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The Federal Institute for Access to Information in Mexico and a Culture of Transparency

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Abstract

In the family of freedom of information laws globally, Mexico is a leader, partly because of its Federal Institute for Access to Public Information in Mexico (IFAI) set up under the country's new Transparency Law. The William

and Flora Hewlett Foundation asked an international team to study how IFAI has made a difference as the legislation furthers public understanding of government and provides for an informed citizenry. Evaluating performance was the first priority. But for an institution like IFAI to survive and flower and for it to make its greatest

contribution, it must also be perceived to be performing in accordance with legislative hopes. Two stakeholders—the “obligated agencies” or agencies covered by the underlying law and the public that uses the transparency law were canvassed as part of the study. We conducted a survey of the staff of IFAI itself as to its understanding of its role and performance. IFAI, as part of the architecture of government openness, has already contributed enormously to a culture of transparency in Mexico. That culture of transparency has contributed to undergirding democratic processes. Much of this progress is attributable to the Commissioners and staff at IFAI. They recognize, however, that there remain substantial opportunities to deepen and broaden this process. Our study seeks to make specific recommendations that will reinforce and advance what IFAI has already accomplished.

Among IFAI's important mandates are: resolving appeals of a denied request under the law, training public servants as well in access to information and protection of personal data, monitoring compliance with the law, promoting and disseminating the use of the right of access to information, establishing guidelines for the management of personal data, and disseminating information about how the Transparency Law works. The study focused on these particular mandates as a basis for framing recommendations.

In particular, there is an emphasis on extending the work of IFAI to as many groups and citizens as possible to make the Transparency Law effective. This outreach must extend to public servants subject to the law and the community at large. Indeed, for a deeply ingrained, robust “culture of transparency” to be established in Mexico, IFAI must involve state and municipal governments to promote transparency on the local level. The Transparency Law is largely an accomplishment of the Mexican civil society that lobbied and won its passage. It is a law that stands for unprecedented public openness in Mexico's history. The underlying hopes are that reach citizen throughout Mexico's thirty-one states benefit, directly or indirectly, from the functioning of the transparency laws and the discipline and educative support of IFAI.

Disciplines

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Project for Global Communication Studies at the Annenberg School for Communications, University of Pennsylvania

A Report for the William and Flora Hewlett Foundation

February 2006

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EXECUTIVE SUMMARY

In the family of freedom of information laws globally, Mexico is a leader, partly because of its Federal Institute for Access to Public Information in Mexico (IFAI) set up under the country's new Transparency Law. The William and Flora Hewlett Foundation asked an international team to study how IFAI has made a difference as the legislation furthers public understanding of government and provides for an informed citizenry. Evaluating performance was the first priority. But for an institution like IFAI to survive and flower and for it to make its greatest contribution, it must also be perceived to be performing in accordance with legislative hopes. Two stakeholders—the “obligated agencies” or agencies covered by the underlying law and the public that uses the transparency law were canvassed as part of the study. We conducted a survey of the staff of IFAI itself as to its understanding of its role and performance. IFAI, as part of the architecture of government openness, has already contributed enormously to a culture of transparency in Mexico. That culture of transparency has contributed to undergirding democratic processes. Much of this progress is attributable to the Commissioners and staff at IFAI. They recognize, however, that there remain substantial opportunities to deepen and broaden this process. Our study seeks to make specific recommendations that will reinforce and advance what IFAI has already accomplished.

Among IFAI's important mandates are: resolving appeals of a denied request under the law, training public servants as well in access to information and protection of personal data, moni-

toring compliance with the law, promoting and disseminating the use of the right of access to information, establishing guidelines for the management of personal data, and disseminating information about how the Transparency Law works. The study focused on these particular mandates as a basis for framing recommendations.

In particular, there is an emphasis on extending the work of IFAI to as many groups and citizens as possible to make the Transparency Law effective. This outreach must extend to public servants subject to the law and the community at large. Indeed, for a deeply ingrained, robust "culture of transparency" to be established in Mexico, IFAI must involve state and municipal governments to promote transparency on the local level. The Transparency Law is largely an accomplishment of the Mexican civil society that lobbied and won its passage. It is a law that stands for unprecedented public openness in Mexico's history. The underlying hopes are that each citizen throughout Mexico's thirty-one states benefit, directly or indirectly, from the functioning of the transparency laws and the discipline and educative support of IFAI.

To aid IFAI in continuing to improve its work as well as in disseminating and encouraging a culture of transparency throughout the country, this report makes the following recommendations, divided into sets of recommendations for IFAI, for the obligated agencies, and for the citizens who use IFAI.

A. RECOMMENDATIONS FOR IFAI

While there are many proposals for legislation, we conclude that the emphasis, in the near

future, should be on operational issues and reform. The focus should be on gaining experience and improving the relationship between IFAI, the obligated agencies, and civil society. In short IFAI should:

- attempt to increase its staff resources devoted to working with state and local governments and interest groups;
- undertake a targeted marketing campaign that promotes confidence in the overall FOI system (as opposed to IFAI itself) and engages parts of the population that are currently underrepresented in usage of the Transparency Law; and
- review existing collaborative agreements to ensure that each agreement truly represents a commitment to transparency and collaboration as well as to ensure that it is being actualized.

In addition, in order to focus on concerns about IFAI's future autonomy, we recommend that a Committee for the Protection of IFAI's Autonomy be set up as an outside, independently-funded ombudsgroup to serve as an advocate for the transparency process as well as for IFAI's continued autonomy. And, IFAI needs to push for formal recognition of the definition for budgetary autonomy in Congress and with the President.

B. RECOMMENDATIONS FOR IFAI AND THE OBLIGATED AGENCIES

There should be more frequent and more institutionalized contact between IFAI and the obligated agencies in order to enhance accountability as well as collaboration and information-sharing. IFAI Commissioners could convene reg-

ular (annual or bi-annual, perhaps) meetings with representatives of the agency Liaison Units and Information Committees to address concerns and solicit input on a variety of issues of mutual interest.

An Institute for Transparency, possibly university-based, should be established for research and training in transparency issues, with a particular focus on public servants.

Archiving work needs to be professionalized and a recognized career path in the federal government.

C. RECOMMENDATIONS FOR IFAI AND END USERS

Civil society organizations, with the support of foundations and other independent organizations, should re-engage in the collaborative partnership that originally advocated for the Transparency Law. This partnership should now work to strengthen and solidify the Law and a culture of transparency in Mexico. The partnership could focus on:

- strengthening the operation of the law through strategic engagement with IFAI and the agencies;
- ensuring that there is a consistent and productive effort to engage the general public and a broader cluster of organizations in the actual use of the transparency legislation;
- encouraging use of the law through the press, partly by improving distribution channels for newsworthy disclosures of information;
- targeted training courses for using the law; and

- formalizing a mechanism for monitoring the work of IFAI and implementing the transparency law process generally.

NGO representatives, in particular, should be trained to use legal advocacy and the Transparency Law in a more focused way. This report recommends a pilot project in which an experienced international FOI lawyer is linked with an NGO in Mexico that may have a need for effective use of government documentation. The lawyer should be skilled in using legal advocacy, public relations, and the freedom of information system. That lawyer will provide ongoing mentoring and advice to his or her Mexican counterparts. He or she would advise on how to identify important documents for the purposes of specific goals, how best to request them, how to determine compliance and deal with the compliance process, and how to utilize the documents once they are obtained.

INTRODUCTION

Freedom of information — with its potential for enhancing the operation of government, citizen participation, and economic development — is a key marker of the advance of democratic institutions in Mexico. The unanimous passage in 2002 of freedom of information (“FOI”) legislation through both houses of the Mexican Congress was a victory for civil society groups and journalists involved in a hard-fought openness campaign. The new law represented an unprecedented opportunity to address the rising public demand for a government committed to transparency, accountability, and respect for a citizen’s right to know. Since then, the extent to which the political culture has accepted the imperative of transparency has been significant. Since the federal law entered into force in mid-June 2003, official discourse has increasingly invoked the concepts of “openness” and the “right to information.” The effort to secure adoption of the federal law also spurred initiatives at the state level, where 24 states have adopted comparable laws with four more in the process of adoption.

At the heart of the process for establishing and advancing the goals of the law is the Federal Institute for Access to Public Information (Instituto Federal de Acceso a la Información Pública, or “IFAI”), created in June 2002.

This report examines the first years of the implementation of the law and the functioning of IFAI. The report focuses on the perspectives of the

three groups with the largest stake in the law and in IFAI: IFAI itself, the Federal Executive agencies who are subject to IFAI's decisions (hereafter referred to as "agencies" or "obligated agencies"), and those citizens who use the law and IFAI (hereafter referred to as "requestors") or otherwise benefit from the law (hereafter referred to as end-users, the public, or civil society).¹ The report, through analysis of existing documents, interviews with representatives from all groups, and outside expert knowledge, is intended to assess the strengths and accomplishments of IFAI's work to date in order to demonstrate the extent to which it has fulfilled its mandates. It also seeks to provide a starting point for discussion on the Transparency Law's implementation or design.

The federal Transparency Law represents a vital element of Mexico's democratic transition. The pervasive sentiment regarding IFAI and the Transparency Law itself is that the legislature has enacted machinery that works. Besides the fact that IFAI has a reputation for more often than not facilitating the release of information, the commissioners and staff are accessible and helpful and the agency is seen to be dedicated to fulfilling the mandates of the law. In essence, the law has already brought about significant change and this is to a large extent due to the tireless efforts of IFAI's staff and commissioners. Attitudes toward government-held information have changed substantially. Every week of every month, data are provided to citizens that affect their lives and help shine a light on government practices.

At the same time, the challenge that all participants in the process face at this juncture is to cultivate further, and embed in Mexican society, a culture of openness that reinforces the breakthrough that the law represents. The pur-

pose of this report is to describe the multifaceted role that IFAI — in connection with an extraordinary array of players in government and in civil society — has already played in establishing such a culture and recommend steps that can deepen and enhance it. This is a challenge that goes beyond ensuring that laws are fully and properly implemented; a culture of openness requires the forging of a new relationship between citizen and state, one that fosters the capacity for informed debate and decision-making that citizens need to genuinely participate in a democratic society.

This report assumes the validity of claims about the worth of laws like the one in Mexico: access to information can foster economic development, reduce corruption, lower the cost of government, and provide citizens with an enhanced sense of community. Only as IFAI and the operations of the law become entrenched and substantially transformative, will these goals come into reach.

This report is written from an international perspective. Mexico's new Transparency Law has the potential to become a global model. There are unique opportunities for international learning and modeling based on the Mexican experience in implementing the transparency legislation. Particular areas of focus for the international community include the state of the art electronic request processing system (Sistema de Solicitudes de Información, "SISI"), the focus on technology as a medium for distribution of information; the encouraging number of requests made under the law (more than 40,000 requests processed in the first year of operation), and IFAI's unique accountability structure. For these reasons alone, there is significant international attention being paid to the emergence of a functioning Transparency Law in Mexico.

Limited time and resources (and the relative infancy of the law) precluded a definitive analysis and limited the scope of the project. Nonetheless, the report is based on a thorough review of existing documents, numerous interviews, and focus groups with individuals and officials from IFAI, various government agencies, and members of the public who have used the law. The report also draws on the expert knowledge of the team members, each of whom has extensive experience with freedom of information and organizational issues throughout the world. Data collection was framed within a series of questions that emerged from an initial review of existing documents and areas that were perceived by the team to be of interest either to those directly involved with the Mexican experience (including the Hewlett Foundation, IFAI and members of the Mexican public) or to the international community interested in promoting transparency and freedom of information.

An initial draft of this report was prepared, based on these interviews and documentary research. The draft was distributed to a distinguished group of experts, including IFAI Commissioners, representatives of the government agencies who work with IFAI, leaders from civil society, journalists, and academics. These individuals met to review the report during a two-day workshop at the University of Pennsylvania. Other stakeholders were asked to provide comments. The final report reflects the results of this meeting and all other comments received.

In addition, a user survey was prepared and disseminated through NGOs and the public to garner the viewpoints of those who have used the IFAI system. The survey was designed to gather quantitative data on end user perceptions of

IFAI. It is provided in Section IV.

Throughout our research, a single theme was transcendent: notwithstanding progress thus far, creating a culture of openness remains an enormous challenge in light of the traditional closed nature of Mexico's government. Only through concerted effort will it be likely that the transparency laws are fully and properly implemented and a new relationship forged between citizen and state, one that allows citizens to engage in a dialogue with the state and participate in the decision-making processes of a genuinely democratic society. Our main objective is to contribute to the discussion of how to bring this about; how, in the rhetoric of the day, one can deepen "the culture of transparency." We focus on IFAI because of its central, defining role at the federal level and because of its mandate to reach out and disseminate the culture of transparency at the state level. To be clear, this report is not a "report card" on IFAI, but, rather, an examination designed to further IFAI's effectiveness in developing and promoting the goals of transparency and enhancing public access to government information.

The report is in five parts. The first four sections, mainly descriptive, are: (1) an introduction to the creation of IFAI; (2) a description of IFAI and its internal operations; (3) an examination of IFAI and its relationship to the external government agencies; and (4) a discussion of IFAI and the end user, or requestor. Because these topics cannot be discussed in isolation, there is significant overlap among the sections. The final section of the report is a compilation of recommendations that can serve as the basis for action by IFAI, government agencies, and organizations interested in strengthening transparency in Mexico.

I. BACKGROUND OF IFAI

IFAI is an extraordinary institution that, in its infancy, is developing strong and pioneering mechanisms to enhance transparency of democratic processes in Mexico. It can do so for structural reasons that are absent in other countries around the world (to be discussed below), and also because of mechanisms of support from civil society, from stakeholders, and, to some extent, from institutions like the World Bank.

Since the passage of the 2002 Federal Law on Transparency and Access to Public Information (“Transparency Law”), each governmental entity and agency must accept and respond to freedom of information requests and proactively disseminate information. The law applies to the Executive, Legislature, and Judiciary, as well as the autonomous constitutional entities such as the Federal Electoral Institute (“IFE”), National Commission for Human Rights (“CNDH”), and the Bank of Mexico.

The Executive branch, the Legislature, the Judiciary, and the constitutional entities are required under the law to promulgate regulations that will guarantee the law’s enforcement within their entities.² Each of these entities has enacted such regulations (*reglamentos*).³ The Executive branch enacted the “Reglamento de

la ley federal de transparencia y acceso a la informacion publica gubernamental.”⁴

Also, in the case of the executive branch, which includes the Public Federal Administration, the President, and the Attorney General, the Transparency Law specifically provided for the creation of IFAI, an agency that would review decisions made under the Transparency Law. IFAI was set up to follow the “principles of openness for information of the government” and operates as a “decentralized” part of the executive branch. Under Article 61 of the Transparency Law, the Legislature and Judiciary must establish equivalent entities and systems to IFAI.⁵

IFAI thus provides review of requests made by citizens to the executive branch and its numerous agencies (close to 250 separate entities). Under the law, the agencies must respond to freedom of information requests within 20 days, but may have another 20 days for good cause and if they notify the requestor. In those cases where an individual does not obtain the information requested, the requestor has the right to appeal the denial to IFAI. IFAI reviews each case within 50 days and decides whether the information should be released or may be withheld by the agency. In exceptional cases, IFAI can request a one-time extension of 30 days to investigate the matter and 20 more days to compile a response. If the requestor is still unsatisfied, he or she can turn to the Supreme Court to demand a review of the case. If IFAI decides that the information must be released, the agency does not have recourse to the court and must release the information.

Civil society’s involvement in the work of IFAI and implementation of the Transparency Law has been important and influential throughout

the past two years. A loose-knit coalition of civil society organizations (known as "Grupo Oaxaca") achieved a major strategic victory with the passage of the freedom of information law. The group consisted of more than 100 members, including national and local newspapers, human rights organizations and universities. The group was able to galvanize a broad coalition of congressional support that resulted in passage of the initiative, bringing about one of Latin America's most promising freedom of information initiatives. "Grupo Oaxaca" has since become more formalized as an NGO called Libertad de Información-México A.C. ("LIMAC"), which is devoted to monitoring the Transparency Law and new Transparency Laws at the state level. A number of influential and active NGOs, some of which specialize in particular areas such as the environment, have remained actively involved in freedom of information and have collaborated as part of the *Colectivo de Transparencia*.⁶ During the 2005 International Conference of Information Commissioners, these NGOs banded together to sign a "Commitment to Democracy" which sought to encourage governments around the world to pass transparency laws and to apply principles of transparency to government decision-making, budgeting, and administrative functions.

