
FEDERAL LAW OF TRANSPARENCY AND ACCESS TO GOVERNMENT PUBLIC INFORMATION COMPELLED SUBJECTS, AFTER ONE YEAR OF OPERATION

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April, 2004

Fundar is a plural, independent, non partisan and horizontal institution, that strives to progress to a substantial democracy. Its ruling principles are:

- to increase citizen participation;
- to demand transparency and accountability;
- to progress towards a state of right;
- to promote substantial equality, and
- to guarantee human rights enforcement.

Fundar activities and projects are closely linked to accountability, government office transparency and right of access to public information matters. The promotion of these values and practices, essentially democratic, covers two paths: it intends to consolidate democracy in Mexico, far beyond the electoral process; second, it intends that every investigation and project can use the information that the government can and must provide.

Fundar started to get involved with these topics from the very beginning, from its creation in 1998, particularly regarding public expense monitoring. Public expense constant analysis allows the organization to answer questions related to the

actual government priorities and to show, from a budgetary study, the scheduling reality underlying political speech. Either focusing on budget with a gender view point or on the budgetary analysis applied to reproduction health or HIV/AIDS, public entities accountability and transparency have been the actual target for Fundar.

As part of our work on transparency during year 2001, and working together with Equidad de Género and the Centro de Investigación y Docencia Económica, we produced the first Latin American Index of Budgetary Transparency, exercise that was replicated in year 2003 with CIDE and with Berumen y Asociados. In both cases, a perception survey for federal government budgetary information experts and users was designed and applied in order to have a transparency indicator that reflected the information openness of public administration. Simultaneously, a theoretical – practical study on this matter topicality was performed. For the first Index, the survey was applied in five countries, and increasing the scope in 2003 to ten.

During the last year, Fundar has extended its investigation lines and created a Government and Human Rights Area, which has a series of projects, related to transparency and accountability promotion in several government agencies. Among these, it is worth to highlight two monitoring projects; one of them, performed over three legislative commissions of the House of Representatives and another one to human rights public bodies in Mexico, both at federal and state levels. Such surveillance tasks had the purpose of publicizing among civil society the operation of such institutions and to foster transparency in their performance. For such purpose, two documents were produced, where the most opaque spaces are shown, as detected during the budget negotiation process in the House of Representatives and in the presentation format of such budget. This analysis has proposed some modifications to the institutional framework to improve transparency and accountability mechanisms.

Currently, both the Citizen Follow Up to Legislative Power in Mexico, and Budgets with a Social Sense projects, are participating in the Transparency, Supervision and Accountability Table of the First National Treasury Convention.

TRANSPARENCY AND ACCOUNTABILITY

In the last few years, the use of the word “accountability” within the Mexican political speech has notoriously increased, together with the birth of other democratic ideas and practices of national agenda and public discussion about

transition in our country. It is true that ever since the 1917 Constitution, the debate around this concept already existed in parliamentary discussions, though in a very limited fashion¹. The debate among politicians and intellectuals over accountability was restricted because in the real practice, government obligation to inform about actions and decisions was neither a post – revolutionary policy priority, nor a social demand.

The current democratic consolidation process in Mexico requires a more intensive exchange of ideas, which is currently happening, and the execution of accountability concepts and mechanisms. Furthermore, it is necessary that discussions over this matter are broadcasted and multiplied not only among interested politicians and intellectuals, but among the population as a whole.

One of the most discussed topics in the last few years – and where our political system has experienced significant progress – has been the need to drive a broader transparency and better accountability mechanisms for public federal office.

In this matter, relevant structural reforms have occurred, starting with the enactment of the Federal Law of Transparency and Access to Government Public Information (LFTAIPG). This Law was published in the Federal Official Newspaper (DOF, acronym in Spanish) on June 11, 2002 and came into force on June 12, 2003, setting the legal framework so that individuals can request access to the information created by or in possession of Federal Government bodies; indicating the Three Powers of the Union as compelled subjects; Public Federal Administration; Republic General Attorney, Federal Judicature Council; federal administrative courts and autonomous constitutional bodies (like IFE or CNDH, amongst others), aside from any other federal entity. To enforce this Law in Federal Executive agencies and departments, the Federal Institute of Access to Public Information (IFAI) was created. Regarding the rest of the compelled subjects (Art. 61), those must create internal regulations or agreements, to define bodies, characterization criteria and procedures to guarantee access to information under their care, always in compliance with the Law.

¹ So is referred by Luis Carlos Ugalde: "For the decade of 1917 to 1927, for example, only 23 mentions emerged in different debates. The same can be said about the decade of 1947 to 1957, where the amount of mentions added up only to 39". See: Luis Carlos Ugalde, *Rendición de cuentas y democracia: el caso mexicano, Cuadernos de Divulgación de la Cultura Democrática 21*, México, Instituto Federal Electoral, 2002.

