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Delivering Transparency: To What Degree Does the Mexican Government Respond to Public Information Requests?

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Abstract:

To what degree do transparency reforms actually make information public? This study documents patterns of agency responses to citizen requests for information. This empirical study draws on both official and independent assessments during the first years of implementation of Mexico's 2003 open government reform. The data show substantial progress overall, combined with significant variation across federal agencies and a growing trend towards official denials of the "existence" of requested information. The findings indicate that support for and resistance to open government is unevenly distributed across the public sector. Future analysis of varying patterns of agency compliance should address both agency-specific incentives and institutional cultures.

Keywords:

Access to information, transparency, open government, administrative law
Acceso a la información, transparencia, gobierno abierto, derecho administrativo

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I. Introduction

If “information is power,” then transparency reforms have the potential to redistribute power. The power of vested interests often depends on discretionary and privileged control over information, so greater public disclosure often produce “losers” as well as “winners.” As a result, open government reforms may generate resistance. After all, analysts of organizations since Max Weber have recognized the powerful incentives that drive institutions to seek to limit access to information.² Therefore, transparency reforms cannot be assumed to necessarily deliver on their promises.³

The principle of transparency has been so widely accepted around the world, at least at the level of discourse.⁴ As a result, few public officials openly reveal their opposition to public information disclosure. This poses a dilemma. Rather than eliminating opposition, today’s unprecedented level of consensus in favor of open government tends to drive the forces in favor of secrecy “underground.” The perverse effect, in other words, is that the real opposition to transparency is rarely transparent. In this context, the “losers” will do what they can to merely *appear* to comply with legal requirements and civic standards.⁵

² As Weber pointed out “Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret... in so far as it can, it hides its knowledge and action from criticism...[E]verywhere that... power interests.. are at stake.. we find secrecy.... The concept of the ‘official secret’ is the specific invention of bureaucracy, and nothing is so fanatically defended by the bureaucracy as this attitude.... Bureaucracy naturally seeks a poorly informed and hence a powerless parliament – at least insofar as ignorance somehow agrees with the bureaucracy’s interests... “ cited in H. H. Gerth and C. Wright Mills (1946: 233-234).

³ For example, according to a comparative study of public information access in 14 countries, based on almost 2,000 requests, only 22% received information in response. Even in those countries with freedom of information laws, the government response was “mute refusal and other noncompliant outcomes” in 58% of the cases. See Open Society Justice Initiative (2006).

⁴ In the Americas alone, 20 out of 25 of countries studied for an Inter-American Dialogue report (2008: 20-23), have access to information laws in place or have bills under consideration. (The exceptions include: Argentina, Costa Rica, Cuba, El Salvador, and Haiti.) Of the 16 countries with access to information laws, 11 have been adopted since 2000. See Mendel (2009) for legal analysis.

⁵ See Arrellano Gault (2008) and Merino (2008) for assessments of the implications of recent public policy theory for understanding organizational responses to information access reforms. For further discussion of information disclosure through the lens of the political economy of winners and losers, see Fung, Graham and Weil (2007). They add that vested interests will also have incentives to do what they can to roll back minimum transparency standards, if the political opportunity arises.

From a research standpoint, this proposition implies that it will not be easy to measure government compliance with freedom of information laws, and that one cannot take official data at face value. The study of the dynamics of enforcement of transparency laws is still incipient (Neuman, 2009). Relevant here is the conceptual distinction between what one could call “clear transparency” vs. “opaque” or “fuzzy” transparency (Fox, 2007a, 2008). *Clear* transparency reflects how institutions really behave in practice — what decisions they make, how they make them, where their money goes, and the tangible results of their actions. *Opaque* transparency, in contrast, refers to the provision of information that is only nominally available (accessible in theory but not in practice), data whose significance is not clear, or “information” that is disseminated but turns out to be unreliable.⁶

These premises frame this study’s central empirical question: to what degree do transparency reforms actually make information public? Specifically, how often do citizen requests for information get the answers they seek? This study addresses this question in Mexico, which has carried out one of the most ambitious open government reforms in the world.⁷ This research question addresses one dimension of the broader process of governmental justification of its actions to society, which is one dimension of accountability and a key component of democracy’s deliberative process (e.g., Monsiváis 2005). Schedler describes this form of official responsiveness as “answerability” (Schedler, 1999; Fox, 2008). The “answerability” of public servants has two main components: their obligation to provide information to the public and their obligation to explain their decisions (Schedler, 1999: 14-15).

This study’s main findings indicate both substantial progress and entrenched obstacles. First, both official and independent assessments concur that a substantial proportion of citizen information requests to federal agencies do get the information that they seek, though substantially fewer than the public official statistics suggest. Second, federal agencies are increasingly denying the “existence” of requested information, and the Federal Institute for

⁶ Note that even “clear transparency” — by itself — does not guarantee accountability, which in turn requires the intervention of other public sector actors whose mission is to promote compliance with the rule of law.

⁷ Lessons from the Mexican experience with information access reform will be of significant relevance to international comparative analysis, because of both its ambitious scope and its vast practical implementation track record. On the origins of Mexico’s information law, see, among others, Escobedo (2004) and López-Ayllón (2005). For Mexico’s legal studies literature on information access reforms, see also Bustillos Roqueñí and Carbonell (2007), López-Ayllón (2006) and Sandoval (2008). On information reform implementation issues, see Bookman and Guerrero Amparán (2009) for an overview, Fox, Haight, Hofbauer and Sánchez (2007) for diverse, sector-specific policy briefs, as well as López-Ayllón and Arrellano Gault (2006) for a comprehensive performance assessment of the many federal bodies that are subject to the law but not to the IFAI. For related political context, see Ackerman (2008) and Sandoval (2009)

Access to Information (*Instituto Federal de Acceso a la Información*, IFAI) has few tools with which to address this trend. Third, in the case of official citizen complaints about information denials (officially known as “*recursos*”), the IFAI frequently sides with the complainants — though to a lesser degree beginning in 2008. Fourth, the IFAI used to rely exclusively on citizen complaints to address agency non-compliance, but since 2007 its monitoring office began systematic verification of agency compliance with IFAI resolutions. The IFAI’s efforts to persuade non-compliant agencies to respond often do produce results. Fifth, there is wide variation *among* federal agencies regarding their degree of responsiveness – *both* to citizens *and* to IFAI mandates. This suggests that support for and resistance to open government is unevenly distributed across the public sector. Based on these empirical findings, the conclusions briefly explore possible explanations for varying patterns of agency compliance, with a focus on institutional cultures and incentives.

II. Methodology

This study’s methodological strategy for assessing federal agency compliance with Mexico’s path-breaking 2002 transparency law is based on an analysis of two main sets of indicators of institutional behavior.⁸ The first set of indicators focuses on the degree to which agencies directly provide citizens with the information that they request. This study’s second set of indicators documents what happens when citizens’ direct requests to agencies are denied. Mexico’s access to information reform created a distinctive complaint process, which allows citizens who consider that their requests were unjustly denied to seek recourse from an adjudication tribunal, composed of the commissioners of the IFAI, a semi-autonomous executive branch agency. Thanks to the existence of this process for seeking public recourse, researchers can document both information denials and institutional responses to them.⁹ In other words, the first set of indicators addresses the direct interface between citizens and the state, while the second set of indicators addresses the role of Mexico’s innovative IFAI in its efforts to promote compliance with the information access law by *other* agencies.¹⁰ These two sets of indicators

⁸ The full name of the law is the Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental (Federal Law of Transparency and Access to Public Governmental Information), last reform published 06/06/2006, Diario Oficial de la Federación.

⁹ Note that the focus here is exclusively on the “demand-driven” dimension of information access reforms, and therefore agency compliance with mandates to pro-actively disclose information about their activities will not be addressed here.

¹⁰ This latter dynamic is a case of “horizontal accountability” (see, O’Donnell, 1999). On state-society “interfaces,” see Isunza Vera (2006).

are analyzed using evidence collected both from official IFAI data and from independent assessments.