II. IFAI TODAY

A. INTRODUCTION

IFAI is an independent body within the Federal Public Administration headed by five Commissioners. The Joint Session (or plenary), the highest governing body within IFAI, is composed of the five Commissioners. IFAI is presided over by a President of the Commission, elected by his or her colleagues for a period of two years, with the possibility of re-election for one additional term. The President, in addition to her own responsibilities as a member of the Joint Session, acts as the liaison between the governing body and the executive structure of IFAI, with the purpose of coordinating the execution and development of institutional policies and programs.

In its short but eventful life, IFAI has had to meet a variety of demands: acting as a symbol of transparency; establishing mutually respectful relationships with the government agencies it monitors and reviews; providing training opportunities for members of the government required to answer requests under the Transparency Law, and fostering public appreciation and usage of the Transparency Law. IFAI, the idea, has been transformed into IFAI the reality, an entity with

established procedures, divisions, and staff. The emergence of IFAI as a functioning organization has been remarkable in this time.

IFAI can only fulfill its extensive external objectives, however, if its internal workings are properly functioning. This section explores some of the internal intricacies of IFAI, including its structure and autonomy, day-to-day operations, and the specific process of managing appeals.

B. IFAI'S MAJOR RESPONSIBILITIES

IFAI plays four main roles. It is an administrative court and regulator of FOI procedures; it is mandated to protect personal data and the privacy of individuals; it is a training entity; and it is an advocate for transparency. Each of these roles entails a series of functions (to be discussed in-depth in the following sections). As an administrative court, IFAI adjudicates appeals when conflicts emerge between agencies and citizens regarding their right to obtain information. This involves not only making decisions about whether the agency must release information, but also issuing guidelines to provide clarity and consistency about the law. IFAI has issued guidelines on classification and declassification of information, as well as guidelines regarding archiving and conservation of documentation. As a training entity, IFAI is responsible for educating both agencies and civil society with respect to the intricacies of the Transparency Law and freedom of information in general. Finally, IFAI is charged with ensuring that sensitive information, such as personal data in the custody of the federal government, is protected. In this role, it must issue guidelines for protecting personal data

and guidelines for releasing it to its rightful owner when requested.⁷

C. AUTONOMY AND EFFECTIVENESS

One of the necessary preconditions for IFAI to establish and deepen transparency is autonomy. If IFAI is to build confidence among civil society and government agencies, it must be seen to operate — and must operate — free of doubt of political motivation or influence. It must be a model for the rule of law, a flagship pointing the way towards an improved culture of governance. Its autonomy must also be consistent with acting responsibly and ensuring internal transparency. It must not be perceived as being “above the law” and must follow the principles of transparency it has directed others to follow.

One consistent theme that ran through many of our discussions with IFAI Commissioners and senior staff members is the concern that IFAI may face challenges to its autonomy over the next several years. While repeal or amendment of the Transparency Law appears to be unlikely, there are concerns that shifting political tendencies could create budgetary pressure on IFAI in Congress, cause IFAI’s ability to enforce compliance with its orders to be undermined, foster resistance within the federal agencies, or allow the federal government to act through the Presidential appointment process (or otherwise) to reduce IFAI’s independence and autonomy.

In response to these concerns, two major features of IFAI need to be stressed. First, IFAI is an independent body within the Federal Public Administration headed by five Commissioners. The Commissioners are nominated by the

President of Mexico and approved by the Senate.⁸ They are appointed for a period of seven years, although in order to establish a staggered replacement system, three of the current Commissioners were appointed for a period of four years, and the other two for a period of seven years. Because the President of Mexico's term is six years, without possibility for reelection, this ensures that in the future no one President will appoint all five Commissioners during his or her tenure. While IFAI is not a constitutionally autonomous organization, like the Commission on Human Rights or the Federal Electoral Institute, IFAI's autonomy is achieved in large part through this appointment process.

Second, Article 33 of the Transparency Law grants IFAI "operational, budgetary, and decisional autonomy," although these terms have not been officially defined. There is a general recognition that "budgetary autonomy" should mean that IFAI may present its budget to the President and that the President may not object to it. Congress would have oversight over IFAI's overall budget, but could not change any individual line items in the budget. This feature of IFAI's autonomy is crucial to its continued credibility and independence and must be established and recognized by both IFAI Commissioners and the President and Congress.

There is a widespread view that IFAI must continue to solidify its position, both within Mexican society and internationally, in order to withstand pressure to turn back the clock on government openness and accountability. Given the near consensus among IFAI officials and civil society that freedom from political influence is critical to IFAI's success, continued focus on budgetary autonomy, support for the independence of the Commissioners, and strong support among the public for IFAI's work, are crucial.⁹

D. ROLES AND RESPONSIBILITIES

1. Administrative Court and Regulator of Transparency Law Procedures

IFAI's primary and most powerful role is that of administrative court and regulator. Analysis of this role is divided into three parts: IFAI's role in adjudicating appeals, IFAI's ability to enforce its decisions, and IFAI's role in regulating agencies under the Transparency Law.

a. IFAI's Role in Adjudicating Appeals

When requestors receive an unsatisfactory response from a government agency under IFAI's jurisdiction, they may file an appeal with IFAI. The proportion of appeals to requests for information has been steadily increasing, from 2.6% in 2003 to 3.8% in 2004 and 4.2% to the early part of 2005. By acting on appeals, IFAI sets the tone for government action as a whole with respect to freedom of information.

Within the agency, appeals are assigned to individual Commissioners for initial investigation and consideration. If the petition lacks specific details that it needs, or if it is deficient in some way IFAI has a procedure to assist the requestor in correcting their appeal. The responsible Commissioner then has the power to invite both the requestor and the relevant federal agency to meet separately with him or her to present their arguments concerning the pending appeal. The Commissioner is empowered to require the production of the disputed information for the purpose of resolving the appeal. At the conclusion of this process, the Commissioner

recommends a resolution, which is then presented to the Joint Session for its approval. Proposed resolutions may be accepted, rejected, or modified by a majority vote of the Commissioners. By all accounts, this procedure has worked well, and there appears to be a collegial relationship among the Commissioners.

Action on appeals may result in a range of outcomes, including exacerbating relations with agencies, heartening or disappointing civil society, or setting new standards in construing the statute. When IFAI resolves an appeal in favor of a requestor, IFAI, in effect, issues an order directing the relevant agency to release information it has sought to withhold or that it claims does not exist. Despite this (or perhaps because of this), there are potential enforcement problems, as we discuss below.

i. IFAI's Response Rate

During its first 22 months of operation (through April 2005), IFAI received 2,591 appeals from agency determinations on information requests. That number represents 3.5% of the 74,000 requests submitted to federal agencies during the same period of time. Although the number of appeals appears to be increasing (from 2.6% in 2003 to 4.2% up through spring of 2005), IFAI officials consider the appeal rate to be low. It is difficult to interpret the significance of the low level of appeal activity; it could indicate either that agencies are responding to requests in a largely satisfactory manner, or that dissatisfied requestors are not pursuing their rights to submit appeals. Institute officials believe that a combination of both factors likely accounts for the relatively small percentage of requests that are the subjects of appeals. At least one official

expressed the opinion that agencies are disclosing a greater amount of information than initially anticipated. At the same time, it is likely that many petitioners are not sufficiently motivated to pursue their requests further if they are dissatisfied with the agency response, and several users we interviewed indicated that they had given up on some requests. Some officials have observed that Mexican citizens do not expect to receive an adequate response from the government, and that their preconceptions are merely confirmed once they make a futile attempt to use the new law.

One possible reason for the low appeal rate — potential difficulty in submitting an appeal to IFAI — was discounted as a significant factor. IFAI officials believe that the appeal process is as simple as is the initial request process, and that if a citizen has the ability to make a request in the first place, he or she should be similarly able to follow-up with an appeal. This is particularly true in the case of requests submitted through the web-based SISI system, which accounts for the vast majority of requesting activity. Several requestors confirmed IFAI's belief.

IFAI's statistics indicate that the appeal process has resulted in the disclosure of some or all of the disputed information in 56% of the cases brought before IFAI. Initial agency non-disclosure determinations were upheld in 16% of the cases (in the remaining 28% of cases, the appeal did not proceed for a variety of procedural reasons). This early track record is likely to bolster public confidence in IFAI's independence. At the same time, IFAI's demonstrated willingness to reject agency attempts to withhold information is likely to send a message through the bureaucracy that transparency must be taken seriously and that IFAI stands

ready to champion citizens' rights of access. By any objective measure, it appears that IFAI has exercised its legal mandate aggressively and, in its role as an administrative court, has advanced the goals of the Transparency Law by closely scrutinizing agency actions.¹⁰

Notwithstanding the early success of the appeals process, several IFAI officials expressed concern over the increasing number of agency responses that assert the non-existence of the requested information ("no records" responses or "inexistencia"). Overall, in 2004, 3.4% of requests resulted in no records responses. Up through early 2005, the percentage grew to 4.2%. Given the lack of effective archiving practices throughout the government, some number of these responses is likely to be an accurate indication of an inability to locate the requested material. Additionally, it is often the case that a citizen requests information that simply does not exist in an agency's record system. It is virtually impossible, however, for IFAI to verify the accuracy of a "no records" response (this is true under any FOI regime, as a degree of agency good faith in accounting for responsive information must be assumed). The problem is exacerbated by archiving deficiencies within the agencies, creating an environment where it is too easy for a recalcitrant agency to deny the existence of requested material. This provides another compelling reason for IFAI, and the government as a whole, to quickly address the archiving issue.

One of the most commonly expressed concerns we heard during our discussions was that the Transparency Law has been used almost exclusively by those with access to the Internet. This concept is more fully discussed in the end-user section; however, one likely explanation for this trend is that IFAI has emphasized the develop-

ment and use of a state-of-the-art, web-based request generation mechanism, the SISI. Indeed, one IFAI official stated that IFAI was built on the concept of electronic access. At the same time, IFAI has published a “simple form” which citizens can use to send in requests to agencies without using SISI, by mail, courier, or through the web.¹¹ Though this form exists, however, SISI still accounts for more than 90% of the requests submitted to date. Creation of SISI is a notable accomplishment, and it is likely the most advanced electronic FOI interface in the world. It can be used both to submit initial requests for information and to submit an appeal to IFAI. It can also be used to search through previous requests and answers given by agencies to those requests. In short, the SISI system is a major accomplishment and significant support for FOI in Mexico, but as will be discussed later, if the simple form is not used to a greater extent, the Law’s usefulness outside the capital may be limited.

ii. IFAI and the Agency Response Rate

IFAI is concerned with the implementation of the Transparency Law at the agency level on a very broad level as well. They have several concerns about progress so far. First, IFAI officials believe that the current level of requesting activity (roughly 40,000 requests per year) is low and note that a level of usage comparable to that in the United States would result in one million requests per year. Unlike the experience in other countries, undue delay with the processing of initial requests has not been a problem. However, expanded use of the Transparency Law is a major goal of IFAI. It is unclear how well IFAI and the agencies would be able to handle the corresponding increase in appeals that

would most likely correspond to increased requests. Both agency officials and requestors voiced concerns about the timeliness of IFAI decisions, especially for reported decisions because of their caseload. While not necessarily widespread, IFAI should consider these criticisms and examine how the system can be streamlined, especially in anticipation of increased requests. The implications of the increase for the agencies are discussed below.

b. IFAI's Ability to Enforce and Follow-up on its Decisions

IFAI does not possess the legal means to enforce compliance with its orders. That responsibility resides with the Ministry of Public Function (Secretaría de Función Pública – “SFP”). The SFP has general responsibility for Mexican public servants and in that capacity manages three million employees. Its primary role is to fight corruption at all levels of the federal public administration. If IFAI decides that documents required by citizens have not been delivered it must send a recommendation to the SFP. The relationship between IFAI, as overseer of the information request response process and as arbiter of disputes between the agencies and citizens requesting information, and the obligated agencies, subject to IFAI's mandates, is thus moderated by the SFP.

One concern voiced regarding IFAI's powers under the Transparency Law is that agencies are not sanctioned in a more immediate and automatic manner. The administrators of the SFP noted that the process is extremely lengthy and that sanctions cannot be expedited since they must go through a regular process established in the Law on Public Administration; to do otherwise would open SFP employees themselves to sanctions.

This arrangement has only been minimally tested. As of early 2005, five cases had been referred to SFP, and in only one instance had the SFP actually ruled (in favor of the agency). The minimal resort to SFP may itself indicate something about the persuasive power of an IFAI directive; thus far, IFAI appears to possess the requisite legitimacy to obtain compliance with its orders. Similarly, IFAI's statistics indicate that in more than a quarter of the appeals filed with IFAI, the agency releases the disputed information before IFAI issues a final decision, again suggesting a degree of agency respect for IFAI and the appeals process.

However, as the system matures, and more referrals are made, some observers have expressed concerns that the process may not allow IFAI sufficient power for enforcing its decisions. These concerns center on the question of whether the law deters bad behavior sufficiently. Solving this problem is complicated due the political and administrative complexities of the issue. Though this report recommends that legislative changes be put off for the next couple of years and thus does not suggest that any radical change be made as to IFAI's sanctioning powers, the law's deterring power could potentially be increased. This could be done through more penalties, different penalties, or through greater enforcement of the existing penalties. Importantly, IFAI does not need to have sanction power itself, but it could have a few more tools at its disposal such as the power:

- to search and seize documents;
- to compel a hearing with an agency official who has to report orally regarding the requested information if it does not exist in written form; or

- to require documents to be created in answer to a request.

In addition, the SFP could be tasked with enforcing mandatory sanctions should IFAI make a finding that the agency's actions were appropriate.

c. IFAI's Role as a Regulator

As mentioned previously, IFAI is also charged with issuing guidelines on implementing the Transparency Law. Currently, IFAI guidelines (14 to date) touch upon subjects such as:

- The reception, processing, decision-making and notification of information requests or petitions for access or changes in personal data, as well as information delivery
- How to notify IFAI about confidential files indexes and personal data systems
- The classification and declassification of documents at the agency level
- Control and accountability over public resources
- How to process personal data requests and corrections
- Archiving
- IFAI's internal budget
- How to monitor and report budgets at the agency level
- Classification and declassification information for banks

IFAI has also issued numerous guidelines in conjunction with various government organizations to assist in the implementation of the law. In addition, IFAI has entered into agreements with various agencies and organizations regarding the law's implementation.¹²

One of the major areas where IFAI's responsibility as regulator has come into play is in archiving. In the early stages of the creation and implementation of the Transparency Law, it became apparent that IFAI needed to issue guidelines with respect to the archiving of public records within the agencies. The law provided that the creation of criteria to catalogue, characterize and handle administrative documents was to be assigned jointly to the National Archive and IFAI. The only guidance that the law provided these entities was that archiving and conservation criteria should be based on international standards and best practices.

The complexity of this issue is exacerbated by two factors. First, there has been no archiving tradition within the Mexican government, resulting in a huge backlog of unindexed documentary material and a lack of an "institutional memory" within agencies. A second factor is that there has been no educational curriculum in archiving, resulting in a lack of qualified specialists to perform the needed archiving work. There is, in short, a need to "professionalize" archiving work to the point that it is a recognized career path and job classification throughout the federal government.

IFAI has issued "General Guidelines" for the organization and conservation of the archives in Federal offices and agencies. These guidelines were issued January 27, 2004 and established

that the organization of archives should provide easier and faster access to documents and ensure their integrity and conservation. The guidelines authorize the creation of an Archive Coordination Unit within each agency. In an effort to professionalize archiving, the guidelines clearly articulate the qualifications required to manage the archive. The guidelines are also very specific as to how documents should be archived according to the frequency with which they are used, their relevance, etc.

IFAI and the National Archive have created the Automated and Integrated System of Request Tools and Archive Control (Sistema Automatizado de Integración de Instrumentos de Consulta y Control Archivístico) or SICCA. It allows users to easily access archiving guidelines and locate documents from all agencies. IFAI has issued guidelines and trained government agencies in the use of SICCA. During the last year, IFAI conducted several courses on archiving procedures, but this effort reportedly was insufficient to meet the demand for this kind of specialized training.

