Nowadays we live in a context where society has become more and more demanding. The “halo” that surrounded an omnipotent authority –remember the theory of the Reason of State– and which experienced its glory during the “Cold War” has disappeared little by little to make way for a joint responsibility between society and government in regard to public affairs.

To make this joint responsibility more effective, it was necessary for society to know how public resources are used and about decision-making processes, reasons to make such decisions and the impact they have.

Thus, when we speak of The Right to Access Information (Spanish: Derecho de Acceso a la Información DAI) the first thing that pops into our head is the word Transparency; probably because some theorists see DAI as an essential instrument in Transparency as a public policy. Others might think transparency is a result of DAI; without transparency the right to access information would not exist, could not be exercised and it would just be a utopia.

Recently, transparency has been considered the basis of modern democracy, without it it would be impossible to know the way the government acts, and the same government would not be forced to be no accountable. Thus, the regulation of transparency has been an important step to build democratic policies in our country.

1. The Right to Access Information, the basis of Transparency

What is the origin of the Right to Access Information? We would never think of two of the most populated countries on Earth: ancient China and India.

* Political Scientist and Public Administrator. Head of the Center for the Development of Public Administrative Culture, INAP. President of the National Political Institute of Public Administrators (IPONAP).
The Chinese emperor was the owner of his subjects’ lives because the only constitution that existed was hill will; however, the Ching dynasty created the Imperial Censorship Bureau. This bureau was in charge of rectifying honesty and efficiency offences committed by the Empire’s employees. Confucius’s philosophy was a great influence in Chinese society—even the Emperor’s behavior was inspired by it—and “[...] knowledge taught in the analects became essential to pass Imperial Exams taken on by every public employee of the Imperial Court.”

India had a book entitled “Arthasastra” by Kautilya (Century IV BC) who stated the need to have daily inspection of public employees’ conduct so as to prevent them from embezzling money from the King. The author also mentions that “men are fickle by nature and... exhibit constant changes in their temperament. Their office and instruments they use, place and work schedule, the way they work, expenses and results have to always be supervised.”

In the 18th century, twenty centuries later, Anders Chydenius, Swedish economist, priest and deputy fought against the current of thought that stated that state affairs were secret, this was known as the arcana imperii. He promoted the Freedom of Press and Right to Access Public Records Law, which was first of its kind and cutting edge at the time (published in 1766, ten years before the Independence of the United States and thirteen years before the French Revolution). This was a time when modern democracy was being conceptualized, it was an ideal that was not put into practice. The Chydenius Law was very strong when it was promulgated in the 18th century; however, it was not decisive in the configuration of the elements of every modern law that seeks to ensure access to public information for citizens. It is also noteworthy that said regulation was in force for a long time due to the fact that the Swedish society of that time used it wisely and public employees in charge of delivering the information to the public had good disposition (even King Gustav III promoted and protected it). This law also promoted Freedom of Press which also happened in our country when DAI was born.

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3 Arcana imperii or “secrets of the Empire” means not only State secrets, but also those unfathomable political mysteries known only by the political elite. Rodríguez, Jesús. (2008). “Estado y Transparencia: un paseo por la Filosofía Política”. Cuadernos de Transparencia, No. 04. Mexico: IFAI. pp. 13-16.
5 Ibidem.
Subsequently, as first doctrinal source, we have The Declaration of the Rights of Man and of the Citizen promulgated by the National Assembly of France. Article 15 proclaimed: “Every community has the right to demand of all officials an account of their conduct.” This meant the establishment, at least in Western countries, of the citizens’ prerogative to supervise public employees and the latter’s obligation to make reports of their work.

The second basic doctrinal source is found in article 19 of the Universal Declaration of Human Rights which states that:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Ergo, the Right to Access Information is considered as “the prerogative people have to access data, records and all kinds of information of public and private bodies that exercise public spending and/or exercise authority, with limited exceptions established by law in a democratic society.” That is, a person has the right to know what the government does and why; the petitioner can be anywhere in the world and does not need to disclose his personal information to ask for this information. This rule does not apply if the petition includes personal data or if the information is considered controversial.

One of the goals of DAI is to make Public Management more transparent as well as strengthening government’s legitimacy through greater citizen trust; make citizens and the population exercise their rights and obligations and identify State’s and government’s strengths and weaknesses. These goals can be achieved thanks to the application of principles such as equal opportunities, non-discrimination, opportunity to access information and the appropriateness of it.