This study draws on four different sets of data to address patterns of agency responses to citizen requests. The first source is IFAI's public official data, which indicate the degree to which agencies send citizens information in response to their requests. The IFAI's extensive data on this process provide a first approximation of government responsiveness, but their validity is limited by two main constraints. First, the agencies themselves classify whether their responses are positive (not the IFAI). Second, the official categories of responses do not address whether the information sent actually responds to the citizen request. Recognition of these limitations led to the creation of the second data set. In cooperation with IFAI staff, independent researchers (including authors of this study) carried out an assessment of the completeness and quality of agency responses, based on case-by-case independent review of simple stratified random samples of approximately 350 actual requests and responses from each of the "top five" most-requested agencies (a total of 1,787 requests) during the information access system's first three years of operation (2003-2005). These original data are analyzed in greatest detail. The third data set was generated by an independent study of IFAI responses to citizen requests, carried out by the Mexico Project of the National Security Archive, a public interest group. Following these two independent assessments, the IFAI itself began to take on the task of evaluating both the completeness and quality of agency responses to public information requests, and the results of its pilot study are analyzed here, representing the fourth data set used in this section of the study.

The second approach to assessing agency responses to information requests involves determining the frequency of complaints about information denials, as well as agency compliance with the IFAI's decisions on citizen complaints. Four different data sets address the patterns of IFAI decisions in response to complaints about information denials. First, the IFAI makes public extensive data regarding its adjudication decisions, indicating the degree to which its tribunal sides with requesters or with government agencies. Second, IFAI data disclosed in response to information requests sheds additional light on the degree to which its tribunal mandates agencies to disclose information, as well as patterns of variation across agencies. Third, the IFAI itself recently began monitoring the degree of agency compliance with IFAI mandates to disclose information in response to official complaints, and the initial findings of its pilot study are presented here. The fourth set of data on patterns of agency response to IFAI mandates focuses in depth on one of the most-requested agencies, the Finance Ministry.

This article's primary goal is to assess the full range of empirical data available that addresses the question: to what degree does Mexico's information access system provide the

information that citizens request? Bolstering this empirical foundation is a necessary precondition for developing robust explanations of patterns of compliance with open government reforms in future research, both in Mexico and in other cases. This specific empirical question raises a set of broader analytical questions about the dynamics of public administration: to what degree, how and why does institutional behavior change, in response to new mandates? Which factors account for variations in institutional compliance with transparency laws? The article concludes with reflections on conceptual issues that will ground possible future research strategies. Key factors are likely to include agency-specific institutional incentives and disincentives for compliance, access to resources for compliance, as well as less tangible agency-specific “cultures of transparency.”

III. Agency “Answerability” to Citizens: Patterns of Response to Information Requests

A. Trends in Self-Reported Agency Responses

The steady growth in the numbers of public information requests to Mexican government agencies over time has been widely recognized. Less well-known is that a high percentage of these requests have been directed to a relatively small number of agencies. As Table 1 shows, the ten executive agencies with the most information requests received between 2003 and 2008 accounted for almost forty percent of all information requests during that six year period. The Mexican Social Security Institute (*Instituto Mexicano del Seguro Social, IMSS*) easily outpaces other executive agencies, having received 12 percent of all information requests during the period in question.

Table 1: Top 10 Most Solicited Agencies in the Executive Branch, 2003-2008*

Rank	Executive Branch Agency	Accumulated Total	% of Total Info Requests
1	Mexican Social Security Institute	44,689	12.0%
2	Ministry of Public Education	17,812	4.8%
3	Finance Ministry	14,361	3.9%
4	Ministry for the Environment and Natural Resources	11,732	3.2%
5	Ministry of Health	11,044	3.0%
6	Ministry of Public Administration	10,752	2.9%
7	Ministry of Transportation and Communications	9,489	2.5%
8	Office of the Attorney General	9,075	2.4%
9	Ministry of the Interior	9,022	2.4%
10	Institute for Social Security and Services for Public Employees	8,226	2.2%
	Totals for top 10 agencies	146,202	39.3%
	Total for all executive agencies, 2003-2008	372,142	100.0%

* Information request system in operation beginning June 12, 2003

Source: IFAI, Estadísticas del SISI, available at http://www.e-mexico.gob.mx/wb2/eMex/eMex_IFAI (last accessed July 27, 2009).

The first source of data on agency responses to information requests involves the nine official categories that describe agency responses to information requests (see Table 2). These categories indicate whether the information was provided, the mode in which the information was provided, or in the case of denials, the general reason for the denial. IFAI regulations allow each agency to classify its response, which means that those who report on whether information requested is actually delivered are interested parties. The most common way that agencies provide information is under the category of “delivery of information through electronic means.” The most common category of denial is “request does not correspond to liaison unit,” which applies to cases where the agency receiving the information request redirects the petitioner to another agency to resubmit the information request.

Table 2: Self Reported Categories of Agency Responses to Information Requests, 2003-2008*

Category of agency response		Percentage of Total Responses
Information Provided	Delivery of information through electronic means	62.6%
	Notification of date and location for pick-up	2.8%
	Notification of delivery	2.1%
	The information is already publicly available	7.1%
	Total Proportion where information provided	74.6%
Information denied	Request does not correspond to liaison unit	12.4%
	The information requested does not exist	6.1%
	Denial because the information is reserved or classified	2.8%
	The request does not fall under the rubric of the law	2.3%
	The request will not be processed	1.9%
	Total proportion of information requests denied	25.4%

* Information request system in operation beginning June 12, 2003

Source: Information Request nos. 0673800096208065 and 0673800117609.

Table 3 aggregates the different subcategories to show the broad trends, in terms of whether information was provided or not. The proportion of responses categorized as positive has been remarkably consistent over time, with agencies reporting that they provide the information requested for close to 75 percent of the requests. In the international context, this is a very high rate of positive response (e.g., Open Society Justice Initiative, 2006).

Table 3: Self Reported Agency Responses to Information Requests, 2003-2008

Category of agency response (as a percentage of total responses)	2003*	2004	2005	2006	2007	2008	Total
Total proportion where information provided	73.7%	74.7%	74.3%	73.5%	75.9%	74.5%	74.6%
Total proportion of information requests denied	26.3%	25.3%	25.7%	26.5%	24.1%	25.5%	25.4%

* Information request system in operation beginning June 12, 2003

Source: Information Request nos. 0673800096208065 and 0673800117609.

B. Independent Assessment of “Positive” Responses to Information Requests: Top Five Most-Requested Agencies

The study that produced the second set of data is based on the recognition that because the official data is generated by interested parties — the government agencies themselves — independent analysis is necessary to assess its validity. The study focuses on the patterns of

response by the five executive agencies that received the most information requests during the IFAI's first two and a half years (2003-2005).¹¹ The focus here is on patterns of agency response, and therefore the agency is the unit of analysis. A representative sample of requests to each agency is needed to be able to draw conclusions about the quality of specific agencies' responses. The results are not intended to be representative of the entire executive branch. The latter methodological choice would not have allowed sufficiently robust samples to draw agency-specific conclusions about response patterns.

Researchers analyzed approximately 350 requests for public information¹² from each of the top five most requested agencies (known hereafter as the "top five"): the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social*, IMSS), the Ministry of Public Education (*Secretaría de Educación Pública*, SEP), Finance Ministry (*Secretaría de Hacienda y Crédito Público*, SHCP), Ministry for the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*, Semarnat), and the Ministry of Public Administration (*Secretaría de la Función Pública*, SFP).¹³ The total sample size was 1,787 information requests.

The research team evaluated each of the responses to information requests based on a set of criteria that were designed to estimate the extent to which the information requested was actually provided. To count as "positive," responses had to meet two sets of criteria. The scoring system measured first, the extent to which the agency provided *all* of the information requested and second, the extent to which the information provided was *accessible* in practice. The research team identified these two characteristics as the most important factors to measure whether responses to information requests successfully responded to citizen information needs. For responses which were categorized as negative (the requested information was denied), researchers scored the responses on two different scales, measuring: first, whether the agency provided a reasonable and easy to understand justification for the denial and second, whether the justification provided instructions for pursuing the information elsewhere, where applicable.

The quantitative indicators were designed to capture patterns of variation among agencies by aggregating large samples of qualitative assessments. The strength of this method of evaluation is that it permits observation of broad trends in agency response to information requests, as other large-N analyses do, using indicators that are only observable by reviewing the

¹¹ The authors thank José Luis Marzal Ruíz of the IFAI for facilitating access to the data, and Valeria Gama Ríos, Mauricio Sánchez and Ana Suárez for their assistance with the analysis.

