy.[10] In the ideal of transparency, this model must be replaced by one in which virtually all the decisions to be taken by public organizations must be placed under public scrutiny, in the widest possible sense. Thus the problem shifts from apparently simple information processing to a complete change in the way public administration operates.

Even in its simplest form, the introduction of the principle of transparency entails a fundamental change in the ways of processing public decisions, from the time civil servants know that any document they sign or even any statement they make at a formal work meeting can be made public. It is not the same to operate under conditions that are more or less protected by secrecy and occasionally explain or justify the results of a decision that has previously been taken as it is to open up the process completely from the beginning.

Virtually all the theoretical formulation conducive to transparency in public administration is based on this specific point, from at least two points of view, one involving the study of the negative effect of the asymmetries of information that tend to occur in any organization with well-defined aims and fairly stable hierarchies and another referring to the relationship between government agencies and citizens. These two approaches are complementary in that one underlines the advantages of transparency from within organizations, while the other stress access to information from outside the entities that produce it.[11]

From this dual point of view, within organizations, access to information is assumed as an instrument for preventing the problems that usually arise between civil servants and breaking up the perverse games that prevent the enforcement of their public aims.[12]In this respect, transparency appears as an organizational strategy that

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[10] According to Max Weber, the purest type of legal domination is that which is exercised through a *bureaucratic administrative cadre.* Only the leader of the association holds a position of empire, either through appropriation, choice or designation by his predecessor. Yet his ability to command is also a legal "authority." The entire administrative cadre consists, in the purest case, of individual civil servants (…) which, *1)* personally free, are only beholden to the *objective duties* of their position, *2)* belong to a rigorous hierarchy, *3)* with rigorously established powers *4)* by virtue of a contract or rather (in principle) on the basis of free choice, according to the *5) professional qualification* that *serves as the basis for their nomination*-in the most rational case: through certain tests or the diploma certifying their qualification; *6)* are paid for in *money* with fixed salaries (…) *7)* hold the position as their sole or main *profession; 8)* have a "career" or the "perspective" of promotions and advancement in return for years of service or for services provided or both, according to their superiors' criteria., *9)* work completely separately from the administrative media, without appropriating the post and *10)* are subjected to a rigorous discipline and administrative surveillance." Max Weber. La dominación legal con administración burocrática", in *Economía y Sociedad.* Fondo de Cultura Económica, Mexico, 1944 (translated from the German edition of 1922), pp.175-176.

[11] See Rodolfo Vergara, *La transparencia como problema*. Instituto Federal de Acceso a la Información, Cuadernos de Transparencia núm. 5, Mexico, 2004.

[12] Cfr. Moe, T. "The New Economics of Organizations", in *American Journal of Political Science.* No.28, 1984. Quoted by Rodolfo Vergara, *op. cit.* Two other classics on the relationship between agent and principal regarding the problems of the implementation of public policies include: Eugene Bardach, *The Implementation Game. What Happens After a Bill Becomes Law.* MIT Press, Cambridge, 1975; and Aaron Wildavsky and Jeffrey Pressman, *Implementation: How great expectations in Washington are dashed in Oakland*. Berkeley University Press, 1973.

prevents the private appropriation of public spaces and therefore places greater demands on civil servants and restricts acts of corruption. And from the outside, access to information not only produces this same effect but can also become a privileged means of forcing public agencies to come into contact with society, at least in the specific spheres of the policies for which civil servants are responsible.[13]

However, both organizational virtues not only break with the tradition of bureaucratic secrecy expressed in the actual name of public offices, "secretariats," meaning the bearers of hermetic knowledge that enforce closed, rigid instructions, but also create extremely wide-ranging organizational problems. Declaring the problem of transparency is much easier than implementing it, beginning with the enormous difficulty of changing established routines in these public organizations, based on a traditional way of doing things which, until very recently, was regarded as habitually correct and also because the regulations that are conducive to transparency do not always correspond with those that force civil servants to act in a particular way. In short, both the predominant organizational culture and the framework of legal obligations and responsibilities within which civil servants perform their everyday work tend to counteract the principle of transparency. And unless these limitations adapt to meet the organizational demands raised by the openness of access to public information, organizations will probably continue to encounter resistance.

Hence the importance of the first rules in the process of openness, not only in terms of citizens' right to obtain information, but also as regards the way public organizations must process and organize it so that this right is effectively enforced. The process of opening up information, in its organizational sense, is translated as follows: *a)* in the form adopted by the organizations responsible for implementing it; *b)* in the rules for processing and filing public information and *c)* in the procedures that must be adopted for ensuring that citizens actually have access to files.

The strength of the culture of administrative secrecy is so obvious that it is striking that issues that previously seemed so inconsequential should have become so important today. Without transparency, the rules for processing and filing information, and the means of gaining access to these documents not only seemed to be but actually were minor matters for public administration. Who could possibly mind whether an official letter was correctly filed, whether there was verifiable history of each decision, whether there were organizations specifically dedicated to this purpose with enough authority to be ensure that papers existed, that the evidence remained, that each process was documented and that everyone could have access to this data? These aspects, formerly overlooked, have now become far more important.

[13] This idea is contained in the highly influential theoretical and practical approach known as New Public Management. See, for example, Donald Ketl, *The Global Public Management Revolution. A Report on the Transformation of Governance.* Brookings Institution Press, Washington, D.C., 2000.

IV.

Finally, it is worth considering a third dimension that has rarely been studied in the process of opening up access to information: the one referring to the effectiveness of the regulations guaranteeing the right of access to information and the use that will be made of this information. We have already seen that in general terms, the principle of transparency has been studied as a key instrument in the functioning of democracy and even as a condition for this regime to fulfill its aims.[14] At the organizational level, it has also been accepted that transparency helps solve the asymmetries of information and therefore facilitate transversal relations between agencies and civil servants, as well as enabling citizens not only to be aware of decision-making processes and their results but also to participate in them. All these intrinsic qualities at the beginning of the opening up of access to information have been developed within the ideal framework of a democratic rule of law, based on the dual assumption that laws are effectively enforced and that the quality of this rule of law is increased insofar as citizens themselves contribute to the public surveillance of their operation.

But it is precisely on the empirical validity of those two assumptions that a broader debate can and must be developed on the true possibilities of reinforcing the use of information. On the one hand, through the recognition of the end users of information, which may comprise interest groups rather than society as a whole. And on the other through the form adopted by the use of the information eventually obtained, either through pressure or legal resources specifically designed for this purpose. Bearing in mind the expectations placed on the principle of transparency, none of these issues is trivial.

As we have seen so far, virtually no-one disputes the importance of the process of opening up access to information. However, it is a fact that the amount of data generated by the government would be impossible for an ordinary citizen to process. Not only for reasons of limited rationality, in Simon's classic formula[15], but also because the sources are extremely diverse and at the same time reflect equally different interests and purposes. Thus the process of opening up access to public information faces the dilemma of the specific interests of those seeking information, not just of the resistance of those providing it. Simply put, one has to admit that there are various "information markets" determined as much by the sources that produce data as by groups specifically interested in obtaining them for their own ends. One could always argue and quite rightly that the existence of these "markets" is indifferent

[14] For more on this discussion, see Sergio López Ayllón, *Democracia y acceso a la información.* Tribunal Electoral de la Federación, Mexico, 2005, pp. 10-13.

[15] The concept of "limited rationality" contributed by Herbert Simon proved crucial to acknowledging the uses and limits of reason in human but also institutional and organizational issues. According to this author, individuals lack the possibility of having all information, clearly determining their own function of usefulness, coping with a well-defined series of alternatives and assigning a solid distribution of joint probability to all future series of events, as well as having the capacities for perfect calculability and maximization. Herbert Simon, *Administrative Behavior*. Free Press, New York, 1976.

to the final usefulness that opening up access would have in enhancing the quality of democracy. It is a fact, however, that they exist and that it is at least difficult to state that each and every exchange of information that takes place between government and the various users always produces the same social benefit.[16]

Although in general terms transparency is essential to democracy, it is less obvious that all exchanges will produce the same social benefit. Everything depends, in fact, on the end user and the use that will be given to the information obtained. Hence the importance of faithfully acknowledging these users and frankly admitting the specific interests to which they respond. For the moment, the statistics available on the requests for information in Mexico at least allow one to observe general behaviors that already confirm this trend: the most frequent users of the right to access to public information are those that have a specific professional interest in obtaining it.

At the same time, it is essential to note that the ideal of the social control of public administration behind the principle of transparency not only assumes a stable, effective institutional framework, but also a special type of political culture that requires citizens' active participation and the prior existence of practical instruments for exercising this control in a public space. In other words, in order for public information to play an effective role, it does not suffice for it simply to exist. It is also essential, once they acknowledge anomalies, false promises or acts of corruption, for citizens to have sufficient mechanisms to be able to activate this system of controlling administration, either formally or informally. Otherwise the information itself could quite simply become a conflict. Hence the importance of having enough legal instruments and public means to ensure that the process of obtaining access to information effectively produces democratic results. It is useless to detect public anomalies if there are no legal means or sufficient forms of publicity and denunciation to be able to correct or prevent them. The assumption of social surveillance is extremely important, but it requires a solid institutional and cultural basis. In this respect, the mechanisms safeguarding access to information constitute the first step towards this positive relationship between openness and the quality of democracy.