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7 On December 10th 1948, the General Assembly of the incipient United Nations, adopted the Universal Declaration of Human Rights as its own and proclaimed: “…this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. Retrieved from: http://secint50.un.org/spanish/aboutun/hrights.htm


9 Ibidem, p. 12.
We can say that DAI can be understood as the opening of public affairs so they can be scrutinized by the public, the generation of a “transparent” government that is not afraid the citizens will examine its actions and the involvement of the population to make it better. DAI empowers the population by transforming the citizens-government relationship and promoting effective accountability.10

The right to access public information is a universal human right. The universal subjects of said right are the people. When journalists and other citizens want to exercise it, they do it as individuals. This right is not classified for any social group; it is also not restricted to the country’s territory because it is not a political right which is restricted to the country’s population. The right to access information is a human right and therefore, a universal one.

2. History of Transparency in Mexico

The three last decades of the 20th century were defined by the rise of citizen participation in every area of the limited public life that existed; the government controlled most of the social actions it carried out, product of the so-called Welfare State. Different social movements generated a substantial change in the way decisions were made and their implementation. All of this would give birth to the 21st century where community would be the center of attention.

This happened in Mexico after the 1968 movement, which brought on the opportunity for young people to participate in politics. Subsequently, one of the consequences of the so-called “dirty war” was the first major electoral reform which would give birth to the Organizations, Parties and Electoral Processes Law (LOPPE). The latter officially recognized parties which were considered clandestine before this, such as the Communist Party. This electoral reform was strengthened after the 1988 questioned election which prompted the creation of the Federal Electoral Institute (Spanish: Instituto Federal Electoral IFE) that was first a part of the Ministry of the Interior and in 1996 as a citizenized body.

Constant violations to “normal” human rights committed in regimes where governments do not listen to their people and public space is concentrated

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10 Accountability entails a sense of obligation. Account-giving seems to suggest a voluntary act, a generous concession in which the sovereign answers to the public voluntarily. Accountability, on the other hand, is compulsory account-giving. Additionally, account-giving (the obligation to do so) goes hand-in-hand with demanding accountability (the right to do so). Like power controls, the obligations of some people are the right of other; accountability takes into account both parties, the ones in charge of account-giving and the ones who demand it. Schedler, A. (2004) “¿Qué es la Rendición de cuentas?” Cuadernos de Transparencia, No. 3, IFAI. pp. 11-12.
in the authorities gave birth to the National Human Rights Commission in 1990. The latter is still in charge of protecting Constitutionally-given individual rights.

**Original conception and the 1976 Reform**

Ramírez (1976), mentions one of the constitutional principles that forces the Constitution to enumerate the rights of the individual who can be isolated beings or related to other individuals.\(^{11}\) Considering the author’s words, the first group includes: freedom of conscience and work and the second one entails religious, press and association freedom –among others–. We could also say that the right to access information is part of the two groups.

DAI is part of the two groups because of the political interpretation is has been an object of from its beginning. In this sense, we cannot separate Law from Politics and the other way around. Why do I dare say this? Both of them are an important part of the game of power and one helps the other to achieve an affective regulation that limits Politics, and the latter materializes Law through its effective application. As Diego Valadés says:

>“Legal order is intimately related to political order. On the one hand, rules define political form; on the other hand, political exercise updates the legal hypothesis. The most obvious point of that coincidence is seen in political decisions that become constitutional precepts and thus, erect themselves as the basis of the normative universe and the work of the State.”\(^{12}\)

The 1917 Constitution did not include DAI. Article 6 stated: “*The expression of ideas shall not be subject to any judicial or administrative investigation, unless it offends good morals, infringes the rights of others, incites to crime, or disturbs the public order.*”\(^{13}\) This article was not modified until 1976.

The first official documents which speak about access to public information date back to 1976 when José López Portillo, President of the Republic at that time, promulgated his Basic Government Plan (1976-1982)\(^{14}\) which read:


“[...] The right to access information means overcoming the purely mercantilist view of the media. It also means renovating the traditional idea which understands the right to access information as the equivalent of freedom of speech; that is, freedom for the person who produces and broadcasts. This would ignore the right men have as recipients of the information.

The existence of a real right to access information; enriches the knowledge citizens have to have a better democratic participation, to organize individual and collective conduct of the country according to their aspirations”

In the aforementioned quote, we can see that the Right to Access Information is seen as the solution to the attacks the media was subjected to after López Portillo came into power; we only have to remember his phrase “I am not paying to get hit”. Thus, the Government was in charge of giving the media the necessary information of the work being done.