¹² Requests for personal information were excluded from the sample, as they are not a category of public information.

¹³ In the intervening years since these samples were collected and scored, the Ministry of Health (*Secretaría de Salud*, SSA) has displaced the SFP for the fifth place in terms of most information requests received overall since the inception of the transparency law (see Table 1).

actual contents of both the information request and the agency response. This permitted a case-by-case assessment of the degree to which the information provided corresponded with the information requested.

The findings revealed two types of shortcomings in official classifications of categories of response. First, agencies sometimes classified their responses as positive when in practice the response provided to the petitioner was a denial of the information. In this sample, the IMSS was the agency that most frequently committed this error. Thirty-nine out of the 285 responses that the IMSS classified as “information delivered electronically” [“entrega de información en medio electrónico”] (13.7 percent of all responses reported as positive) were actually cases where the IMSS delivered a memo to the petitioner explaining that the information was denied. Second, researchers found that agencies often provided responses to information requests that did not include all the information that was requested or presented the information in highly technical, inaccessible language. These types of responses are officially classified as positive, but by the standards applied here, they did not receive the highest scores. The IFAI has recognized this problem, as will be discussed below. The more in depth analysis of information requests found that, of the agency responses self-classified as “positive,” information was actually provided in a satisfactory manner approximately *87 percent of the time*.

Table 4 shows a breakdown of “top five” agency responses to information requests based on this independent assessment. The column labeled “percentage satisfactory” shows the proportion of all responses to positive information requests that scorers judged to effectively provide the information that the petitioner sought, in a reasonably accessible manner. Graph 1 then shows an “adjusted” score that demonstrates the percentage of all responses, both positive and negative, that provided the information that the petitioner sought.

One of the principal findings was that while 67.3 percent of all information requests in these samples were officially registered with the IFAI as positive responses, the scorers found that only 52.5 percent actually provided the information that the petitioner sought (as shown in Graph 1). In addition, this analysis found great variation among agencies in the proportion of “satisfactory” positive responses. The agency that most frequently provided the information that the petitioner sought was Semarnat, with an “adjusted” percentage of positive responses of 72 percent. On the low side, the SFP’s “adjusted” proportion of positive responses was only 34 percent. This wide range indicates that inferences based on studies of information requests that are based on system-wide averages, without differentiating between agencies, can obscure the wide variation between high and low-performing agencies.

Table 4: Independent Assessment of “Top Five” Agency Responses Self-Reported as Positive within Samples*

Agency	Self-reported positive responses to information requests**	“High quality” responses (%)	“Satisfactory” and “high quality” responses (%)	“Unsatisfactory” responses (%)	Information denials misclassified as “information provided”
IMSS	246	74.0%	92.3%	7.7%	39
Semarnat	211	80.6%	95.7%	4.3%	1
SEP	214	62.6%	72.0%	28.0%	3
SFP	113	73.5%	88.5%	11.5%	8
SHCP	176	64.8%	88.1%	11.9%	1
Total	960	71.1%	87.3%	12.7%	52

*Responses classified as “high” received a score of four or five out of a total of five on both scales. Those classified as “satisfactory” received at least a three on both. The remaining responses were classified as “unsatisfactory.”

**This category includes responses classified as “entrega de información en medio electrónico” or “información disponible públicamente.” In a small percentage of cases, the information was provided to the petitioner in a hard copy, and scorers were thus unable to evaluate the information delivered.

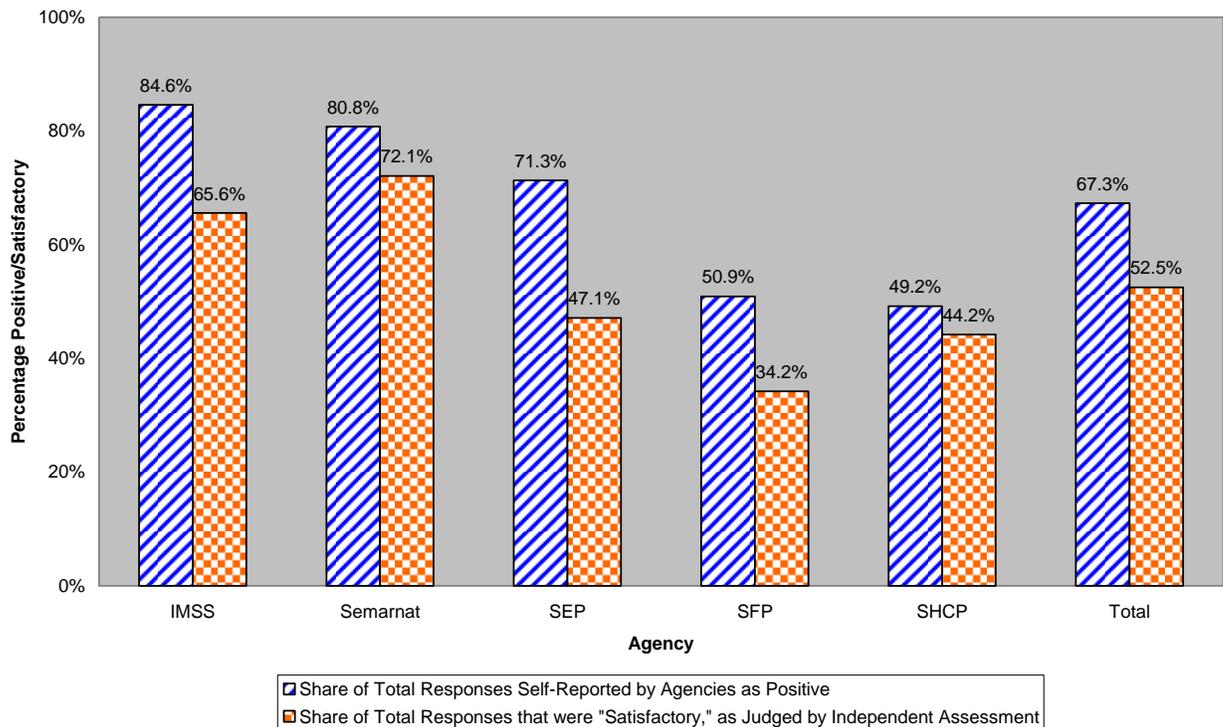
Source: database of information requests to five agencies. N = 1787, 2003-2005

As shown in Graph 1, while most responses to information requests self-classified as positive are satisfactory, all agencies demonstrate a gap between the percentage of self-reported positive responses and the percentage of satisfactory positive responses, according to the independent assessment. The size of this gap varies widely among the five most-solicited agencies. For instance, while SHCP provides positive responses to very few information requests, the vast majority of its self reported positive responses were evaluated as satisfactory. Therefore, on one metric of responsiveness to information requests—the extent to which positive responses provide the information requested—SHCP comes out well. On another metric, the proportion of information requests that receive the information that they seek, red flags appear, as SHCP denies over half of the information requests that it receives. The next section discusses how information denials can be evaluated based on whether they are justifiable and how well they explain the denial and reorient the petitioner to find the information elsewhere.

The SEP stands out at the opposite extreme. While the SEP reported a large proportion of its responses as being positive, almost 34 percent of the requests that were registered as positive were evaluated as unsatisfactory, according to this assessment. In this sample, over two-thirds of

petitioners received responses that were classified as positive by the SEP, but fewer than half of petitioners received responses that “satisfactorily” provided the information that they sought. The next section explains the criteria for these assessments in greater detail, with a focus on both the prevalence of information denials and the quality of their justifications. While observers might expect official claims of “reserved information” or confidentiality to be a primary source of information denials, other categories of denial were much more common.