These two considerations provide an inverse interpretation of the traditional debate on the borders between the public and the private (and indeed the intimate, as Ernesto Garzón would point out[17]) and a different way of interpreting the new legislation on this matter: if, on the one hand, one can document the resistance to public organizations to opening up access to the information they handle, it is also

[16] This is another of the arguments wielded by Joseph E. Stiglitz against the notion according to which any aggregate piece of information produces a benefit to the economy as a whole on the basis of the theory of general equilibrium. Stiglitz argues that we actually make economic decisions and design policies on the basis of imperfect information that does not tend towards equilibrium but rather towards inequality and the inefficiency of markets. Cfr. *On Liberty, the Right to Know and Public Discourse: The Role of Transparency in Public Life.* Oxford Amnesty Lecture. Oxford, U.K. January 1999.

[17] Cfr. Ernesto Garzón Valdés, *Lo íntimo, lo privado y lo público*. Instituto Federal de Acceso a la Información Pública, Cuadernos de transparencia núm.6, Mexico, 2004.

possible to observe that citizens in general still are not clearly involved in this process. Hence the litigious consequence, so to speak, of the start of this new policy.

On the basis of this, it is easier to understand that in the absence of widespread use of public information, the process should have begun as a sort of dispute to determine who can and cannot classify information as reserved or confidential. As I said earlier, origins leave their mark, which is why it is no coincidence that the evolution of access to information should have evolved from the idea of administrative closure until it gradually became a fundamental right. And in this respect, two pieces of data are particularly important for undertaking a comparison between the different experiences that have occurred at the state level: *a*) first of all, the legal authority granted to the organizations specifically dedicated to guaranteeing access to information in each state; *b*) secondly, the type of powers granted to these organizations to classify the available information.

For these reasons, it is no coincidence that much of the process of opening up access to public information should have been resolved in a litigious fashion. What has happened-and in light of these reflections, it is inevitable that it should have happened-is that the path of contention is setting the guidelines for the process of openness, literally along the way. But for this very reason, it is essential that the procedures of access to information and the timeliness and veracity of the resources used for revision should be clearly established, from the outset, in the legal norms. Otherwise, it would be virtually impossible to prevent this principle from being utilized by the interests of the agencies themselves and by civil servants (who would tend to provide as little information as possible) or else by groups interested in obtaining specific data on public administration according to their private interests (which would tend towards as much information as possible, within their own areas of interest). The fact that neither of these conditions is fulfilled depends largely on the norms governing the process of appeal and their exact inclusion within citizens' individual guarantees.[18]

Second: Analysis of State Laws of Access to Information in Light of Criteria Pointed Out

V.

At the beginning of these notes, I pointed out that the status of state laws of access to public information in Mexico was still incipient, incomplete and fragmented. In this second section, I will try to show the evidence that explains my use of these adjectives. The following analysis is based on information published by the Federal

[18] For a review of the transition from the right to information as a social guarantee to its inclusion as an individual guarantee on the basis of Article 6 of the Constitution, see the excellent account by Sergio López Ayllón, *Democracia y acceso a la información*. *Op.cit.*, pp.34-53.

Institute of Access to Public Information (IFAI) and a review of the electronic pages of the state organizations that exist to date.[19] However, as noted from the outset, emphasis is placed on a comparison of state legislations, on the basis of the ten criteria drawn from the first part of this text. This may help show the different ways and rates at which the opening up of access to public information in Mexico has begun.

V.1. Criteria for the first level of analysis: conditions for beginning the process of opening up access to information.

First criteria: the existence of a complete legal framework.

Not all states have passed laws on transparency and access to public information. To date, a comparison has only been undertaken of the legislations of 23 states. Seen from the opposite angle, this piece of information is by no means trivial: nine Mexican states have not even joined the process of openness, as we have called it here. If this same piece of information is transferred to the municipalities that form part of these states, the total rises to 1,495 governed by transparency laws: 61% of the national total.

Moreover, it is obvious that this openness is extremely recent: only three of the laws passed came into effect in 2002: a further nine did so in 2003; eight in 2004; two in 2005 while another two had been published but were still at the transitory stage prior to their coming into effect. Nevertheless, the exercise of the right to access to information had yet to be reclaimed in another six states[20] whereas in another state, municipalities will not be obliged to enact these laws for another two years. In short, only 15 states had legislation on transparency in force, in other words, just half the country. And only four of these states had also passed specific laws to ensure the timely enforcement of these laws.[21]

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[19] In particular, the analysis is based on the documents published by the Head Office for Liaising with States and Municipalities of the Federal Institute of Access to Public Information, entitled "Estudio comparativo de leyes de acceso a la información pública". This information includes a comparison of the state laws that had been published by April 2005. I would also like to thank Sergio López Ayllón for the information which he provided for me through the organization known as Observatorio Ciudadano de Transparencia, A.C.

[20] According to the data provided by IFAI, they are as follows: Nayarit, Puebla, Sonora, Tlaxcala, Veracruz and Zacatecas.

[21] The regulations published to date include: Mexico, October 10, 2004, Michoacán, April 12, 2004, for the Executive Branch, Querétaro, August 15 2003 and Sinaloa, April 25, 2003.

T A B L E 1

Date of Passage and Coming into Effect of Laws.

Sphere of application	*Date of passage*	*Date of coming into effect*	*Sphere of application*	*Date of passage*	*Date of coming into effect*
Federal	11-Jun-02	12-Jun-02	Nuevo León	21-Feb-03	21-Feb-03
Aguascalientes	30-Jul-02	15-Ene-03	Puebla	16-Aug-04	17-Ago-04
Coahuila	04-Nov-03	04-Feb-04	Querétaro	27-Sep-02	28-Sep-02
Colima	01-Mar-03	02-Mar-03	Quintana Roo	31-May-04	01-Jun-04
Distrito Federal	08-May-03	09-May-03	San Luis Potosí	20-Mar-03	21-Mar-03
Durango	25-Feb-03	26-Feb-03	Sinaloa	26-Apr-02	27-Abr-02
Guanajuato	29-Jul-03	02-Ago-03	Sonora	25-Feb-05	26-Feb-05
Jalisco	06-Jan-05	22-Sep-05	Tamaulipas	25-Nov-04	26-Nov-04
México	30-Apr-04	01-May-04	Tlaxcala	13-Aug-04	1yr. after publication
Michoacán	28-Aug-02	20-Feb-03	Veracruz	08-Jun-04	6 mths. after pub
Morelos	27-Aug-03	28-Ago-03	Yucatán	31-May-04	04-Jun-04
Nayarit	16-Jun-04	17-Jun-05	Zacatecas	14-Jul-04	15-Jul-04

Source: Compiled by the author using information provided by the Head Offices for Liaising with States and Municipalities, April 2005 compendium, *Estudio comparativo de leyes de acceso a la información pública,* Instituto Federal de Acceso a la Información Pública.

This first indicator alone shows that this is an incomplete right, since not all the citizens in the country can exercise it with the local authorities that govern them. And it is also incipient, in the sense that not all these legislations have come into effect or have the necessary procedures to enforce them. If we take the data from the 2000 Census until the beginning of the year 2005, this right could still not be enforced in the local sphere by over 29 million citizens.

However, if the process of opening up access to public information were *only* a public policy, the existence of different models and rhythms in each state might be seen as an amusing quirk. In fact, some public policies tend to have better results insofar as they manage to adapt to regional differences and conversely, fail when they attempt homogenous forms that ignore the diversity of Mexico's local governments.[22] But in this case, we are *also* dealing with a fundamental civic right whose enforcement

[22] This argument is developed in Mauricio Merino, *La importancia de las rutinas (Marco teórico para una investigación sobre las rutinas de gestión pública municipal en México).* Centro de Investigación y Docencia Económicas, Documento de Trabajo núm.160, Mexico, 2005.

depends on the existence of these specific local legislations. And in this respect, the applicable legal logic is exactly opposite to what is happening in practice: individual rights cannot be reduced or conditioned by the existence of a secondary legislation. If it is indeed possible to point out differences, given the country's federal structure, they cannot be used to restrict rights but merely to expand the possibilities of carrying them to effect. Nevertheless, the right of access to public information in Mexico still depends on the place of residence of each citizen.

Second Criterion; Diversity and Availability of Data on Public Information

The diversity of state regulations passed to date not only translates into different rights according to the place of residence of citizens but also requires different obligations of the branches of each state. In principle, all legislations are binding for the three branches, autonomous constitutional organizations, semi-state and municipal firms and town halls. This means that once it has been adopted, the transparency policy implies specific obligations for all the organizations that exercise public powers. And some of them even take these obligations to two other subjects not contemplated in federal legislation: political parties and the organizations responsible for handling public resource in general.[23]

These two extra subjects, however, operate in favor of the right to access to public information. Yet at the same time, they raise legal dilemmas that will only be resolved in the last jurisdictional organizations, along the way. Although in the first case, all the organizations that exercise public powers must be obliged to provide information for citizens, in the second, state legislations have dared to take a step that crosses the border of public space to move into a sphere in which the latter is linked to private activities, hence its importance.

