

# INTRODUCTION TO FEDERAL INSTITUTE FOR ACCESS TO INFORMATION AND DATA PROTECTION

## Content

1.	INTRODUCTION.....	2
2.	FEDERAL TRANSPARENCY AND ACCESS TO GOVERNMENTAL PUBLIC INFORMATION ACT (FOIA) .....	3
3.	FEDERAL LAW ON PROTECTION OF PERSONAL DATA HELD BY PRIVATE PARTIES .....	4
4.	FEDERAL INSTITUTE FOR ACCESS TO INFORMATION AND DATA PROTECTION (IFAI) .....	6
a.	About IFAI .....	6
b.	Electronic Tools. ....	7
i.	INFOMEX .....	8
ii.	Transparency Obligations Portal (POT) .....	8
iii.	ZOOM .....	9
iv.	COMMUNICATION TOOL .....	9
c.	IFAI by numbers .....	10
d.	Access to Information in the states and municipalities in Mexico .....	11
5.	CONCLUSION.....	12



## 1. INTRODUCTION

The eighties were characterized by political transitions from authoritarian regimes that would eventually become democratic; the nineties can be identified as the years when the "emergence of transparency and access to information" were the key elements for democratic consolidation. Although the first legislation on access to information appeared in 1776, the year when Sweden passed *the Freedom of the Press Act*, it was not until the last 15 years when these two issues —closely related— have entered on the political agenda of a large number of countries. Currently more than 90 countries have laws that promote access to information in possession of the government and many others are in the process of drafting, deliberation or approval of such regulations.

Transparency and access to public information are two fundamental qualities of a democratic government, which in addition to ensuring clear and reliable rules for electoral competition and the rise to power, provide institutional channels of access to information enabling the society to constantly know, participate and evaluate —and not only periodically through elections— the government management and the performance of public servants.

Transparency and access to information are two mechanisms that promote government accountability and both have a direct impact on improving the democratic system as they contribute to a multiplicity of players, among which are non-governmental organizations, civil society, academia, media and even the powers of the State themselves, acting as social controllers, reduce costs associated with overseeing and monitoring the exercise of power. At the same time, transparency and access to government public information favor the creation of communication channels between State institutions and society, which allow constituents to perform a critical, knowledgeable and permanent scrutiny of the government's actions.

In the case of Mexico, the first approach to the right of access to information dates from 1977 and is since registered in the Constitution of the United Mexican States. Article 6 of the Constitution sets forth the obligation of the State to guarantee the right to information and, in Article 8, the "right of petition" that empowers any Mexican citizen to consult on government activities. It must be recognized, however, that in the absence of legal regulations applicable to the subject matter, access to information had been a gracious or discretionary concession of the authority, subject to the willingness of public servants and the physical availability of the information.

It was the development of the jurisprudence of the Supreme Court of Justice of the Nations Office that defined during this first stage, the contours of the right of access to information, considering it in the beginning as a social right to express opinions through the media, in the context of political parties, in order to evolve



then into a genuine individual right requiring the State to provide complete and truthful information.

It is until 2007 that, based on a constitutional reform by consensus, the principles and bases for the right of access to information applicable to the Federation, states and the Federal District, within their respective jurisdictions are established.

Among the principles established stands out that all information held by any authority, body, organ and entity at federal, state and municipal levels, is public and can only be reserved temporarily for reasons of public interest in the terms established by law, and that in the interpretation of this right the principle of maximum disclosure shall prevail.

## **2. FEDERAL TRANSPARENCY AND ACCESS TO GOVERNMENTAL PUBLIC INFORMATION ACT (FOIA)**

With the enactment of the Federal Law of Transparency and Access to Public Government Information (LFTAIPG) on June 12, 2002, the lack of specific regulations that support and facilitate the exercise of the right to information established in the Federal Constitution is remedied.

The enactment of the LFTAIPG brought a change in the relationship between government and governed, because the exercise of public office shall be under the premise of participation and scrutiny of the governed, having as objectives, among others, "make transparent public administration", "encourage accountability to citizens" so that they can evaluate the performance of government entities, and "contribute to the democratization of Mexican society and the full rule of law" (Article 4).