Within this transparency and accountability promotion framework, public budget is a key topic, due to the fact that it shows those priorities defined by the Government regarding the areas and sectors that they intend to impact. The way in which public resources are assigned and spent is of key importance to understand the logic behind public policies and the responsibilities of State workers.

This exercise, by which the LFTAIPG compelled subjects were tested, was performed with the purpose of observing the way in which the Government informs citizens about public resources management.

As opposed to years before, when there was no law that could force government bodies to disclose information – and therefore the access depended only upon their will to do so -, now the incentives to be transparent are theoretically larger. And that is what we wanted to evaluate: to what extent had the compelled subjects fulfilled the transparency demand after one year of the LFTAIPG enactment?

It is not necessary to dwell over our interest in the budget topic and its relationship with transparency because this has been meant a drawback for the political system because of the manner in which the information over the allotment and exercise of public resources has been whisked away. The information requests filed for the completion of this document are related to data that before the appearance of the LFTAIPG were extremely difficult to obtain.

TO TEST SUBJECTS COMPELLED BY THE FEDERAL LAW OF TRANSPARENCY AND ACCESS TO GOVERNMENT PUBLIC INFORMATION.

The general objective of this document was to perform an investigation to evaluate the effect of the Federal Law of Transparency and Access to Government Public Information (LFTAIPG) over the compelled subjects after one year of its enactment. The work is limited to information related to budgets.

Evaluated particular objectives:

1. The information supplied by the subjects compelled by Law, in terms of their quality; in other words, if the information was complete and delivered in accordance with stipulated requirements.
2. The quality of the access to information mechanisms in the request process, and

3. The difference, in terms of quality, form and content of the information delivered by the agencies under IFAI's jurisdiction and other compelled subjects, with the purpose of producing a comparative analysis between both groups of public bodies.

To achieve such purposes, the mechanisms to request information from a set of three questions asked to different compelled subjects were put under examination.

METHODOLOGY

To achieve our objectives, 78 information requests were filed simultaneously in 26 institutions of the three Powers of the Union (a set of three questions, same for each selected subject)². The requested information is of the budgetary type and was requested on January 30, 2004, as by such date all agencies were fully obliged to comply with the transparency responsibilities set forth by LFTAIPG. The Treasury Secretariat (SHCP) was asked a series of different questions, same which will be detailed later on.

The only request mechanism that was evaluated was the Internet. Our analysis did not consider other mechanisms, like telephone, mail, fax, etc.

The information that was requested to the selected agencies and bodies was:

- 1) The resources administration schedule set by the Treasury Secretariat for such agency for fiscal year 2004;
- 2) The resources administration schedule set by the General Directorate of Schedules and Budgets (DGPOP, acronym in Spanish) for each one of its departments and schedules for fiscal year 2004, and

² The selected Executive Power compelled subjects for this research were: Agriculture, Livestock, Rural Development, Fishing and Alimentation Secretariat (SAGARPA), Communication and Transportation Secretariat (SCT), Social Development Secretariat (SEDESOL), Economy Secretariat (SE), Public Education Secretariat (SEP), Energy Secretariat (SENER), Department of State (SEGOB), National Defense Secretariat (SEDENA), Public Function Secretariat (SFP), Agrarian Reformation Secretariat (SRA), Health Secretariat (SSA), Navy Secretariat (SEMAR), Environment and Natural Resources Secretariat (SEMARNAT), Republic General Attorney (PGR), Foreign Affairs Secretariat (SRE), Public Security Secretariat (SSP), Tourism Secretariat (SECTUR), Employment and Social Provision Secretariat (STPS) and Federal Preventive Police (PPF). The selected compelled subjects as defined by article 61 of the LFTAIPG were: Federal Superior Auditors (ASF), House of Representatives, Republic Senate, Federal Judicature Council, Supreme Court of Justice of the Nation (SCJN), National Commission of Human Rights (CNDH) and Federal Electoral Institute (IFE).

- 3) The amount budgeted for Concept 3800 (official services), during fiscal year 2004, itemized by entries.³

Furthermore, three specific questions were asked to the SHCP:

- 1) The resources administration schedule for fiscal year 2004, covering all State Secretariats, the Congress, the Federal Electoral Institute, and the National Commission of Human Rights;
- 2) Analytical breakdown of the Federal Expense Budget for 2004, in the way it was usually presented until year 2003 in PEF4 Volume III, and
- 3) Agreements, circulars and dispositions that establish the expense adjustment criteria over cases of budgetary modifications (reductions and extensions) of the Health, Social Development, Education, Dept. of State, Treasury Secretariats, as well as the Presidency of the Republic.