In 1977, the Presidency sent a series of constitutional reforms which ought to lay the seed of the right to information so as to promote democratic culture where there was not a system of this nature. The Presidency sent the Congress of the Union the law initiative on political reform on October 4th 1977 which intended to modify 17 articles of the Federal Constitution; the Presidency’s gesture of openness. Said initiative added one sentence to article 6 to guarantee DAI: “The right to access information will be guaranteed by the State”.

The ruling presented to the Chamber of Deputies by the Joint Committee on Governing and Constitutional Issue established that said reform would take place so that information wouldn’t be distorted by those in charge of transmitting it to society, in other words the media. It read:

“If an acceptable general culture, political education and the chance to check and confirm transmission sources does not exist; information becomes deformed. The aforementioned conditions are far from belonging to the common people; ergo, there is the need to introduce the right to access information as a social right”.

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15 Cabrera, J. in Burgoa, I. op. cit., pp. 672 y 673.

16 Derechos del Pueblo Mexicano. México a través de sus Constituciones. (1994). Volume 2, H. Cámara de Diputados, 55th Legislature. p.p. 388. This volume also presents the debate that took place in the Chamber of Deputies and the Republic’s Senate about the 6th article’s reform.
We can see that it seemed Mexican society lacked political culture; ergo, the media could misinform it about government actions. This is why the government would be in charge of “protecting” this right; this way the information would be true, objective and impartial. Logically, the initiative was passed and promulgated in the *Official Journal of the Federation* on December 6th 1977.17

Thus, DAI became enveloped between two actors: the government and the media. The writings of that time how that DAI’s “minor” rights (right to not be bothered because of ones opinions; to investigate facts [news], to investigate ideas; to receive opinion, news, ideas and broadcast them)18 had to do with the media because information (whichever it was) was transmitted to society by the media, which had some kind of social responsibility when doing so.19

The lack of this article’s regulation caused it to be used in diverse manners. Ignacio Burgoa’s work *Individual Rights* (Spanish: *Las Garantías Individuales*), speaks of a specific request for information –based article 6 and 8 of the Constitution– made to the Ministry of Finance and Public Credit to provide data on external debt. The information was denied, and an appeal was filed before a judge and later before the Administrative Courtroom of the Supreme Court20, which concluded:

> “a) The right to access information is a social right related to the freedom of speech; it was established thanks to the ‘Political Reform’ which means the State has to allow the regular manifestation of diverse opinion of political parties in the media;

> b) The specific definition of the right to access information will be given by secondary legislation; and

> c) It never was intended to have an individual right to allow any citizen, whenever he considers it relevant, to request and obtain specific information from State bodies.”21

This ruling has two important points: 1) the need the Supreme Court mentions to establish secondary regulation for DAI, and 2) the fact that it was considered that the constitutional reform was not passed so that any citizen could freely request information from the government and obtain it.

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21 *Ibidem*, p. 690.
From my point of view, this left citizens vulnerable and unable to exercise this right.

Nonetheless, the Supreme Court was not the only one that understood the need to have a secondary legislation to regulate article 6 of the Constitution. Besides Mr. Burgoa, various advocates of constitutional government such as Salvador Valencia Carmona establish that one of the great pending issues of the late 20th century was the regulation of this right so as to guarantee true and impartial information.\textsuperscript{22}

\textit{Regulation of article 6}

Ernesto Zedillo’s term saw the beginning of DAI’s regulation and the creation of public policies regarding Transparency. The Compranet System was created to electronically inform about purchases made by the government. It is worth mentioning that this system, in President Fox’s first years, was responsible for the fall of one his advisers because of the so-called “Towel-Gate”.\textsuperscript{23}

In Zedillo’s term, academic Sergio Aguayo –president of Alianza Cívica, A.C.– asked the Republic’s Presidency, using DAI, for information regarding Presidency’s accrued wages and reserved funds. Said information was denied and he turned to the Supreme Court of the Nation and subsequently to the Inter-American Commission of Human Rights; the latter declared itself incompetent. Thanks to the multiple appeals presented by the organization, the information was partially released, the numbers were less than credible and it was said that “citizens had no right to know this information”.\textsuperscript{24}

When political alternation arrived in the year 2000, it was thought that it was the appropriate time to finally regulate article 6. Different civil society started negotiations, especially the Oaxaca Group, which ended when the Transparency and Access to Government Public Information Federal Law was published in 2002. Said law forces agencies and bodies of the three levels of government, as well as autonomous constitutional bodies to give citizens the information they asked for; except that which is considered reserved or confidential.