Unfortunately, these efforts, while commendable, have not been adequate to solve the serious problem of archiving in the country. Mexico lacks an archival tradition and it seems that something stronger than guidelines will be needed to help agencies resolve their archiving needs. There are several proposals for archiving laws now pending in the Mexican Congress.

2. Training

A second function of IFAI is training. The statute's provisions mandate a fundamental change in the way federal agencies view the nature and

maintenance of their information resources. There is hardly a task in which the payoff would be greater than increasing the capacity of all participants to understand the law and improve its operation. This is more broadly discussed in the section on IFAI's relationship with government agencies.

In terms of IFAI training its own staff, training needs are established from department to department. We are unaware of any systemic procedures for evaluation and professional development of IFAI staff, but heard from several staff members that as specific questions or needs arise, they are provided the resources necessary to learn to address the problem, usually through some sort of consultancy.

3. Advocates for Transparency and Interpreter of the Law

As the agency tasked with interpreting the Transparency Law and promoting its use, IFAI has been engaged in substantial activities. In its role as an advocate for a culture of transparency, IFAI seeks to lead by example and attempts to make every aspect of its operations transparent. Commissioners decided that all of their deliberations should be open and public, even though that degree of transparency is not legally required. Similarly, information concerning the travel expenses of IFAI officials is posted on IFAI's website as soon as it is available. It is not yet clear whether these efforts have been successful in persuading other governmental entities to embrace transparency. At least one official from a federal agency characterized IFAI Commissioners as "fundamentalists" who convey an attitude of superiority over other civil servants. Such perceptions diminish IFAI's powers of persuasion, and could be overcome by

increased consultation and interaction between IFAI and other governmental entities. Such a process is likely to create a greater degree of trust and would enhance IFAI's ability to encourage a culture of transparency within the agencies it seeks to influence. More information about IFAI's outreach activities is included in Section IV.

E. INTERNAL AUDITS

Since its inception, IFAI has sought to establish a mechanism for tracking and reporting on the implementation of the Transparency Law. While we are unaware of any systematic efforts currently in effect for measuring the success of the various departments within IFAI, the entity as a whole submits an annual report to Congress on their work.

A brief review of the 2003-2004 report to Congress shows the extent to which IFAI is completing its obligations under the law. This report primarily describes the steps IFAI has taken to establish itself and some of its preliminary results. It also lays out some of IFAI's priorities, including work on archiving and development of guidelines for classifying information, promotion of broader use of the law for more specific reasons by the public, and encouragement of website uniformity amongst the agencies (ensuring that all the appropriate information is posted and accessible). From our perspective, the annual report seems to be complete and comprehensive.

F. RELATIONSHIP WITH STATES

If a deeply ingrained, robust “culture of transparency” is to be established in Mexico, it cannot be limited to the federal level. Thus, one of IFAI’s mandates is to reach out to the state and municipal governments to promote transparency on the local level. IFAI has established a special division that deals with local entities: *Dirección General de Vinculación con Estados y Municipios*. It has also conducted a study on transparency laws at the state level and has dedicated part of its website to information on state transparency laws.¹³

These efforts are clearly important. Because the activities of the state and municipal governments are closer to the daily lives of average citizens, the benefits of transparency can best be demonstrated at the local level through the disclosure of information held by those entities. In spite of the limitations and difficulties of the expansion of the Internet (coverage in Mexico is less than 11.8%) IFAI officials believe it must increase the public ability to access the information rather than require them to come the Federal District and “battle its great bureaucracy.” While not obligated under the law, but with the authority to cooperate with local governments,¹⁴ IFAI sees such outreach as an important component of its advocacy efforts. According to IFAI officials, there is presently a real commitment to openness in only one-third of the states, and local conditions vary throughout the country. Some states have ineffective transparency laws that amount to little more than “window dressing” to quell public demands for greater transparency. Some of the state transparency commissions (the local equivalents of IFAI) are well-funded, but others are not. Morelos, for instance, has an effective law but lacks the budget to properly implement

it. Sinaloa also has a strong law (the first to be enacted in the states), but the decisions of its commission have not received broad political support. In some states, civil society groups and newspapers are active advocates of transparency, but similar efforts are absent elsewhere.

The state transparency commissions (there are currently 18) attempt to follow IFAI's model and seek guidance from IFAI on a continuing basis. In working with the local commissions, IFAI recognizes that the states are autonomous and that it cannot compel those entities to take any particular actions; it can provide advice and support local initiatives. Sharing its expertise and knowledge with state entities would be particularly valuable. Some of IFAI's current priorities in this area include the deployment of the INFOMEX system which will create a portal to facilitate the submission of FOI requests to local governments. Funded by the World Bank, this program will be implemented through local governments and will allow IFAI to promote use of the federal law at the state level. Fourteen states signed agreements with IFAI in February of 2005 to begin operating INFOMEX. These states include Colima, Nuevo León, Durango, Coahuila, Guanajuato, Estado de México, Michoacán, Morelos, Nayarit, Puebla, Querétaro, San Luis Potosí and Sinaloa. The Federal District of Mexico City also signed the agreement. So far, INFOMEX has attempted to achieve transparency at the local level through posting information about local governments on the web.

IFAI's efforts to reach citizens at the state level also include the provision of technical support to develop websites and other access tools, and assistance with the political work that is necessary to build local support for transparen-

cy. For these efforts (particularly the latter) to succeed, it is important that IFAI have a meaningful presence in the states. Currently, however, its presence is limited by a lack of resources. There are currently six IFAI staff members responsible for working with 18 state commissions and officials in three other states that lack commissions. IFAI also attempts to provide support to the municipal governments, many of which are very small and whose own resources are severely limited. It appears that local transparency activities are significantly hampered by a lack of resources, within both IFAI and the local governments themselves.

Another challenge to the development of an effective transparency movement at the local level is the need to build an organized constituency similar to the one that exists at the federal level. At the federal level, there is a broad array of civil society organizations which were instrumental in gaining passage of the federal law and in testing and promoting it now. IFAI has been successful in having these organizations from civil society push for increased use of the law. At the state level, IFAI officials believe that local business groups can play an important role in promoting transparency, as they often see themselves as the "natural challengers" of government. Business interests were instrumental in bringing about transparency laws in Campeche, Quintana Roo, and Yucatan. However, there does not appear to be any national coordination of business groups to advocate for transparency legislation at the local level. Such efforts, if undertaken, could be useful, as the local business organizations that have been successful believe that their activities could serve as models for similar groups in other areas of the country. Coordination of other natural local constituencies, such as journalists, academics, and civil society groups could also

be pursued as a strategy. Local coalitions could campaign for the enactment of transparency laws in the states that lack them and promote effective use of the laws in areas where they do exist. Forming such groups could be done in partnership with organizations that have had experience in promoting the federal law.¹⁵

III. IFAI AND THE AGENCIES

A. INTRODUCTION

The effectiveness of the Transparency Law will ultimately be measured by the behavior of Mexico's hundreds of government agencies and bureaus. In implementing the Transparency Law, IFAI is only one half of a critical partnership that must exist for freedom of information to succeed. How IFAI interacts with these entities, whether it is viewed as a significant force, and whether it is viewed as a partner in developing a pervasive and positive attitude towards transparency — will be a substantial measure of IFAI's success. The agencies obligated by the law have become more sophisticated, often highly cooperative, and continue, for the most part, to work to make access to information a reality. This section discusses some practical issues regarding the agencies, and then focuses on the relationship between the agencies and IFAI.

1. Who is Subject to IFAI?

The "obligated agencies" or "agencies" subject to IFAI's review include the federal public administrative agencies under the Public

Administration Law and decentralized administrative institutions, such as the Office of the Attorney General of the Republic. There are close to 250 agencies in this group, some of which receive many information requests, some of which receive relatively few.

2. Structure of Agencies

In order to ensure that agencies are able to comply with the law's mandate and to ensure consistency and uniformity across the many agencies, the Transparency Law clearly delineates an internal structure for complying with the law within each agency. Each department or agency must have or create a Liaison Unit that will be responsible for collecting and disseminating information, processing requests, assisting individuals in elaborating requests, and preparing and delivering the requested information and related notifications.

Additionally, each agency must have an Information Committee which will coordinate all actions within the agency in relation to the law, ensure the efficiency of the request process, confirm, revoke, or modify decisions made by the Liaison Unit with respect to the classification of information, and ensure that classification and archiving systems within the agencies are in accordance with government guidelines.

B. SPECIFIC AGENCY ISSUES

1. Archiving

We have already touched on the important issue of archiving, from the perspective of IFAI's regulatory role. Managing archives — particularly the systematic archiving of records already in existence, is a massive, almost insurmountable, task. According to officials from the National Archive, there are 32 miles of boxes of archived material, and at least 60% of the content is unknown to the archivists themselves. More than 14 million records are entered each year. Both IFAI and the agencies agree that this is a problem that must be addressed as soon as possible. The task of bringing order to archives may feel Sisyphean at times, but some decisions and prioritization must be made, so that agencies will know whether requested records exist and have the means to identify and release them. In addition, in any legislative change regarding archiving, there must be some consideration of the budgetary needs of an agency implementing new archival procedures.

2. Agency Response Time

The issue of response time seems to be a current major strength of the agencies. The law requires agencies to respond to requests within 20 working days. Thus far, the agencies are beating that deadline, with responses being issued, on average, within 11 working days. While this level of compliance with the time requirements is certainly encouraging, and indicative of the agencies' early willingness to meet their transparency obligations, it is important to ensure the continu-

ation of this trend. Agency officials already question whether they have adequate resources to handle the current number of requests (although the timeliness of responses seems to contradict those concerns) and note that personnel responsible for compliance with the Transparency Law have other, competing duties. In most agencies, for instance, directing the Liaison Unit is not a full-time position. The adequacy of agency resources and ability to handle an increased number of requests are issues that should be addressed collaboratively by IFAI and relevant agency officials.

3. IFAI Training at the Agency Level

IFAI conducted a fairly broad training initiative shortly after the Transparency Law was enacted. Its focus was on the general requirements of the law. Those training sessions were not, however, specifically tailored to the unique needs and circumstances of particular agencies. As agencies have become more knowledgeable about the law, they have requested more specific training, which IFAI usually provides upon request. As one IFAI staff member noted, there is now a need for “more complex training.”

Currently, IFAI conducts workshops on Transparency Law requirements, but there is a perception within some agencies that these presentations do not address the actual needs of their personnel. IFAI has been attempting to remedy this through solicitation of topics that would be of interest to agencies, but it is not clear how successful IFAI has been in these efforts. The perceived shortcomings of IFAI in addressing actual needs could potentially be corrected through better interaction with the agencies and joint coordination or design of the

training program, as discussed in more detail below.

IFAI personnel also respond to specific inquiries (by telephone) from agencies that arise on a case-by-case basis. It is not clear, however, whether these “real world” queries are used to develop a formalized training protocol designed to provide agencies with the type of guidance they require.

Finally, IFAI has recently launched an “e-learning system” that has the potential to maximize the available (and apparently limited) training resources to reach the largest possible number of agency personnel responsible for compliance with the Transparency Law. This system, entitled e-FAI,¹⁶ includes detailed information explaining the guidelines on classification of information, archives, and personal data.¹⁷ It is aimed specifically at liaison units and information committee officers.

IFAI has also made a major attempt to train agencies in archiving. The National Archive has partnered with IFAI in order to help agencies classify and save information. So far, IFAI has provided 28 archiving courses and 4,200 officials have been trained. However, IFAI has not provided training regarding specific criteria to be used when classifying information, nor has it been able to provide archival training specific to particular agencies. There also appears to be little follow-up or monitoring to get a sense of whether these training programs made a difference. On the one hand, agencies need further guidance in this area. On the other hand, many agency officials recognize that IFAI does not have the capacity to go into the agencies and understand every type of information particular agencies possess and direct how it should be archived. The agencies themselves have an

obligation to internally assess information and implement the general guidelines for their specific information. Many of the classification decisions and criteria will, of necessity, be left to the agencies. At the same time, agency officials require further guidance in how to classify information in order to lessen the likelihood that IFAI will reverse their decisions under the Transparency Law. One way to alleviate this tension and to provide further guidance on specific criteria would be to provide IFAI with the resources and ability to go into the field and spot check databases.

As noted, IFAI's training efforts would likely benefit from greater consultation and interaction with agency officials responsible for implementation of the Transparency Law. These individuals are on the "frontlines" and best understand the day-to-day challenges of responding to information requests. They are also the only source of knowledge concerning the unique characteristics and needs of their particular agencies (such as the special considerations that may relate to the kinds of information they maintain and the ways in which that material is organized). Another suggestion would be to involve NGOs who are particularly interested in the work of the particular agency to provide guidance on how to classify and organize the information. While agencies should be establishing information collection systems, civil society can and has helped with a lot of that work.

There is a perception within some agencies that IFAI issues guidance "from the top down" without a real appreciation of the realities within the agencies. This perception, if allowed to grow, could result in increased agency resistance to the cultural changes that the Transparency Law is meant to foster and, ultimately, threaten IFAI's legitimacy and autonomy. Training activities are

an obvious area where it would be useful to solicit agency input. One constructive suggestion we received is that IFAI Commissioners should convene regular (annual or bi-annual) meetings with representatives of the agency Liaison Units and Information Committees to address their concerns and solicit their input on a variety of issues of mutual interest. Given the specialized nature of the issues that are likely to arise in such meetings, it might be useful to convene sessions by governmental sector — security, economic and social might be a logical breakdown of agencies (rather than convening a single session for all of the roughly 250 federal agencies). Through such a formalized consultation process, agencies are likely to become more invested in the culture of transparency and more supportive of IFAI's work.

C. AGENCIES AND IFAI RELATIONSHIP: TENSE BUT AMICABLE

The relationship between the agencies and IFAI is complicated by IFAI's dual roles of (1) oversight (appeals) and (2) training and assistance. It is further complicated by the ambivalence of many agency staff to the concept of transparency, which has turned the traditional culture of secrecy and withholding on its head. The relationship between IFAI and the obligated agencies highlights the difficulties of legislating cultural change.

This is not to say that the agencies are unwilling to be part of this transition. Many agency officials are proud to be part of a comprehensive transparency regime, broader and more pervasive than those existing elsewhere in the world. There is a substantial reservoir of support at the

agency level regarding the usefulness of IFAI and its positive attributes. Nonetheless, there are a number of concerns voiced at the agency level.

1. Areas of Substantial Agreement

In general, at the agency level, there is a commitment to forge ahead and make access to information a part of the present government's accomplishments. The tenor and actions of President Fox's administration are directed towards leaving a legacy of commitment to transparency in Mexican society. In addition, because this is largely an accomplishment of the Mexican people, who pushed for the law, future administrations will find it difficult to pull back on the current level of transparency.

The new Transparency Law has already had a positive impact on many of what were seen to be the more egregious abuses in the public sector. One of these is the more or less complete disappearance of "aviadores" (government employees who being on the payroll would show up to get paid at the end of the month without ever having registered for work). These persons have been discouraged because payrolls started being published, at which point many of them were dismissed and others were simply forced to stop collecting their paychecks. The law has also had a positive effect in government administration of concessions, bids, licenses, and permits because corruption is now more likely to be discovered when these documents are made public.

Agency officials also note that, in general, significant progress has been made regarding accounting and budgetary transparency; the

government is increasingly providing this information to citizens. In addition, the procedure by which IFAI rates the web pages of the agencies for transparency has been very helpful. The agencies compete for the best ratings on their websites.

Another area of agreement can be found with respect to promoting the law to the public. Some agency officials note that neither the law nor IFAI have managed to reach the less advantaged social sectors. There is a perception that only journalists and businesspersons who are interested in doing business with the government use the law. There is a need to promote the law in society in general. The agencies fear that if this does not happen, the law will be useful only to groups that will use this information for private and selfish reasons and to obtain financial advantage. IFAI and civil society representatives agree that this concern needs to be addressed.

Though a substantial amount of criticism has been voiced regarding the implementation of the law at the agency level, in practice most officials support the law and recognize its importance as a fundamental tool for reform in the Mexican state. Various sectors of the government acknowledge that they must work with IFAI to be more efficient and comply with the law.