The LFTAIPG regulates the right of everyone to access to information held by the Powers of the government, autonomous constitutional bodies, the federal administrative tribunals and other federal agencies.

The LFTAIPG sets forth the organs, criteria and procedures, principles and specific deadlines by which the right of access to information before federal authorities can be enforced.

First, the LFTAIPG provides that all government information is public, and instructs government agencies to promote the "principle of maximum disclosure and availability of information," which means that in case of doubt about the public or reserved nature of the information, it should be resolved in favor of the right of access thereto.

Likewise, it grants individuals the right to request information from government agencies through simple and expeditious procedures, and without having to prove any interest, or justify the use that will be given to it. Additionally, the LFTAIPG establishes a catalog of information to be published routinely by



government agencies on functions, budgeting, operations, staff directory, salaries, internal reports, and the execution of contracts and concessions, among others.

It cannot be overlooked that the LFTAIPG also provides for means by which individuals may file a claim against the refusal of access to information in the first instance before an administrative body functionally independent and, in second instance, before courts of the Judiciary of the Federation.

### **3. FEDERAL LAW ON PROTECTION OF PERSONAL DATA HELD BY PRIVATE PARTIES**

Since 2001, a total of 9 bills were presented before Congress, none of which was passed so that it could satisfactorily reconcile the needs of all sectors involved.

It was until the publication of the Federal Law of Transparency and Access to Governmental Public Information in 2002, when the right to protection of personal data is first recognized and constrains all federal public entities to comply with a series of rules aimed at ensuring proper treatment of personal information they possess in order to carry out their daily activities.

Added to this, 2009 is distinguished by the realization of two important events, the adoption of the amendments to Articles 16 and 73 of the Constitution of the United Mexican States. Article 16 of the Constitution incorporates the list of fundamental rights set forth in our Constitution, the right to protection of personal data and provides it with content. For its part, Article 73 of the Constitution empowers the Congress to legislate on matters related to the protection of personal data held by private parties.

***Approval of the Federal Law on Protection of Personal Data Held by Private Parties by the Federal Congress.*** After years of intense debate on the desirability and content of a law in this area and once the constitutional foundations were laid, the Government Commission of the House of Representatives of the LXI Legislature is given the task of drafting a bill that meets basic needs and demands of all stakeholders in order to have a law agreed in all respects.

Once this task was completed, on April 13, 2010 the Full Bench of the House of Representatives approved the report presented by the Government Commission, passing the minute of law approved at the Senate for further evaluation. Thus, the Committees of Government and Legislative Studies of the Senate, study and assess the bill and submit the corresponding report to vote by the Full Bench, and is unanimously approved by the senators present on April 27, 2010.

***Overview of the Federal Law on Protection of Personal Data Held by Private Parties.*** The Federal Law on Protection of Personal Data Held by



Private Parties (LFPDPP) has been established as the general framework that includes rules, requirements, conditions and minimum obligations to ensure proper treatment of personal data by private parties, without hindering the flow thereof which will result in the imposition of barriers, thus contributing to the economic development of our country.

**Purpose and Scope:** the LFPDPP aims at the protection of personal data held by private parties, in order to regulate the legitimate, controlled and informed treatment, in order to guarantee the right to informational self-determination of people, be compulsory in all Mexico.

**Subjects Governed:** the subjects obliged under this law are all private natural and legal persons who carry out processing of personal data for the development of their daily activities, excluding credit information companies and individuals that have data for personal or household use.

**Principles of the Protection of Personal Data:** The LFPDPP incorporates the principles of data protection recognized in the document entitled "International Standards on Data Protection and Privacy," namely the principle of legitimacy, consent, quality, aim, proportionality, accountability and information. In general, these principles ensure that the data will be treated for the purposes intended, with full knowledge of the owners.

**Security Controls Applied to Databases:** as a complementary mechanism of this series of duties imposed, the law requires the implementation of security measures of administrative, physical and technical character that effectively ensure the confidentiality, integrity and availability of databases in order to avoid damage, loss, alteration, destruction or unauthorized use, access or disclosure of personal data.