Graph 1: Percentage of Responses to Information Self-Reported by Agencies as Positive versus Independently Assessed as "Satisfactory" within the Top Five



Source: database of information requests to five agencies, N = 1787, 2003-2005

C. Independent Assessment of Information Denials: Top Five Most-Requested Agencies

“Inexistencia” Denials

The category of denial which leaves the greatest opening for agency opacity is “declaración de inexistencia.” This type of denial is difficult to prove or disprove because the IFAI’s adjudication board is incapable of finding out what information an agency has collected or not. Therefore, it is very hard for either citizens or the IFAI to prove whether an agency misuses this classification to avoid providing information. This gets to the root of an important issue with the transparency law. In order for agencies to truly adhere to the spirit of the law, they must make

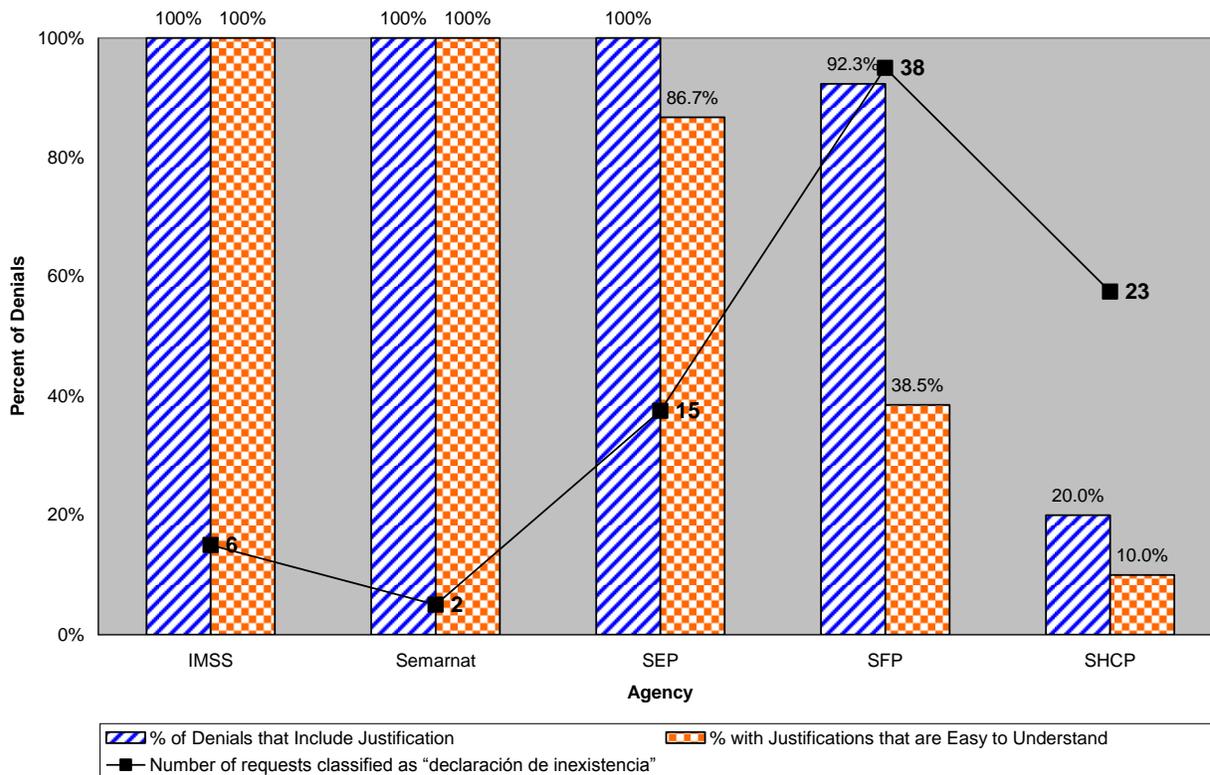
sure to store information that plausibly could be requested by a citizen in the future. If not, an agency can avoid providing information by simply not recording it, or by disposing of information that would be inconvenient to release. Article 42 of the transparency law states “Las dependencias y entidades sólo estarán obligadas a entregar documentos que se encuentren en sus archivos.” The law defines “information” as what is registered or contained in government documents, drawing a clear correlation between the right to information and agencies’ management of records.¹⁴ Given this provision, it is clear that in the absence of a strictly upheld Archive Law, agencies will be able to continue to use claims of “inexistencia” as a loophole to avoid providing information.¹⁵

In looking at the information requests to the most-requested agencies, this study evaluated “inexistencia” claims under two different rubrics. These claims can be considered to be de facto denials. First, researchers looked at whether the agency’s response provided a justification for denying the existence of the information requested. Next, researchers asked whether this justification was clear. Graph 2 demonstrates the findings for these two different indicators. Notably, the “top five” agencies varied widely in the frequency with which they denied information under the category of “inexistencia,” as shown by the black line.

¹⁴ For an official assessment of archive issues, from an information access point of view, see IFAI (2008d). Mexican legal scholars have proposed a series of “best practices” for information laws that would address this issue (López Ayllón 2007).

¹⁵ Indeed, the authors’ recent experience with researching Agriculture Ministry documents from the 1990s found an interesting contrast. While the electronic request system for specific documents produced “inexistencia” responses, personal visits to the Ministry’s archive of physical documents made it possible to access a substantial number of them. The on-line and paper archives were apparently not linked.

Graph 2: Independent Evaluation of "Inexistencia" Denials, Top Five



Source: database of information requests to five agencies. N = 1787, 2003-2005

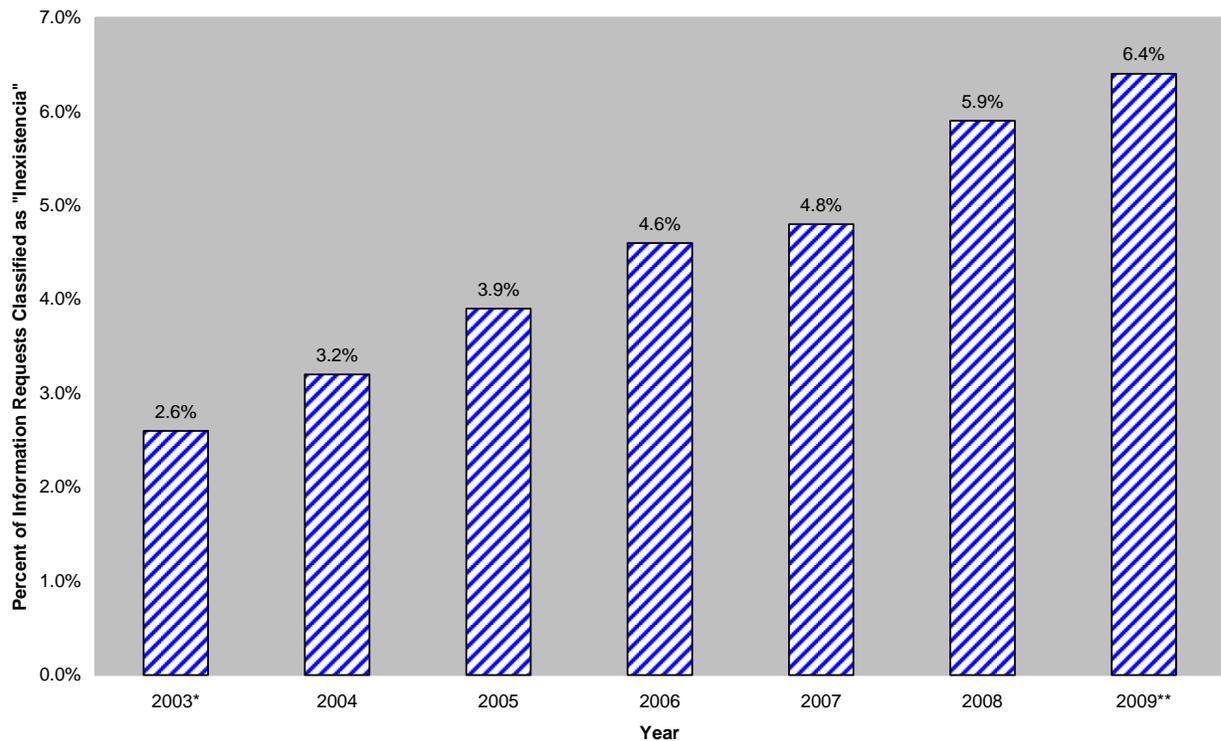
The first observation from Graph 2 is that SFP and SHCP denied many more information requests under the category of “inexistencia” than the other three agencies. Possible explanations for this include: a) petitioners request exotic information from these agencies more frequently than from others, b) these two agencies deny requests under this category due to their failures to effectively store, retrieve, and provide information in response to citizen requests, or c) the other agencies simply find other ways to avoid responding with information.