There are, however, nuances: in the thirteen states in which political parties are assumed as subjects with obligations, it is not clear that state legislation includes the organizations that have obtained their registration at the federal level. One should recall that the country's Political Constitution permits both forms of legitimate behavior in the electoral processes: it is enough for parties to obtain their registration with the Federal Electoral Institute (IFE) for them to be able to participate in any of the local elections. Yet it is also possible for them to obtain limited registration in state elections. Hence the dilemma: there is no doubt that parties with local registration are bound by state legislation regarding the issue of transparency, in the same way as the rest of the

[23] Under federal legislation, the subject obliged to provide information is the person that has transferred recourses, although in principle, those that receive them are under no obligation. The states in which political parties are regarded as under obligation are as follows: Aguascalientes, Coahuila, Colima, Jalisco, Michoacán, Morelos, Querétaro, Quintana Roo, Sinaloa, Sonora-the law regards them as unofficial bounden subjects-Tlaxcala, Veracruz and Zacatecas. On the other hand, the states in which the entities responsible for handling public finances are: Aguascalientes, Coahuila, Colima, Distrito Federal, Durango, Jalisco, Michoacán, Morelos, Nayarit, Nuevo León, Querétaro, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán and Zacatecas.

authorities in these thirteen states. But if the register was obtained from IFE, parties will always be able to argue that the legislation that applies is the federal one. This is not easy ground: the Electoral Tribunal of the Judicial Branch of the Federation-the highest jurisdictional organization in electoral matters-has determined that there are two complete legal spaces regulating political parties and that federal authorities cannot sanction them for their activities or local financing, while federal authorities are unable to do so when the mistakes or monies are derived from the federal sphere.[24] Thus, even with the most favorable interpretation to transparency, parties would only be obliged to answer for the resources obtained through public financing in the states.

On the basis of the same legal logic, individuals or corporations that receive public resources in the eighteen federal sates where, due to this fact alone, they become subjects bound by the laws of transparency, are only answerable for the use made of public monies that were actually given to them. In this respect, the laws of transparency are based on the contractual relationship established by private individuals with public organizations. But they may not go beyond this limit.

This means that none of the state laws, including those that were most boldly designed, have crossed the border of a sphere that is strictly limited by the resources used. And this piece of information is by no means trivial, since despite the importance of the principle of transparency in democratic terms-as explained at the beginning of this article-even the most advanced norms are based on a principle of a budgetary nature How far do transparency obligations reach? As far as public monies do.

Conversely, authorities as such have different obligations to publish data on their operation, objectives and results. But in this respect, there are also noticeable differences. For example, according to an initial list drawn up by FAI, which includes 25 topics that must be published, a citizen in Coahuila is much better informed than one living in Veracruz. The former will have information on twenty- four issues of public interest, whereas the latter will only have data on seven of them. At the same time, all states are obliged to provide information on the organic structure of the authorities: the directory of civil servants; monthly salaries for each post and the normative framework. But only ten states are obliged to provide information on the application of special funds; eleven on the controversies that arise between the authorities and twelve on the sentences and resolutions that have definitely ended a case.

A glance at the table of these obligations shows the disproportions in the way states comply with the principle of transparency. For example, only sixteen states are obliged to publish their financial statements and their balance sheets, sixteen are compelled to publish the results of the annual public account while eighteen are bound to reveal the bills submitted to congress, together with the verdicts. And only fifteen

[24] For a fuller development of this idea, see Mauricio Merino, *La Transición Votada. Crítica a la interpretación del cambio político en México*. Fondo de Cultura Económica, México, 2003.

legislations contemplate the obligation to publish the resources they hand over, the recipients of these resources and their use.

There is no need to provide further examples. The point is that the process of opening up access to public information has not had a common reference regarding the scope of these obligations. In this respect, the data themselves can be interpreted as clear evidence that each state has defined the public information to which ordinary citizens can have access in a different way. And although the existence of the laws of transparency assumes that anyone can have access to public information, it is obviously not the same if this obligation is passively fulfilled for citizens as it will be through the activation of requests, resources and costs. The difference is by no means trivial: whether the information is available for free on electronic pages or whether citizens have to request it reflects a very different conception of the principle of transparency in each state.[25]

T A B L E 2

COMPULSORY PUBLIC INFORMATION IN THE LAWS OF ACCESS TO INFORMATION

Compulsory Public Laws	Laws of Access to Information that do consider it.	Laws of Access to Information that Do Not Consider It
Powers of each administrative unit.	Aguascalientes, Coahuila, Colima, Federal District, Durango, Guanajuato, Jalisco, México, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcalam Yucatán, Zacatecas. *(Total 22)*	Veracruz *(Total 1)*
Address of Liaison Unit	Aguascalientes, Coahuila, Colima, Durango, Guanajuato, México, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán, Zacatecas, Jalisco. *(Total 21).*	Federal District, Veracruz *(Total 2)*

[25] In fact, in an analysis of the websites of the states and of a sample of municipalities, Sergio López Ayllón, Benito Nacif, Mauricio Portugal, Cecilia Toledo and Adriana Galván found that the passage of laws of transparency and access to public information is not a sufficient condition to guarantee either the quality or the quantity of the data published in these pages at no cost. One of the states with the highest rating, for example, is Chihuahua, which has not passed any laws on this matter, while Nayarit, Puebla and Tlaxcala's pages were among the ten lowest rated states, despite having transparency laws. Cfr. www.observatoriotransparencia.org.mx

T A B L E 2

(Continue)

Compulsory Public Laws	Laws of Access to Information that do consider it.	Laws of Access to Information that Do Not Consider It
Goals and Objective of Administrative Units	Aguascalientes, Coahuila, Colima, Federal District, Durango, Guanajuato, Jalisco, México, Michoacán, Morelos, Nayarit, Quintana Roo, San Luis Potosí, Sonora, Tlaxcala, Yucatán, Zacatecas. *(Total 17)*	Nuevo León, Puebla, Querétaro, Sinaloa, Tamaulipas, Veracruz *(Total 6)*
Services Provided	Aguascalientes, Coahuila, Colima, Federal District, Durango, Guanajuato, Michoacán, Morelos, Nayarit, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Veracruz, Yucatán, Zacatecas, Jalisco. *(Total 21)*	México, Nuevo León. *(Total 2)*
Paperwork, Requirements and Forms	Aguascalientes, Coahuila, Colima, Federal District, Durango, Guanajuato, Morelos, Nayarit, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán, Jalisco. *(Total 18)*	México, Michoacán. Nuevo León, Veracruz, Zacatecas. *(Total 5)*
Budget Assigned and Spent	Aguascalientes, Coahuila, Colima, Federal District, Durango, Guanajuato, Jalisco, México, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán, Zacatecas. *(Total 19)*	Durango, San Luis Potosí, Sinaloa, Veracruz. *(Total 4)*
Auditing Results	Coahuila, Colima, Durango, Guanajuato, México, Michoacán, Morelos, Nayarit, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tlaxcala, Yucatán, Zacatecas, Jalisco. *(Total 18)*	Aguascalientes, Federal District, Nuevo León, Tamaulipas, Veracruz. *(Total 5)*

T A B L E 2

(Continue)

Compulsory Public Laws	Laws of Access to Information that do consider it.	Laws of Access to Information that Do Not Consider It
Subsidy Programs Operating	Coahuila, Colima, Federal District, Guanajuato, México, Michoacán, Morelos, Nayarit, Puebla, Querétaro, Quintana Roo, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán, Zacatecas. *(Total 18)*	Aguascalientes, Durango, San Luis Potosí, Nuevo León, Veracruz. *(Total 5)*
Concessions, Permit or Authorizations Granted	Coahuila, Colima, Federal District, Durango, Jalisco, México, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Zacatecas. *(Total 19)*	Aguascalientes, Guanajuato-rules only-Yucatán-rules only-Veracruz. *(Total 4)*
Contracts Signed	Coahuila, Colima, Federal District, Durango, Jalisco, México, Michoacán, Morelos, Nayarit, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán. *(Total17)*	Aguascalientes, Guanajuato-for public works only-Nuevo León, Puebla, Veracruz, Zacatecas. *(Total 6)*
Reports Produced by Legal Order	Coahuila, Colima, Guanajuato, Jalisco, Mexico, Michoacán, Morelos, Nayarit, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatán, Zacatecas. *(Total 18)*	Aguascalientes, Federal District Durango, Nuevo León, Veracruz. *(Total 5)*
Civic Participation Mechanisms	Coahuila, Colima, Durango, México, Michoacán, Morelos, Puebla, Querétaro. Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tlaxcala, Veracruz, Zacatecas, Jalisco. *(Total 16)*	Aguascalientes, Federal District, Guanajuato, Nayarit, Nuevo León, Tamaulipas, Yucatán. *(Total 7)*

T A B L E 2

(Continue)

Compulsory Public Laws	Laws of Access to Information that do consider it.	Laws of Access to Information that Do Not Consider It
Sentences and resolutions that	Colima, Federal District, Guanajuato, Morelos, Nayarit, Querétaro, Quintana Roo, Sonora, Tamaulipas, Veracruz, Yucatán, Jalisco. *(Total 12)*	Aguascalientes, Coahuila, Durango, Mexico, Michoacán, Nuevo León, Tamaulipas, Yucatán. *(Total 12)*
Definitely ended a case	Colima, Federal District, Guanajuato, Morelos, Nayarit, Querétaro, Quintana Roo, Sonora, Tamaulipas, Veracruz, Yucatán, Jalisco. *(Total 12)*	Aguascalientes, Coahuila, Durango, México, Michoacán, Nuevo León, Puebla, San Luis Potosí, Sinaloa, Tlaxcala, Zacatecas. *(Total 11)*
Political Party reports	Coahuila, Colima, Durango, Guanajuato, México, Michoacán, Morelos, Nuevo León, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tlaxcala, Yucatán, Zacatecas. *(Total 16)*	Aguascalientes, Federal District, Jalisco, Nayarit, Tamaulipas, Puebla, Veracruz *(Total 7)*
Financial Statements and Balance sheets	Aguascalientes, Coahuila, Colima, Federal District, Jalisco, Mexico, Morelos, Nuevo León, Queretaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Zacatecas. *(Total 16)*	Durango, Guanajuato, Michoacán, Nayarit, Puebla, Veracruz, Yucatán. *(Total 7)*
Public Accounts	Aguascalientes, Coahuila, Colima, Guanajuato, Jalisco, México, Morelos, Nuevo Leçon, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Zacatecas. *(Total 16)*	Federal District, Durango, Nayarit, Puebla, Quintana Roo, Tamaulipas, Veracruz *(Total 7)*
Application of Special Auxiliary Funds	Coahuila, Colima, Guanajuato, Michoacán, Querétaro, San Luis Potosí, Sinaloa, Tamaulipas, Yucatán. *(Total 11)*	Aguascalientes, Federal District, Durango, México, Morelos, Nayarit, Nuevo León, Puebla, San Luis Potosí, Sonora, Tlaxcala, Veracruz, Zacatecas. *(Total 13)*