**Rights of Access, Rectification, Cancellation and Opposition, the Exercise and Protection:** The LFPDPP provides individuals with a set of rights that translate into the right to access all the ends of their personal information, correct it if inaccurate or incomplete, cancel it when is inadequate or excessive or oppose to treatment for a particular purpose for justifiable reasons. In this sense, the law has designed simple and expeditious procedures so that people can exercise these rights before those responsible for the databases, and in case owners consider their claims in the exercise of these rights have been violated, they can appear before the guarantor authority.

**Special Rules for Sensitive data:** these special rules are based on the fact that the legitimate cause of treatment will be the express written consent of holder. Thus, the databases with this type of information cannot be created if they do not have legitimate, concrete purposes which are consistent with the explicit actions or goals pursued by the governed subject.

**IFAI as Guarantor Authority and Its Powers:** one of the beauties of this law is that it names as guarantor authority of this new third-generation right the IFAI, to the point that as of the entry into force of the law IFAI changes its name to



become the Federal Institute for Access to Information and Data Protection. It also gives it authority on information, regulations, verification, adjudication and sanctions which together ensure full monitoring and verification of compliance with the law and, therefore, ensure due respect for this new right.

**Crime on mistreatment:** the legislator's intention was to establish criminal offenses to punish with up to 5 years imprisonment those responsible who, under certain circumstances, make an unlawful use of personal information they handle, on the grounds of general interest based on damages that can sometimes be irreparable.

**Transient Regime:** it is important to note that for the implementation and enforcement, the legislator has granted IFAI a series of reasonable time periods to fulfill its mission with due efficiency, in order to be able and have the capacity and human, technical and budgetary resources for the work ahead, and which involves an enormous challenge. On the other hand, this preparation period also benefits the governed, so that they also perform all necessary steps aimed at fulfilling the provisions of this law.

The LFPDPP represents in fact, the tool that was needed to provide support and content to the constitutional right of protection of personal data. In accordance with the internationally recognized principles and rights, as well as standards and best practices, giving people the right to informational self-determination. In this sense, the IFAI is preparing to receive and protect the right of individuals to access, rectify, cancel and oppose the processing of their personal information, in accordance with the regulations that will be published shortly.

## 4. FEDERAL INSTITUTE FOR ACCESS TO INFORMATION AND DATA PROTECTION (IFAI)

### a. About IFAI

The LFTAIPG foresees in Article 33, the creation of the Federal Institute for Access to Information and Protection of Personal Data, which officially began operations in June 2003 enjoying since then operational, budgetary and decision autonomy. IFAI is responsible for implementing and enforcing the LFTAIPG in the area of the Federal Executive and is the body responsible for promoting and disseminating the right of access to information and to resolve the authorities' refusal to respond to Requests for access to information. Also, since 2010, IFAI is the guarantor authority of the right for the protection of personal data, right of third generation, the IFAI[sic]. For this reason it was necessary that the former Federal Institute for Access to Information to change its name to become the Federal Institute for Access to Information and Data Protection. It also gives the Institute the authority on information, regulations, verification, adjudication and sanctions which together ensure full monitoring and verification of compliance with the LFPDPPP and, therefore, IFAI shall

ensure due respect for this new right.

IFAI is composed of five commissioners, whose appointment corresponds to the Federal Executive Power, without objection from the Senate. The commissioners last seven years in office with no possibility of reelection, and may only be removed when they transgress in a serious or repeated manner the provisions of the Federal Constitution or the LFTAIPG, when their actions or inactions affect the powers of the Institute, or have been convicted of a serious crime that merits imprisonment.

It is important to highlight that for purposes of its resolutions, IFAI is not subject to any authority, and that it adopts its resolutions in full independence.

In order to effectively guarantee the right of access to information, it is necessary to allow the creation of specialized and fair institutions, vested with autonomy, particularly functional, responsible for monitoring compliance with the legislation on access to information held by the government. It is not enough, then, to have an adequate legal framework, if the body responsible for ensuring compliance is not shielded to act with independence and autonomy. IFAI has these characteristics.