\textsuperscript{22} Valencia, S. \textit{op. cit.}, p. 253.

\textsuperscript{23} This was a famous case at the beginning of Vicente Fox’s administration. Towels and luxury articles were purchased for the official home of the President and his family. These articles totals $440,000 pesos; public opinion became unhappy with this situation. Our country’s newspapers wrote about this on June 2001.

Ergo, as explained by José R. Castelazo, DAI and Transparency became public policy because the law acquired procedures to guide access to information, citizens also cooperated to implement it and an organization was created to guarantee the enforcement of Transparency and Access to Information Right, this organization is the Federal Institute for Access to Information (Spanish: Instituto Federal de Acceso a la Información, IFAI).25

Once the Federation regulated Transparency and DAI, states started to do the same and created state legislation and bodies to guarantee the exercise of this right.

2007 Reform

Finally, to strengthen the country’s Transparency, article 6 of the Constitution was reformed in 2007.26 The following paragraph was added to article 6:

“In order to guarantee the right to information, the Federation, the states and the Federal District, according to their powers, shall be ruled by the following principles:

I. All information in custody of any federal, state or local authority, entity or organ, is public. It may be reserved only temporarily due to public interest and according to the law. The principle of maximum disclosure shall prevail when interpreting this right.

II. Information regarding private life and personal data shall be protected according to law and with the exceptions established therein.

III. Every person shall have free access to public information and his personal data, as well as to their rectification, without the necessity to argue interest or justification.

IV. Free mechanisms to access information and review procedures shall be established. These procedures shall be formalized before specialized and impartial agencies, which shall have operational, managerial and decision making independence.

V. Government agencies shall keep their documents in updated administrative files, and shall disclose, through electronic media, the complete and updated information about the indicators of their management and the use of public resources.


26 IFAI has compiled all of the information related to the reform of this article, it is interesting to read the motives the Chamber of Deputies had. Reforma al artículo 6° Constitucional que establece el acceso a la información pública como un derecho fundamental de los mexicanos. (2007). México: IFAI.
VI. The law shall establish procedures for governmental agencies to disclose information concerning the use of public resources paid to natural or artificial persons.

VII. Failure to comply with these dispositions shall be penalized according to the law.”

The main characteristics of this reform are:

- Maximum disclosure: All information in custody of any boy of the three levels of government is public. It may be reserved only temporarily due to public interest and according to the law.
- The protection of private life and access to personal data only by the interested party.
- The autonomy of the agencies that protect Transparency, so as to ensure their impartiality.
- Local laws shall implement the measures necessary to assure that municipalities having more than 70,000 inhabitants have their own electronic systems to access information from anywhere in the country and the world.

The 2007 Reform provided an opportunity to homogenize the country’s Right to Access Information, due to the fact that each state interpreted it differently –and still does–. This is why we had advanced Transparency laws in some states, like the Federal District, and some laws that were not so advanced.

Nowadays, the Legislative is “cooking” a new constitutional initiative. It is currently being discussed in the Chamber of Deputies’ commissions.

This new initiative plans the create an autonomous body to protect the Right to Access Information, which would interfere in the three Powers of the Union and autonomous constitutional bodies; except, of course, the Supreme Court of the Nation, which would be in charge of supervising and resolving Transparency matters, as long as it rule against the individual. An essential element of this reform is its ability to attract revisions in process from state institutes which can be classified as issues of general interest to the Nation by commissioners.

Another essential aspect of the reform can be found in the creation of two new laws: General Law of Transparency and Access to Public Government Information and a Federal Law. Without a doubt this can be a big step, as long as its implementation process maintains the spirit of access to information: knowing what the government does help us have better citizens and authorities who are aware of their social responsibility.

As Sergio López Ayllón says: “the constitutionalization of the Right to Access Information has important implications because it forces authorities
to enforce and obey it; it also gives citizens the means to demand its enforcement.”


The promulgation of the Federal Law of Transparency and Access to Public Government Information (Spanish: La promulgación de la Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, LFTAIPG) in June 2002 modified the situation in which citizens had a difficult time accessing public information. It is based on the idea that all government information is public and that every public employee should be accountable to citizens. Information classified as restricted shall be appropriately justified and people who request this information need not to argue interest or justification.

LFTAIPG is a powerful tool that helps transparency and it has also become an international example. It provides a list of obligations that every government office and body should obey and observe. It has filled an institutional void by putting forward a proposal to create an autonomous institution in charge of monitoring its enforcement: Federal Institute for Access to Information (IFAI). IFAI is in charge of guaranteeing access to government information, promoting a transparency and accountability culture in public employees of the Federal Executive Power and protecting citizens’ personal and private data. The following chart shows what kind of information can be classified as reserved or confidential, respecting constitutional respect for privacy and in accordance to individual rights:

Source: Developed by the author based on LFTAIPG.