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(Continue)

Compulsory Public Laws	Laws of Access to Information that do consider it.	Laws of Access to Information that Do Not Consider It
Controversies between Authorities	Coahuila, Colima, Michoacán, Morelos, Nayarit, Querétaro, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Zacatecas. *(Total 11)*	Aguascalientes, Federal District, Durango, Guanajuato, Jalisco, México, Nuevo Leçon, Puebla, Quintana Roo, Tlaxcala, Veracruz, Yucatán. *(Total 12)*
Bills submitted to Congress and verdicts	Coahuila, Colima, Federal District, Guanajuato, México, Michoacán, Morelos, Nayarit, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Tlaxcala, Yucatçan, Jalisco, Zacatecas. *(Total 18)*	Aguascalientes, Durango, Nuevo León, Puebla, Veracruz. *(Total 5)*
Announcement of competitions and biddings and their result.	Aguascalientes, Coahuila, Colima, Federal District, Durango, Jalisco, México, Michoacán, Morelos, Nuevo León, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Zacatecas. (*Total 18)*	Guanajuato, Nayarit, Tlaxcala, Veracruz, Yucatán. *(Total 5)*
Handing over of public resources, recipients and use.	Coahuila, Colima, Durango, Guanajuato, Michoacçan, Nayari, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Yucatán, Zacatecas and Jalisco. (*Total 15)*	Aguascalientes, Distrito Federal, México, Morelos, Nuevo León, Puebla, Tlaxcala, Veracruz. *(Total 8)*

Source: Compiled by the author with information provided by the Head Office for Liaising with States and Municipalities, Compendium April 2005, *Comparative Study of Laws of Access to Public Information,* Federal Institute of Access to Information.
Note: There are another four issues that must be published by these 23 states, namely: organic structure, directory of civil servants, monthly salary per post and normative framework.

Third criterion: Existence of Agencies Responsible for Guaranteeing Access to Information

The predominant model in the world, as regards access to public information, is not the one that has been used in Mexico.[26] Most of the laws that have been passed in other countries in the past fifteen years have emphasized the conception of the right that citizens acquire to find out about public information, and in this respect, they have

[26] For more on this aspect, see David Banisar, www.freeinfo.org/survey.htm.

protected this through established administrative procedures and jurisdictional systems. Thus, special agencies have not generally been created to safeguard the guarantee of this right and when they do exist, they nearly always perform functions of administrative arbitrage.

Conversely, as we have seen, in Mexico, access to public information has been understood as a right and a public policy. And it is striking that in the two areas, it has been regarded as important to create specialized organs that undertake their functions at both levels; in other words, they operate as administrative courts to determine the validity of the requests for information and at the same time, have become public agencies responsible for promoting transparency and access to information as a public policy. The breadth of their functions means that this model is virtually the only one of its kind in the world.

The nature of this model was probably designed to counter the distrust that the introduction of new rights tends to elicit in Mexico, the guarantees of which are jeopardized when they have to go through the complex networks of the administration of justice. And in this respect, the creation of the Federal Institute of Access to Public Information (IFAI) would have meant a response committed to the will to make compliance with the new right effective. And the success of the experience of electoral administration in the country probably also influenced the design of the new agency specializing in transparency. Hence, perhaps, the idea of creating a sort of administrative court specializing in the issue which at the same time performs the functions of a collegiate agency of an executive nature. Both lines are reflected in the powers given to IFAI. And there is no doubt that this design, in turn, has influenced the way in which several of the states have coped with the challenge of transparency.[27]

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[27] An excellent description of the way in which the negotiations that led to the passage of the Federal Law of Transparency and Access to Government Public Information were carried out is provided by Sergio López Ayllón. The remarks in this paragraph can be compared with the following text by this author: "During the final draft of the bill for the Executive branch, the creation of a new autonomous constitutional entity was seriously considered: an Information IFE. The idea was tempting but it had a number of problems. The main one was that the creation of this organization necessarily implied a constitutional reform, which might significantly delay the passage of LAI. The advisability of continuing to create constitutionally autonomous agencies for each of the country's main problems was also seriously discussed (…). Why not have a similar one for indigenous groups, another for the handicapped, and another for regulating energy or telecommunications? (…) At the same time, the creation of an entity of this nature implied solving the delicate problem of its relationship with the Federal Judicial Branch and the National Human Rights Commission. In fact, as a result of constitutional mandate, the latter was authorized to have information on the complaints against the acts or omissions of an administrative nature by any authority or civil servant hat violated human rights. Since the right of access to information is part of a fundamental right, the creation of an agency of this nature would entail duplicating the functions of an existing constitutional agency.

"The relationship between an organization of this nature and the Federal Judicial Branch was even more complex. Due to the design of the Constitution, the latter is responsible, in the last instance, for the interpretation of the Constitution. Therefore, creating an organism whose decisions escaped judicial control would mean profoundly distorting the scheme of the division of powers. (…). However, in order not to overload the judicial branch, LAI would create an autonomous administrative agency that would have to resolve the conflicts over access that arose between private individuals and the administration. It would be a sort of collegiate administrative tribunal , created with all the guarantees required for ensuring independence in its decisions and subject to judicial control. Consequently, the control of the law is not, as has been said, in the hands of the administrative authorities but

In the states, however, there are at least two other alternative models: on the one hand, the one that has responded to the Anglo-Saxon tradition already commented on, which regards access to information as a right granted to citizens, protected by established administrative course and compulsorily provided by each of the public agencies. This is the case of the first version of the Jalisco model, which preceded the federal model and is also the one followed in Aguascalientes and, with variations, in Veracruz and Tamaulipas. I think it would be unfair to say that this design is insufficient for guaranteeing the fulfillment of the right to access to information, or that the absence of a specialized agency prevents the states bound by law from complying with their duty to inform. None of these statements can be upheld in an abstract context. In fact, this model has the undeniable advantage of reducing the costs entailed by the creation and operation of a new state agency. But it is also true that it tends to place more responsibility on citizens and that, at least in principle, it fails to regard transparency as a public policy directed from a single bureau responsible for carrying it out.

At the same time, however, in the cases where the authorities have opted for the creation of these agencies, they have widely differing degrees of autonomy. The option chosen for the federal sphere was that it offered greater joint responsibility for the parties involved: a technically autonomous agency yet one that is integrated into federal public administration and authorized to regulate the transparency policy within this same sphere and resolve, as a last administrative resort, the resources for the review derived from the decisions made by all legally bound subjects. This option distributes specific powers among all the agencies, yet at the same time guarantees the central supervision of the entire process. If one could extrapolate the terms coined by political science to the theory of organizations, I would not hesitate to say that this is a pluralistic model; each agency has its own responsibility and at the same time, there is a normative system of surveillance and control assigned to IFAI.

Some states have chosen to adopt this same model while others have decided to created autonomous constitutional agencies, similar to those that regulate electoral matters throughout the country. This difference is by no means trivial: protected by the Constitution of the states, these agencies perform functions that go beyond the sphere of local authorities and become the highest authorities on the matter. In this respect, they not only have the authority to settle the resources for revision caused by the refusal to grant access to public information, but also reinforce their role as agencies responsible for designing and directing the transparency policy as a whole. The case of Morelos, for example, includes powers related to the production and handling of the statistical information produced in this state. This would be the equivalent-if one

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rather in the hand of the Judicial Power. Cfr. "La creación de la Ley de Acceso a la Información en México: una perspectiva desde el Ejecutivo Federal", in Hugo A. Concha Cantú, Sergio López Ayllón and Lucy Tacher Epelstein, *Transparentar al Estado: la experiencia mexicana de acceso a la información.* Instituto de Investigaciones Jurídicas. UNAM. Mexico, 2004, p.15.

wishes to have a comparative explanation-to having the powers of IFAI and the National Institute of Statistics, Geography and Informatics combined in a single agency which in turn was totally autonomous from the state. This is the boldest but also the most risky organizational proposal: confined to constitutional autonomy, the true possibilities of transparency, such as public policy, depend, in this case, on the resources and correct decisions of a single agency converted into the last resort, while its jurisdictional decisions will always be subject to the specific content of the applicable legislation, with no possibility of appeal to the Judicial branch, or at least, not directly.

Fourth Criterion: Coercive Faculties in the Event of the Denial of a Right

A law is regarded as imperfect when, despite creating obligations, it fails to establish sanctions for non-compliance. In colloquial terms, this imperfection is comparable to having a wild animal without teeth, although we should perhaps also speak, to be more precise, of the size and strength of the animal's jaws. This is an important point, since in relation to this fourth criterion, we have also been unable to find a single leitmotiv for the legislations of all the states.