In Mexico, as from the entry into force of the LFTAIPG and the establishment of the IFAI, any individual interested in requesting information held by the federal government can request it in three ways:

1. By going to IFAI's Citizens' Care Center which has computer equipment and trained personnel to guide and assist the citizen.
2. Going directly to the government agency or entity from which the information is required. The individual must attend a special office called "Liaison Unit." Each agency, mandated by the LFTAIPG, must have one of these offices which should provide all the guidance needed to request the information needed.
3. From anywhere in the country and even from abroad, through the INFOMEX System.

#### **b. Electronic Tools.**

The electronic revolution has contributed significantly to the effective exercise of the right of access to information and facilitated the exercise of rights of access and correction of personal data in the public sector. The IFAI has promoted the creation and use of electronic tools, in order to simplify for constituents the knowledge of government administration and development of the civil service. The current trend of promoting open governments, implies that these tools will play a key role, so the challenge is to harness technological advances for the socially useful and relevant information to be exploited by those interested.

At the same time, it is necessary to promote the use of electronic tools for the exercise of rights under the protection of personal data for the benefit of its holders, both in the public and private sectors, without compromising the

protection to be guaranteed in the processing of such data.

#### i. **INFOMEX** <sup>1</sup>

The INFOMEX system is a software tool that allows citizens to exercise the rights of access to information and protection of personal data held by the public sector, through a system of reception and prompt attention to requests for information that are made under the provisions of Article 6 of the Constitution and the LFTAIPG.

The main objectives of INFOMEX are:

- Receive and respond to requests for access to information and personal data, as well as corrections thereof brought by citizens in electronic form on this site;
- Know the situation of the applications referred by means of the monitoring mechanisms of INFOMEX;
- Query more than 500 thousand responses from the Federal Government, using multiple filters, such as: date, status and type of response given by agency and entity of the Federal Government.

It is worth mentioning that the INFOMEX system is a worldwide innovation since few countries have such an accessible means for citizens to request government information through the Internet. IFAI has advised officials from Canada, Germany, Great Britain, the Czech Republic and Peru, among other countries interested in adopting systems of access to information similar to the Mexican system.

#### ii. **Transparency Obligations Portal (POT)** <sup>2</sup>

The Transparency Portal (POT) is an on-line system through which citizens have access to information related to the transparency obligations of the agencies of the Federal Government, under the LFTAIPG. This is a unique tool of its kind nationwide.

Some of its most important features are:

The Transparency Obligations Portal (POT) allows the user to navigate in a single environment, i.e., in standardized formats and a single website, making it easy to verify the timely and complete publication of the obligations of transparency established by law.

The design of the POT database ensures consistency of published information, and allows comparing information published by the various authorities.

POT has two levels of consultation and/or search:

<sup>1</sup> Access the INFOMEX System at: <https://www.infomex.org.mx/gobiernofederal/home.action>

<sup>2</sup> Access the Transparency Obligations Portal at:  
<http://portaltransparencia.gob.mx/pot/>

**General Search:** From the Transparency Obligations Portal of any government institution, it is operated by entering one or more words in the search box located on the top right of the System. The browser indicates the result of all information records in the POT containing the word or words entered. Such information can be sorted in descending or ascending order, filtered by an agency or entity, by fraction of Article 7 of the LFTAIPG or sector. No specific knowledge to search or identify a fact to be located in the POT is required.

**Direct Search:** It operates through the selection of the fractions of Article 7 of the LFTAIPG (with the exception of the organizational structure), and through this query it is possible to get all the information that the institution registered or, use filters to get specific information. This allows quick and easy reference for any user. The information queried can be exported to Excel to handle and treat it as desired and/or print it.

For each information content there is on-line support available to explain briefly the operation of the filters of the system and view the information at a more detailed level.

### iii. ZOOM<sup>3</sup>

It is a "Google"-like search engine of public information requests and appeals resolved by the Institute. The user can enter key words and phrases in the system, and it will provide the results of those requests and appeals that contain in their attached documents the words given by the user; therefore, the experience of access to information generated regarding the application of LFTAIPG is swift and within the rules and trends of browsing the network.

To achieve this, the system has indexed all the requests for public information and attachments, and the appeals that have arisen, allowing full traceability of the issues. Also, the search considers studies and opinions that allowed the application of the remedies, which allows getting precedents and material adjacent to searches.