During this investigation, both the request process and the quality of the delivered information were assessed. A data base was created with data capable of systematizing the variables that could enlighten the analysis of both aspects.

Regarding the information request process, we were interested in comparing the different subjects compelled by law against each other, over:

- The possibility of filing the request via Internet;
- The existence or absence of receipt acknowledgement;

³ **Entries** (budgetary entries) are the budgetary elements in which the concepts are itemized and that classify expenditures according to the expense specific object. They represent concrete and detailed expressions over the purchased good or service, allowing their monetary or accounting classification. Furthermore, the **expenditure chapters** are classification elements by expense object, integrating the set of goods and services purchased by the Federal Government and semi-state agencies in pursuit of their objectives and goals. The basic registration unit, part of a *budgetary chapter* is the **entry**; a set of entries create a **concept**, and a group of concepts form a **chapter**. Concept 3800, Official Services, include entries for expenditures related to conferences, conventions, travel expenses, air fares, meals for public servants in command. To consult the complete glossary of terms related to the Federal Expense Budget, where the previous terms are included, see: Helena Hofbauer and Jorge Romero, *El ABC del Presupuesto de Egresos de la Federación: retos y espacios de acción*, Fundar, México, 2002.

⁴ The significance of the presentation of the Federal Expense Budget, Volume III rests in the fact that it is an analytical volume that itemizes the budget according to the expense object; in other words, it provides an idea of the expense final destination. This is the most important volume, from the independent and citizen analysis perspective, as it provides more detailed information over budgetary appropriations. This Volume was not included in the 2004 PEF, as opposed to the previous years.

- The time taken to submit the receipt acknowledgement;
- The time taken to serve the information;
- Information presentation.

Regarding information quality, as supplied by the agencies, the evaluated variables were:

- Complete information;
- Time disintegration level (for questions 1 and 2);
- Program and/or unit disintegration level (for question 2);
- Entry and/or concept disintegration level (for question 3);
- Information presentation (whether if it is delivered or referred to an Internet link)

An additional data base was created including those features that the Internet web site from a compelled subject must fulfill to allow individuals to file an information request easily. We were interested in knowing if the web site had a window exclusively intended to transparency, and if the corresponding regulations were thereby included (LFTAIPG, agreements and/or regulations about the Link Unit performance and inspection mechanisms for Law enforcement), the link to the Link Unit (where telephone number, domicile and e-mail address appears), and about the possibility to access a request format that included the corresponding receipt acknowledgement; finally, we wanted to know if it was possible to file a request via Internet. In this analysis, we would show only the results obtained from the compelled subjects, as set forth in article 61 of LFTAIPG, as those agencies under the surveillance of IFAI comply with the required forms and procedures.

INFORMATION REQUESTS

After filing the information requests and following their complete process, the results rendered can be analyzed. The first variable in the system is the one related to the response itself. This was divided in three different kinds:

- a) Delivered response;
- b) Undelivered response, and
- c) Incomplete response ⁵.

⁵ Later on, we will show which are the features that make a response considered as incomplete or not delivered.

Furthermore, and with the purpose of rating each compelled subject so that they can be assessed, a value was assigned to each type of response:

- 3 points, if completely delivered;
- 1 point if incompletely delivered, and
- 0 points if it was not delivered.

The results of the process can be observed in Table number 1. The resulting rating includes values between 0 and 9; 9 if all responses were satisfactorily served and 0 in the opposite case.

TABLE 1

COMPELLED SUBJECTS BY LAW	ANSWER			Score
	Question 1	Question 2	Question 3	
Subjects under IFAI's supervision				
Economy Secretariat	Delivered	Delivered	Delivered	9
Tourism Secretariat	Delivered	Delivered	Delivered	9
SEDENA	Delivered	Delivered	Delivered	9
SEMAR	Delivered	Delivered	Delivered	9
SEGOB	Delivered	Delivered	Delivered	9
Foreign Affairs Secretariat	Delivered	Delivered	Delivered	9
Public Function Secretariat	Delivered	Incomplete	Delivered	7
Public Education Secretariat	Delivered	Incomplete	Delivered	7
Energy Secretariat	Delivered	Incomplete	Delivered	7
SRA	Delivered	Incomplete	Delivered	7
SCT	Delivered	Incomplete	Delivered	7
SAGARPA	Delivered	Incomplete	Delivered	7
PGR	Delivered	Delivered	Undelivered	6
SEMARAT	Delivered	Incomplete	Incomplete	5
Health Secretariat	Delivered	Incomplete	Incomplete	5
SEDESOL	Delivered	Incomplete	Incomplete	5
PFP	Delivered	Incomplete	Undelivered	4
SSP	Delivered	Undelivered	Undelivered	3
Employee and Social Problems Secretariat	Undelivered	Undelivered	Delivered	3
Subjects that are not under IFAI supervision				
IFE	Delivered	Delivered	Delivered	9
ASF	Delivered	Delivered	Incomplete	7
Federal Judiciary Council	Delivered	Incomplete	Delivered	7
National Commission of Human Rights	Delivered	Delivered	Incomplete	7
Republic Senate	Delivered	Incomplete	Incomplete	5
House of Representatives	Delivered	Undelivered	Undelivered	3
Supreme Court of Justice of the Nation	Undelivered	Undelivered	Undelivered	0