All of the agencies except for SHCP scored highly on variable one, which reflects whether they provided an explanation for the denial and is therefore an indicator of “answerability” — the degree to which agencies justify their actions to the public. The SHCP only provided a justification for roughly one-fifth of the requests it denied under the category of “inexistencia.” While IMSS, Semarnat, and SEP tended to provide easy to understand justifications for these denials, the low scores for SFP and SHCP indicate that their explanations were minimal and insufficient to demonstrate that the information truly did not exist. The information law requires agencies to legally attest to “inexistencia,” but in the case of SHCP, most denials did not include any justification at all. As a result, very few of these responses received positive variable two scores. In the case of SFP, justifications were provided for over ninety percent of its “inexistencia”

denials, but most of these justifications were either in highly technical language or were exceedingly brief, therefore receiving a “no” for variable two. The poor performance of SFP and SHCP in justifying “inexistencia” denials is a symptom of the limits to the information access system’s mechanism for monitoring agency compliance . It is difficult for agencies to explain why they have not stored certain types of information, and in some cases their “inexistencia” claims strained credibility.

More generally, public IFAI data show that, overall, agency claims of “inexistencia” are steadily increasing over time, with their share of responses doubling between 2004 and 2009, as indicated in Graph 3. This is puzzling, insofar as institutional learning and improved information storage should, in principle, improve agency capacity to locate requested information. However, this could possibly reflect a different process of institutional learning, as agencies have discovered that this is the least risky way to deny requests for information in cases where they did not want it released or it when assembling it would be a large burden. In contrast, the burden of proof is on the agency if it claims that information requested is “confidential” or “reserved.”

Graph 3: Growing Share of Information Requests Classified by Agencies as "Non-Existent"



* Information request system in operation beginning June 12, 2003

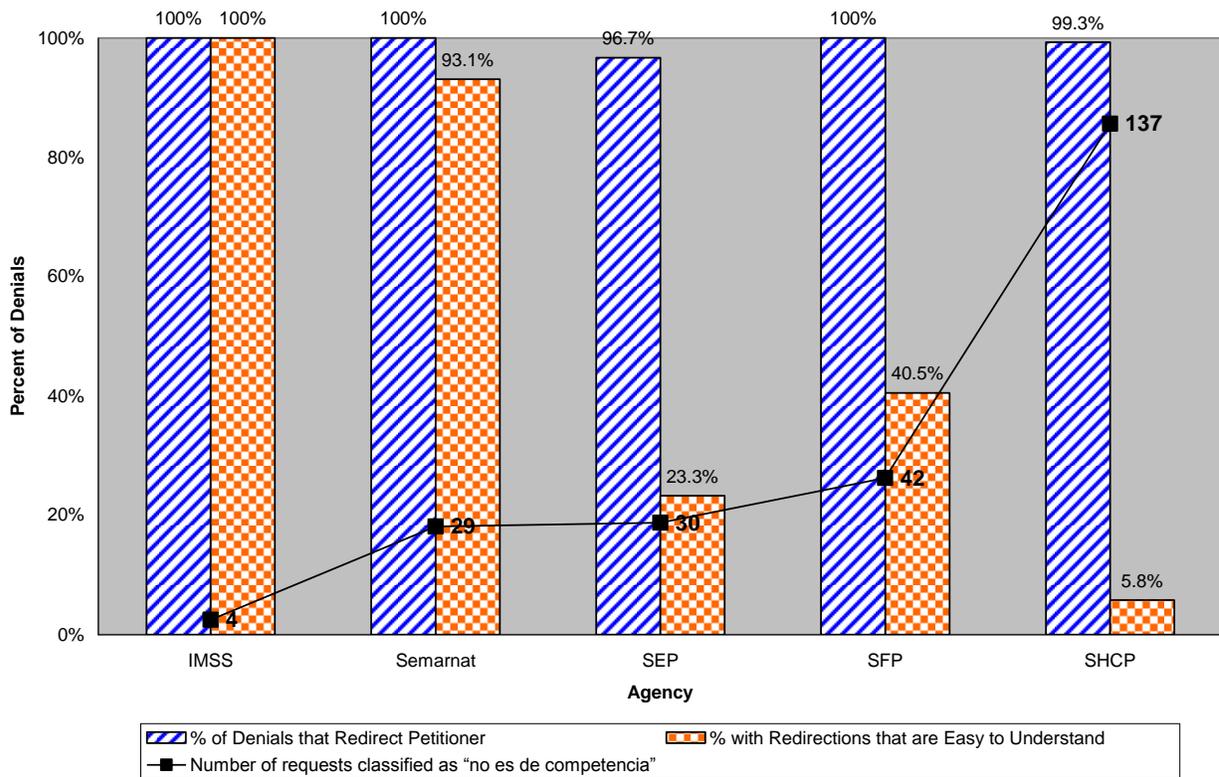
**Up until July 9, 2009

Source: IFAI, “Estadísticas del SISI,” available at <http://www.ifai.org.mx/Gobierno/#estadisticas> (last accessed on July 27, 2009).

“No es de competencia” Denials

Another common form of agency denial of information is to claim that a request falls under the purview of another agency. Indeed, it is often unclear which agency is responsible for responding to a particular information request, particularly for the non-specialist citizen – especially when many specialized federal agencies are formally under the authority of ministries. The transparency law stipulates that when an agency denies information under the category of “no es de competencia,” it should redirect the petitioner to the appropriate agency. For the purposes of this assessment of the most-requested agencies, responses that were not accompanied by a clear “redirect” counted as denials. A clear redirect to the appropriate agency, however, counted as a positive response. Scoring of “no es de competencia” responses considered two components: first, a justification for why the information was denied in the first place; and second, an explicit redirect to the appropriate agency. If a response included both of these components and they were clear and correct, then that response was considered satisfactory because the agency provided useful instructions to help the petitioner to locate the information elsewhere. In some cases, however, agencies simply state that the information sought “no es de competencia de la unidad de enlace” and neglect to direct the requester to the appropriate agency. These responses were considered insufficient.

Graph 4: Independent Evaluation of "No es de Competencia" Denials, Top Five



Source: database of information requests to five agencies. N = 1,787, 2003-2005

The first pattern of “no es de competencia” claims, indicated in Graph 4, suggests wide variation across the five most-requested agencies. The SHCP is certainly an extreme case; this agency classified almost as many cases as “no es de competencia” (137) as it did “entrega de información en medio electrónico” (143). Second, whereas practically all denials for “no es de competencia” included instructions for accessing the information through another agency, three of the agencies (SEP, SFP, and SHCP) tended to provide unclear or insufficient explanations. It was common among these three agencies to simply provide a one-line response which signaled that the information request did not pertain to that particular agency and to mention the agency to which the petitioner should resubmit the request. Often this agency was under the authority of the ministry that redirected the requester, and therefore the information requested was often likely to also be in the possession of the ministry to which the request was submitted in the first place. Mexico’s transparency law does not apply only to documents or data *generated by a given agency*, however, it also explicitly applies to information *in an agency’s possession*. The information law’s Article III.V defines information subject to the law as including: “That which is contained in documents that the mandated agencies generate, obtain, acquire, transform or store

in any capacity” [“La contenida en los documentos que los sujetos obligados generen, obtengan, adquieran, transformen o conserven por cualquier título.”]

D. The NSA Assessment of Agency Responsiveness to Information Requests

Not long after the “top five” data analysis was carried out, a US-based public interest group carried out its own assessment of Mexican government responsiveness to information requests (Doyle et al, 2008). The Mexico Project of the National Security Archive (NSA) also focused on the *quality* of government responses, based on a representative sample of cases through 2006. Like the “top five” study, the NSA study also examined the actual requests and responses, which allowed them to verify the validity of claims of positive responses. The NSA also independently assessed the key issue of whether “redirects” to other agencies were clear.

The NSA study’s main findings were that “in 76 percent of the cases, the government’s response satisfied the original request or exceeded the requester’s expectation.... Requesters were unsatisfied with government responses in 24 percent of the cases.”¹⁶ They also found, notably, that 18 percent of requests sought information that was already publicly available, and in 75 percent of those cases, citizens were directed to the source — usually on-line.