### iv. COMMUNICATION TOOL

The Communication Tool System is a closed system of communication between IFAI and Liaison Units of the Federal Public Administration that allows both parties, to serve in timely and adequately the management of appeals, to comply with the decisions arising therefrom, to serve the requirements made by the Institute and make at the same time consultations with IFAI on the interpretation of the LFTAIPG. Through this tool, the parties that are obliged can establish any type of communication with IFAI, ensuring the security, integrity, authenticity, privacy and confidentiality of the information exchanged. In addition, it facilitates the generation of electronic records for sending and receiving of information. So, in turn, it generates records of cases associated with issues of transparency and access to information.

<sup>3</sup> Access the ZOOM at: <http://buscador.ifai.org.mx/buscador/bienvenido.do>

### c. IFAI by numbers

#### RESUMEN AL 30 DE JUNIO DE 2011

Solicitudes recibidas*, Respuestas, Consultas al Portal de Obligaciones de Transparencia y Recursos presentados al 30/06/2011							
CONCEPTO	Del 12 de junio de 2003 al 31 de diciembre de 2006	2007	2008	2009	2010	Al 30 de junio de 2011	TOTAL
SOLICITUDES ELECTRÓNICAS	163,156	92,261	102,297	114,179	118,367	61,807	652,067
SOLICITUDES MANUALES	9,013	2,462	2,953	3,418	3,771	3,206	24,823
<b>Total de solicitudes</b>	<b>172,169</b>	<b>94,723</b>	<b>105,250</b>	<b>117,597</b>	<b>122,138</b>	<b>65,013</b>	<b>676,890</b>
RESPUESTAS ELECTRÓNICAS	145,417	81,439	89,092	97,642	103,869	55,054	572,513
RESPUESTAS MANUALES	7,668	1,948	2,328	2,880	3,273	2,484	20,581
<b>Total de respuestas</b>	<b>153,085</b>	<b>83,387</b>	<b>91,420</b>	<b>100,522</b>	<b>107,142</b>	<b>57,538</b>	<b>593,094</b>
SOLICITUDES CONCLUIDAS POR FALTA DE RESPUESTA AL REQUERIMIENTO DE INFORMACIÓN ADICIONAL	12,358	8,224	10,541	14,622	13,431	6,826	66,002
SOLICITUDES CONCLUIDAS POR FALTA DE PAGO DE LOS COSTOS DE REPRODUCCIÓN DE LA INFORMACIÓN	1,527	883	1,139	1,103	1,030	512	6,194
<b>Total de solicitudes concluidas por falta de pago o de respuesta al requerimiento de información adicional</b>	<b>13,885</b>	<b>9,107</b>	<b>11,680</b>	<b>15,725</b>	<b>14,461</b>	<b>7,338</b>	<b>72,196</b>
CONSULTAS AL PORTAL DE OBLIGACIONES DE TRANSPARENCIA**	n.d.	4,966,618	13,978,771	9,525,069	8,129,846	5,482,510	42,082,814
RECURSOS ANTE EL IFAI	8,238	4,864	6,053	6,038	8,160	3,618	36,971

As of June 30, 2011, 676,890 requests for information from the Federal Public Administration have been admitted. The average annual growth rate of requests for information from 2004<sup>4</sup> and 2010 was 21.6%, from 37,732 applications in 2004 to 122,138 in 2010. The final responses issued by the agencies of the Federal Government are 593,094 as of June 30, 2011.

From June 12, 2003 to June 30, 2011, the agencies that have received the most requests for information are the Mexican Institute of Social Security with 104,847 requests (15.5% of the Federal Public Administration); the Ministry of Public Education with 31,162 (4.6%), the Ministry of Finance with 22,821 (3.4%), the Ministry of Health with 20,488 (3.0%) and the Ministry of Environment and Natural Resources with 20,000 (3.0%).