LFTAIPG defines all government information as public and forces all government offices and bodies to favor the “disclosure principle” over the reserved one. Each body has to publish all of its information regarding its functions, budgets, operations, staff, wage, internal reports, contracts and subventions in a routine, periodic and understandable way. It gives citizens the right to request information that has not been made public yet and take actions in court against each body that denies information.

In general term, LFTAIPG’s goals are making public management more transparent, promote government’s accountability and contribute to the democratization of Mexican society. It has interesting innovations, such as the fact that information cannot be considered confidential if it deals with “severe violations” of fundamental rights or crimes against humanity. On the other hand, the world now lives in the global village and informatics network era so the government should promote the flow and dissemination of information. Mexican legislation forces government bodies to have an internet site with all of the necessary information available.

This law has become a mechanism to fight political and administrative corruption. The disclosure principle allows the allocation of public responsibilities, identification of those who execute decisions and government functions. It can also be used as an instrument to know and evaluate public policies, improve the level of debate on its design, content and impact. When all public employees are obligated to be accountable they can help build a new relationship between rulers and the ones they rule and promote the country’s democratic consolidation.

Legislations of several countries include the creation of autonomous bodies in charge of monitoring the observance of this law. This is why IFAI –created as a body dependent on the Federal Executive Power– started to operate in 2003 and was in charge of enforcing LFTAIPG –in the Federal Executive Power– promoting and disseminating the right to exercise access to information, solve requests which had been denied and protect personal data held by government offices and bodies. It is also expected to spur a cultural transformation by putting government management and public employees under critical and constant social scrutiny.

IFAI has operational, budgetary and decision autonomy which gives it great strength and independence in contrast to other Public Administration bodies. It is also authorized to unrestrictedly know all of the information held by any government office or body; even if it is confidential or reserved information which is great responsibility. This power allows it to ensure compliance with the law and it also avoids that certain information can remain classified as confidential.

Government bodies are helped by IFAI to establish criteria for its reserve, training and technical support to post information and answer requests;

28 Ackerman, op. cit.
creating guidelines regarding the handling of personal data and also notify internal accounting offices of LFTAIPG infractions. IFAI gives guidance on search, review and development processes for those who request information. IFAI is also in charge of preparing an access guide to federal information; create an annual report on the government’s response capabilities regarding information requests made by society to be given to Congress and educate citizens and public employees on this subject. IFAI’s work also includes supporting and increasing public’s trust in institutions and activating formal accountability mechanisms. Nonetheless, legislation does not establish that IFAI’s sessions and deliberations have to be public; this is an important element that has to be examined and improved to develop better transparency bodies.

One can imagine that a more transparent State is a more efficient one. This can be seen, on the long run, on the strengthening of public funds and the economy in general. According to several studies, corruption costs various percentage points of GDP, resources that could be used to promote productive and social activities. Thanks to LFTAIPG and IFAI, businesses and citizens can be aware of their public life rights and obligations. Transparency and access to information are two of the most important tasks of the “second phase” of democratic expansion and consolidation in Mexico.

After almost eleven years of the passing of LFTAIPG and ten years after citizens acquired the right to access public information, these are the results of the impact this policy has had:

REQUESTS TO ACCESS INFORMATION
Number of requests to access information (2003-2011)
Data up until December 31st 2011

<table>
<thead>
<tr>
<th>Year</th>
<th>Requests</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>24,097*</td>
</tr>
<tr>
<td>2004</td>
<td>37,732</td>
</tr>
<tr>
<td>2005</td>
<td>50,127</td>
</tr>
<tr>
<td>2006</td>
<td>60,213</td>
</tr>
<tr>
<td>2007</td>
<td>94,723</td>
</tr>
<tr>
<td>2008</td>
<td>105,250</td>
</tr>
<tr>
<td>2009</td>
<td>117,597</td>
</tr>
<tr>
<td>2010</td>
<td>122,138</td>
</tr>
<tr>
<td>2011</td>
<td>123,293</td>
</tr>
</tbody>
</table>

* Cifras del 12 junio al 31 de diciembre de 2003

Source: 9th Work Report, IFAI.29

We can see there has been a substantial rise in access to information requests. In 2003, 24097 of them were made; however 123,293 of them were made in 2003\(^{30}\). This represents a 500% growth thanks to the impact and implementation of this Law; it also shows its credibility also grew. We can also see there are more requests are made in electoral years; this can be interpreted in various ways. Nonetheless, the population is interested on how resources are used and if they are being used for electoral purposes.