All most state agencies have specific powers for ordering subjects bound by the law to hand over the information that citizens have requested, only eight of them also have the power to sanction them directly in the event of non-compliance. And in this respect, the difference between the models adopted by each state is again crucial. If we begin with the assumption that the information produced by public agencies belongs to all citizens and that therefore, it does not have the characteristics of intellectual property, the criterion to be followed would have to be that of complete openness. And this would have at least two consequences: first, that the restrictions on access would have to be fully justified and be genuine exceptions to the rule. And second, that civil servants that fail to justify the exception and yet resist openness will be sanctioned.

Nevertheless, in the models established in most states, state agencies responsible for ensuring access to public information lack the power to go so far. Most of them follow a similar pattern to that established in federal law; in other words, the agencies responsible for supervising the process of openness can determine that a particular office or civil servant effectively committed an offense by unduly denying access to public information, yet their powers are limited to denouncing this type of behavior to the internal control departments of the agency where the offense was committed. From that moment onwards, it is the responsibility of the comptrollers' offices to compile a dossier and implement the sanction procedures, in keeping with the laws of responsibilities of each state. It is in this respect that one can speak of toothless lions; although the transparency agencies are responsible for safeguarding citizens' fundamental rights, in practice they are unable to protect them directly.

T A B L E 3

Coercive Faculties of Agency Responsible for Ensuring Access to Public Information In the Event of the Denial of a Right

Powers of the Agency Responsible for Access to Public Information	Agencies Responsible for Access to Information that Do Consider It	Agencies Responsible for Access to Information that Do Not Consider It.
To order subjects bound by law to hand over information.	Coahuila, Colima, Durango, Guanajuato, Jalisco, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Yucatán, Zacatecas.	Federal District, Mexico, Sonora, Tlaxcala
To sanction subjects bound by law	Coahuila, Colima, Guanajuato, Morelos, Nuevo León, Quintana Roo, Sinaloa, Yucatán.	Federal District, Durango, Jalisco, Mexico, Michoacán, Nayarit, Puebla, Querétaro, San Luis Potosí, Sonora, Tlaxcala, Zacatecas.

Source: Compiled by the author himself, from information provided by the Dirección General de Vinculación con Estados y Municipios, Estudio comparativo de leyes de acceso a la información pública, April 2005, Instituto Federal de Acceso Información Pública.

It is also true, however, that transparency agencies can and must perform the function of civic education, on the basis of the adoption of transparency as public policy. And in this respect, their most effective weapon could be the dissemination of the data that they themselves produce on the development of this process. And yet, a quick glance at the electronic pages of these agencies shows that to date, we know very little about the way in which civil servants that have denied access to information have been sanctioned. Even at the federal level, it is relatively easy to see which agencies have been most unwilling to comply fully with this new right, and we also know how many requests have been submitted and how many answered. Yet in order to know how many sanctions have been applied, as well as the reasons, paradoxically one has to implement the same right that was denied: one has to request this information from all federal public agencies and hope that their comptrollers' offices will provide it, the problem being that sanction procedures and the names of civil servants involved will be kept in reserve, until the case is solved. As we saw in the first part of these notes, all this complex legal scaffolding that demands and at the same time protects the civil servants that produce and manage information can become a death trap for the fulfillment of this new right.

Fifth Criterion: Public Interest in Public Information

The last of the criterion concerning the first level of analysis we have proposed for these notes refers to the information users, in other words, to the way citizens have adopted and possibly begun to use the right to access to public information. As I said earlier, it is one of the criteria for acknowledging the fact that the process of opening up access to public information ha actually begun, not only because of the existence of minimum institutional conditions, but because citizens themselves have decided to give this new right validity and a specific use. And in this respect, one can say once again that this is still an incipient process.

According to the data provided by IFAI, until March 2005, most of the requests for public information had been concentrated into four professional interest groups. First of all, academics have predominated, not only as the most active users but also because their relative participation has increased. Whereas in 2003, they accounted for 29% of the requests, by early 2005, they were responsible for almost 36% of the total. The second group has been that of businessmen, whose participation, however, has followed a downward trend. Almost 23% of the requests submitted in 2003 corresponded to this group, whereas by 2005, they accounted for nearly 19%. The media has also used this new right, accounting for 9% of all the requests during this period. It is striking that civil servants themselves have been more active than journalists in using the new forms of access to public information: of the aggregate total, 12% have corresponded to the government sector itself.

T A B L E 4

Percentage of Users of Federal Information by Occupation

Occupation	*2003*	*2004*	*2005*	*Overall Total*
Business	22.8	19.9	18.8	20.6
Academic	29	33.4	35.7	32.5
Government	12.4	12.5	11.5	12.2
Media	10.0	9.0	8.5	9.2
Other	25.8	25.2	25.5	25.5
Total	100	100	100	100

Source: Instituto Federal de Acceso a la Información Pública. Note: Figures correspond to the use of federal information. At the same time, the data for 2005 correspond to the period until March 31.

These data show that nearly 75% of users of the new right of access to public information have been concentrated in four sectors with clearly identifiable professional interests: academics, journalists, businessmen and civil servants, who have found it extremely useful to have an open door to information that facilitates the

performance of their own roles. Yet at the same time, it would be inaccurate to say that this process of opening up access have elicited an enormous amount of interest among citizens.

Another piece of evidence reflecting this very limitation lies in the regional origin of the requests submitted to date. Most have come from the metropolitan zone of Mexico City: 50.1% from Mexico City and 13.5% from the state of Mexico, And none of the remaining states has accounted for more than 3.3% of the total requests. On the contrary, in 23 states, requests for public information have not even accounted for 2% of the total despite the electronic media IFAI has made available to citizens from all over the country. How should these data be interpreted?

T A B L E 5

Percentage of Total Requests for Information by State, 2003-2005

Range of Percentages	*States*	*Percentage of Total Requests*
Equal to 50.1	Federal District	50.1
Equal to 13.4	Mexico	13.5
From 2.5 to 3.3	Jalisco, Puebla, N. León	9.0
From 2.0 to 2.4	Chihuahua, Veracruz	4.7
From 1.5 to 1.9	Tamaulipas, B. California, Guanajuato, Sonora, Morelos, Tabasco, Coahuila, Sinaloa, Chiapas.	3.4
From 1.1 to 1.4	Querétaro, Yucatán, Michoacán, Hidalgo, Oaxaca, Aguascalientes, Durango, Guerrero, Quintana Roo, San Luis Potosí.	11.1
From 0.5 to 1.0	Colima, Zacatecas	6.9
Less than 0.5	Baja California Sur, Tlaxcala, Nayarit	1.2

Source: Compiled by the author himself with information from the Instituto Federal de Acceso a la Información Pública.

First of all, it seems obvious that professional interests have become a key factor during the start of this process. It is no exaggeration to say that the new right has faithfully reflected its origins: on the one hand, businessmen, who have regarded transparency as an opportunity to perfect their own growth strategies through timely reliable information and on the other, journalists and academics whose professional trade depends largely on information produced by the public sector. Is this bad news? I think not: these three professional sectors perform a function of economic, social and political mediation which is by no means inconsiderable. The same three sectors also perform in the non-governmental public space and in this respect, are effective

sounding boxes of public information. They are bridges which, through different routes, can and must reach citizens and contribute to the consolidation of the main democratic processes. In this respect, it would be unfair to say that the new right has not been used for democratic purposes and merely to satisfy partial interests. In any case, I do not believe that any blame should be placed on the new process of opening up access to public information but rather that these figures reflect the professional standards of those that have used the information: the products generated by Mexican academia; the media's professionalism and the quality of the firms that compete in the country.

The second way of interpreting these data is, however, emblematic of the country's political culture: as long as citizens do not have a real interest in public affairs, it is up to the state to promote their active participation. The same has happened with electoral processes: the most important reforms in this field took place as a result of specific agreements between party leaders, yet once implemented, the electoral processes themselves generated a new political culture among citizens. Practice makes perfect and it was never true that a lack of democratic culture prevented the success of the transition process. And this same lesson should also be applied to the sphere of opening up public information. When will we know that this process has stopped being a policy directed by the state and become part of citizens' culture? It will not be easy to answer this question. Yet one can predict that the only way of reaching this point will be by opening up access to information.

V.2. The Criteria of the Second Level of Analysis: the form of organization.

So far we have seen the main characteristics of the first steps taken in the process of opening up access to public information in the states: the existence of legal regulations, the obligation to provide information on certain issues of public interest, the agencies designed to guarantee the process of openness, the main powers granted to these agencies in the sanctioning procedures and the way citizens have approached public information, five criteria that reflect the differences and limitations of the start of the process of openness in Mexico. In this section, we shall see the three criteria that refer to the second level of analysis, concerning the general organization of the process, as proposed in the first half of this document. In other words, it is an internal view of the institutional design adopted by the states for dealing with transparency as a public policy.

Sixth criteria: characteristics of the agencies responsible for ensuring access to information.

We have already seen that the process of opening up access to public information in states has adopted different forms. At this point I should add that these have also led to the means of organization adopted by the organs responsible for guaranteeing the success of this process. The most widely used one corresponds to the creation of a specialized agency that has been authorized to ensure both the protection of this right and the implementation of public policy. But even this version has had its differences. I shall point out two of those that I believe are important: first of all, the professional or civic nature of those that run these agencies and second, their powers to have permanent, direct access to all public information.