SOURCE: Proprietary information based on the data obtained from the filed information requests.

Seven agencies, out of a total of 26, were the only ones that served the information as requested. This means only 27% of the selected subjects. Executive Power agencies, Economy, Tourism, National Defense, Navy, Department of State and Foreign Affairs Secretariats, sent their responses correctly. Regarding the rest of the compelled subjects, only the Federal Electoral Institute submitted complete responses to the three requests. Nevertheless, among the agencies with a highest scores, there are some details that we will analyze later on when we discussed the features of the served information and the request process.

In the other end of the spectrum, only the Supreme Court of Justice failed to serve any kind of response to the request, representing 4% of the total agencies. Aside from that, the Public Security Secretariat and the House of Representatives only responded to one question; the Republic General Attorney and the Federal Preventive Police served two requests. This means that, in this sector, out of the 78 information requests, 10 of them were not processed or even slightly successful (12.8%). Later on, we will show the particular circumstances that lead, in some instances, to omit information (House of Representatives).

The most significant concern is incomplete responses: a total of 18. Given the methodology used to file information requests, it is possible to control the variable that implies the possibility that the question was not properly presented, causing an incorrect response. The fact that there were responses, specially those from the Executive Power, that were correctly served, sets a parameter for us to corroborate that the set of questions had been properly applied ⁶.

This incomplete response occurrence, added to the set of ten that were not served (35% of unsatisfactory responses), could have derived in filing the corresponding recourses of revision before the IFAI, so that the agencies fulfilled the filed requests. However, this procedure makes information attainment a costly issue, as it delays its access time. If it is true that the creation of IFAI intends, largely, to protect the right of access to information form petitioners before a possible non satisfactory response by the agencies, the need to file recourses of revision in such a high percentage of requests undermines the information service opportunity and quality. The LFTAIPG was designed for the execution of the right of information and to ensure that the compelled subjects are fully responsible for the information delivery in a prompt, clear and complete manner.

⁶ In those cases related to Legislative Power compelled subjects, the question received two different responses, as its organization differs from the State Secretariats. For further information, please refer to case studies (pages 82-86), where the request process for the House of Representatives, the Republic Senate, and the Federal Superior Auditors Agency are discussed.

The above evidence provides a picture over LFTAIPG effects during its first operational year. Regarding budgetary matters, even though there is more openness and transparency in access to information today, we realize that this is not a general practice in government structure as a whole. There is still discretionary handling of information, though not at the same level than before the Law was enacted, and this might be due to lack of technical capacity in the corresponding Link Units or to other circumstances. Nevertheless, it is evident that the system can discourage citizens to exercise their right of access to information.

For those cases in which the compelled subjects were not under IFAI jurisdiction, the rendered results were not satisfactory. As previously stated, it was only IFE that completely responded to three requests.

For the Legislative Power entities cases, more requests had to be filed in order to obtain the proper responses. In the case of the House of Representatives, as observed in the specific experience section, the process has been interrupted because of reasons that are apparently beyond the Link Unit competence. Regarding the Senate, the filing is still under process.

Additionally, the implemented mechanisms to file information requests before most of these subjects are not efficient, thus causing indifference from the corresponding agencies. It is evident that failures in the delivery of the requested information go against the **timeliness**, which is an essential access feature.

INFORMATION QUALITY

Now we can analyze the quality of the obtained information.

With this purpose, we define the features of the served data according to two criteria.

- The schedule disintegration for the first and second questions. For the specific case of the second request, such disintegration was observed regarding whether or not the agency delivered the administration schedule per responsible unit and per program. In failing to respond the question by the itemization of the schedule per programs and units, it would be considered as an incomplete response.
- The itemization by entries (or its absence) over resources allotted to concept 3800, regarding the third request (see note 3). In case that the agency served the information only with the total amount of the concept, the response was considered as incomplete.