One of the NSA study’s main variables involved the nature of the citizen request, focusing on “the involvement of the users and the important role they play in the outcome of the overall information process. Citizens who make information requests help determine agency responses at the outset, because they define the form of information sought.” They found that most requests sought data rather than specific documents or records, which contributed to the high rate of satisfaction. More complex requests, such as for specific government documents, met with lower rates of response; “the percentage of satisfactory responses dropped, from an average 81 percent satisfaction rate for low and medium-complexity requests, to 57 percent level of satisfaction for very high-complexity requests.” Consistent with the “top five” study’s findings, the NSA study also found “a large discrepancy between different agencies in the way they responded to requests.”

E. IFAI’s New System for Monitoring Positive Responses to Information Requests

¹⁶ This rate of “satisfactory” responses is higher than the government’s own reports that information was actually delivered. This was because the study categorized information denials that appeared to be justified as “satisfactory” responses. For example, the NSA study found that the majority of agency responses that information requested was non-existent appeared to be “explained in a clear and reasonable manner.”

Beginning in 2007, the IFAI’s Office of Monitoring and Coordination with the Executive Branch acknowledged the limits of the self-categorized indicators of agency responsiveness by launching its own new monitoring system for assessing the quality of information responses in 2009. An internal pilot study, focusing on the top 25 most-requested agencies, used a sample of over 11,000 information requests from the first half of 2008, approximately one quarter of all the requests submitted during that period. This initiative represents the first official effort that seeks to monitor the extent to which agencies actually provide the information that petitioners seek.

Analysts scored agency responses in terms of four sets of indicators: consistency, completeness, reliability, and timeliness. The overall percentages of agencies that received positive scores on these four indicators were: consistency: 89 percent, completeness: 71 percent, reliability: 49 percent (note that this category is defined procedurally, in terms of administrative compliance) and timeliness: 93 percent (IFAI, 2008b). Table 5 also shows results of the pilot study’s evaluation of the completeness and accessibility of information requests. According to this data, approximately 84 percent of positive responses provide all of the information requested and in between 78 and 85 percent of cases (depending on the way in which the information was provided), the agency’s response provides an explanation for how to access information pertaining to each of the pieces of information requested. Rather than providing scores for specific agencies, this evaluation only mentions selected low-scoring agencies for each indicator. Table 5 shows that the IMSS and the SFP, two of the five most highly requested agencies received below-average scores for some of these indicators.

Table 5: IFAI Assessment of “Positive” Agency Responses, 2008

Indicator for Quality of Positive Response	Percentage	Low Scoring Agencies Mentioned
Percentage of responses registered as “delivered” that are really “delivered”	82.8%	
Proportion in which all the information requested was delivered	83.7%	IMSS
Proportion in which all the information requested was made available	83.6%	IMSS, SFP, SER, SCT
Proportion that indicated how the information delivered responded to each point in the request	85.3%	IMSS
Proportion that indicated how the information made available responded to each point in the request	77.8%	SAT, SFP, PGyPB

Source: IFAI (2008b)

The consistency between the IFAI’s evaluation of officially positive responses to information requests from 2008 and the findings from the “top five” study of officially positive

responses from 2003-2005 is remarkable. Recall that the proportion of officially positive responses which that were less than “satisfactory” in the “top five” was 13 percent (Table 4). The IFAI’s new monitoring system found that a full 17 percent of ostensibly positive information responses failed to actually deliver information requested (see Table 5).¹⁷ This figure reflects the fact that while more than sixty percent (60.3 percent) of responses were classified as “entrega de información en medio electrónico,” fewer than fifty percent (49.9 percent) were actually considered to have delivered substantive content. In other words, information was only delivered in response to approximately half of the overall requests.

In spite of the methodological differences between the two studies, their findings suggest that in terms of “agency responsiveness,” narrowly defined as whether positive responses actually responded to citizen requests in practice, it would be difficult to argue that agency performance had improved over time. Indeed, a comparison of the results from the 2003-2005 and 2008 periods show little improvement over time. Nevertheless, it is a remarkable achievement for Mexican democracy that more than four-fifths of officially positive agency responses were *actually* positive, according to the IFAI’s large-scale, rigorous “third-party” assessment.

F. IFAI’s New System for Evaluating Information Denials

The IFAI’s pilot study of agency responses to information requests also evaluated information denials. Like its evaluation of positive responses, this system focused largely on the extent to which agencies comply with procedural requirements, such as whether they provide the document required to specify the rationale for the denial. Nonetheless, a complete application of the evaluation mechanism described in the pilot study would surely yield useful data about the quality of information denials. For instance, one of the findings reinforced the concerns resulting from the “top five” analysis that denials for “inexistencia” were frequently not well justified. As Table 6 shows, approximately 92 percent of information denials for “inexistencia” did not include a well justified explanation for the denial in a formal “*acta*”. Indeed, the assessment also found that while agencies claimed “inexistencia” in response to 7.9 percent of requests, actual cases of “inexistencia” reached 11 percent (that is, 23 percent higher).

¹⁷ It is not possible to compare specific agencies in terms of change over time because the pilot study report did not disaggregate the scores by agency, but rather reported the average scores for six different sectors, each encompassing several agencies (health, labor, and social security; education and culture; national security; energy; treasury, economic development; and social development and renewable resources).

Table 6: IFAI Assessment of Agency Justifications for Information Denials, 2008

Category of Response to Information Request	Was the requester given the Information Committee <i>Acta</i>?	Did the Information Committee <i>Acta</i> specify the justification for its decision?	Percentages of responses accompanied by an <i>Acta</i> that justifies the decision
Non-existent	30.7%	26.2%	8.0%
Reserved or Confidential	52.0%	53.9%	28.0%

Source: IFAI (2008b)

Agencies rarely comply with even the most clear-cut procedural requirements for information denials. While administrative constraints and limited resources may certainly be a factor, the legitimacy of IFAI denials depends on meeting certain formal requirements. Agencies that were specifically mentioned as having particularly low scores on indicators of the quality of information denials include some of the most requested agencies overall: IMSS, Semarnat, the Secretaría de Salud (SSA), the Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación (Sagarpa), and the Comisión Nacional de Agua. The IFAI's pilot study of information denials makes a significant contribution by addressing whether the explanations that agencies provide to petitioners for denials are well justified. The fact that agencies so infrequently comply with this requirement suggests that executive branch personnel are generally unconvinced that the burden of proof falls on themselves to demonstrate to citizens that information denials are justified.

Considering the combination of over-reporting of positive responses and the under-reporting and low rate of compliance with the procedural requirements for denials, the need for this new monitoring system is acutely clear. If it is fully implemented, if the IFAI distinguishes among agencies in reporting compliance trends, and if the results are made public, then the monitoring system's results will serve both to encourage high-performing agencies and to reveal lagging agencies. This initiative could thereby make a significant contribution to the IFAI's role as an agency of "horizontal accountability."

IV. Citizen Complaints about Information Denials: Trends and Outcomes

This section addresses the second indicator of governmental responsiveness, the process and results of official citizen complaints to the IFAI in response to denials of their information

requests or positive responses that they were dissatisfied with.¹⁸ This indicator sheds light on the degree to which Mexico's distinctive arbitration mechanism actually increases the likelihood that citizens receive the information that they request.

The IFAI commissioners are mandated to address citizen complaints by ruling on whether or not an executive branch agency's response was legitimate. This section addresses the outcomes of this process by documenting the trends in each step of the process. The analysis begins with the numbers of requests, followed by the trends in IFAI rulings on those complaints, the frequency with which IFAI rulings instruct agencies to release information, and the degree of actual agency responsiveness to these IFAI mandates.

The complaint process is straightforward; if requesters want to seek recourse in response to what they consider to be an unjustified denial or an insufficient provision of information, they do not need lawyers or technical experts. Indeed, the IFAI itself is mandated to assist in transforming a complaint into a legally grounded formal complaint, to help the information requester present the strongest possible case. As Table 7 shows, since 2005, between five and six percent of total information requests have led to official complaints. This is probably an underestimate of the degree of citizen dissatisfaction, since not all requesters who consider an agency response to be unjustified will necessarily file a formal complaint. Rather than file a complaint in response to an unsuccessful information request, however, some requesters find it simpler to compose a new request that is crafted to avoid the obstacle presented by the first one.

The IFAI commissioners meet weekly, in public sessions, to rule on these citizen complaints. The system allows requesters to register complaints about *any* response, for whatever reason. This includes both formal, explicit denials and *de facto* denials, such as responses that do not include the information requested.