The way of requesting information demonstrates the importance and transcendence of electronic means, even when our country still faces challenges regarding this topic. The following graph shows how people requested information in 2011:

### How people request information

<table>
<thead>
<tr>
<th>Mes</th>
<th>Solicitudes electrónicas</th>
<th>Solicitudes manuales</th>
<th>Total solicitudes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enero</td>
<td>9,275</td>
<td>880</td>
<td>10,155</td>
</tr>
<tr>
<td>Febrero</td>
<td>10,844</td>
<td>278</td>
<td>11,122</td>
</tr>
<tr>
<td>Marzo</td>
<td>12,427</td>
<td>340</td>
<td>12,767</td>
</tr>
<tr>
<td>Abril</td>
<td>8,599</td>
<td>711</td>
<td>9,310</td>
</tr>
<tr>
<td>Mayo</td>
<td>9,665</td>
<td>446</td>
<td>10,111</td>
</tr>
<tr>
<td>Junio</td>
<td>10,997</td>
<td>551</td>
<td>11,548</td>
</tr>
<tr>
<td>Julio</td>
<td>8,929</td>
<td>281</td>
<td>9,210</td>
</tr>
<tr>
<td>Agosto</td>
<td>10,370</td>
<td>325</td>
<td>10,695</td>
</tr>
<tr>
<td>Septiembre</td>
<td>10,975</td>
<td>317</td>
<td>11,292</td>
</tr>
<tr>
<td>Octubre</td>
<td>10,661</td>
<td>327</td>
<td>10,988</td>
</tr>
<tr>
<td>Noviembre</td>
<td>9,761</td>
<td>332</td>
<td>10,093</td>
</tr>
<tr>
<td>Diciembre</td>
<td>5,778</td>
<td>224</td>
<td>6,002</td>
</tr>
<tr>
<td>Total</td>
<td>118,281</td>
<td>5,012</td>
<td>123,293</td>
</tr>
</tbody>
</table>

Source: 9th Work Report, IFAI.\(^{31}\)

Additionally, most requests have to do with personal data and information generated by offices themselves; the following graph shows information related to institutional contracts and activities:

\(^{30}\) We have to remember that citizens started to request information on June 12\(^{th}\) 2003, following the promulgated law.

\(^{31}\) IFAI, op. cit., p. 21.
Another important point is, who requests this information? It is widely believed that the media; however, the following chart shows that most people who request information belong to the academic and corporate world, although it would be interesting to know what others who ask for this information do.

**Number of information requests, per year, including occupation of petitioners**

**Data up until December 31st 2011**

<table>
<thead>
<tr>
<th>Occupation</th>
<th>2003-2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Núm.</td>
<td>%*</td>
<td>Núm.</td>
<td>%*</td>
<td>Núm.</td>
<td>%*</td>
</tr>
<tr>
<td>Ámbito empresarial</td>
<td>30,033</td>
<td>17.7</td>
<td>11,428</td>
<td>18.0</td>
<td>17,632</td>
<td>19.2</td>
</tr>
<tr>
<td>Ámbito académico</td>
<td>55,094</td>
<td>32.5</td>
<td>18,352</td>
<td>28.9</td>
<td>27,361</td>
<td>29.7</td>
</tr>
<tr>
<td>Ámbito gubernamental</td>
<td>19,746</td>
<td>11.6</td>
<td>7,806</td>
<td>12.3</td>
<td>10,114</td>
<td>11.0</td>
</tr>
<tr>
<td>Medios de comunicación</td>
<td>15,670</td>
<td>9.2</td>
<td>5,012</td>
<td>7.9</td>
<td>7,393</td>
<td>8.0</td>
</tr>
<tr>
<td>Otros</td>
<td>48,954</td>
<td>28.9</td>
<td>20,832</td>
<td>32.8</td>
<td>29,551</td>
<td>32.1</td>
</tr>
</tbody>
</table>

Source: 9th Work Report, IFAI.\(^{32}\)

\(^{32}\) *Ibidem*, p. 23.
According to the results, Transparency was a successful public policy that has been copied in other states.

### 4. Transparency and states

Our country has 32 states and they all have Access to Information Laws. The law of each state has its own characteristics that make it more advanced or not than the Federal Law. Little by little, transparency became part of citizens’ and public employees’ language.