CUADRO 2

COMPELLED SUBJECTS	INFORMATION DISINTEGRATION			
	Time of disintegration (question 1)	Time of disintegration (question 2)	Disintegration per program and/or entity (question 2)	Disintegration per concept or entity (question 3)
SUBJECTS UNDER FIAI SUPERVISION				
Tourism Secretariat	Monthly	Monthly	Program and Unit	Entity
Environment Secretariat	Monthly	Monthly	Unit	Concept
Health Secretariat	Quarterly	Monthly	Unit	Concept
Employee and Social Protection Secretariat	Undelivered	Undelivered	Undelivered	Entity
SED EOD L	Monthly	Monthly	Unit	Concept
Public Function Secretariat	Quarterly	Monthly	Unit	Entity
Public Education Secretariat	Monthly	Monthly	Unit	Entity
SED ENA	Sends to SHCP	Sends to SHCP	Sends to SHCP	Sends to SHCP
SEMAR	Quarterly	Monthly	Program and Unit	Not approved
PGR	Monthly	Monthly	Unit	Undelivered
SESOB	Monthly	Monthly	Program and Unit	Entity
SSP	Quarterly	Undelivered	Undelivered	Undelivered
PFPP	Quarterly	Undelivered	Unit	Undelivered
Energy Secretariat	Monthly	Monthly	Per program	Entity
Foreign Affairs Secretariat	Monthly	Monthly	Program and Unit	Entity
GRA	Monthly	Monthly	Unit	Entity
Economy Secretariat	Quarterly	Quarterly	Program and Unit	Entity
SCT	Monthly	Monthly	Unit	Entity
SAGARPA	Monthly	Monthly	Per program	Entity
SUBJECTS NOT UNDER FIAI SUPERVISION				
IFE	Quarterly	Monthly	Program and Unit	Entity
SEMIATE	Monthly	Annual	Unit	Concept
HOUSE OF REPRESENTATIVES	Monthly	Undelivered	Undelivered	Undelivered
ACF	Quarterly	Nonexistent	Nonexistent	***
Supreme Court of Justice of the Nation	Undelivered	Undelivered	Undelivered	Undelivered
Federal Judiciary Council	Monthly	Monthly	Unit	Entity
National Commission of Human Rights	Monthly	Monthly	Program and Unit	Concept

SOURCE: Proprietary information based on information obtained from the requests filed before different Link Units and SISI.

As observed in Table 2, five agencies in fact served complete information. SEDENA responded correctly, according to LFTAIPG dispositions, stating that it was necessary to request the budgetary information to the SHCP. In other words, they did not serve the requested data. In the case of the Navy Secretariat, request number three was responded in terms that there were no resources for concept 3800, because it have not been approved by the House of Representatives.

There were also questions that could be technically correct, as in the cases of SSP and PFP. Both of them responded that the budgetary information that could be found in the SSP transparency link have been provided by the SHCP and that

the information could be found there. Nevertheless, the requests therein filed were not responded. This is why in both cases the responses were considered as not delivered, regardless of the fact that they transferred to SHCP the responsibility to create and serve such information.

It is worth mentioning that even though SEDENA's response is correct, when compared against the rest of the agencies, this double and ambiguous responsibility of SHCP and other compelled subjects to serve the information herein dealt with (paragraph IX article 7 of LFTAIPG obliges SHCP and the rest of the agencies to serve such information) should not exist. As if this functional duplicity was not enough to generate disinformation in this sector, the Treasury Secretariat Internet web site has limited information and its Link Unit does not serve the requested information in a clear, complete and timely manner.

Regarding the information about time disintegration of the first and second requests, we identified a disagreement, as a significant percentage of the responses served the information per month, while another significant percentage per quarter. In order to be able to compare the information, all agencies should have delivered, aside from a clear and complete information, their monthly itemized schedules. However, the criteria are not clear about how to present the information and this means that the data is delivered in a faulty manner. There were even some agencies that gave us the yearly amount and others that refereed us to the PEF 2004, where there is no schedule.

The last two columns of Table 2, contain the criteria to determine if the information was properly served. Although the information request was made in a clear and precise manner, 23% of the responses were incomplete. Specially, regarding question number two (third column), twelve agencies delivered the disintegrated schedule, either by program or by responsible unit. If we add to these agencies another four that did not serve the information, the result is that more than one half of the compelled subjects responded unsatisfactorily.

Regarding concept 3800, five agencies delivered the information only per concept, though not per entry, as originally requested. Another one, ASF, delivered information over one entry. The rest of them responded satisfactorily.