All the state legislations that have opted to designate higher agencies for supervising the process have chosen the integration of collegiate bodies, without exception. This piece of information is striking; no-one has opted for the creation of agencies directed by a single person, as used to be the case in the Mexican administrative tradition. It is true that this tradition was interrupted by the creation of the Federal Electoral Institute (IFE) which was conceived of in 1990 as an agency that would be directed by a collegiate body. And as has been said earlier, it is quite likely that the success of this agency influenced the design of those that would subsequently be created to conduct the transparency policy. But it is also true that, given the dual nature of the latter as executive agencies and administrative tribunals, legislators preferred this collegiate formula for solving the organizational problems that might have been posed by the creation of institutions led by a single person. Nevertheless, this is not a magic formula: collegiate management raises dilemmas of administration and responsibilities that have barely been studied to date.[28]

There is no doubt that the integration of these management agencies may prove useful, if one assumes, from the outset, that they perform a jurisdictional function. In other words, that they must solve disputes over access to information in the form of a trial. In this respect, the Mexican judicial experience shows that, in effect, the submission of projects for resolution to a collegiate body comprising peers that must approve or reject these projects tends to favor the quality and honesty of their contents. It is a formula for self-control characteristic of courts of the last instance which also has the virtue of facilitating the more effective solution of the requests submitted, insofar as the projects are distributed among the magistrates forming part of the agency. Yet executive decision-making and the supervision of bureaucratic apparatuses tends, however, to be much more complex and difficult in collegiate agencies than in those run by a single person. And one should not forget that those dedicated to the issue of transparency achieve both aims.

[28] For the case of IFE, see the chapter on "EL IFE por dentro: algunas zonas de incertidumbre", in Mauricio Merino, *La transición votada, Op.cit.*

There is still not enough information to draw definitive conclusions about the operating difficulties that this has caused recently-created state agencies. But some testimonies already speak of the emergence of various types of conflict among their members, which nearly always arise in the sphere of administrative operation: appointments of civil servants, budgetary assignations and specific executive projects tend to become veritable bones of contention when executive responsibilities are divided among various people. And perhaps none of them would go beyond the limited spheres of academic interest or greater or lesser administrative efficiency if it were not for the fact that these differences can also have an effect on the votes that are essential for resolving underlying legal issues. In this respect, for the moment I can simply assume that the experience of these agencies will gradually lead to the functional separation between these two spheres: that the collegiate nature of the resolutions on access to information will be reinforced while at the same time, attempts will be made to find formulas to delegate individual faculties to solve operational problems.

Likewise, there are no conclusive data on whether the honorary nature of the advisors directing the highest-ranking agency in Tlaxcala or Jalisco has proved more efficient than the professional occupation of these posts would have been, as is the case in all the other states. Beyond the savings of resources that this other model supposedly entails, it is not obvious to me that this formula implies a greater sense of responsibility while conversely the personal obligations of this set of citizens may require more attention and time than their work with the transparency agencies. And it is also obvious that this honorific model fails to eliminate the dilemma of the collegiate bodies themselves, and on the contrary, would tend to emphasize them by destroying the logic of shared professional interest.

The difference becomes much more relevant when one observes the duration of the period of management of these agencies and the number of people they comprise. From this second perspective, the options opened up by state legislations range from 1 to 7 years, with a possibility of re-election; and from 3 to 18 people as members with full voting rights of the ranks of upper management. How did the legislators of the various states arrive at such disparate numbers? I do not know: answering this question requires detailed knowledge of the contents of the arguments and negotiation used in each particular case, information which I do not possess. In light of the results, however, it is obvious that no complete organizational analyses have been formulated to evaluate the discussion of these different designs, which do not have a single dominant pattern. I would like to draw readers' attention to the importance of these combinations. It is by no means trivial that a body should be collegiate, that its members should number anywhere from 3 to 18, or that they should hold the post from 1 to 14 years. Each of these combinations produces a different effect on organizational behavior. And they directly affect the success of the right to public information to the same extent. For the moment, they reflect both the lack of specific

studies on this issue and the fact that institutional decision are based more on budgetary or political reasons or image than well-founded organizational reasons.

T A B L E 6

Characteristics of the Plenary of the Agency Responsible for Public Information

Sphere of Implementation	*Number of Plenary Members*	*Duration of Post*	*Type of Post*	*Permanent Access to Reserved Confidential Information*
Coahuila	Three councilors and three substitutes	Seven years	Paid	No
Colima	Three commissioners	Seven years	Paid	Yes
Federal District	18 councilors, three from the executive, three from the judicial and four from the legislative branch, three from civil society and one from each autonomous agency	Civic councilors, six years. Councilors from public entities, three years.	Paid for Citizen Councilors	No
Durango	Three commissioners, Three councilors,	Seven years	Paid	No
Guanajuato	One director general	Four years	Paid	No
Jalisco	Four civic councilors, one President and substitutes.	Four years	Paid president and honorary councilors	Yes
México	Three councilors	Four years	Paid	No
Michoacán	Three commissioners and three councilors	Five years	Paid	No
Morelos	Three substitutes, three commissioners	Four years	Paid	No
Nayarit	Three substitutes, three commissioners and one supernumerary	Three years	Paid	Yes
Nuevo León	Three commissioners	Four years	Paid	Yes

TABLE 6
(Continue)

Sphere of Implementation	*Number of Plenary Members*	*Duration of Post*	*Type of Post*	*Permanent Access to Reserved Confidential Information*
Puebla	Three substitutes, three commissioners	Six years	Paid	Yes
Querétaro	Three substitutes, three councilors	Four years	Paid	Yes
Quintana Roo	One executive secretary	Six years	Paid	Yes
San Luis Potosí	Three commissioners	Four years	Paid	No
Sinaloa	Three commissioners	Seven years	Paid	No
Sonora	Three members, five representatives, one technical secretary	Six years	Not established by law	No
Tlaxcala	Three councilors, one executive secretary	One year	Honorary	No
Yucatán	Three councilors, one executive secretary	Five years	Paid	No
Zacatecas	Three commissioners	Four years	Paid	No

Source: Compiled by the author himself with information provided by the Dirección General de Vinculación con Estados y Municipios. Estudio comparativo de leyes de acceso a la información pública, April 2005, Instituto Federal de Acceso a la Información Pública. *Note:* Aguascalientes, Tamaulipas and Veracruz not included.

At the same time, in addition to these differences, there is the fact that not all the commissioners in the states have permanent, direct access to the public information produced, so that they can issue their rulings. This restriction occurs in thirteen states, where members of the collegiate management bodies are obliged to trust in the criteria of the offices of origin in order to grant or to deny access to information and at best, to issue specific regulations to guarantee open access to information. This border, which virtually divides the state experiences verified to date, splits the organizational orientation of these organizations into those that operate more as tribunals and those that foster their role as public policy directors. I have already mentioned that this is by no means a slight difference, since the design of an organization cannot do without a clear definition of the aims it pursues. If both pieces

lose coherence, the organization is unlikely to be successful. And in light of the information available to date, I would say that the internal forms of operating of the agencies in charge of ensuring the principle of transparency have been insufficiently studied.

Seventh Criterion: the norms for organizing files and establishing the procedures for access to information.

The differences we have observed in the form of organization adopted by the state agencies created to date are also expressed in the powers local laws have given them to intervene in the organization of the information produced by public offices. This constitutes the external expression of these criteria for organization. And in this respect, there are at least two particularly revealing functions: on the one hand, those that refer to the capacity of the higher managerial agencies to establish the procedures for providing access to information and ensuring compulsory compliance for public administration and on the other hand, those attributed to them to be able to issue norms on file management. Both issues are directly linked to the way in which the offices in each state administer information, hence their importance: if the transparency agencies are authorized to make these decisions, then their role can be said to extend to the sphere of public information management, through which it is subtly transferred to complex organizational problems. Conversely, if they lack these powers, they can be said to be agencies specifically designed to safeguard the right to access, yet without any influence on the way in which the information that is finally delivered to citizens is in fact produced, processed and organized. Even at the federal level, one can perceive the importance of these functions: set in the sphere of federal executive power, IFAI can only establish procedures for access to information through federal public administration itself, yet cannot force the other branches of the Union or other autonomous organizations to comply. This limitation clearly expresses the constitutional borders between the branches, yet also poses additional challenges regarding coordination, since the implementation of different procedures may act against the effectiveness of a guaranteed right. And if the agency for directing policy lacks any powers in this matter, the result may be the multiplication of procedures in each of the formally bound offices. I have no empirical evidence to study the specific consequences produced to date by this lack. Yet this risk emerges clearly in the legislations of ten states, where the agencies are unable to establish a common administrative criterion.

The same can be said of the norms for handling files, which represent the raw material on which virtually all the right of access to public information is based, It is therefore at least a matter of concern that only seven state laws grant these specific powers to top management agencies in this matter. I do not think that it is necessary to take up more space in underlining the importance of this data. I frame it as a question: if there is no shared criterion for producing, conserving and organizing the public

information required by citizens, how can its access be guaranteed? As I said at the beginning of this document, the archives were not important until the start of the process of opening up access to information which we have been discussing. But, once opened, it serves as one of the keys for understanding the organizational scope of this new right.

