

Looking Ahead Information in Mexico City's Federal District

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Oscar Guerra, commissioner-president of Mexico City's Federal District Institute of Access to Public Information and Protection of Personal Data (Infodf), explains the INFOMEX informational system platform.

Mexico City's Federal District Institute of Access to Public Information and Protection of Personal Data (Infodf) is the local guarantor of the right to information established in Article 6 of the Mexican Constitution. As such, on a daily basis, it carries out different kinds of actions to consolidate the exercise of this right. It has also ensured that the Federal District continues to be at the cutting edge on issues of transparency, accountability, and the protection of personal data.

Infodf's actions, together with its accumulated experience, have made it possible to foster in the Federal District Leg-

islative Assembly (ALDF) as the result of its day-to-day work with the responsible actors.

Access to public information in government hands is important for several reasons: firstly, because the real owners of that information are the people, who elect a government, depositing in it the capacity to decide about public issues. The government accumulates information and makes decisions that are written down in different documents. However, it does all this in the name of the citizenry, as its agent, and therefore, the citizens themselves have the right to know about and have access to all the information the government has generated.

In the second place, it is important because access to information is one of the pillars of accountability, which, in turn is one of the conditions necessary for an effective democracy. Accountability means that public officials are obligated to inform the citizenry about their acts of government. Many

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regulations about access to information obligate the government to publish different kinds of data, and therefore they become another instrument for accountability.

In the third place, access to information is an effective mechanism for evaluating and controlling the exercise of power. Through this kind of legislation, any person or organization can request information to review the acts of those in different spheres of government. Public servants know this, and that knowledge is an incentive to act in accordance with their mandates and the relevant legislation in their spheres of responsibility.

The ALDF recently approved amendments to the Federal District Law of Transparency and Access to Public Information (LTAIPDF) to harmonize it with international obligations. This will guarantee further access to information by the governed.

Along these same lines, Paragraph 3 of the new LTAIPDF Article 1 states that the fundamental right to information includes disseminating, investigating, and gathering public information. This recognition complies with the stipulations in Article 13 of the American Convention on Human Rights, which protects the right of every person to request access to government-controlled information by explicitly pointing out the right to “seek” and receive information. In consequence, it backs the right of individuals to receive information and the government’s positive obligation to provide it, recognized in 2006 by the Inter-American court of Human Rights, since providing information to an individual means it can be disseminated in society so that the public can receive and evaluate it.

TRANSPARENCY AND ITS RELATIONSHIP TO OTHER RIGHTS

Transparency must be reconciled with other rights of persons, particularly with a fundamental one, the right to privacy. Because these are two essential rights, there can be conflicts between them, given that neither can be exercised in all cases absolutely.

Generally, two types of information can be considered exceptions to the right of access: the first is the data the government must classify for reasons of national security. The other is information about private legal entities and citizens. In the case of individuals, personal data must be protected both by the laws on access to information, since they are confidential, and by legislation specifically on protection of personal data.

In this sense, and given the importance and need for the authorities to protect data they might have in their power both about individuals and private legal entities, on October 3, 2008, the ALDF published in the *Gaceta oficial del Distrito Federal* (Federal District Official Gazette) the Law to Protect Personal Data for the Federal District.¹ This created a specialized legal norm in this sphere, creating certainty among the population that personal data would not be disseminated, and establishing rights called “ARCO”: the rights to access, rectification, cancellation, and opposition.

While all democratic regimes must guarantee the right to public information, it is also true that the right to privacy must be safeguarded. Both rights have the same status, mentioned in Article 6 of the Constitution and in the Universal Declaration of Human Rights, whose Article 19 states, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.” In the same fashion, the declaration’s Article 12, states, “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

Both the right to access to public information and the right to the protection of personal data have their limits, expressed in legal documents specifying the reasons that would impede their being made public, in the case of the former, and that would allow them to be opened up to scrutiny, in the case of the latter. In this sense, when it is said there are excep-

tions or limits to access to information in government hands, this is known as an exceptional or special case. Naturally, personal information must be confidential and only subject to restricted access (usually available solely to the interested party). However, there is another kind of information that the government may refuse to provide, the kind that would cause serious damage to the institution in question in different ways, or that would pose a threat in delicate matters of state, such as national security.

The exception is one of the most complex items any law on access to information must deal with. In addition to personal data, different kinds of proof, such as proof of damages and proof of public interest, should be considered. These make it possible to clearly establish in which cases the public institution must refuse information to the applicant; these kinds of proof are included in Article 4, Subsections 16 and 26 of the new LTAIPDF as follows:

XVI. Proof of Damages: It is the responsibility of the entities mandated to demonstrate that the dissemination of information damages the interest protected by law, and that the damage that would be caused by making the information public is greater than the interest in knowing it...

XXVI. Proof of Public Interest: It is the obligation of the Institute to objectively, quantitatively, and qualitatively argue and motivate the benefit of ordering the dissemination of the information whose access is restricted for reasons in the public interest.