¹⁸ These official complaints could also be referred to as "appeals" of agency decisions, since the IFAI adjudication process is akin to an administrative court, but the term is too easily be confused with formal legal appeals through the judicial system, and is therefore not used here. Thanks to one of the anonymous reviewers for noting this issue.

Table 7: Total Complaints Submitted to IFAI and Proportion of Total Requests that Lead to Complaints

	Accumulated total	2003*	2004	2005	2006	2007	2008
Total complaints filed with IFAI	19,020	635	1,431	2,639	3,533	4,864	5,918
Percent of total requests	5.1%	2.6%	3.8%	5.3%	5.9%	5.1%	5.6%

* Information request system in operation beginning June 12, 2003

Source: IFAI (2009: 20 and Information request no. 0673800005909, Fox and Haight (2010: 147)

The commissioners' possible responses to official complaints fall into the following categories: confirm, repeal, modify, *positiva ficta*, stay of the case, discard, "no show," and inappropriate. The IFAI classifies these outcomes into three broader categories: those that involve application of the law (known as "core rulings"), those that are based on procedural issues (known as "procedural rulings"), and *positiva ficta*, a unique category of rulings that encourages agencies to respond to the request (and grant the information at the agency's cost) within the legally mandated time limit.

A resolution classified as "confirm" implies that the IFAI has determined that the agency's response was correct (whether denying or disclosing information). "Modify" implies that the IFAI neither completely accepts nor completely rejects the response given by the agency, and rather mandates that the agency change its response in some way. In resolutions described as "repealed," the IFAI has ruled that the agency response was incorrect, which often means taking the side of the requester. The IFAI annual reports categorize "stays of the case" as "procedural rulings." However, many "stays of the case" imply that the agency has changed its position during the course of the complaint, which in effect may mean that it has granted access to the information requested.

The majority of complaints have required that IFAI commissioners make substantive decisions about whether or not the agency's response was appropriate. Table 8 shows that in 37.3 percent of the cases, IFAI commissioners either repealed or modified the agency's response. The commissioners have ruled fully in favor of the agency in only 17.5 percent of cases. At least until recently, they tended to interpret the law in favor of disclosure. Indeed, because 43 percent of total rulings are on procedural grounds, this means that *of the remaining 57 percent of cases ruled on substantive grounds*, the IFAI sided with information requesters in close to 66 percent of the cases. These percentages reveal key trends. One of these trends is the

high rate of rulings on procedural grounds, whose significance is not clear.¹⁹ Moreover, as noted above, complaints involving agency claims that the information requested “does not exist” are difficult to disprove, because the “burden of proof” falls almost exclusively on the requester.²⁰

Table 8: Categories of IFAI Resolutions as Percentages of Total Complaints Addressed, 2003-2008

Adjudication decisions (IFAI resolutions)	Percent of total complaints addressed	2003*	2004	2005	2006	2007	2008
Core rulings							
Confirm	17.5%	16.5%	15.9%	14.9%	15.5%	16.6%	20.3%
Modify	21.3%	21.7%	21.4%	20.4%	19.2%	24.8%	20.3%
Repeal	16.0%	19.5%	23.4%	22.5%	17.1%	13.8%	12.1%
Positiva ficta	1.8%	1.8%	0.8%	0.3%	0.4%	1.1%	3.3%
Procedural rulings	43.4%	40.5%	38.4%	41.9%	47.7%	43.7%	44.0%

* Information request system in operation beginning June 12, 2003

Source: IFAI (2005: 18–19; 2006, 19-20; 2007, 23-24; 2008a, 20-21), Fox and Haight (2010: 148)

According to the 2002 transparency law, the commissioners’ ruling ostensibly becomes binding for the agency.²¹ Agencies are not allowed to challenge IFAI resolutions by filing their own appeals through the court system, but requesters are permitted to (Art. 59). Nevertheless, some executive agencies have filed legal challenges, though only in 1.2 percent of the more than 19,000 IFAI resolutions (IFAI, 2008a: 24) Of the 45 judicial injunctions agencies filed against IFAI resolutions during 2007, for example, the courts found in favor of the IFAI in 26 of those cases, while fifteen were still unresolved (IFAI, 2007: 25). In other words, the courts have yet to find in favor of agencies that challenge IFAI decisions and so far they have consistently ruled that IFAI resolutions are definitive. IFAI rulings are published online, including supporting documents. If an agency is required to release information, it is usually given ten working days to respond and deliver the information (after it gets the official notification of the resolution). Table 9 highlights more specifically how often IFAI resolutions instruct agencies to release information. One of the

¹⁹ Additional research on this category of rulings is needed. One hypothesis would be that the high rate of rejections of complaints on procedural grounds indicates a steep learning curve on the citizen demand side, as requesters learn the rules. While in principle those requesters could apply lessons to future experience, in a process of trial and error, the rulings could reinforce mistrust and lead some to lose faith in the process.

²⁰ See, for example, the test case detailed in Fox and Haight (2007).

²¹ IFAI rulings are not bound to follow precedent.

most notable observations is the contrast between the relatively consistent trend between 2003 and 2007, when the annual share of resolutions that instructed the release of information averaged 42.8 percent, and the sharp dropoff to 29.6 percent in 2008. Table 8 revealed a similar trend in 2008. Between 2003 and 2007, IFAI commissioners ruled in favor of agency denials of information requests in an average of 15.3 percent cases, annually. In 2008, in contrast, IFAI rulings in favor of agencies rose to 20.3 percent of the total, an increase of almost one third over the previous average. Together, these two trends suggest a significant change in the direction of IFAI rulings.

Table 9: Frequency and Proportion of IFAI Resolutions that Instruct Agencies to Release Information

Resolutions with instructions	Accumulated total	2003*	2004	2005	2006	2007	2008
Totals	7,202	275	680	1,153	1,395	1,945	1,754
Percent of total complaints	37.9%	43.2%	47.5%	43.7%	39.5%	40.0%	29.6%

* Information request system in operation beginning June 12, 2003

Source: IFAI, “Estadísticas del SISI,” www.ifai.gob.mx, Accessed April 11, 2009 and Information requests nos. 0673800076608, 0673800018807, 0673800026809, Fox and Haight (2010: 150).

As in the case of agency responses to direct citizen requests, agency responses to IFAI mandates to release information also vary widely. Table 10 shows the ten agencies that receive the most complaints, in absolute terms. Among those ten, however, some generate large numbers of complaints simply because they receive huge numbers of requests overall — yet only a very small share of those requests lead to complaints, as in the case of the IMSS. Other agencies high on the list, in contrast, provoke rates of complaints that are far higher than average (approximately 5 percent, as indicated in Table 7). Notably, two ministries that are responsible for good governance — the Ministry of Public Administration (SFP) and the Attorney General — generate rates of citizen complaints above *nine* percent. These rates, almost double the average, indicate that citizens frequently challenge the legitimacy of information denials by these two agencies. These high rates are also related to the nature of the contested information, which is often related to legal cases involving criminal or administrative transgressions. The high degree to which SFP information responses provoke complaints is especially notable because the same ministry is responsible for deciding whether and how to sanction federal officials in the event of non-compliance with IFAI resolutions. In other words, the SFP is in the position of being both judge and jury when it comes to compliance with IFAI resolutions.

The IFAI, recognizing the importance of monitoring agency responsiveness to its own commissioners' rulings, developed a set of indicators with which to track delays in agency disclosure of information in response to IFAI instructions (IFAI, 2008c). The IFAI office in charge of Monitoring and Coordination with Executive Branch Agencies then carried out a pilot study of agency responsiveness in 2008, known as "*Apertura, Efectividad de Clasificación y Cumplimiento a Resoluciones, ACC*".²² Overall compliance scores for the first and second semesters of 2008 are presented in the final two columns in Table 10, which lists the ten agencies that received the most complaints between 2003 and 2008.

These scores reflect three different indicators of agency compliance with the complaint procedure, each weighted differently. Forty percent of the score reflects the percentage of negative responses to information requests that include reports from the agencies' information committees explaining the denials. (These official justifications are required and therefore bolster the agency's position in the adjudication process). Another 15 percent of the score reflects what percentage of complaints result in the IFAI upholding the agency's original response. The final 45 percent of the score reflects how frequently and by how many days the agency exceeds the established period of time for complying with IFAI adjudication resolutions.