T A B L E 7

Powers of the Organs of Access to Public Information for Organizing Files and Establishing the Processes of Access to Information

Powers of Agency for Ensuring Access to Public Information	*Agencies for Ensuring Access to Information that Do Consider It*	*Agencies for Ensuring Access to Information that Do Not Consider It*
To establish procedure for obtaining access to information.	Coahuila, Federal District, Jalisco, México, for offices, auxiliary organizations and trusts in state public administration, including the Attorney General's Ofifce-Nayarit, Querétaro-suggest appropriate measures to the authorities for guaranteeing access to public information, Quintana Roo, Sonora, Tlaxcala, Zacatecas.	Colima, Durango, Guanajuato, Michoacán, Morelos, Nuevo León, Puebla, San Luis Potosí, Sinaloa, Yucatán.
To issue guidelines on file management.	Coahuila, Distrito Federal, Jalisco, México, Morelos, Quintana Roo, Sonora	Colima, Durango, Guanajuato, Michoacán, Nayarit, Nuevo León, Puebla, Querétaro, San Luis Potosí,Sinaloa, Tlaxcala, Yucatán, Zacatecas.

Source: Compiled by the author himself using information from the Dirección General de Vinculación con Estados y Municipios, Estudio comparativo de leyes de acceso a la información pública, April 2005, Instituto Federal de Acceso a la Información Pública.

Eighth Criterion: The Different Forms of Access to Information

Finally, it is obvious that the organization of the means of access to public information influences everyday' citizens' actual possibilities of gaining access to this information. And a propos of the last point, there are also noticeable differences between the legislations of the states in at least two respects: firstly, as regards the offices responsible in each state for receiving the requests for information formulated by citizens and secondly, in relation to the deadlines and modalities for obtaining the data requested.

Virtually all the state laws passed to date stipulate the creation of administrative units responsible for receiving information requests. Although the names given to these offices differ, they have very similar functions: receiving and delivering these requests to the center of the offices where they operate. In most cases, the legislations themselves order the creation of specific offices for performing this task whereas in the case of Aguascalientes and Colima, they have the power to determine which office will serve as a liaison with the offices that are bound to comply with these regulations. In these two states, it is assumed that the obligation to inform corresponds to all the agencies and there are no internal organizational measures designed to facilitate compliance with this institutional obligation.

These differences are accentuated when one examines the powers granted to the offices responsible for providing access to information. If, in the federal system, there are information committees for each agency, whose primary responsibility is to make an initial decision regarding the delivery of the information requested by citizens, in the state legislations, these committees are more of an exception, since they are only stipulated in the laws of six states. Quite simply, this means that in most cases, the right of access to information is accepted or denied in a single office within the agency, before forcing the citizen to take the path of administrative litigation to obtain the information he requested. Consequently, several of these legislations have stipulated an additional resource to the one included in federal law, to appeal the refusals to provide information with the hierarchical superiors or heads of the offices where the rejection took place. These first remedies of appeal, however, (which are usually called resources of reconsideration, non-approval or claims) are only contemplated in the laws of ten states. This means that in the remainder, citizens must resort to the head offices for transparency or to the courts to attempt to modify the first response obtained.

The deadlines are also different: state laws contemplate anywhere from 5 working to 30 calendar days to respond affirmatively or negatively, although nearly all of them provide extensions to this deadline, ranging from another 5 to 30 days more. At the same time, other state laws require another ten days to provide the information.

T A B L E 8

Characteristics of Appeal for Reconsideration

Sphere of Application	*Name of Reconsideration*	*Person to whom Reconsideration Must be Submitted*	*Deadlines for Requesting Reconsideration (Working days)*	*Total Length of Response (Working days)*
Coahuila	Appeal for reconsideration	Agency director	10	10
Colima	Non-approval appeal	Agency director	10	15
Durango	Non-approval appeal	Head of public Agency	15	15
Guanajuato	Non-approval appeal	Dir. Gen. of Institute responsible for providing access to information.	15	17
Michoacán	Non-approval appeal	Agency director	10	10
Nuevo León	Appeal for reconsideration	The authorities	10	5
Querétaro	Claim	Yes	5	5
Sinaloa	Non-approval appeal	Head of public Agency	10	10
Tamaulipas	Non-approval appeal	Head of this public entity or legal representative if it is a collegiate body.	5	No more than 10 from time of reception

T A B L E 8

(Continue)

Sphere of Application	*Name of Reconsideration*	*Person to whom Reconsideration Must be Submitted*	*Deadlines for Requesting Reconsideration (Working days)*	*Total Length of Response (Working days)*
Yucatán	Non-approval appeal	Executive Secretary of State Institute of Access to Public Information	15	25

Source: Compiled by the author himself, using information from the Dirección General de Vinculación con Estados y Municipios, Estudio comparativo de leyes de acceso a la información pública, April 2005, Instituto Federal de Acceso a la Información Pública.

In the event of a refusal, however, most local laws establish a deadline for citizens to be able to submit a remedy of appeal, within the same offices that rejected their previous request. These deadlines range from 5 to 15 working days. At the same time, they establish another deadline during which citizens must be given an answer to their appeal, which fluctuates between 5 and 25 working days. If, after this deadline, the citizen has still failed to receive the information he requested, it can still request a review which, under different names and in different guises, is still contemplated by all the state legislations. And in this last case, the deadlines for appeals is once again from 7 to 30 working days, while the maximum deadlines for the higher levels to provide a definitive reply range from 10 to 50 working days, although in some cases, there is no time limit. On average, the time that elapses from the original request to the final delivery of the information requested, on the assumption that the latter was finally provided by the higher body, can take up to six months. On the basis of this assumption, one presumes that in virtually all cases, citizens have to activate their right to information on at least three occasions: when they submit the original request, when they appeal the first refusal in the office where it was denied and when they request a review from the central agency of access to information, not to mention the strictly legal option. And it is worth mentioning that it is also assumed, in the same sense, that if the citizens misses the deadlines established by law for appealing the first or second refusal of information, he will have lost the right to continue the procedure the moment he left it.

T A B L E 9

Characteristics of the Appeal for Review

Sphere of Application	*Deadline for lodging appeal (No. of working days)*	*Minimum deadline for attending appeal (No. of working days)*	*Sphere of application*	*Deadline for lodging appeal (No. of working days)*	*Minimum deadline for attending appeal (No. of working days)*
Federal Level	15	50	Nuevo León	10	10
Aguascalientes	Not est.	Not. est.	Puebla	10	50
Coahuila	10	10	Querétaro	15	15
Colima	10	15	Quintana Roo	15	30
Federal District	15	10	San Luis Potosí	10	Not est.
Durango	15	15	Sonora	15	18
Guanajuato	10	30	Sinaloa	10	10
Jalisco	7	5	Tamaulipas	Deadlines will be established by rules issued by Tribunal.	Deadlines will be governed by rules issued by Tribunal
Mexico	15	30			
Morelos	30	30			
Michoacán	10	10	Tlaxcala	10	10
Nayarit	10	20	Veracruz	Not est.	Not. Est.
			Yucatán	10	40
			Zacatecas	10	30

Source: Compiled by autor using information provided by Dirección General de Vinculación con Estados y Municipios, Estudio comparativo de leyes de acceso a la información pública, April 2005, Instituto Federal de Acceso a la Información Pública.

In light of these data, there is no need to overstate the fact that the transparency laws in the states have at least as many padlocks on them for granting or denying the right of access to information. In short, these laws have produced a sort of balance between the tradition of administrative secrecy and the new tendency to publicize the actions and decisions of the executive branches. But as a result of this equilibrium, it has also produced complex organizational effects: the more difficult and less transparent access is, the more costs are added to the organization. Not only in terms of the offices involved in processing the requests, appeals and appeals for review, but also as regards time and the organizational attention that must be dedicated to this procedure. And although the modalities differ, the rule derived from this criterion is the same: the more confused the original organization of public information and the more unwilling offices are to provide I, the more time, resources and costs will be added to public administration. As in virtually all matters related to public policies, in this case, it is also true that the simpler its organization, the better the results it will produce. But unfortunately, that is not the case of the issue that concerns us.

IV.3 The Criteria for the Third Level of Analysis: the Contentious Sphere

The last approach to this comparative analysis of state laws on transparency will refer to two final criteria: the legal situation of the authorities responsible for guaranteeing access to public information and the powers effectively granted to the transparency agencies to classify or declassify public information. I said earlier that in the absence of a firmly established culture of information in Mexico, the process of opening up access to information has largely developed as a result of public pressure, the demand for specific regulations and specific legislation concerning specific data. In this respect, the location of the state agencies responsible for ensuring the success of the process is as important a piece of information as the power conferred on them by local laws to determine whether the information produced by the state should be regarded as reserved or confidential. If pressed, I would say that these two last features are as or more important than any of the previous ones, since they determine the implementation of the right to information. Beyond the characteristics of institutional design or of the organizational problems faced by this issue, at the end of the day, what is at stake is the public nature of the information and documents produced by the state. In other words, effective access to information. Hence, the powers granted by the legislation to determine who can and cannot restrict access is, in the last analysis, the most important issue of all. Hence the importance of the last two criteria used for this analysis.

Ninth Criteria: The Authorities' Legal Situation in Transparency Matters.