The percentage of requests for access and correction of personal data on the total applications submitted has increased significantly going from 5.0% in 2003 to 19.9% in 2011 (figures as of June 30). 57.7% of requests for access and correction of personal data have been submitted to the Mexican Social Security Institute, while the Institute of Security and Social Services for State Employees accounts for 5.1%, the two institutions, together with the Ministry of Education (2.9%) and the Federal Attorney General's Office for Labor Defense (2%) accumulated little more than two-thirds of requests for access and correction of personal data provided to agencies of the Federal Public Administration.

From June 12, 2003 to June 30, 2011, 36,971 appeals have been lodged to the Federal Public Administration. The Mexican Social Security Institute tops the list of the agencies with the largest number of appeals, 4,4751; however, considering that the institution is also the one with largest number of requests

<sup>4</sup> The first year with complete information on the number of requests for information, because the INFOMEX system / Federal Government (formerly SISI, Information Request System) began operations on June 12, 2003.

for information filed, the figure can be sized obtaining the coefficient of resources per 100 inquiries, of 4.5, while that of the Federal Public Service as a whole is 5.5. Next in the list is the Ministry of Civil Service with 1,669 appeals brought and a coefficient of 9.3, the Ministry of Education with 1,505 (4.8), the Attorney General of the Republic with 1,257 (8.3) and the Ministry of Finance with 1,140 (5.0) appeals brought.

#### **d. Access to Information in the states and municipalities in Mexico**

The Federal Law of Transparency and Access to Public Government Information (LFTAIPG) was issued in 2002 followed by its equivalent in the states. By early 2007, all the states in Mexico had a law in this area. However, there was one major problem: the criteria contained in such laws to exercise the right of access to information varied significantly. This meant that the requirements for entitlement were different depending on the state in question. Some required, for example, that the person making the request was a citizen of that state, others imposed various limitations on claims, or there were significant differences in the information that could be reserved. This created an unacceptable situation, for it was the same right to citizens, but with different exercise conditions in each state.

In response to this problem, in 2007 the Constitutional Standing Committee, composed of the House of Representatives and the Senate plus the legislatures of at least 16 states in Mexico, agreed to amend the Constitution and add a second paragraph with seven fractions to Article 6 of Constitution with the minimum basis of the right of access to information and, therefore, the Congress of each state and the Federation have the possibility to extend it as much as they see fit in the laws for this purpose issued.

Currently, 31 states of the Republic, the Federal District and the Federation have laws on access to information. With regard to the local level, more than 214 municipalities have regulations on transparency and access to information.

For its part, the implementation of INFOMEX System began in December 2005 with the signing of the first cooperation agreement to implement the system in local governments. To date all the states and the Federal District have signed the cooperation agreement.

This has given rise to the National INFOMEX Platform, currently made up of 33 operating systems that allow requests for information in a standardized manner to more than 240 Agencies and Bodies of the Federal Executive Power, 8 Other Regulated Entities of the LFTAIPG, 23 Mexican states and the Federal District, and more than 480 municipalities.

In total, 33 INFOMEX systems in operation involving more than 3,500 institutions nationwide, such as: Ministries, hospitals, trusts, institutions, funds, museums, comptroller agencies, local congresses, public universities, courts, prosecutors, police, municipalities and political delegations of Mexico City,



# Mexico

among others.

## 5. CONCLUSION

Transparency and access to information are necessary components for the consolidation of Mexican democracy, and full respect for the rule of law, since they encourage accountability at the same time that due to the instrumental nature of right to information, the exercise of other rights is promoted by making available to individuals the information necessary to exercise and guarantee them.

The big challenge is rooting the culture of transparency and accountability in both the authorities and the private sector. For this, the IFAI has deployed actions that foster the right conditions to promote public policies aimed, on the one hand, to generate and preserve electronic government information as this, accompanied by an appropriate regulatory design, will facilitate the management of archives and documents, while ensuring access to information contained therein.

Moreover, the IFAI has set itself another challenge to promote public policies aimed at creating and preserving electronic government information as this, accompanied by an appropriate regulatory design will facilitate the management of archives and documents, facilitating at the same time access to information therein.

And lastly, the IFAI encourages proactive steps to promote transparency by government entities for the purpose of the publication of information focused or socially useful to permit, beyond the fulfillment of obligations of transparency and attention to requests submitted by individuals, account for the most relevant aspects of the management by the obligor authority.