According to the investigation we performed, we should have filed a total of 18 recourses of revision, aside from three new requests for SHCP, regarding SEDENA. This situation obviously generates a very high cost for gathering the requested information in a satisfactory manner.

It is important to point out that only the Supreme Court of Justice of the Nation did not serve a response. The rest of the agencies submitted some kind of response within the legal time. It is necessary to emphasize that a response does not necessarily mean that the information has been delivered, which leads us to conclude that, as long as this practice prevails, it is impossible to discuss transparency over the subjects under study. The general notion is that there is not right to information, but that the Government is just doing a favor to citizens. In many cases, this is plain simulation.

QUALITY OF THE REQUEST MECHANISMS

Regarding transparency, the ways in which we access information are almost as important as the information service. In the case of the SISI, there is no apparent failure. The process is accessible, complete and transparent. The problems appear when we analyze those compelled subjects that are beyond IFAI jurisdiction.

According to LFTAIPG, subjects defined in article 61 have the responsibility of defining their own Link Unit, the pertinent regulations or agreements and the procedure to file requests. Furthermore, their Internet web sites must provide the information set forth by the Law. In Table 3 we can observe the failures in these aspects.

To February 18, 2004, SCJN or Federal Judicature Council did not have in their transparency web sites the Regulatory Framework related to transparency obligations. It was necessary to establish telephone communication with such agencies to obtain the information. Additionally, CNDH does not have a direct telephone line for its Link Unit.

Regarding the way to file information requests, problems are even more severe. The Federal Judicature Council did not allow us to file a request via Internet. Additionally, they stated that there are only 61 offices in the country capable of addressing these matters. Therefore, the cost of requesting information becomes excessively high. On the other hand, five of the seven analyzed compelled subjects do not have clear formats to file requests. Only the House of Representatives and the Senate have them. These same five agencies or bodies do not provide a receipt acknowledge to the petitioner when filing a request, creating uncertainty. Because of the faults in these mechanisms, agencies can contravene the right of access to information when they fail to respond to information requests, as is the case of the Supreme Court of Justice of the Nation.

CUADRO 3

CARACTERÍSTICAS DE LAS PÁGINAS ELECTRÓNICAS DE SUJETOS OBLIGADOS SELECCIONADOS								
Dependencia	Liga a Transparencia	Normatividad	Solicitud via Internet	Liga a Unidad de Enlace			Formato de Solicitud (Internet)	Acuse de recibo (Internet)
				Dirección	Teléfono	Correo		
Instituto Federal Electoral	Si	Si	Si	Si	Si	Si	No	No
Cámara de Diputados	Si	Si	Si	Si	Si	Si	Si	Si
Senado de la República	Si	Si	Si	Si	Si	Si	Si	Si
ASF	Si	Si	Si	Si	Si	Si	No	No
SCJN	Si	No	Si	Si	Si	Si	No	No
Consejo de la Judicatura Federal	Si	No	No	Si	Si	Si	No	No
CNDH	Si	Si	Si	Si	No	Si	No	No

SOURCE: Proprietary elaboration based on the compelled subjects web pages. Web sites revision dates were February 18, 2004.

From here on, we should see some specific cases, describing the request process. First, we would take the special case of the Treasury Secretariat, and later on some others that had different procedures, due to the circumstances. These latter ones will enlighten certain aspects of LFTAIPG performance during its first operational year.

TREASURY SECRETARIAT: A SPECIAL CASE

The three questions mentioned in the methodological section of this document were made to the Treasury Secretariat. The request was filed through SISI.

It is necessary to point out three special circumstances about this process:

- a) As opposed to the rest of the agencies, the Treasury Secretariat responded out of the period set forth by Law. No recourse of revision was filed, though the questions were presented again and this process is still pending.
- b) Out of the three questions, only the first one was directly and satisfactorily responded, without referring us to an Internet link to find the information.
- c) The other two questions received as response that the information was in the Internet web site. This was not true in the case of the question related to the analytical breakdown of PEF 2004, thus such response was considered incorrect.

As observed from the above, it is evident that there is a lack of transparency regarding budgetary information, mainly created by the mentioned functional duplicity, so it is not only necessary to demand it, but also to create mechanisms and incentives so that SHCP does not incur in simulation or serves incorrect responses.

LEGISLATIVE POWER

HOUSE OF REPRESENTATIVES

The same set of questions, presented to the rest of the government agencies and institutions, was presented to the House of Representatives. On January 30, 2004 the requests were filed. A positive response was received only to the first question, by enclosing the information to an e-mail. The information about the resource administration schedule set by SHCP was delivered in itemized monthly format. The response to this question was the following:

“According to the General Directorate of Schedules and Budgets, the Legislative Power is not explicitly considered within the National Development Plan, so an Annual Operational Plan in strict correspondence of the program characterization is not elaborated. Furthermore, this Legislative Body is represented as a unique Responsible Unit, so the total resources are 100% integrated into the said Unit, and there is no administration schedule for the different departments and programs”.