The following map shows when each state published its Transparency Law:

States which have Transparency Laws

33 state transparency laws in Mexico: one federal and 32 states ones

![Transparency Law Map](image)

Source: IFAI, www.ifai.gob.mx

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<table>
<thead>
<tr>
<th>Año de aprobación</th>
<th>No. de entidades</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>5</td>
</tr>
<tr>
<td>2003</td>
<td>8</td>
</tr>
<tr>
<td>2004</td>
<td>9</td>
</tr>
<tr>
<td>2005</td>
<td>6</td>
</tr>
<tr>
<td>2006</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: IFAI, www.ifai.gob.mx

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33 *Ibidem*, p. 27.
In 2002, Querétaro, Jalisco, Michoacán, Aguascalientes and Sinaloa published their Transparency Law—the same year the Federal Law was promulgated. In 2003 Nuevo León, Coahuila, Durango, Colima, the Federal District, Morelos, San Luis Potosí and Guanajuato published it. Yucatán, Quintana Roo, Veracruz, Tamaulipas, Puebla, Tlaxcala, State of México, Zacatecas and Nayarit did it in 2004 and Baja California, Baja California Sur, Sonora, Chihuahua, Guerrero and Campeche in 2005. Only Tabasco, Chiapas, Oaxaca and Hidalgo waited until 2006.

When all 32 states had their Transparency Laws, which included at least one institution in charge of guaranteeing the right to access information, their institutions and the federal one were in charge of creating mechanisms to make it possible for any citizen of the Republic to access information in an agile way. This is how INFOMEX was created: “Tool for the basic e-management of information requests through the implementation of processes of every transparency law”.

And even though not every state is part of this system, most of them are planning to be:

Source: www.infomex.org.mx

34 www.infomex.org.mx
Besides these efforts to unify access to information systems, Transparency measurement indicators have tried to be established and compel subjects to fulfill their obligations. The two most recent studies have been carried out by *Metrics of Transparency in Mexico*[^35], which evaluated Access to Information—not only at the federal level—, of the 32 states’ and their capitals’ governments, except the Federal District.

These studies did not only focus on the information available to the public on the Internet, but it also addresses two other topics: quality of attention given to users and quality of the information given; in their first edition[^36]. Their second edition of metrics included other variables such as legislation quality; Transparency’s guiding principles, responsibilities and sanctions, design of the corresponding body, reserved information, and files, among others.

The general results of these studies done by CIDE show great strength in principles, but weaknesses in file organization and revision processes. The resistance that still exists regarding this right I due to the fact that it affects the greatest power a public employee can have: information.

### 5. Public Power and Transparency

The exercise of Public Power in the modern State is closely linked to Transparency and Accountability, central policies of its development. Nonetheless, the political culture of our country does not necessarily agree with the fact that this policy is necessary to improve government tasks.

Transparency can be viewed as an obstacle to develop several functions of public employees because of the implementation of Federal and state Laws and the fact that they did not hire specialized staff which made it essential to improvise and increase workloads for those who now had to deal with requests for information.

There was also a lack of organization of files in Public Administration, which complicated a bit more the delivery of information.

Besides, the right to access information is still seen, as mentioned before, as a gracious concession given to the media which is in charge of discovering mistakes in everyday government tasks.

Several states made efforts to diminish the strength of institutions in charge of guaranteeing the right to access information. In Campeche, the


[^36]: *Ibidem*. 
decisions of its institution could be examined by the State’s Administrative Court which had the last word. Queretaro tried to fuse together the Human Rights Commission with the Transparency Commission. This situation led to several protests, mainly carried out by civil society organizations which asked the Supreme Court of the Nation to declare unconstitutional the merging of these two bodies.

In more recent times, there have been efforts to undermine the authority of IFAI’s decisions by filing lawsuits before the Superior Court of the Supreme Court. The Court determined that decisions made by the superior body of Transparency are irrevocable. Nonetheless, many public employees have found ways to circumvent the Law and not give any information; they argue that they cannot create information to answer these requests or “curiously enough” mark it as classified a day before the request was made. These are the resistances that exist regarding Transparency.

The following chart shows how many federal bodies have not complied with IFAI’s decisions. As we can see, the number of decisions that have been obeyed gets smaller each year, although it can be considered minimum in percentage terms, it shows the resistance against Transparency laws.