However, situations can exist in which the public interest must prevail over individual interests; that is to say, it could be the case that the benefit the state seeks to achieve by divulging the information is superior to the damage that would be caused to private interests by violating his/her/its right to privacy. This obligates the authority to carefully ponder in detail the interests in conflict in order to, under exceptional circumstances, allow the possibility of divulging certain personal data.

This decision cannot be discretionary or arbitrary, since it must be based on and motivated strictly by the objectives pursued in the laws themselves. In addition, the procedures ensuring the holders of the rights in conflict their due guarantee to a hearing must be complied with.

The right to a hearing is an essential element that all authorities must respect and comply with, since only through the exercise of this right will it be possible to come to a decision about the dissemination of a specific piece of information according to Article 87 of the Federal District's new law on

transparency. This article states that when a request for review has been presented based on Subsection 3 of Article 77, for duly accredited reasons of public interest related to the objectives of this law, as an exception, the dissemination of information classified as of restricted access can be ordered. In this case:

- I. The applicant can present proof arguing that it is in the public interest to disseminate the information;
- II. During the substantiation of the request for review, and in the case that the information under review contains confidential information, the guarantee of the right to a hearing of the holders of the personal data will be respected; and
- III. The decision handed down must contain an objective, quantitative, and qualitative evaluation of the interests in conflict that would reasonably ensure that the benefits to society of divulging the information will be greater than the damage it could cause.

Finally, this kind of resolution, known as proof of public interest, can be carried out solely on the request of one of the parties involved and only in exceptional cases. In addition, it must be established in the specific case that the public interest contained in a law must prevail over private interests, a general principle of law recognized in our Mexican legal system.

FORMS OF ACCESS TO INFORMATION

The right to access to information brings with it the obligation to publish on the internet information that would be of interest to society. However, it should not be forgotten that the number of Mexican homes with a computer and internet service is still low. Therefore, access via telephone, whether a land line or cellular phone, should also be provided. So, promoting the use of the internet to exercise the right to access to information only serves an as yet small sector of society.

Access to information is one of the pillars of accountability, which, in turn is one of the conditions for an effective democracy. This means that public officials are obligated to inform the citizenry about their acts of government.

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Opening up government information to all citizens is undoubtedly a step forward in guaranteeing this right. However, this generalized opening must be focused so that certain processes, administrative paperwork, and specific social sectors can improve and benefit from transparency. The focused transparency included in Article 22, Subsection 10 of the new LTAIPDF points out that it is a fundamental task

to guarantee that the information published by the entities under obligation to do so be accessible in a focused way to persons with physical, auditory, and visual impairments, as well as persons who speak different recognized languages. . . . This is a response to the need to obtain specific benefits in transparency, as well as to the demand for greater order in the information the government offers, which requires that it standardize and publish specific information that seeks to resolve a concrete social problem and stimulate the market mechanisms to achieve a specific social benefit.

Equally, we can speak of civic transparency, transparency in administrative procedures and services, as well as socially useful information; all these concepts express the interest in guaranteeing that all information in the public interest, administrative procedures and services the government provides, be published on internet portals and that searches for it be agile. On this point, Article 14 of the new law stipulates that

the entities obligated [by this law] will update the information about the topics, documents and policies detailed as follows in printed form for direct consultation and on their respective internet websites, according to their functions. . . . The Offices of Public Information of these entities obligated by law must provide interested persons with computer equipment so they can directly obtain information or print information to be paid for

in accordance with the rate set by the Federal District's Fiscal Code. They must also provide support for clients who require it and all manner of assistance in carrying out the paperwork and procuring the services they provide.

It is important to point out that in order to substantially advance on issues of transparency, the aim is to write regulations using language that can be more easily understood by citizens unfamiliar with legal terminology. This is because obscure language makes it difficult to understand texts, meaning that what they stipulate cannot be applied correctly, thus limiting the effective exercise of the right to information. On this note, several European countries have already duly modified their legal regulations.

Along these same lines, mechanisms must be encouraged that make it possible to automatically and immediately access information by a telephone service set up by the body that is obligated by law to serve applicants. Also, in the case of information published on the internet portals of the obligated bodies, whatever is requested must be provided immediately, without having to make an official request for information. This is known as expeditious transparency. However, if the information does not exist on the internet portal at that time and cannot be provided electronically or by telephone, an application must be submitted, which must go through the proper channels.

When these new concepts are implemented, transparency, accountability, and the protection of personal data will be strengthened, allowing them to develop further. It is fundamental that in the development of legislation about the right to information, we always keep in mind the greatest benefit to society that our actions can contribute and that we always seek to ensure that the government offers all Mexicans all the means at its disposal to ensure that transparency is a mechanism that contributes to a more equitable, democratic society. ■■

NOTES

¹ See at http://www.consejeria.df.gob.mx/uploads/gacetas/OCTUBRE_3_08.pdf [Editor's Note.]