2. Agency Concerns

While there is substantial agreement and support at the agency level for the Transparency Law and IFAI's work in general, there is, as might be expected, also a set of concerns relating to the workload associated with the Transparency

Law. One major concern for agency representatives, is the lack of resources. The law was put into effect without consideration of the need for additional resources at the agency level for fulfilling the law's mandates. Human and financial resources are lacking. For instance, the agency liaison position was typically added to an employee's already existing workload. Further archival duties will only increase the burden on the employees responsible for those tasks.

Another major concern is that IFAI is sometimes seen as an omnipotent arrogant entity. Some agency officials express a suspicion that the Commissioners feel "superior" to other civil servants. The fact that IFAI often issues its guidelines without consultation with the agencies has likely exacerbated this perception. In one example of a guideline that was found to be frustrating and may have been seen as autocratic by some agency officials, IFAI made the decision that all its resolutions would be public. This step was taken to show that IFAI itself was dedicated to transparency. However, some agencies complain that this provision can be harmful for some sensitive sectors of the government.¹⁸ Agency officials believe that IFAI is a part of the public sector and that they must work together. Further discussion will address a need for communication to surmount some of these difficult tensions.

Another criticism is that there are only a few lawyers serving as IFAI Commissioners; some agency representatives assert that because of this, legal issues may not be handled properly at the IFAI level. They also assert that the majority of IFAI commissioners do not understand how the civil service works.

Another serious concern voiced at the agency level is the absence of an agency's right to

appeal an adverse IFAI decision. Dissatisfied requestors may appeal IFAI's decisions in the courts, but agencies are not accorded the same right. Some agencies are frustrated with this discrepancy in the law. This may be an aspect of the law that should be addressed, although we do not believe that the existing approach to appeal rights is inappropriate.

Another agency criticism concerns use of the news media to compel agencies to be more transparent. There is a perception among some officials that IFAI uses the media with the purpose of biasing public opinion in its favor, to the detriment of other governmental entities. IFAI, lacking real constitutional autonomy such as that of the Commission of Human Rights, may be using media exposure as a means to increase its visibility and power, and that of the Transparency Law. IFAI clearly seeks public recognition for its mandate and activities. While IFAI may need to publicize certain disputes with agencies, the use of the media can be seen by other public institutions as a form of propaganda rather than a legitimate effort to foster transparency. Some agencies believe they have begun to develop a more mature relationship with the public, and that contentious issues should not be debated in the media, but instead addressed through more dialogue. There is no reason to consider IFAI's use of the media at this point, however, to be inappropriate.

There are several practical issues that could be resolved through further communication. Agencies would benefit from more information regarding classification of materials. Because the existing guidelines are general, there have been cases where different agencies have interpreted them differently. More in depth research and training on this issue should be

conducted at IFAI.¹⁹

Another difficulty, mentioned by some officials, has been that mechanisms for freedom of information requests have been confused with basic administrative questions from the public. The estimates of how serious a problem this is may vary, but it is possible that a significant number of queries fall in this category--where there is, in essence, no freedom of information request. Better education of the public should improve their performance, but IFAI may examine the possibility of creating a filter in SISI that asks the user to perfect the question or explains to the user the difference between a purely administrative question and a freedom of information request.

Another practical matter where additional guidance may be helpful involves the publication of the day-to-day activities of agency officials. Many officials do not have a clear understanding of what should be public and what can remain private. While the public may want to know (and need to know) details of agency officials' agendas, there are cases in which officials do not maintain formal agendas because it is not mandatory. IFAI should provide agencies with clear mandates that allow them to better understand when the daily activities of government employees should be recorded and made public.

D. BUILDING BRIDGES FOR COMMUNICATION

IFAI recognizes the existence and validity of certain of these complaints and tensions, while others have not received significant or (in the view of some agencies) appropriate attention. The volume of complaints, however minor some of

them may be, is in itself a source of concern. A better system of communication between IFAI and the obligated agencies could help address some of these grievances before they cause permanent damage to the IFAI-agency relationship and, ultimately, successful implementation of the law.

IFAI must make an effort to clarify the reach, extent, and fundamental policies underlying the law on an ongoing basis. While there has been a substantial amount of training at the agency level on how to implement the law, respond to requests, and interpret guidelines, there are several areas of fundamental interpretation and implementation of the law where there are disagreements between IFAI and the agencies. These areas may need to be considered and discussed as part of IFAI's training agenda in order to broaden the culture of transparency at the agency level and avoid serious disputes between the agencies and IFAI.

IFAI's ability to bridge this gap and help create a more open bureaucratic culture will depend in large part on its ability to reach out to the agencies, and combat tendencies toward secrecy. While the long-standing cultural tradition of secrecy has not yet been eradicated, agency officials, requestors, and IFAI all noted that there is already a perceptible shift, small though it may be.

IV. IFAI'S RELATIONSHIP WITH THE END USER

A. INTRODUCTION

Among the broad charges given to IFAI in the Transparency Law, the first is “promoting and disseminating the use of the right of access to information.”²⁰ In this section we focus on use of the law by private citizens, institutions, journalists, academics, businesses, and non-governmental organizations (“NGOs”). This section will address the promotion and distribution of the right of access to civil society, including areas of definitive success and areas for continued improvement. One of its charges, serving as the agency of appeal in case of noncompliance by a federal agency, has been previously addressed in this report. Because IFAI's political viability turns on its relationship to the end user and the public perception of its effectiveness in meeting its promotional objectives, our comments are directed at the mode by which IFAI goes about these tasks and the understanding of IFAI among the wide consuming public.

It has been four years since passage of the law and only three years since citizens began to interact with the system, which is not enough time to fully assess the quality of this interaction. Perhaps the only concrete conclusion that can be drawn about IFAI's interaction with citizens at this point is that there need to be increased efforts to promote and publicize the law. Our interviews and research confirmed that the per-

ception of IFAI and the broader concept of transparency varies widely throughout civil society.

Underlying all aspects of the relationship between IFAI and civil society is a recognition that successful implementation of the Transparency Law will require a major shift, not only in the government, but also in the mind-set of Mexican citizens. As Issa Luna Pla wrote in 2002, “[t]he Mexican public has a long road ahead in developing a culture of seeking and acquiring information, a problem shared in common with Latin American countries with long histories of secrecy.”²¹

B. LEGAL BASIS FOR A RELATIONSHIP WITH THE END USER

In essence, there are three ways in which IFAI interacts with the public:

1. Through requests to the obligated agencies (which IFAI facilitates);
2. Through the appeals system, in cases of unsatisfactory responses; and
3. Through the publication and distribution of information that expands the public’s knowledge about the Transparency Law.

We will discuss each of these three types of interaction as a mechanism for exploring civil society’s relationship with IFAI.

C. MECHANISM FOR REQUESTS: PROS AND CONS OF THE INTERNET AND THE TRANSPARENCY LAW

A defining moment occurred early in IFAI's history when it decided to emphasize the Internet as a mode for facilitating requests for information. While requests for information can be submitted in person or by mail, 92% of all current requests are made via the Internet.²² Access to the Internet, then, is perhaps the best indicator of whether individuals or entities are likely to exercise their rights under the Transparency Law. The Internet is also most often used to submit appeals to IFAI in cases of unsatisfactory agency response. Investing in the Internet as a favored mode of access was a strong and significant initiative for IFAI and the executive agencies. Such electronic systems certainly represent the future and they allow for easy and efficient use of the FOI system. Overall, there appears to be a high level of satisfaction with the ease of filing a request on-line using SISI, indicating that the forms were quite simple to use. However, there is broad concern about the extent to which reliance upon the Internet limits participation by the broad public. While the efficiency of the computerized system is remarkable in terms of broad public access for freedom of information, reliance on Internet access is a problem in digitally divided Mexico. Current statistics show that only 11.8% of the Mexican population has access to the Internet,²³ and though other means, such as hand-delivery and paper mail, are available for submitting requests, their use is considerably less for several reasons, including the large amount of time it currently takes to use non-Internet methods and decreased anonymity.²⁴ In order to expand use of the law, IFAI should consider innovative ways to reach the broad public that are not based exclusively on access to a personal computer,

but also minimize the amount of time it takes to submit a request and ensures a large degree of anonymity.

One good approach may be the expansion of the E-Mexico initiative, which currently provides more than 3000 kiosk access points around the country in an effort to bring a variety of governmental services to under-served segments of the population. SISI has yet to be integrated into the E-Mexico portal, but IFAI currently is negotiating for such access.²⁵ Another possible approach would be to explore the development of “low-tech” means to submit information requests, such as making simple paper forms more broadly available, such as distribution at post offices and other locations that serve citizens on a regular basis.

General indications point toward urban use of the law, and its use by individuals of higher income. While it is important to broaden usage, a variety of factors should be kept in mind: Mexico is not alone in having a system of uptake of FOI rights skewed in this manner. Patterns of use of transparency laws most often track patterns of use of similar legal tools. Furthermore, NGOs and other institutions that use the law may represent large numbers of people in the broader public that do not make direct use of the law themselves.

In addition, much emphasis is, quite properly, put on an anticipated metric of compliance or success: how many FOI applications are made, what is the rate of disclosure, what is the pace of disclosure. All these are important. But our discussions suggested several other points: First, there are different uses of the law each of which is relevant for a different sector. Some uses (such as access to medical records) provide for large-scale citizen satisfaction. Others, such as the

case of the investigation into genocide during the 1970s, are more important politically and socially rather than as a private individual matter. Both of these types of cases need to be pursued, but large-scale satisfaction with the law is only likely to begin to occur when cases that affect an individual's every day life are publicized and become more common. The larger, more political cases are important because the law can then be said to improve policy outcomes, contribute to democratization or enhance economic growth. If the transparency legislation is meant to be an instrument of democratization or economic development, an important consideration is the purpose for which information is being requested. How do usage patterns ultimately impact the broader public? Who is using the system and why? Does usage lead to increased public knowledge and support for the Transparency Law? Are the people using the law able to successfully use the information they receive and publicize it if it is relevant to the general public? IFAI and NGOs should consider these two tracks and these underlying questions when pursuing claims and devising their transparency initiatives.

D. TYPE OF INFORMATION REQUESTED

IFAI has developed a basic categorization system with which to track the types of information being requested (see Appendix I for requests by subject in the years 2003 and 2004). Technical issues in data presentation make comparison between the two years of data-gathering imprecise and the information does not always answer the questions that are most interesting, such as whether use of the Transparency Law is leading to a more informed electorate con-

cerning the most pressing issues, or rather, whether use of the law is producing primarily scandal-oriented information that tends to devalue faith in the political system. We recommend that IFAI and civil society review the type of data that is being collected for usability and relevance.

Many of the individuals we interviewed observed that the vast majority of requests to date involved the expenditure of public funds. These have ranged from the amount of money spent by the President's wife on clothing to the rents paid by agencies for their office space. Information concerning the salaries and travel expenses of agency officials has also been a frequent subject of requests. This focus on the use (and potential abuse) of public funds is understandable given the history of governmental corruption in Mexico; the concept of "accountability" is often synonymous with fiscal oversight. Nonetheless, the Transparency Law will not truly be mature until it is used to access information about a broad range of official activities and is seen as a critical means of facilitating informed public debate on policy issues such as environment, education, labor and foreign affairs. It is our opinion that the media has an important role to play in any shift in use of information and type of information that is deemed relevant, as further discussed in the next section.

E. OCCUPATION OF REQUESTOR AS PROXY FOR TYPE OF USE

In the absence of a broader study to examine how information is being used once obtained, occupation categories can serve as a rough

surrogate for likely data usage. IFAI, similar to categorizing types of requests, collects data on the occupation of requestors. There are five broad categories outlined in IFAI's statistics: entrepreneur, academic, government, media, and other. These categories are somewhat problematic because it is impossible to determine whether requests are related to the requestor's occupation (most likely not the case in requests for personal data, for instance), how requested data may actually be used, what the "other" category might include, and what job categories might be found in each grouping. A notable grouping that is not listed is NGOs and similar institutions that promote the public good. Notwithstanding these deficiencies, the data IFAI collects, coupled with the qualitative data collected for this report, indicate several noteworthy issues.

First, in contrast to generally held beliefs regarding freedom of information acts and their usefulness for the news media, journalists believe that the Transparency Law has had a rather imperceptible impact on journalism in general. In explaining why, journalists alluded to the following factors:

- Successful journalism often depends on the immediacy and novelty of news. The response time required by the law can range from less than 20 days to 5 months, if all appeals and extensions are used, which lessens the usefulness of the law for journalistic purposes.
- Specialization and investigative journalism constitute a relatively small percentage of the overall Mexican media, and are almost exclusively limited to print media. (IFAI officials confirmed that the majority of those attending the training courses they have provided for journalists represent the print media.)

- The number of relevant training courses available and accessible to journalists are perceived to be insufficient. This includes courses offered by NGOs and IFAI. It was not clear how the courses could be improved or whether an increased number of training sessions would actually be attended.

There does seem to be a slight shift in attention by the news media to the Transparency Law. One IFAI official noted that an editor of a prominent newspaper had instructed his journalists to submit two or three FOI requests each week. The editor felt that if he could get a 10% response rate to the requests, it would be worth the effort. While journalists might be expected to make such use of the law, there are reasons to question whether that expectation is realistic. The problem is exacerbated in cases where agencies resist disclosure and requestors must resort to the appeals process. It will clearly take time to encourage and train journalists to use the law in creative and effective ways most likely to produce high-profile stories that will galvanize public support for transparency.

A recommended strategy for better engaging journalists is creating a forum to strengthen relationships between journalists and NGOs and other civil society institutions, such as academic organizations. These institutions are more likely to have the time, interest and dedication to pursue high-profile or noteworthy cases. Once a FOI request is submitted, the NGO would then work with the interested journalist to publish the story, emphasizing the mechanism by which the information was obtained (the Transparency Law). Such "success stories" likely would produce the positive public impact that is necessary to raise the profile of the Transparency Law.²⁶

In other countries, the creation of centers for investigative reporters have proved to be an important component in the promotion of a culture of transparency. In Mexico, the organization *Periodistas de Investigación*, which is affiliated with the organization Investigative Reporters and Editors, Inc. (IRE), appears to be a growing network of investigative journalists and may be a good partner to consider in future FOI training for journalists. It might also be helpful to establish investigative reporting fellowships and awards. For example, The International Center for Journalists runs an investigative reporting project for Armenian journalists who spend four weeks in the U.S. learning about investigative reporting, and sponsors an ongoing series of workshops in Latin America called "Media and Freedom of Expression in the Americas" that is especially for journalists. IRE gives annual awards recognizing outstanding investigative work and helps identify techniques and resources for completing stories.

According to IFAI's data, there has been a steady decrease in the percentage of entrepreneurs using the law in comparison to other groups, from 22.8% in 2003 to 18% in the first part of 2005. Several interviewees expressed the belief that the law was mostly being used by businesses to improve their competitive position. However, there is a perception that "entrepreneurs," or those using the law for business purposes, are requesting information more intensively than suggested by the available data.

Academics are using the law more than any other single group, and this group is the only one to increase its percentage of use in each consecutive year. It is possible that this group may include civil society organizations that are requesting information for public benefit initiatives, such as LIMAC and FIDAC (Fundación

Información y Democracia), as many of their staff members and affiliated researchers have academic ties.

The potential users of the Transparency Law best situated to maximize the impact of disclosures appear to be NGOs that specialize in particular policy areas. For example, a local environmental group that actively tracks industrial activities in its community would have the requisite knowledge and incentive to seek information concerning hazardous materials used in local factories. An agricultural or rural advocacy organization would be similarly equipped to request information about government farm subsidies.

There are three types of general expertise that must be present for an NGO to make use of a high-profile request and answer under the Transparency Law: expertise in public relations, legal expertise or knowledge about where to pursue claims under the Transparency Law, and journalistic expertise. In the legal area, what is particularly needed is a working understanding of the government so that the NGO is able to send the request to the appropriate branch and office of government. What these NGOs appear to require is greater expertise in using the law to support their ongoing work. Many NGOs are currently mainly staffed with activists who are not trained in any of these particular areas.