Much of the analysis corresponding to this criteria has already been explained earlier in this article, particularly in the section on the comparison of institutional design proposed by state laws on the matter. The question we ask now is whether these agencies, dedicated to guaranteeing access to information, represent the last administrative instance to which a citizen can resort to obtain the information he or she has requested. And in this case, the answer might be deceptive: in principle, in fact, all the laws passed to date on this analysis cite the last point of the process as the decisions made by courts in contentious administrative matters or in recently created transparency agencies. As we have seen, however, not all of them are fully autonomous: not all of them have the power to oblige other public offices to make information public; not all of them can establish norms for the production and filing of public documents; not all of them are able to establish procedures for access to information and not all of them are able to sanction the government officials that deny information. There is no need to repeat what was said earlier about each of these sections. What I would like to do is to establish the importance of this set of powers, as a guarantee that the process of opening up access to information has effectively been implemented.

When the Supreme Court of Justice in Mexico modified its criteria to assume the right to information as one of citizens' basic rights, it actually also created a general obligation for all governments that cannot be ignored for reasons of institutional design. Nevertheless, what we have seen throughout this review of local laws is that we are dealing with a right that is limited by the characteristics that compliance with it have adopted, and even overtly denied by the lack of regulatory laws. Hence the importance of the legal situation of transparency laws, which can only be interpreted as a consequence of its specific functions and the way that they can be carried out. It is true that no right is absolute and that laws must establish their limits and the way they must be carried out in practice. But it is also true that until there is a state authority that effectively guarantees compliance with the right to public information, the latter will continue to face insuperable obstacles. And it is true that to date, none of the state organs has this power. At best, they must all negotiate access, so to speak, through the administrative procedures that always involve, throughout the chain of decisions concerning the issue, the governments that actually produce the information. Nothing more need be added: the balance I referred to is enshrined in all the legislations on transparency passed in Mexico.

Tenth Criterion: The Authority to Classify and Declassify Public Information.

The previous criterion, based on the balance negotiated between the opposing trends of the greatest openness or reserve possible, is visible in the powers granted to the agencies responsible for transparency to determine whether information may or

may not be given to the citizens that request it. I believe that this point is central to the entire process: the difference between publicizing and concealing information.

The point to be underlined is that all laws contemplate the possibility of reserving part of the information they produce for very similar reasons: public safety, safeguarding the intimacy of people's data, deliberative processes that had not yet produced decisions, trials underway and in general, the protection of people's assets and lives.[29] Nevertheless, none of these criteria is automatic: their application to specific cases always warrants an interpretation. Hence the importance of the powers granted to the various agencies responsible for the process of transparency in making a distinction between public and reserved information.[30] Moreover, all state laws-except that of Coahuila-have a third classification concerning strictly confidential information on people's individual data which, in principle, is regarded as the private property of the individuals that have given it to the state. The best known case is of the data that Mexicans reveal to the Federal Electoral Institute (IFE) for compiling the electoral roll: this information may only be used for the specific purpose that citizens authorize and in no case may they be published, except for the uses specified by electoral laws. Confidential law raises fewer problems of transparency than reserved information, in that the criterion for application is much clearer. But this is by no means a trivial matter.

The most widespread formula in local legislations consists of a sort of division of roles between agent and principal. With the sole exception of Querétaro, it is assumed that the offices that produce information also have the power to identify and classify that which they consider reserved and confidential. Given that it is impossible to stop this process, legislators acted carefully in this respect, since for the central transparency agencies, it would be virtually impossible to assume the responsibility of classifying all the information produced every day. Thus, this initial function is divided among the very same people that produce public information. It is also the source of the risks of the model: if offices tend towards a lack of openness, they will attempt to find arguments to justify classifying most of the information they are obliged to publish as reserved. For this reason, most local legislations grant transparency agencies the power to declassify reserved information, as a specific result of the appeal for review. Transparency agencies act in this procedure like the principal, which corrects or confirms the decisions made by the agencies. As we saw in the earlier section, however, thirteen of these agencies lack the power to obtain permanent access to previously classified information, meaning that it can only be known when a refusal has already become a remedy of appeal.

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[29] Cfr. Sergio López Ayllón, *Op. Cit.* Pp. 63-64

[30] See the discussion on this issue raised by María Marván in "El acceso a la información: algunos problemas prácticos", in Mauricio Merino (Coord), *Transparencia: libros, autores e ideas.* Centro de Investigación y Docencia Económicas-Instituto Federal de Acceso a la Información Pública, México, 2005.

T A B L E 1 0

Powers of the Agencies Responsible for Ensuring Access to Public Information to Classify and Declassify Information

Powers of the Agency Responsible for Granting Access to Public Information	*Agencies Responsible for Granting Access to Information that Do Consider It.*	*Agencies Responsible for Access to Information that Do Not Consider it*
To classify information	Querétaro	Coahuila, Colima, Federal District, Durango, Guanajuato, Jalisco, México, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tlaxcala, Yucatán, Zacatecas.
To declassify information	Coahuila, Colima, Durango, Guanajuato, México, Michoacán, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, Jalisco, Quintana Roo, San Luis Potosí, Sinaloa, Tlaxcala, Yucatán, Zacatecas	Federal District, Sonora

This is undoubtedly a pragmatic procedure. Yet ensuring that its implementation leads to more open access to public information is actually based on a fortunate combination of variables, the first being that the offices do not use their powers to classify information for reasons other than those established in each law; the second being that if they do so, citizens should act to appeal these decisions until they arrive at the remedies of appeal and the third is that the agencies responsible for ensuring transparency should not fall into the logic of political negotiations that may lead to justifying refusals for reasons not expressly contemplated in the laws or which have sufficient means and criteria to be able to counteract the technical and legal arguments that will undoubtedly be put forward to keep the information that was denied reserved and fourthly, that the result of this litigious procedure, in which the central organs of transparency must act as judges between the offices and the citizens requesting information should not be mediated by political sympathies, party colors or private interests. In other words, that the general principles of the imparting of justice

should be applied with absolute rigor: And let us not deceive ourselves: at the end of the day, the success of the system designed in all the states to begin the process of opening up access to public information depends on the ethical probity of those who have the last word on permitting or denying access.

VI.

Throughout these notes, I have attempted to show that the process of opening up access to public information in Mexico is still incipient, incomplete and fragmented. However, it is also a fact that this process has already begun and has become one of the signs of identity of democratic consolidation. As in any truly important process, it has good and bad points: states that have refused to adopt transparency as opposed to others that moved more quickly than the federation; systems of openness that have established guidelines for effective behavior as opposed to those that have encouraged the lack of powers and resources for the agencies responsible for implementing the process: genuine innovations, as opposed to pretence. But it is a fact, in any case, that this process has already become established in Mexico.

In a review of this nature, it is impossible to propose conclusions without reducing the value of the comparison made in the previous pages. Conversely, I would like to end this article with three final reflections, the first of which being that the issue of transparency, as we saw from the outset, is actually concerned with several levels of the state's social, political and economic coexistence. It is a topic that has several angles, whose practical expression speaks of the many ways in which the state is linked to society. The tendency towards administrative concealment and secrecy is now facing the opposite trend, which seeks greater openness of the information produced by the state and is committed to the social surveillance of public decisions and policies. Transparency implies a new challenge to the current relationship existing between the state and its citizens, according to the classic formula devised by Hermann Heller which also raises new problems of public organization and new legal dilemmas, for which a solution has yet to be found. Access to public information currently protected by the laws passed to date is only the tip of the iceberg. Under it lies an entirely new conception of the rule of law.

The second reflection, which stems from this first glance at local laws, lies in the very diversity of these laws. It is difficult to imagine a similar situation arising during the 20th century in Mexico: the hegemonic party system in the country established homogeneous laws for heterogeneous regions and realities. Conversely, we are now facing a process that has acquired as many nuances as those that each state has sought to give it. In light of the ten criteria for comparison I have used for these notes, one cannot even speak of competing alternative models, since there are in fact many different ways of dealing with the issue. I think that it is no exaggeration to say that the

transparency policy is the first one of a genuinely federal scope produced after the transition to democracy. Yet I realize that this statement needs clarifying: when I say "federal" I do not mean the traditional interpretation of this expression, according to which government issued norms which were adopted by the states. I am referring to the original significance of the term: a policy implemented in the states with as many differences as there are between each state. And also to the fact that it occurs in this way because in the early 21st century, it is possible for it to do so, given the plurality of the options and powers that have become established in Mexican political life.

Nevertheless, transparency is not only a public policy. Access to public information has also become one of citizens' main rights. And this last characteristic should not go unnoticed: we are dealing with a right and a policy. Hence the difficulty of analysis: if on the one hand, we should celebrate the fact that each state is adopting a policy in keeping with its priorities, on the other hand, it is unfortunate that citizens' universal right should be limited or annulled by the diversity of local laws. The virtue of federal diversity becomes a vice when it acts against fundamental rights. It is necessary to split hairs, because it is not fair for the federation to become an obstacle to the effective fulfillment of this right. And to prevent this, one will have to assume a minimal definition and procedures to guarantee access to all the public information produced on Mexican territory. On the basis of this minimum, every state and even every municipality could broaden the frontiers of this right and define its own policies for turning transparency into a local matter that has been fully assumed. If this were the case, federal logic could multiply its virtues in favor of citizens. Nevertheless, the reverse is happening: where transparency is concerned, federalism has become an obstacle.

I would like to end with one last comment. In the debate on the design and development of public policies, there is one common point regarding the gradual conquest of rights: the last word is never said. Conversely, every movement for or against a new democratic idea also produces new knowledge and modifies the original situations. And this is what is happening in the field of access to public information in Mexico: every day, more is known about its importance, new possibilities are being opened up of analysis and new practical challenges are being raised. In short: transparency has gradually become one of the key issues in consolidating our democracy. And the good news is that, despite everything, we are already on the way there.