Statistics on the compliance with IFAI’s decisions (per year)

<table>
<thead>
<tr>
<th>Año</th>
<th>Número de resoluciones con instrucción</th>
<th>En trámite</th>
<th>68 incumplimientos denunciados</th>
<th>Cumplimientos pendientes en virtud de la interposición de un amparo</th>
<th>Total de resoluciones cumplidas</th>
<th>Porcentaje</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Cumplidos después de la denuncia</td>
<td>Incumplidos a pesar de la denuncia</td>
<td>Total de resoluciones cumplidas</td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>166</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>166</td>
<td>100%</td>
</tr>
<tr>
<td>2004</td>
<td>446</td>
<td>0</td>
<td>4</td>
<td>5</td>
<td>441</td>
<td>98.4%</td>
</tr>
<tr>
<td>2005</td>
<td>1,125</td>
<td>0</td>
<td>7</td>
<td>2</td>
<td>1,123</td>
<td>99.8%</td>
</tr>
<tr>
<td>2006</td>
<td>1,310</td>
<td>0</td>
<td>5</td>
<td>5</td>
<td>1,302</td>
<td>99.3%</td>
</tr>
<tr>
<td>2007</td>
<td>1,782</td>
<td>0</td>
<td>2</td>
<td>10</td>
<td>4</td>
<td>1,768</td>
</tr>
<tr>
<td>2008</td>
<td>2,003</td>
<td>0</td>
<td>2</td>
<td>14</td>
<td>3</td>
<td>1,986</td>
</tr>
<tr>
<td>2009</td>
<td>2,070</td>
<td>0</td>
<td>5</td>
<td>3</td>
<td>12</td>
<td>2,055</td>
</tr>
<tr>
<td>2010</td>
<td>2,018</td>
<td>18</td>
<td>0</td>
<td>4**</td>
<td>20</td>
<td>1,976</td>
</tr>
<tr>
<td>Total</td>
<td>10,920</td>
<td>18</td>
<td>25</td>
<td>43</td>
<td>42</td>
<td>10,817</td>
</tr>
</tbody>
</table>

In addition, not all bodies carry out all of the obligations outlined by Transparency laws –article 7–, although the existing percentage is of 90%. However, after 11 years of enforcing this law the percentage should be close to 100%.
Number of bodies and entities according to their compliance numbers

<table>
<thead>
<tr>
<th>Porcentaje de cumplimiento</th>
<th>Número de dependencias y entidades a diciembre de 2009*</th>
<th>Número de dependencias y entidades a diciembre de 2010*</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>90 a 99.9</td>
<td>88</td>
<td>126</td>
</tr>
<tr>
<td>80 a 89.9</td>
<td>70</td>
<td>58</td>
</tr>
<tr>
<td>70 a 79.9</td>
<td>37</td>
<td>25</td>
</tr>
<tr>
<td>60 a 69.9</td>
<td>25</td>
<td>16</td>
</tr>
<tr>
<td>50 a 59.9</td>
<td>7</td>
<td>11</td>
</tr>
<tr>
<td>40 a 49.9</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>30 a 39.9</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>20 a 29.9</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>10 a 19.9</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>0 a 9.9</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>ND</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>242*</td>
<td>242</td>
</tr>
</tbody>
</table>

Although authorities have ordered, at least theoretically, the strengthening of DAI and Transparency throughout the country, there is the need to carry out a campaign to raise awareness on the importance these two factors have on national development. All public employees think that accountability, informing the public clearly, appropriately and truthfully does not harm the power they exercise in public positions. On the contrary, it contributes to their strengthening by legitimizing them and creating the necessary trust between government and society.

Conclusions

Transparency has become a popular idea in the second decade of the 21st century. Political parties use it in its political campaigns and swear they fiercely support it. Nonetheless, the resistance shown because of the implementation of this policy is getting stronger due to the ever-growing number of information requests and the new found awareness of the population, especially in big cities and the middle class.

In my opinion, our country’s Transparency public policy needs to carry out the following tasks to be stronger:
a) A Federal Institute for Access to Information which acts accordingly in all Federal levels of Government and autonomous constitutional bodies.

b) The emission of the General Access to Information Guidelines to include all government levels and based on maximum disclosure principle established in the Constitution.

c) A commitment made by the Government, Organized Society and Business Owners so as to create a Transparency culture based on the responsible use of information.

The power of contemporary world must be used responsibly and shared with society. Transparency can be an important tool to legitimize and create trust to strengthen social fabric which is nowadays characterized by the lack of solidarity.

Bibliography


Reforma al artículo 6° Constitucional que establece el acceso a la información pública como un derecho fundamental de los mexicanos. (2007). México: IFAI.