It was therefore decided to make another question to know about the “resource administration schedule, itemized by Parliamentary Groups, Legislative Commissions, research centers and several Chamber administration bodies”. The response to this question was subordinated to approval from the Administration Committee in charge of the final budgetary distribution, due to the fact that the budget had been adjusted during its approval. On February 25, that is 11 work days after requesting this information, the Link Unit explicitly requested an extension as the information was not available. The following was literally responded:

“By virtue that the Administration Committee is a Collegiate Body, the tentative date for the meeting in which the expense re-allotment policies for year 2004 will be defined, is still

unknown; but after these are defined, we shall proceed to set the budgetary ceilings for the Parliamentary Groups, Legislative Commissions, research centers, and administration bodies with the purpose of submitting them again for approval or adjustment, to the corresponding administrative Committee, who, in turn, will submit them for final authorization by the Political Coordination Board”.

“Once the previously mentioned processes are completed, we shall be in possibility of serving the requested information”.

In the case of the third question of the proposed set for the selected compelled subjects, related to concept 3800 official services, the procedure was as follows:

1. The information was requested in January 30, 2004, and the reception acknowledgement was delivered by Link Unit on February 2 of the same year.
2. The notification indicating that at the moment it was not possible to serve the requested information was received on February 4, stating the following:

“According to the General Directorate of Schedules and Budgets, this House of Representatives budget, on December 31, 2003, resolved a reduction of 236 million pesos from the original budget of this Institution. In this sense, the Administration Committee, who provides administrative and financial support to the Political Coordination Board, is currently making adjustments in reassignments and schedules of the 2004 Budget entries, in compliance with the expenditure priorities of this Honorable House of Representatives, as well as the above mentioned budgetary reduction”.

3. On February 11, 2004, after receiving a negative response, a second request was filed insisting over the information related to concept 3800 budgetary appropriation, and adding in this opportunity, one question about the date on which the Administration Committee would disclose the adjustments to the Chamber Budget. The reception acknowledgement was delivered on February 13.

4. The response to this new request was served via e-mail on February 25 and it only contained a commitment, without setting any specific date, to deliver the information as soon as it became available:

“The amount for the concept 3800 official services budget will be disclosed after the Administration Committee meets and defines the adjustment policies for year 2004. This response represents a commitment, with no due date, to deliver information as soon as it becomes available”.

5. To the closure date of this investigation, April 23, there has been no further response.

THE SENATE

In the case of the Republic Senate, none of the three questions was served with the requested information. The Link Unit sent only one e-mail to answer the complete set of questions. The message stated, similarly to the House of Representatives, “By virtue that the budget for 2004 was reduced, the final budgetary appropriation has been submitted for the consideration of the Administration Commission, so that once this government body approves the said document, its disclosure will be possible”.

Finally, we were informed that the “request had been turned to the Treasury Department to prepare a response”.

In this case, we considered that, except for the first one, the responses would be served after the budgetary approval. From comparing the responses from both Chambers, we concluded that their program structure was alike, thus resulting in the same responses issued by the Senate and by the House of Representatives. For the above, another request was filed indicating that the Treasury Secretariat, by that date, should already have sent the schedule.

On February 24, the Senate served the information, though instead of the requested one, they delivered the **budgetary schedule project proposed by SHCP, itemized by month**. The following clarification was also made:

“In compliance with the dispositions of the Organic Law of Federal Public Administration, the Law of Budgets, Accounting and Federal Public Expense and its Regulations, the creation of the resource administration budgetary schedule for the federal government, including the Republic Senate, is

under the responsibility of the Treasury Secretariat; in other words, a Federal Executive Power agency”.

“For the above, and with full respect to the principle of power division, the Treasury Secretariat submits a budgetary schedule project to this Chamber, for the consideration of its Administrative Commission, and after being approved by this government body, regulates the budget of the corresponding year.

The responses to the other two information requests were received on March 1st. and indicated that the information was being served by e-mail attachments. However, only the administration schedule was attached, though unsatisfactorily because it was not broken down. In the case of the third question, the information was not included. For this reason, and through an e-mail sent to the Link Unit, it was requested once more, to send the information that should have been included in the response. The response to this new request arrived in a timely manner but in the incorrect format, as only the total concept was sent, though it was not itemized by entries. Once more, the Link Unit was requested to serve the complete information and by the date this investigation was closed, this was still in process.