This deficiency could be remedied in a number of ways, including the provision of training for NGO staff in the use of the federal law (and local equivalents) and mechanisms such as the existing Transparency Collective, which seeks to facilitate the submission of FOI requests through a web portal based on suggestions received from NGOs throughout the country. After requests are inputted however the NGO must be ready to use the information it gathers. It

must have a public relations staff member who thinks about how to publicize the information. In addition, when the NGO is first planning its projects it must think strategically about how the transparency law request is going to further the project, where it fits, and what they need to gain from it in order to help the project succeed. In other words, if the transparency initiative is not integrated into the project overall it will be difficult to know how to use the information for that project when and if it finally arrives.

The approach most likely to yield the desired results would be to ensure that research-oriented NGOs have adequate staff resources, preferably an attorney trained in the effective use of the law and staff members who are capable of, first, strategically planning their use of the law and, second, “packaging” the information obtained from the government in order to tell compelling and informative stories to the general public. Such internal NGO resources could be supplemented through liaisons with attorneys outside of Mexico with longer experience using FOI laws for public interest purposes.

F. AGE: A POSSIBLE CULTURE SHIFT?

The average age of requestors is in the mid-twenties, with more than 50% falling in the young professional age group of 20-34. Preliminary 2005 statistics show the age range is flattening out (i.e., becoming more uniform across age categories), but in the first few years since the law’s enactment, young professionals have led the way. This provides some evidence of the emergence of a new culture of transparency, which appears to have positive implications for the future of transparency in Mexico. The flattening of the age profile is to be expected as

requests for personal data increase, as older people may be more likely to seek data concerning their pensions, medical files, and so on (indeed, the Social Security institute receives the highest number of requests). However, it is our recommendation that IFAI work to continue to engage the younger demographic in order to ensure a cultural shift in favor of transparency. There may be an additional benefit to strong engagement by younger participants in the system, as they are the ones most likely seeking non-personal data, the disclosure of which would have a larger impact since release of such information is more likely to be of interest to a broader group of society.

Several individuals from all sectors commented on the need to engage the younger generation in order to ensure a culture of transparency and access to public information. While IFAI's statistics indicate that young professionals are currently engaged, it is necessary to also engage school-aged children. We were told that the Ministry of Public Education has embarked on a program that includes the promotion of transparency in schools. A review of the Ministry's website identified two programs the Ministry is implementing, one that promotes transparency at more of an administrative level, focusing on internal transparency (El Programa Operativo para la Transparencia y el Combate a la Corrupción) and one focusing broadly on incorporating new forms of investigation into education (Enciclomedia), including the use of electronic media to access information. While the Ministry should be applauded for these noteworthy initiatives, and while we recognize that the Ministry has many mandates, we believe that a more direct emphasis on government openness and FOI would be beneficial in promoting a long-term culture of transparency in Mexico.

The Transparency Law provides that any person who desires to submit an information request must present a description that is clear and precise regarding the information they seek.²⁷ Agencies complained early on that the requests were so broad or unspecific that they were burdened with excessive research, at a minimum, and in several instances were unable to provide any responsive information, resulting in a “no records” response. Article 6 of the statute provides that the law be interpreted in favor of the principal of information, and that agencies carry a greater part of the responsibility for providing information, even when a request is not as clear as it might be. This principle recognizes that the power balance favors the agencies because they know what information exists or does not exist and the requestor is not necessarily privy to the same knowledge. Notwithstanding this requirement, educating civil society in framing more precise requests would benefit the entire process. This could occur through training courses emphasizing how to research and prepare an effective request, not just how to submit one.

There is evidence that not only is the law being more broadly used, but that civil society is becoming more savvy in its use of the law. Several sources across all sectors indicated that users are generally submitting better, more specific requests. Further, several NGOs are helping to hone use of the law by running “test” cases that look to maximize the potential use of FOI. Given the benefits of encouraging clearly defined requests, IFAI could consider ways to better educate those making requests in terms of being more specific in their request, which may be accomplished through dialogue with the agencies concerning this issue.

H. CIVIL SOCIETY PERCEPTIONS OF THE TRANSPARENCY LAW, FOI PROCEDURES, AND STAKEHOLDERS

End user perceptions regarding the Transparency Law, FOI procedures and stakeholders have slowly started to change as a result of the outreach efforts that IFAI, agencies and other organizations have initiated. Nonetheless, there is still a great level of skepticism and lack of clarity about many aspects of the procedures and the roles of each of the stakeholders. This section seeks to explain some of the end users' perceptions and misperceptions.

1. Perceptions about the Transparency Law and Access to Information

As described throughout the report, one of the main challenges has been creating a culture of transparency and generating a shift in the mindset of Mexican civil society. In a study conducted by REDES Marcas con Estrategia, at the request of IFAI in August 2004, there was significant evidence of citizens' awareness of the existence of transparency laws and a culture of transparency. In this study, respondents often associated these concepts with anticorruption, and ethical and moral values, such as honesty, sincerity, and clarity. At the same time, there seems to be distrust and skepticism with respect to the law and IFAI's ability to effect change.

When asked about IFAI specifically, respondents considered it to be an important institution but failed to associate it with freedom of information. Rather, IFAI was seen as an oversight entity much like the Federal Electoral Institute. Its functions are barely known. That lack of knowledge appears to generate feelings of distrust among

citizens. The study also found, however, that, in general, the law is considered important for Mexico. General conclusions from this study will be included in the following sections.

2. Perceptions about Stakeholders

Regarding the role that each of the stakeholders plays, there is some evidence that the public does not distinguish between IFAI and the agencies, such as observations to the effect of "IFAI denied the request for X information" where in reality it was an agency that denied the request. On the other hand, there also appears to be a perception that IFAI provides accountability mechanisms to prevent agency abuse. It is seen as the agency charged with defending the public from agency abuses. Both perceptions can ultimately have negative consequences for IFAI. In the first instance, the public may lose confidence in IFAI's ability to fulfill its responsibility of implementing the law. Results of the REDES report seem to confirm this. "It is necessary to explain that IFAI does not provide information, but rather provides support to ensure that government does so . . . public information is perceived as government information, and therefore is perceived as manipulated and untrustworthy."²⁸ Because IFAI's role is partly to require the agencies to fulfill the requirements of the Transparency Law, the public may perceive IFAI as their champion against inherently obstinate agencies and this could lead to a self-fulfilling prophecy of excessive antagonism between IFAI and the agencies.

While IFAI may wish to create a clearer public perception of its mandate, it is probably more important to develop public faith in the FOI system as a whole, rather than focusing on

increased public understanding of the particular bureaucratic components.

Another thing worth noting is that IFAI's authority and jurisdiction do not extend to the judicial and legislative branches and independent agencies. While each of the branches of government is subject to the law, the non-executive branches have the responsibility under the Transparency Law to establish similar or equivalent independent authorities such as IFAI to administer their implementation of the law. Both the legislative branch and the judicial branch have committees that review requests and accept appeals when FOI requests are denied. However, the committees in both cases are not independent. Several sources indicated that the exclusion of these entities from IFAI's oversight and their lack of any independent review process impedes broader public acceptance of the notion that the government can truly be held accountable.

3. Perceptions about the Transparency Law Process

Regarding the requesting process in general, there continues to be skepticism and some dissatisfaction with the way that agencies are responding to information requests. Much has been published about agencies' high response rates, although, as previously noted in the IFAI section, there is concern that the number of complete, affirmative responses is much lower than reported. The current statistics are not able to capture the degree to which a sufficient response is provided, and the only existing measure of dissatisfaction is the number of appeals. However, there are strong indications that not everyone who is unhappy with their answer appeals. Interviewees noted that some

responses are incomplete and that “no records” responses are becoming more common. We also heard several first-hand accounts of individuals not receiving any response from an agency.

The truly important issue, however, is the overall legitimacy of the law with the public, which comes with better compliance all around. As a result, we recommend that IFAI work closely with the agencies to promote a united commitment to openness that is shared by both entities.

I. PUBLICATION AND DISTRIBUTION OF INFORMATION

The Transparency Law provides that IFAI is to “conduct and publish studies and investigations to further distribute and expand the knowledge” of the Transparency Law.²⁹ As a result of this mandate, IFAI has engaged in a broad public relations campaign that, in addition to promoting transparency, has served to heighten the public recognition of the agency. IFAI has developed a series of pamphlets, posters, radio, and television announcements, academic essays and a comprehensive website to promote its work and the concepts of FOI and transparency. The chart below describes the majority, if not all, of the media (print and electronic) outreach efforts of IFAI.

In terms of the success of these outreach materials, there is a limited amount of data that present inconclusive findings. For example, the REDES study inquired whether users remembered seeing and/or hearing the video and audio clips (further discussed below). Ten percent of those interviewed said they recalled having heard the clip on the radio and 18% remembered seeing the video clips on televi-

sion. However, our review of the REDES report did not find any indication as to whether the response was high or low, indicated limitations on the outreach of the clips or spoke to the quality of the clips.

IFAI's principal mechanism for disseminating information about its activities, and the Transparency Law generally, appears to be its website, which is comprehensive and informative. The reach of the website, however, is limited by the low rate of Internet access in Mexico, as previously discussed. Given the limited reach of any Internet-based resources, it is important that IFAI continue to make use of other outreach mechanisms, such as public television and radio and "low-tech" means of disseminating materials to the general public. Systematic interaction with local NGOs would also be a valuable strategy.

1. Publications and Materials of IFAI

IFAI officials recognize that it is difficult to show citizens how the Transparency Law affects their lives, and that an understanding of the benefits of openness is a prerequisite to fundamental cultural change. To that end, IFAI began running radio and television advertisements in 2005 to promote the general concept of open government and transparency. The ads are quite basic and do not include specific information about IFAI or the Transparency Law; they merely seek to portray access to information as beneficial. IFAI plans to follow-up with public opinion polling to assess the impact of the advertising campaign. Future ads will focus on "success stories" showing the value of access to specific information (medical information, tax records, etc.).

Appendix II presents a brief depiction of the materials that have been used by IFAI in order to create awareness about the Transparency Law and IFAI. We have thoroughly reviewed this material and sought to identify the main messages IFAI is trying to send and the type of audiences it seeks to address. We also provide a brief assessment of the materials' usefulness in strengthening the relationship between IFAI and civil society.

2. Other Approaches to Promoting the Law

In addition to publications and materials, IFAI has used other approaches to promoting the law. In order to reach out to those individuals who do not have access to resources in Mexico City, IFAI has organized several events in the past (with others planned for the upcoming year) in order to bring information directly to the states. So far, forums and "Jornadas de Transparencia" have taken place in Cancun, Yucatan, Chihuahua, Monterrey and Aguas Calientes.

Another approach that is being considered would rely on educating and empowering civil society organizations, as surrogates for the public. This will involve training community groups in using the Transparency Law and surveying them on the kinds of information that would be most useful to them. Increased use of the Transparency Law by such organizations, coupled with effective strategies for "packaging" and disseminating information obtained from federal agencies, would provide a critical means of public outreach to demonstrate, in a very concrete way, the value of government transparency. We provide several recommendations for achieving this goal in Section V.

J. PARTNERSHIPS AND COLLABORATION

As noted, IFAI has signed collaboration agreements with more than fifteen other entities and organizations, ranging from other government agencies (such as the Federal Electorate and National Commission on Human Rights), to universities and NGOs. These collaborations are largely mechanisms for IFAI to share the role of promoting the Transparency Law throughout Mexican society, and include agreements to conduct courses and workshops about the Transparency Law, to promote general knowledge of the law and to generally promote transparency and the right of access to public information. We were unable to determine the extent to which IFAI is engaging in such partnerships in a coordinated and methodical manner to maximize impact as opposed to signing agreements with any credible organization that expresses an interest in promoting transparency for the sole sake of their publicly acknowledged support. While both scenarios seem to have benefits for promoting the law, we would encourage IFAI to coordinate its partnerships in such a way as to strategically and efficiently reach out and educate the broadest public possible.

K. SURVEY ON APPEALS TO IFAI

The appeals process represents the “teeth” of FOI in Mexico. It provides individuals dissatisfied with the performance of any given federal agency the opportunity to challenge the agency directly, while simultaneously allowing the agency to defend its action in a neutral environment. As was previously mentioned, in its first 22 months of operation, IFAI received over

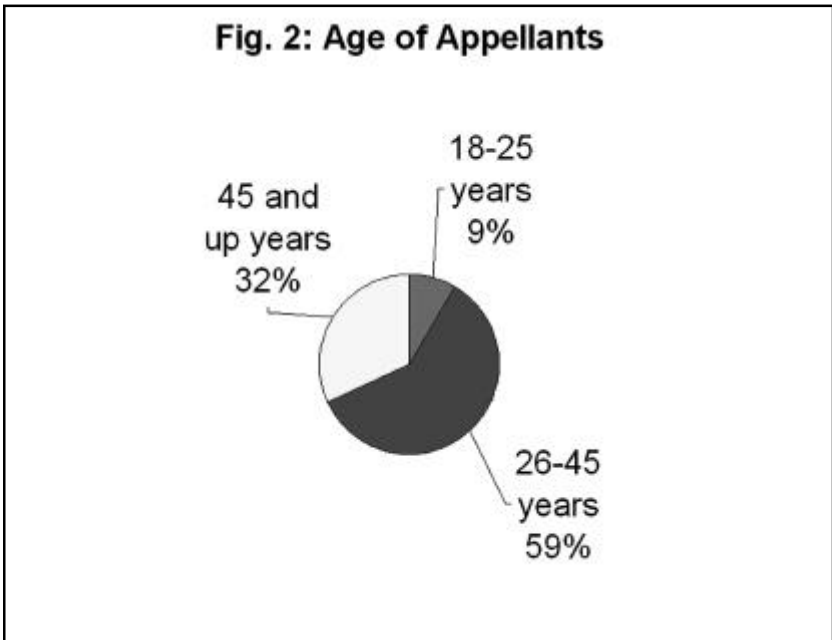
2,500 appeals, with 56% of these appeals resulting in the disclosure of some or all of the disputed information while in 16% of the cases the action of the agency was upheld. The remaining cases represent appeals that did not proceed for a variety of procedural reasons.

As part of the process leading to this report, a survey was devised and implemented to look more carefully at the appeals process from the end-user perspective. A link to the survey was posted on IFAI's website and was distributed to a broader network in Mexico via e-mail, resulting in 69 individuals who had filed appeals with IFAI completing the survey. Because these individuals self-selected, and the sample size was small, the findings are not definitive; however, we do believe they provide some insight into the appeals process and warrant further investigation.

Fig. 1: Type of Information for which an Appeal Was Made



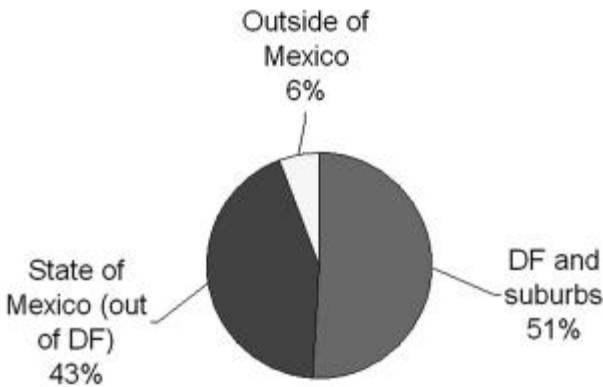
Of the respondents, 78% were male and 22% female, with nearly 80% stating they had a university degree or higher (and 45% of those having at least some post-graduate education). This result may also be somewhat determined by virtue of the survey being located online and that all respondents were at minimum comfortable with working in an online environment.



As seen in figure 2, the vast majority of appellants are over 26 years, with 18-25 year olds representing approximately only nine percent of appeals. This is somewhat puzzling, given that the age group 20-34 represents 50% of all FOI requests and we would expect to see a comparable percentage of appeals from this group. This may be another indication that there is a certain level of sophistication needed to participate in the appeals process, though it could also be that the 18-25 age group is making FOI

requests of a simpler/more straight forward nature and so appeals are less likely. We recommend that IFAI monitor the age group making appeals to ensure that the appeals process is sufficiently accessible to all groups, as that demonstrates further buy-in to the process.

Fig. 3: Place of Residence of Appellants

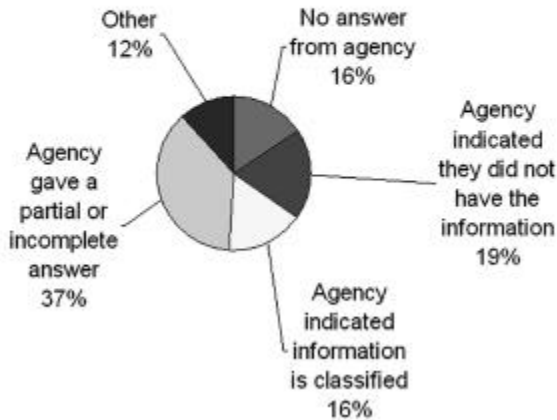


In line with expectations, given the location of end-users making requests, 51% of appellants (See figure 3) indicated they were in Mexico City and the surrounding suburbs and 43% were from another state of Mexico. Thus, the appeals process does not appear to further inhibit those outside of the capital area, at least where they have access to the Internet.

Through the survey, we were able to look closer at the occupations of appellants and the reasons for their appeals. (See figure 4.) Of survey respondents, 75% had submitted at least one FOI request as a part of their work, with 60% indicating they had made more than one request.

Additionally, 73% reported submitting at least one FOI request for personal reasons, with 48% indicating they had made more than one request. This would indicate that those likely to appeal are using the system frequently and are doing so both for their work and their own personal reasons and are, therefore, fairly experienced with the system. As such, their need for support for navigating the system is low, which is reflected in the low number of respondents indicating the need for assistance from IFAI in the process. The experience of frequent users of the process can benefit agencies that must fill FOI requests by helping to create clearer guidelines. Therefore, it is as important for IFAI to cultivate its relationship with frequent users as it is to reach out to new users. We would recommend creating some process that will ensure that IFAI is able to obtain periodic feedback from those who use the system the most.

Fig. 4: Reason for the Appeal



Based on appeals data, activities and programs are the most common type of data requested for which an appeal is made, followed by information collected/produced by the agency and salaries and benefits. Agencies' failure to give a complete answer to a request is the most likely type of response to elicit an appeal. Nearly 40% of appeals were due to an agency giving a partial or incomplete answer. Figure 4 shows detailed information on reasons for the appeal.

In looking at the distribution of appeals by type and agency response, 11% of appeals were for activities and programs where the agency gave a partial or incomplete answer, representing the largest single grouping. This was followed by appeals based on FOI requests for information collected/produced by an agency, also where the agency gave a partial or incomplete answer, representing 9% of the group. While the exact nature of the requests are not known, we would assume that as agencies are able to further organize their websites and files, the appeals in this area should go down. We recommend that IFAI continue to monitor the distribution of type of information and reason for appeal over time to identify both problematic areas and areas for training purposes or those in need of additional guidelines.

While there was no one agency singled out for appeals, the types of agencies with the greatest number of appeals appear to be focused on those organizations overseeing financial transactions (banks, budget offices, etc.), utilities and education. This is not surprising, since each of these areas represents a subject matter that is of broad concern to the general public.

Regarding the outcomes of the appeals, 53% reported that the appeal was still pending. Of those reporting a decision, 76% indicated that

IFAI found that the agency was in error and had to rectify the situation, while IFAI ruled in favor of the agency in 24% of the cases. Even with the self-selective nature of the respondents, these percentages are roughly similar to the 56/16 percent ratio reported by IFAI. Respondents indicated that for the most part agencies seem to have complied completely or nearly completely with IFAI's decision for fuller disclosure in about 75% of the cases.

Finally, respondents were overall neutral about whether IFAI's decisions are based on clear criteria and are consistent. This is not an unexpected finding with a young organization that is still developing a critical mass of precedence cases. Not surprisingly, respondents whose appeals were granted by IFAI were much more likely to agree that IFAI's decisions were both consistent and based on clear criteria than those whose appeals were denied. Regardless, given its infancy, there is evidence that IFAI needs to be especially diligent to show clear rationale and consistency in their decisions in order to promote confidence in their work.

This was a limited survey, seeking only views on the appeals process and not the implementation of the Transparency Law overall. For the future, IFAI may consider recreating this survey on a broader scale to incorporate each of the population groups it serves. For example, if there is a group of users that only interacts with IFAI by postal mail, IFAI could mail out a copy of the survey at some point in the process and request that users mail it back. This would ensure that IFAI learns whether people without access to the Internet find the process user-friendly and accessible to the same degree as those with access to the Internet.

L. CULTURE OF OPENNESS

It could be argued that one way to measure the success of IFAI's publication and distribution of information is the extent to which a culture of openness is developing in Mexico. While there is no concrete evidence that we can point to, individuals throughout civil society believe that a culture of openness is, in fact, beginning to emerge in almost every sector.

Another proxy for measuring the culture of openness is the Transparency International Corruption Perception Index, which looks at how business people and country analysts perceive the level of corruption in a given country. Through a series of questionnaires to various business people and analysts, a composite score is created for each country as to their perceived level of corruption. On a 1 to 10 scale, with 1 being highly corrupt, Mexico has consistently scored around 3.6. In 2001, the year before the FOI law came into existence, Mexico ranked 51st in the world, with a score of 3.7. In 2002, that dropped to 57th place, with a score of 3.6, and remained at 64th place with a score of 3.6 in both 2003 and 2004.

However, what the TI perception index may not capture is a grassroots cultural shift towards openness and freedom of information, which would not be seen at a technical business level, but would be more manifest in other areas, such as human rights and environmental protection. As previously discussed, academic use of the Transparency Law has continued to increase as a percentage of all FOI requests, while entrepreneurial requests have actually declined.

IFAI has already begun to capitalize on the initial momentum for freedom of information in Mexico. For example, in December 2003, IFAI

conducted an evaluation of all agencies regarding their compliance with the basic information publication requirement of the law.³⁰ The results for each agency, often dismal (an average score of 36.6% for all agencies), were reported back to each agency, but were not released to the broader public (although they were available upon request). IFAI decided to put pressure on the agencies to improve their compliance, and indicated that future reports would be widely publicized. In February 2005, the most recent report published indicated that the general average on compliance had risen to above 90%. While time may have been a factor in the improved rate of compliance, the threatened publication likely expedited the process in many agencies.³¹

There appears to be a public benefit to the perception that published reports compelled the agencies to increase their compliance, as this would demonstrate both agency responsiveness to public opinion and civil society's ability to bring about positive change and accountability in the government, a key goal of the law.³²

In summary, there are numerous positive indications that a culture of transparency is emerging throughout Mexico. In the following Section, we present several steps that can be taken to continue that trend.

V. RECOMMENDATIONS

A. RECOMMENDATIONS TO IFAI

Of the major questions already raised, one is fairly basic: what structural changes, if any, should be made to the law with respect to IFAI? In the last several years, there have been many proposals for legislative modifications; changes relating to autonomy, the appointment of commissioners, IFAI's powers, and division of responsibilities. As we studied the practices and experiences of the last two years, we concluded that the emphasis, in the near future, should be on operational issues and not legislative reform. Indeed, our suggestion would be for a moratorium on considerations of legislative change so that more experience can be gained, and the relationship between IFAI, the obligated agencies and civil society can become richer and more suggestive.

Here the potential for improvement, with limited but deliberate steps, is quite great. IFAI — and the machinery of transparency in Mexico — already is recognized as pathbreaking. More must be accomplished to reinforce the understanding of IFAI's accomplishments and those of the coordinated efforts of IFAI and the agencies. What is being done in Mexico is a contribution to the development of similar approaches elsewhere. More should be done to underscore

the international importance of these efforts.

1. IFAI and the States

Another way for IFAI to extend its impact is to work with the federal representatives in the states to make them agents of transparency, with sufficient information and motivation to assist those in the states who wish to use the federal apparatus more effectively. Likewise, IFAI should continue its efforts to encourage the enactment and use of state and local transparency laws. In support of those efforts, IFAI should attempt to increase its staff resources devoted to working with state and local governments and interest groups.

2. Supporting IFAI and Institutions of Transparency in Mexico

Within Mexico, greater efforts should be made to articulate the benefits of transparency. We applaud the preparation of a book of case studies highlighting IFAI's activities and the operation of the transparency regime. A "citizen's guide" to IFAI, written in accessible language and instructing individuals and broad-based NGOs will also go a long way to exploring how to use the law and explaining the benefits it can provide. IFAI's multiple roles are easily confused by the public, creating potential obstacles for promoting overall transparency. IFAI is unlike federal entities such as the Federal Election Commission and the Human Rights Commission, which oversee the entire government with respect to specific actions and are tasked with preventing overt abuses. IFAI, in contrast, must manage a careful partnership with the obligated agencies and the public.

Therefore, we recommend that IFAI should undertake a targeted marketing campaign that promotes confidence in the overall FOI system (as opposed to IFAI itself) and engages parts of the population that are currently underrepresented in usage of the Transparency Law. For example, a push around personal data—the types of data the government gathers on individuals and how that information is used, might engage a part of the public that does not currently see any personal reason to pursue or support the transparency law. Specific groups that we identified where IFAI might focus include: youth in the public school system, indigenous people and people without access to the Internet. Along with targeted outreach, we recommend that IFAI and others promoting FOI and transparency review existing information distribution systems for effectiveness in relation to reaching target audiences, both in terms of actual physical reach (are they getting the information) and understandability (is the information presented in a way that they can understand it).

3. Collaboration

IFAI's internal resources are limited, and as such IFAI cannot possibly reach all possible groups by itself. To remedy this, IFAI has recognized the valuable contributions that can be made by other organizations, both governmental and non-governmental, and has established collaborative agreements with several such organizations. However, these agreements seem to reflect a general acknowledgement of collaboration, but lack specification of actual targeted efforts. We recommend that IFAI review existing collaborative agreements and assess the extent to which its partners have engaged in strategies

outlined in the agreements. Further, we recommend that IFAI establish a formal mechanism for coordinating the efforts of those who enter into collaborative agreements in order to leverage resources for maximum utility. This would entail coordinating both an organization's efforts in conjunction with IFAI and also with other organizations. Finally, we recommend that IFAI work to integrate agencies into collaborative agreements and that other organizations consider formalizing partnerships with specific agencies with whom they work on a regular basis on FOI issues. It is important to note that this recommendation relates to efforts overseen by IFAI and should not be confused with our recommendation for civil society to collaborate as a separate and independent entity towards re-engaging in a broad-based effort to strengthen the overall implementation of the Transparency Law.

4. **Autonomy**

Autonomy is clearly an important issue. But, the process and mode of building and focusing support for IFAI can have many elements. Rather than legislative or constitutional change at this point, we urge consideration of the creation of a Committee for the Protection of IFAI's Autonomy. Such a body could be composed of distinguished citizens who are (if this is possible) "above politics." The function of the committee would be to act as a "firewall" (to use a much overused term) against attempts to weaken IFAI, and to develop non-partisan support for IFAI. Such a committee might include authors, publishers, iconic political figures, and respected academics. It should have a relatively small membership (perhaps seven members), an executive director, and a small budget. It would be an advocate for the transparency process

and IFAI's continued autonomy, encouraging the appointment of apolitical Commissioners, for example, and be available for critical commentary if there were attempts to infringe IFAI's autonomy. In addition, there needs to be formal recognition of the definition for budgetary autonomy at IFAI and in Congress and with the President.

One criticism of the current system (often voiced within the obligated agencies) is that IFAI is not sufficiently accountable—agency decisions are reviewed by IFAI, but there is no review or oversight of IFAI's actions. We believe that accountability, in these kinds of structures, comes over time. If there is, as we propose, more frequent and more institutionalized contact between IFAI and agency representatives, the resulting dialogue will create a forum for accountability. We believe there should be legislative review of IFAI's operations, but only in studied and deliberate intervals—for example once every two years. There could also be an institutional review (perhaps by a panel including a judge and representatives of civil society and the agencies) every two years. What should not be created, we believe, is a case-by-case process for appealing IFAI's decisions, which would make the system more expensive and cumbersome.

While there is much discussion indeed criticism of the dual judicial and executive roles of IFAI, we believe there is a strong basis for maintaining the current structure. IFAI's strength and standing is largely a function of its ability to adjudicate disputes. It is respected in its advocacy role and in its recommendations to agencies because of its power to decide. It is possible, after five years of functioning, when the culture of transparency is deepened and the institutions more mature, that IFAI's structure could be re-analyzed.

B. RECOMMENDATIONS CONCERNING IFAI AND THE AGENCIES

1. A Working Relationship

Another set of concerns deals with IFAI's relations with the obligated agencies. A number of approaches were considered as to how to improve discourse between IFAI and agency representatives. One step would be to professionalize, further, the preparation of documents produced as part of the appeal process. More particularly, it is necessary to ensure that IFAI's decisions are reasoned, that they follow legal arguments, and that they overcome a notion that results vary with the individual Commissioner involved in a particular case. The obligated agencies require the guidance that comes from reasoned opinions. Just as the agencies expect reasoned opinions, IFAI needs its consideration of appeals to be based on documents that are well reasoned and provide an adequate understanding of the agency decision and the reasons for it.

A key issue we identified was the need to create institutional dialogue between IFAI and the agencies. Our recommendation is to establish bimonthly meetings between the agencies and IFAI. These could be sectoral meetings. This would entail clustering agencies into groups such as Finance, Health, Security, Public

Services. Each sector would settle on a mechanism to have meaningful dialogue between its officials (a mix of liaison officers and information committee members) together with representatives of IFAI or Commissioners themselves. These meetings would not be occasions for the relitigation of cases. Instead, there would be analysis of trends (an abnormal pattern of appeals or reversals, an abnormal pattern of delay, need to improve systems of document provision, modes for promoting the law, etc.).³³

Alternatively, the IFAI Commissioners could convene regular (annual or bi-annual, perhaps) meetings with representatives of the agency Liaison Units and Information Committees to address their concerns and solicit their input on a variety of issues of mutual interest. In many ways, given the specialized nature of the issues that are likely to arise in such meetings, these recommendations overlap. Even such regular meetings could be divided by sector. Through such a formalized consultation process, agencies are likely to feel as though they are able to contribute or (buy in) to the process and thus become more invested in the culture of transparency and supportive of IFAI's work.³⁴

2. Training

More can be done to enhance IFAI's role in providing training for the obligated agencies. For example, an Institute for Transparency, possibly university-based, should be established for research and international debate on transparency laws – their purposes, uses, and implementation. It should be a home for the most distinguished transparency practitioners, both within and without the government. It should provide ongoing evaluation and critical per-

spectives on IFAI, the agencies, and the end-users. Its activities could include conferences with NGOs and training meetings with counterparts in executive agencies. Given the large number of obligated agencies and the importance of freedom of information issues, there should be a greater effort to professionalize FOI practitioners. Regularized training, perhaps even certification, can contribute to this process and help imbed transparency in the political culture.

3. Archiving

Lack of archiving competence and procedures throughout the government is a major obstacle to effective implementation of the Transparency Law. Unless information is organized and maintained in a logical and consistent manner, agencies are likely to assert that they are unable to locate responsive material when a request is received (indeed, “no records” responses are a growing phenomenon and a source of increased concern within IFAI). IFAI must devote substantial resources to training agency personnel in this area. There is, in short, a need to “professionalize” archiving work to the point that it is a recognized career path and job classification throughout the federal government.

4. Institutionalizing Dialogue between IFAI and Other Similar Entities

International comparison reveals several different levels of institutionalized dialogue between bodies such as IFAI and other equivalent entities. At the most general level, IFAI already collaborates with other information commissions

and commissioners through the International Conference of Access to Information Commissioners. Indeed, IFAI was host to the most recent and largest gathering in Cancun in February 2005. In the final Declaration, the commissioners pledged themselves to “continuous cooperation.”³⁵ However, there is a lack of information about such cooperation. The question is whether it means anything in practice. Existing inter-commission communication and/or collaboration should be enhanced to allow the creation of a wider network of transparency law users and agencies around the world. IFAI could seize this moment and serve as the focal point for a global study of the existence and effect of such cooperation — to which the world’s commissioners are committed.

C. RECOMMENDATIONS FOR END USERS

1. Implementation of the Transparency Law

Civil society was instrumental in the passage of the Transparency Law. The groups that worked for the law’s enactment have remained involved in its implementation, largely through the formation of specialized NGOs. However, overall, the significant civil society presence that helped push for the law’s passage has been much less visible and appears to have been less cohesive during the first years of the law’s implementation. We recommend that civil society organizations, with the support of foundations and other independent organizations, re-engage in the collaborative partnership that advocated for the law in order to strengthen its implementation.