FEDERAL SUPERIOR AUDITORS

Regarding the Federal Superior Auditors (ASF), the three responses to our request were received on the same date and through the same mail. Without reception acknowledgement or any other message to prove the arrival of our request, on February 19, they served the requested information; in other words, within the legal term.

In one attached file, they presented the resources administration schedule set by SHCP, a response over the administration schedule, properly itemized by program and responsible unit, indicating also that there was only one unit and one program; finally, regarding concept 3800, the following response was delivered:

“Regarding concept 3800 ‘Official Services’, 83.4% (12,901,174 million pesos) correspond to Travel Expenses Entries, as required by the supporting units to address institutional inspection programs”.

This response showed that information was being handled discretionally in this agency. It is evident that the way in which the data are provided is incomplete with no apparent reason. Furthermore, it is mentioned that there are inspection

programs (plural) and supporting units (also plural) to perform such inspections, which disagrees with the response given to the second question.

From these two cases, including the above, we can conclude two things:

- 1) There is no supervision mechanism to monitor cases like those of the House of Representatives and the Senate, where the existence of information is subordinated to ambiguous terms, thus making it very difficult for the requester to have a proper follow up and allows agencies to disregard the requests.
- 2) In the cases of IFE and ASF, aside from the Supreme Court of Justice of the Nation and CNDH, the mechanism to make requests is not clear and, therefore, complicates access to information.

SOCIAL IMPACT AND IMPROVEMENT PROPOSALS

The results rendered by this investigation to test the LFTAIPG compelled subjects clearly describes a progress towards better transparency levels over those resources allotted to public agencies. However, an information service mechanism that guarantees transparency is still required. To the extent in which this happens, citizens will have more **capacity and interest** to request information.

Regarding the linkage between public information and civil society, we found that mechanisms are sufficiently clear and now allow - as opposed to what happen just a few years ago - to request information in the simplest manner. Nevertheless, this friendly environment in filing requests is not totally reflected over the information service, considering the responses served by the compelled subjects.

The creation of a legislation such as LFTAIPG aims, amongst many other things, to reduce access to information costs. We are not only talking about costs in monetary terms; we also refer to the cost in time, effort, and being forced to follow difficult and tiresome processes. These costs can, in the long term, discourage citizens to obtain information by the means set forth by the Law.

Among the results we obtained from this investigation, we point out that the period of time to obtain complete and quality information are still too long. Despite the fact that the responses given to our requests were served on time and within form, a significant percentage of the subjects sent:

- a) Incomplete information;
- b) Erroneous links to find the information, or
- c) Negatives for lack of competence from the Link Unit.

In many cases, the quality of the information was not the best. This leads us, obviously, to file recourses of revision before IFAI. The process is then extended and becomes tedious.

Regarding those subjects compelled by the Law and that are beyond IFAI jurisdiction, there are problems even in the easiness of filing requests. The mechanisms thereto created in many times are inefficient, causing a lack of link between an individual's right of access and the information served.

The challenge is to substantiate the concepts of transparency and information. To accomplish this, the following discussion lines could be proposed to improve the access to information system:

- a) Información incompleta;
- b) Vínculos erróneos donde encontrar la información o,
- c) Negativas por no ser responsabilidad de la Unidad de Enlace.

En muchos de los casos, la calidad de la información no era la mejor. Esto nos conduce, obviamente, a interponer recursos de revisión frente al IFAI. El proceso se alarga y se vuelve tedioso.

En lo que concierne a los sujetos obligados por la Ley y que escapan a la jurisdicción del IFAI, existen problemas, incluso en la facilidad de realizar solicitudes. Los mecanismos creados para ello son, en muchas ocasiones, ineficientes, lo que provoca que no haya un vínculo entre el acceso a que tiene derecho un ciudadano y la información provista.

El reto es darle sustancia al concepto de transparencia y de información. Para ello, se propondrían como líneas de discusión para mejorar el sistema de acceso a la información las siguientes:

1. To reform the LFTAIPG in order to avoid the existing ambiguity in the responsibilities related to budgetary information of the Executive Power agencies and SHCP. Or, otherwise, to more clearly define the latter's role.
2. To design more clear guidelines as to how to present a minimum of information regarding budget. The Treasury Secretariat must undertake its role with more responsibility in serving this type of information.
3. To consider the possibility of integrating the compelled subjects, as stated in Article 51, under IFAI jurisdiction. Or, in any event, to define clear guidelines in order to homologate the work and information delivery mechanisms from the different responsible Link Units and agencies.

4. To consider mechanisms that allow performing a proper follow-up over a request when the availability of such information is subordinated to ambiguous terms that allow agencies to disregard the response times set by LFTAIPG

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