Ideally, there would be four components to such a partnership. First, the partnership would consider ways to strengthen the operation of the law through strategic engagement with IFAI and the agencies. Second, the partnership would consider a comprehensive strategy to strengthen outreach to the general public towards a culture of transparency. Third, the partnership would consider means for more strategic use of the law, such as distribution channels for newsworthy disclosures of information and targeted training courses for using the law. Such training would include better formulation of requests, and negotiating the appeals process. Fourth, the partnership would consider formalizing a mechanism for monitoring the work of IFAI and implementing the transparency law process generally.

2. Training for NGOs on Enhancing Public Interest Advocacy

One can think of enhancing IFAI's status by looking at its internal apparatus or, instead, by increasing "demand" through use of the Transparency Law. As important as it is to examine and improve internal operations and relationships with obligated agencies, we believe that the key to IFAI's long-term vitality is improving the way in which civil society makes use of the law. In short, making "demand" more sophisticated will, in the medium run, improve "supply." It is relatively easy to conclude that societal support for transparency needs to be nurtured and the "culture of transparency" must be deepened to sustain IFAI as an institution and to bring greater openness and accountability to all levels of Mexican government. The more difficult question is how to make that happen.

Average citizens must see concrete examples

of how access to government information impacts their daily lives. IFAI should provide indicators of success, examples that illustrate, in very clear terms, the benefits of access: for instance, disclosure of information concerning the presence of hazardous chemicals at a factory and the use of that knowledge by the neighboring community to demand the removal of the material.³⁶

We recommend that IFAI and others supporting FOI training should seek to reach those most likely to use the law to advance larger public goals — democratization, economic development, environmental protection, and so on. For example, an effort might be made, in conjunction with selected NGOs, to focus on particular subject matter areas where FOI requests might contribute to public understanding of significant policy issues. One example would be increased training, and other kinds of support, for use of the law by NGOs working with indigenous people. Already there have been moves in this direction, but more could be done. One could have special workshops for NGOs in this area, consider how SISI and other mechanisms work in relationship to this constituency, encourage discussions between the NGOs and the obligated agencies in the field involved. And here — as elsewhere — in addition to increasing the number of requests for documents, there should be systematic discussions between those who need information and the relevant agencies concerning disclosure policies. If more “automatic transparency” or voluntary disclosure of information could be achieved, there would be less reliance on the formal machinery of the Transparency Law and IFAI.

3. Legal Advocacy

We recommend training for NGOs to use legal advocacy in a more focused way. International models, such as the U.S., demonstrate how sophisticated “public interest” practitioners have developed the skills and experience to both submit well-targeted requests to government agencies and publicize the information obtained in response to those requests. These activities often have a dual effect. They promote the public good in general, and the mechanism for obtaining the information (FOI) contributes to an awareness on the part of the general public that there is a right to access government information and that preservation of that right is an important component of a democratic society.

We specifically recommend a pilot project in which an experienced international FOI lawyer, who has worked with a specific NGO over time, be linked with a group of five lawyers or legal assistants in NGOs in Mexico that have a need for effective use of government documentation, and that such a lawyer have an ongoing mentoring and advising relationship with his or her Mexican counterparts. He or she would advise on how to identify important documents for the purposes of specific goals, how best to request them, how to determine compliance and deal with the compliance process, and how to utilize the documents once they are obtained.

Similarly, the experience developed by NGOs in other countries with a longer tradition of government transparency should be shared with their Mexican counterparts, through seminars and workshops designed to bring international experts together with NGOs. Because human and financial resources that can be devoted to

the implementation of the law are limited, IFAI must have a strategy to identify its highest priorities with respect to outreach activities.

4. Media Outlets and Information Gained through FOI Requests

The media is critical to both publicizing public-interest information and to promoting overall governmental transparency. We recommend that NGOs establish a formal mechanism for creating links with journalists interested and willing to publish public interest stories. This should be an ongoing network and may require training for both journalists and NGOs on how to strategically support each other. Further, we recommend that investigative reporting be enhanced by strengthening organizations that support journalists doing such reporting, such as *Periodistas de Investigación* and IRE.³⁷ Such strengthening may include the creation of a formal center to work with journalists and local NGOs to develop in-depth reports on under-reported issues of public interest.

D. FINAL COMMENTS

As a group brought together from a variety of backgrounds and expertise, with exposure to the development of information access structures in many states, we were deeply impressed with the advances we saw in Mexico; the enthusiasm, the professional development, and the cooperation of the different actors within so short a time. Our emphasis in conducting this study was on finding ways to maintain the momentum of the early efforts in support of transparency. Our recommendations and conclusions are intended to foster, enhance, and

embed the extraordinary progress already achieved. We applaud the efforts of IFAI and its staff, the agency officials responsible for implementing the law, and the civil society organizations that advocated in support of the law and now seek to promote its use. All of their efforts contribute to important reforms that have the potential to make Mexico an international model for transparency in the 21st century.

END NOTES

- 1 The term “civil society” is used in this report to refer loosely to politically engaged organizations and individuals who have sought to test the law and promote the law’s use as well as those citizens who are generally active in the arena of freedom of information either because they write about it, provide training on how to use the law, advocate further compliance with the law, or advocate other reforms necessary to ensure full implementation of the law.
- 2 In addition, every public entity with a web site is required to publish all draft laws, regulations, decrees, competitive tenders, and other administrative measures 20 days before they go into effect or are submitted to the President to sign.
- 3 The Reglamento for the Camara de Diputados can be found at:
<http://transparencia.diputados.gob.mx/index.php?node=2>.

Information about the Senate’s regulations can be found here: <http://www.senado.gob.mx/transparencia/content/marco/index.htm>.

Information about the Supreme Court’s transparency regulations can be found on its website (under “Transparencia.”): <http://www.scjn.gob.mx/inicial.asp>
- 4 See the Controller’s website for the text of the law: available at: <http://www.funcionpublica.gob.mx/leyes/leyinfo/lftaipg.htm>.

These regulations are not debated in Congress or reviewed by the other branches, but they are published

in the Official Journal.

- 5 Each of these entities has established a system for administering appeals when a request is denied within their branch of government. While the systems set up a person or committee to take appeals, none of the entities ensure that this person or committee is independent or autonomous from the rest of the branch. See the regulations cited in footnote 2 for more information.
- 6 See <http://www.mexicotransparente.org.mx/>
for more information on the Colectivo.
- 7 We do not address the personal data issue at great length in this report. IFAI has only recently begun to focus on the issue.
- 8 To be eligible for appointment, proposed Commissioners must meet the following qualifications: Mexican citizenship, outstanding professional credentials, and public or academic experience related to the subject matter of the Transparency Law. They must not have served as secretary of state, head of an administrative department, attorney general, senator, federal or local deputy, head of a political party or association, or head of government of the Federal District, within a period of one year prior to appointment.
- 9 The question of agency independence has proven difficult in Mexico as well as in other countries. This might be because, even in countries where there is a claim and an appearance of "independence" and "autonomy," it is not always clear what that means, how it is guaranteed, or whether any institutional procedure/structure can be transplanted easily to another context. Globally, there are a wide variety of models. For some examples, during the 3rd meeting of the Information Commissioners in Cancun, February 2005, several Commissioners reported on their institution.

See: <http://www.icic-cancun.org.mx/index.php?lang=eng>

- 10 For more information on IFAI's decisions and a quantitative analysis of each commissioner's decisions covering

2004, see *El IFAI y la Calidad Jurídica de sus Decisiones*, LIMAC, Mexico, 2005.

- 11 The "simple form" developed by IFAI requires requestors to provide the minimum amount of information necessary to enable an agency to conduct a search for responsive material and communicate with the requestor. Making such a form available facilitates requests more easily than requiring requestors to compose their own request letters, as is the practice in the United States.
- 12 IFAI has entered into basic cooperation agreements with the SFP, Commission on Human Rights, Federal Electoral Institute, Supreme Court of the Nation, National Autonomous University of Mexico, State Commission for Access to Information in Sinaloa, the Iberoamericana University, Agrarian Tribunal, the Federal Tribunal for Arbitration, the Tribunal for Federal Judicial Elections, the National Association of Universities and Institutions for Superior Education in Mexican Communication and Environmental Education, Ecological Culture, the NGO Presencia Ciudadana, and the Center for Environmental Rights of Mexico, and others. These agreements are published on IFAI's site at: http://www.ifai.org.mx/test/new_portal/transparencia.htm.
- 13 See *Vinculación con Estados y Municipios* at <http://www.ifai.org.mx/test/eym/edos.htm>
- 14 Article 37 section 15 gives IFAI the authority to work with other agencies and local governments to promote the Transparency Law.
- 15 Some of the business groups that have been active at the state level are part of the LIMAC network, suggesting that national alliances can, in fact, play an important role in promoting local activities.
- 16 Sistema de Educación Remota del Instituto Federal de Acceso a la Información Pública.
- 17 See <http://www.ifai.org.mx/e-fai/Demo/> to take the course.
- 18 For example, at IPAB [Instituto para la Protección del

Ahorro Bancario– Institute for the Protection of Savings in Banks], officials noted that many legal problems could arise if they are forced to make certain decisions, names, or information public. They would prefer to release the information to the requestor and not release it to the general public. In particular, the argument emphasizes that banks that are in liquidation or failed banks must be more careful with their information in order to avoid putting the capital due to the beneficiaries at risk. IPAB cannot publish, before the auction sale of real estate, what is going to be auctioned because this leads to invasion of the estates and loss of money in the eviction process.

- 19 Some agency officials also express concern over the legal requirement that individuals who are requesting information may remain anonymous. They believe that anonymity is not good because "they are being asked to work under poor conditions and without a clear purpose." This provision of the law however was put in place to protect citizens from reprisals and sanctions based on their requests for information. Even within the agencies this is a minor concern and there is not too much justification for change.
- 20 See Article 33 of the law.
- 21 Luna Pla, Issa. *Mexico: the Rise of Social Participation*
- 22 All IFAI demographic statistics should be taken as indicative and not definitive, as the request system allows for anonymity and people need not complete or give accurate information.
- 23 <http://www.Internetworldstats.com/central.htm#mx>
- 24 Evidence that current access issues may be decreasing use of the law is seen in the geographic distribution of requests. Recent IFAI statistics show that 46.4% of requests continue to come from Mexico City, where Internet access is much higher than elsewhere in the country. Mexico City (and immediately surrounding areas) accounts for roughly 20% of the total population, but almost half of the FOI requests.
- 25 <http://www.e-comunidades.gob.mx/>

- 26 Several groups have already brought landmark cases to IFAI, which have caught the public's attention, have added to a sense that the Transparency Law is working. For example, in the case that has come to be known as the PROVIDA case, the Transparency Law was used to request financial information that led to the exposure of inappropriate use of public funds by an HIV/AIDS organization in collaboration with the head of the Congressional budget committee. And, in another case, after a request to the Attorney General's Office (AGO) for the transcript of an investigation into Luis Echeverría (President of Mexico from 1970 to 1976) for crimes against humanity was turned down, IFAI found that the transcript could not be classified because it related to genocide. After the AGO released a transcript of the investigation in February of 2005 under IFAI's orders, a review noted that most of the transcript was redacted. IFAI then released an opinion saying that the released version was excessively redacted.
- 27 See Article 40.II of the Transparency Law.
- 28 REDES: Marcas con Estrategia. Percepciones respecto al IFAI y sobre la campaña de divulgación de la cultura de transparencia 2004. Presentation. August 2004. Slide 9.
- 29 See Article 37.XIV of the Transparency Law.
- 30 IFAI, using a standard form, rated the websites of all the agencies, based on their obligations for posted information under the law. See the previous Agency section, which outlines several of the agency concerns about IFAI evaluation process and the perceived agency legitimacy of the reports.
- 31 At the time of the first evaluation in December 2003, the law had only been in effect for about 18 months. Given the time required to establish each agency information committee, compile the information, and get it on-line, low compliance might be expected. Five months later, in May 2004, the first published evaluation came out, with an average score of 62.8%. February 2005 was the next published report.
- 32 Another example that IFAI is gaining leverage with the public is agencies' inclination to resolve appeals actions

before IFAI deliberations. Agency and IFAI officials both indicated that entities often prefer to settle the appeal, once it is made, before IFAI deliberates and hands down a decision to avoid the publicity associated with the appeal.

- 33 To the extent that they do not already exist, IFAI should negotiate agreements between itself and each state body with the aims of (i) institutionalizing dialogue and cooperation to (ii) foster maximum transparency, consistency of interpretation and best practice under the law. Further, consideration should be given to with which other non-governmental bodies within Mexico IFAI should sign similar agreements.
- 34 There is some precedent for setting up annual meetings such as this. For example, in 2005, the Information Commissioner of the United Kingdom signed an agreement with the Secretary of State for Constitutional Affairs and the (UK) Information Commissioner outlining applicable procedures in the event that complaints are made to the IC about central government departments. See www.foi.gov.uk/memorandum.pdf
- 35 They agreed as follows:

Participation in the knowledge of public entities is a legal right of the information society. Without discrimination, any person must be allowed access to the documents of public agencies. A transparent public administration, open to citizen participation in its decisions, is a prerequisite of a modern democratic society.

The information Commissioners and Ombudsmen who secure freedom of information in the home countries are obligated to preserve and respect these basic principles.

In order to foster a broader, worldwide public awareness of freedom of information, to further analyze and define its vital elements, and benefit from an exchange of experience, the undersigned agree to a continuous cooperation in the International Conference of Information Commissioners. See: http://www.icic-cancun.org.mx/doctos/signed_english.pdf.

- 36 An interesting study recently published by LIMAC and pre-

sented at National Transparency Week on June 27, 2005, catalogues 12 cases of national and personal importance where an appeal was taken to IFAI. Publication and dissemination of case studies such as this should be continued. Ernesto Villanueva & Issa Luna Pla, *Importancia Social del Derecho a Saber*, LIMAC, Mexico 2005.

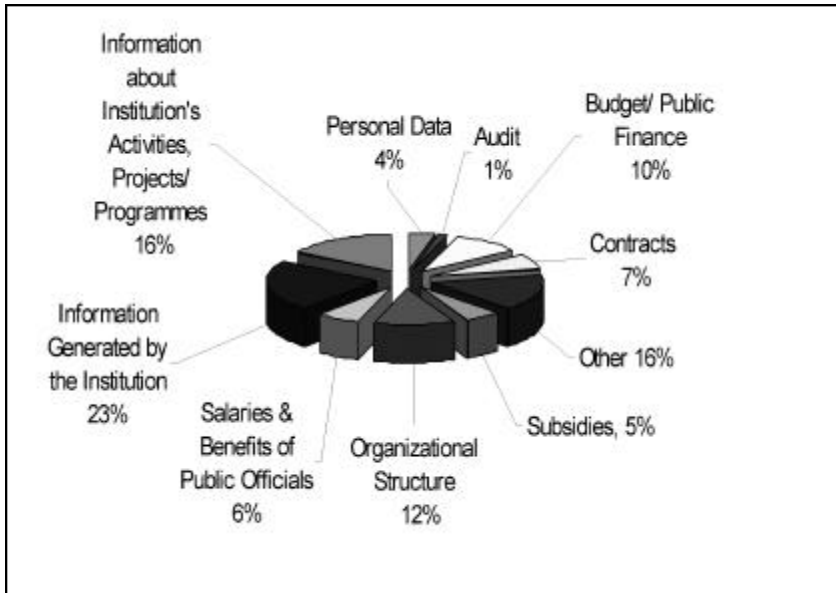
- 37 Periodistas de Investigación's website is: <http://investigacion.org.mx/>

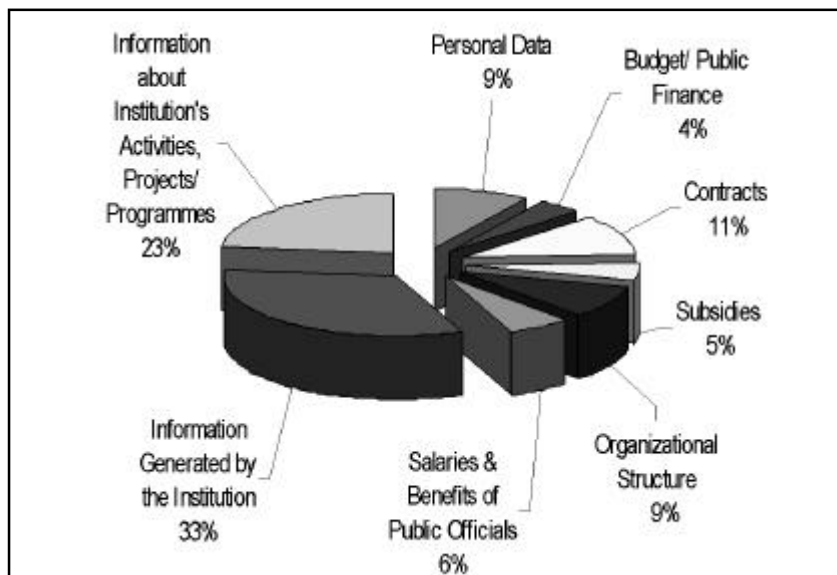
IRE's website is: <http://www.ire.org/>

- 38 IFAI. *I Cuadernos de Transparencia: De los ángeles a los índices*. Mexico. Nov 2003. Page 6.

APPENDIX I: REQUESTS BY SUBJECT

2003





Source: www.ifai.gob.mx

APPENDIX II: IFAI PUBLICATIONS

I. VIDEO

Description

- Aimed at creating awareness about IFAI and to promote transparency and the use of Freedom of Information.
- So far seven video clips have been disseminated. Although they all intended to present situations where there is a lack of visibility or transparency, with time the context of the clips has shifted. For instance, the first three clips alluded to situations of lack of visibility or transparency and how IFAI contributes to unveiling information when it comes to governmental activities, by comparing this to every day life situations.
- The three most recent clips have a different approach. The setting presents a person requesting information (e.g. Where do babies come from? How can I find X address?) and some of the obstacles they encounter (e.g. being sent to other people, being ignored, feeling powerless to inquire or obtain information). These are all obstacles that Mexican citizens have encountered – and still encounter- when they seek information from government agen-

cies. The clip seeks to portray IFAI as a resource to address these issues.

Strengths

- Analogies allow citizens to relate IFAI and FOI's role back to situations of their daily lives.

Challenges

- The videos fail to explain IFAI procedure.
- Contact information is in small font and fade on and off from the screen.
- The videos are not useful for people who have visual disabilities, because contact information appears only visually.
- According to the REDES Study, respondents considered that TV spots effectively captured audiences' attention but fail to effectively deliver important information about IFAI and the FOI process.

II. AUDIO

- Radio is another outlet through which IFAI has started to create awareness. The agency has two main strategies in place at the radio level.
- Audio Clips: Ten clips of approximately 5 seconds each have broadcasted to date.

- Caja de Cristal (The Cristal Box): This is a radio show that is transmitted Wednesdays at 8:30 pm on AM radio and its purpose to train civil society on the use of the right to freedom of information and the right to the protection of personal data. Over 50 shows have been aired so far, and they are hosted by members of IFAI, the obligated agency and other agencies as well as people from civil society to speak about the Law and freedom of information.

III. WRITTEN MATERIAL

A. Cuadernos de Transparencia (Transparency Notebooks)

Description

- This publication was initiated in November of 2003 and constituted IFAI's first editorial effort. Cuadernos de Transparencia seek to "become an instrument for knowledge, a vehicle to circulate ideas and reference tool for everyone."
- According to María Marván Laborde, IFAI's President Commissioner at the time of the first publication, "these books are easy to read, presented in a user friendly format, accessible and free of charge. They are an initial proposal on how to construct bridges between the new topics of modern democracy and Mexican society."
- Two years later, IFAI has published 8 issues of Cuadernos de Transparencia, covering topics such as transparency, accountability and the right of privacy from various perspectives.

Strengths

- Cuadernos de Transparencia is slowly becoming a compilation of research on issues of transparency, accountability and right of privacy by some of Mexico's most knowledgeable experts in these topics.
- The booklets provide information regarding the principles and theory underlying freedom of information and justify the existence of procedures set forth by the Law of Transparency and of institutions such as IFAI.

Challenges

- The articles do not make direct reference to the implementation of the law or IFAI activities, therefore would probably not be useful as training materials.

B. Transparency, Access to information and Personal Data

Description

- This book is a compilation of the regulatory framework of Freedom of Information of Mexico. The information is presented in several formats through the booklet.
- The first section contains the text of the Law of Transparency and regulatory decree.
- The second section describes how to make requests before government agencies in a Q&A format.

- The third section presents the process, its terms and costs through drawings.

Strengths

- Explains the process in several formats allowing audiences of all literacy and interest levels to obtain information about the process.

Challenges

- The first section seems lengthy and overwhelming.

C. Mexico: Transparency and Access to Information

Description

- This booklet contains a summary of the main aspects of the Transparency Law in six different languages.

Strengths

- Underlying principles and values of the Law.
- Law's content in terms of IFAI, access of information regulations and procedures, statistical facts and access to state information.

Challenges

- Perhaps it would be useful to focus on languages spoken within the Mexican territory as well.

D. **Transparencia: Libros Autores, Ideas**

Description

- This is a compilation of expert reflection on the theme of transparency and the limits and challenges associated with implementing a culture of transparency. Most of the pieces were written by IFAI commissioners.

Strengths

- The establishment of an expert base that acknowledges the benefits of transparency while acknowledging the difficulties of achieving a culture of transparency.

Challenges

- The work is very academic and suitable mostly to those interested in a theoretical, as opposed to a practical approach to implementing transparency.

E. “Prácticas” (Practical Guides)

Description

- Of all current publications, this is probably the most simple. *Guías Prácticas* is a collection of small booklets that explain the basic elements of the Transparency Law, freedom of information and access and modification to personal data procedures before agencies and IFAI.

Strengths

- The guide's language is simple. Concepts are explained in the form of questions and answers. Format is very dynamic and colorful, making the reading process a pleasant experience.

Challenges

- The need to keep it simple often hinders the possibility of more in-depth analysis about the issues and challenges that users may face during the process.

APPENDIX III: GUIDE TO TERMINOLOGY

- 1) Guidelines (*Lineamientos*). Agency issued guidelines that are non-binding and that are intended to aid in the implementation of the law.
 - a) Disobeying a guideline is not a basis for sanction as is disobeying a provision of the law.
- 2) Regulations (*Reglamento*). Each branch of the government and each constitutionally independent entity issued regulations under the Transparency Law that specified how the law would be implemented for that branch of government.
 - a) They were published in the Diario Oficial. They are not debated by Congress or approved by any other branch of government, besides the one issuing the particular regulation.
 - b) There is no mechanism for ensuring that the regulations are in line with the plain language of the law, besides public opinion.
- 3) Request for information (*Solicitud de informacion*).

- a) A petition for public information that is found in the documents that are generated, obtained, acquired, altered or preserved by the agencies and entities of the Federal Public Administration, and the Other Parties Bound by The Law.
- 4) Appeal for review (*Recurso de revision*).
- a) An appeal for review that a private person may make to the IFAI when they are denied access to information, notified that the information does not exist, or if the information provided is considered incomplete or does not answer the request.
 - b) An appeal for review that a private citizen may take to the IFAI if they are denied access to their personal data, or it was delivered in an incomprehensible form, or they were denied the opportunity to modify the personal information.
- 5) Requestor A person who puts in a request for information or an appeal for review.
- 6) SISI (*Sistema de Solicitudes de Información*). Information request system.
- a) An online request portal that can be used to send in requests for information to the liaison units of each federal agency and appeals for review with IFAI.
 - b) <http://www.sisi.org.mx/>
- 7) “No records” response (*inexistencia*). The agency response to a request for information indicating that there are no records available to answer that request.

- 8) Obligated agencies or agencies (*sujetos obligados*). The agencies identified in the Public Administration Law, subject to IFAI's jurisdiction under the Transparency Law.
- 9) Liaison Unit (*Unidad de Enlace*). Individual responsible for collecting and disseminating information, processing requests, assisting individuals in elaborating requests, and preparing and delivering the requested information and related notifications at each federal agency.
- 10) Information Committee (*Comité de Información*). Responsible for coordinating all actions within the agency in relation to the law and ensuring the efficiency of the request process.

APPENDIX IV:

PROJECT MEMBERS

- Project Leader & Author

Professor Monroe E. Price is Director of the Project for Global Communication Studies and Visiting Professor at the Annenberg School for Communication. He is the Joseph and Sadie Danciger Professor of Law at the Benjamin N. Cardozo School of Law, Yeshiva University, of which he was the dean from 1982-1991. He was Professor of Law at UCLA until 1982. Professor Price currently serves as the director of the Howard M. Squadron Program in Law, Media and Society and is the founder and editor of the Communications Law in Transition Newsletter. He was member of the School of Social Science at the Institute for Advanced Study, Princeton in 2001 - 2002 and was a Communications Fellow at the John & Mary R. Markle Foundation from 1996 to 1998. He was a senior fellow of the Media Studies Center of the Freedom Forum in New York City in 1998.

- Deputy Director & Author

Bethany Davis Noll, consultant for the project, has worked with Professor Monroe Price on numerous projects at the Programme in Comparative Media Law and Policy at Oxford, including a comparative survey and book of media reform in democratizing countries, a book on minority language broadcasting and legislation in OSCE states, a book on media reform in Ukraine sponsored by USAID, and a conference on international media assistance

and its role in promoting democracy with the World Bank and USAID. She graduated from Stanford Law School in 2005.

- Report authors/researchers:

David L. Sobel, at the Electronic Privacy Information Center, has litigated numerous cases under the Freedom of Information Act seeking the disclosure of government documents on privacy policy, including electronic surveillance and encryption controls. His current cases seek disclosure of information concerning the USA PATRIOT Act, the Total Information Awareness program and the privacy impact of aviation security measures and other homeland security initiatives. He served as co-counsel in the challenge to government secrecy concerning post-September 11 detentions and participated in the submission of a civil liberties amicus brief in the first-ever proceeding of the Foreign Intelligence Surveillance Court of Review. Mr. Sobel has a longstanding interest in civil liberties and information policy issues and has written and lectured on these issues frequently since 1981. He was formerly counsel to the non-profit National Security Archive, and his clients have included Coretta Scott King, the Nation magazine and ABC News.

Benjamin Fernandez Bogado is a lawyer and journalist. He is President of the Fundacion Libre and General Director of Radio Libre in Paraguay. He has worked with UNDP on governance issues since 2000 and has written several books about access to information. He is the Rector of the Universidad Americana in Paraguay and has done a lot of work on how freedom of information interacts with democratization. He was a draftee of the 1992 Paraguayan Constitution. He studied at Harvard, as a Nieman Fellow, at University of

Minnesota, as a Fulbright Fellow, and Syracuse University, as a Humphrey Fellow.

- TCC Group Consultants

(<http://www.tccgrp.com/>)

Shelly Kessler, Vice President. Since joining TCC, Shelly has had a major role in developing TCC's international practice. She has been one of the leads on our work on long-range financing for the Consultative Group on International Agricultural Research (CGIAR) as well as participating in the strategic marketing workshops funded by the Ford Foundation. Kessler has also led a strategic planning assignment for the Merck Foundation, and a review of one of the Bristol-Myers Squibb Foundation's flagship philanthropic projects. She has twenty years experience in international development, non-profit management, and consulting. Prior to joining the firm, Kessler spent five and a half years as Deputy Executive Director of the International Clinical Epidemiology Network (INCLIN, Inc.), an international non-profit organization working with medical schools in 24 countries.

Jared Raynor is a Consultant at TCC Group. He recently joined the firm after working in a number of international organizations. He worked for the International Rescue Committee (IRC) in Azerbaijan, working with local communities and organizations affected by conflict. In this capacity he worked on strategic planning for the country office of IRC and worked to enhance organizational efficiency for IRC programs, local NGOs and partner organizations. Raynor has also worked for the United Nations in the NGO Section of the Department of Public Information, assisting with the development and implementation of several major conferences for NGOs, working on general outreach to

NGOs and coordinating media outreach efforts.

Ana Ramos-Hernandez is a Consultant at TCC Group. She received her law degree from the University of Los Andes, in Bogotá, Colombia. Shortly after graduation, she was appointed coordinator of the project Visible Candidates – Visible Congress, an organization dedicated to monitoring legislative activity and the performance of Colombian Congress, and to empowering citizens by disseminating accurate, complete and impartial information on Colombian legislators. During this time, she not only performed the administrative functions inherent to running an organization but also conducted quantitative and qualitative analysis conducive to reports on legislative performance. Ramos has extensive experience in surveying, data collection, and quantitative and qualitative analysis, possesses valuable computer skills and is fluent in both English and Spanish. Ramos graduated from her Master's program in May 2004 with a Certificate in Nonprofit Management and was awarded the Fels Institute of Government Excellence in Performance Measurement Award for her work with the Philadelphia Department of Human Services.

- Project Coordinator

Susan Abbott is Sr. Research Coordinator at the Project for Global Communication Studies at the Annenberg School of Communications.

- Board of Advisors

David Goldberg taught law at the School of Law, University of Glasgow from 1971-2000. Now, he directs deeJgee Research/Consultancy and is a Guest Lecturer for Glasgow Caledonian University's communications law course. He founded the Journal of Media Law and Practice

in 1979 (later, Tolley's Communications Law) and initiated the teaching of communications law and policy at Glasgow in 1983 at both undergraduate and postgraduate levels. Since 1984, he has (as Co-convenor of the Campaign for Freedom of Information in Scotland) campaigned for freedom of information in Scotland as well as internationally. He is a UK media law information provider to the Council of Europe's Audiovisual Observatory. In 2002, he was a Member of the UK Foreign and Commonwealth Office's Free Expression Panel (under the auspices of the Human Rights Policy Unit) he is a Research Fellow and Member of the Advisory Council of The Commonwealth Centre for Electronic Governance.

Luis Botello, Director, Latin American Programs, ICFJ. Responsible for the identification, implementation and development of all ICFJ projects for Latin America and the Caribbean. Conducts a variety of training programs and conferences. Botello was formerly director of ICFJ's web-based service, the International Journalist's Network (IJNet), which tracks media developments around the world. Also previously served as morning newscast producer, host and television reporter for Televisora Nacional in Panama, where he covered assignments in Colombia, the United States and Europe. He is a member of the board of directors of the Knight Center for Journalism in the Americas at the University of Texas at Austin and the Latin American Journalism Center (CELAP) in Panama City, Panama. Recipient of a Fulbright Scholarship in 1988 and a fellowship to Louisiana State University's Manship School of Mass Communication in 1997. B.A., Journalism and Master's in Mass Communications, Louisiana State University,, Special Rapporteur for Freedom of Expression Inter American

Commission on Human Rights, Organization of American States.

Kate Doyle, a Senior Analyst of U.S. policy in Latin America, currently directs the Mexico Project at the National Security Archive, which aims to obtain documents on U.S.-Mexican relations. She edited two of the Archive's collections of declassified records - Death Squads, Guerrilla War, Covert Operations, and Genocide: Guatemala and the United States, 1954-1999 and El Salvador: War, Peace and Human Rights, 1980-1994 - and numerous Electronic Briefing Books on Guatemala and Mexico for the Archive's Web site. Since 1992, Doyle has worked with Latin American human rights organizations and truth commissions - in Mexico, Guatemala, El Salvador and Honduras - to obtain the declassification of U.S. government archives in support of their investigations. Doyle also works with citizens groups throughout the region on their campaigns for government transparency, accountability and freedom of information, and has written about the right to information in Latin America and the United States. In 2002, Doyle was awarded the Iberoamerican University's annual "Right to Information Prize" in Mexico.

Eduardo Bertoni, former Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States.

- Special Advisors in Mexico.

Issa Luna Pla, LIMAC. LIMAC is a non-partisan, secular and non-profit civil society organization that promotes the individual's right to information and especially to public information in the framework of a democratic state based on the

rule of law.

Dra. Patricia Galeana, LIMAC Advisor. Historian at the National Autonomous University of Mexico. Former General Director of the Historic and Diplomatic Archives at the Ministry of Foreign Affairs, of the General Archives of the Nation and Councilor of the International Council on Archives. Author and coauthor of 20 books, she has coordinated more than 54 publications in history, international relations and gender.