²² Email communication, José Luis Marzal Ruíz, Director General de Coordinación y Vigilancia de la Administración Pública Federal, IFAI, July 6, 2009.

Table 10: Top 10 Agencies in Number of IFAI Adjudication Decisions: Assessment of Responses, 2008*

Agency	Total complaints addressed (2003-2008)**	IFAI decisions as percentage of total information requests to each agency	First Semester 2008 ACC Score (out of 10)	Second Semester 2008 ACC Score (out of 10)
Mexican Social Security Institute	1,405	3.2%	7.7	8.6
Ministry of Public Administration	1,050	9.9%	8.7	9.2
Ministry of Public Education	911	5.2%	6.8	8.5
Office of the Attorney General	816	9.1%	7.3	4.2
Finance Ministry	727	5.1%	9.1	8.8
Communication and Transportation Ministry	623	6.7%	6.3	8.0
Tax Administration Service	578	7.9%	8.8	9.6
PEMEX	490	8.1%	8.9	8.8
Institute for Social Security and Services for Public Employees	468	5.8%	9.3	9.1
Ministry of the Interior	452	5.1%	8.3	9.2
Proportion of complaints about top 10 agencies as percentage of total complaints addressed (2003-2008)	39.5%			

* Information request system in operation beginning June 12, 2003

** Figures are based on total complaints where the process has concluded and the IFAI commissioners have reached a final resolution.

Source: Information request nos. 0673800005909 and 0673800026809; Fox and Haight (2010: 151), ACC data from personal email communication, José Luis Marzal, IFAI, July 6, 2009.

None of the IFAI's three ACC indicators measures the extent to which the information provided in response to an IFAI resolution actually provides the information that the citizen has requested. Rather, when an agency fails to respond to an IFAI resolution with instructions, this contributes to a lower quotient for the part of the ACC score that reflects *timeliness* of compliance. The monitoring system records complete noncompliance as a long string of days exceeding the deadline. This system does not address the quality or completeness of agency compliance with IFAI mandates.

Until recently, the IFAI relied on a “demand-driven” system to discover cases of complete non-compliance with resolutions, depending on complaints by citizen requesters to alert the IFAI Monitoring and Coordination office to cases of agency compliance (see discussion below). IFAI authorities realized, however, that there was substantial under-reporting of non-compliance, and launched their own compliance verification system in September, 2007. Table 11 shows remarkable initial findings. Perhaps not surprising, agency non-compliance rates at the time of IFAI verification are quite high, ranging between 39 and 57 percent. The data also show the very significant degree of under-reporting of citizen complaints, underscoring the importance of the IFAI’s new effort to take institutional responsibility for verifying compliance. Notably, the IFAI reports that agencies respond to their follow-up efforts to a high degree, elevating the officially reported rate of overall compliance with IFAI mandates to 98 percent (IFAI, 2009a).

Table 11: Results of IFAI Verification of Agency Compliance, 2007-2009

Year	Total resolutions that mandate agencies to disclose information	Number of resolutions out of compliance at the time of IFAI verification	Percentage of resolutions out of compliance at the time of IFAI verification	Resolutions followed by citizen complaints about non-compliance (not included in IFAI verification data]
2007*	935	340	57%	80
2008	2,028	1,052	52%	131
2009**	599	232	39%	29

* IFAI verification system in operation beginning in 2007.

** Up until August, 2009.

Note: The resolutions correspond to the year the complaint was filed, regardless of the year of resolution.

Source: José Luis Marzal, IFAI, personal email communication, Sept. 4, 2009

Further independent research is needed to assess the degree to which cases registered as “in compliance” actually respond to IFAI mandates and citizen requests. Consider, for example, that cases officially recorded as in compliance include those in which agencies that are instructed to release information can resolve the issue with mere procedural compliance. For example, if the IFAI resolution rejects an agency’s claim of “inexistencia” because it lacked the appropriate formal document from its information committee, the agency is said to comply if it responds with the missing formal justification of its denial. In other words, according to this approach, formal compliance with an IFAI ruling does not necessarily mean that the claimant actually received the information in question – in contrast to the IFAI’s new system for monitoring the content of information requests. In brief, the demand-driven approach to non-compliance

implies that pursuing compliance is a shared responsibility between citizen stakeholders and the agency charged with horizontal accountability, the IFAI.²³

Citizen Complaints about Non-Compliance with IFAI Resolutions

Citizens have three possible recourses if dissatisfied with an agency's response to an IFAI mandate. First, they can request the IFAI's continued involvement in the case by making an official complaint to its Department of Monitoring and Coordination with Executive Branch Agencies. Once a complaint is filed, IFAI staff then work directly with the agency to encourage compliance with the mandate, using their informal powers of persuasion, since they lack the tangible threat of sanctions. Second, complainants can file legal appeals through the courts to make the case that an agency has violated their rights. Few have chosen this arduous legal path. Complaints to the IFAI are more common, occurring in response to roughly 3.5 percent of IFAI resolutions. Third, requesters can give up, in the face of bureaucratic delays and the possible perception that they are wasting their time insofar as they perceive the IFAI as unlikely to succeed in extracting the contested information from the agency in question.

The degree to which different agencies provoke complaints for non-compliance with IFAI instructions is a revealing indicator of variation in agency responsiveness to IFAI mandates. Note, however, that the lack of an official complaint is *not* an indicator that the agency necessarily complied with the ruling, since many citizens give up, or make do with some fraction of the information that they requested. From an agency's point of view, stonewalling often works. Table 11 compares agencies on two indicators: the number of IFAI rulings with instructions to release information and the percentages of IFAI resolutions that are followed by in complaints about agency non-compliance.

²³ When framed in terms of the political science conceptual contrast between "police patrols" and "fire alarms," this system clearly relies on the "fire alarm" approach. For discussion of this concept in the context of innovations in social oversight institutions, see Fox (2007b).

Table 11: Top 10 Agencies with Most Complaints for Non-Compliance with IFAI Resolutions when Instructed to Release Information, 2004-2008*

Agency	Accumulated total complaints 2004-2008	Total IFAI resolutions with instructions	Percentage of total IFAI resolutions involving instructions to agency resulting in complaint, 2004-2008
Ministry of Public Education	46	357	12.9%
Office of the Attorney General	34	249	13.7%
Mexican Social Security Institute	30	420	7.1%
Ministry of Public Administration	29	251	11.6%
Foreign Relations Ministry	24	185	13.0%
Finance Ministry	22	233	9.4%
Office of the President	19	227	8.4%
PEMEX-Exploration and Production	19	122	15.6%
Communication and Transportation Ministry	18	232	7.8%
National Water Commission	17	125	13.6%

* No complaints for non-compliance were registered for 2003.

Source: Information request no. 0673800076508 and 0673800064109, Fox and Haight: 2010: 152)

As one might expect, the agencies with the most numerous IFAI mandates to release information are among the most-requested agencies overall, notably the IMSS. However, they vary widely in terms of the rate at which IFAI rulings result in citizen complaints for non-compliance. The agencies that have the highest *proportion* of complaints for disregarding IFAI rulings include PEMEX, the SEP, the Attorney General — and most notably, the SFP. A pattern of institutional behavior emerges when one also takes into account the SFP’s low rate of satisfactory replies to information requests, documented in the “top five” study, as well as its high rate of complaints about information denials.

The IFAI’s office of monitoring and verification reports that of the total of 747 complaints of non-compliance with resolutions received between 2003 and 2009, a remarkable 718 achieved delivery of the documents without having to seek recourse to a formal denunciation (96 percent).²⁴ This success rate calls for further analysis. As a last resort, the IFAI does turn cases of non-compliance with resolutions over to the SFP for investigation and possible administrative sanctions. Over the IFAI’s entire history, from 2003 through August, 2009, the total number of cases turned over to the SFP was 56, with 4 more in process. Approximately one quarter of those

²⁴ José Luis Marzal, IFAI, email communication, Sept. 4, 2009

cases involved the Attorney General's office. Of those 56 cases over this entire period, most remain officially listed as "under investigation" or "closed because of lack of evidence." Only 7 concluded with administrative sanctions (IFAI 2009c).

Case Study of Agency Responses to Complaints from Information Requesters: SHCP

The high level of variation in agency responsiveness to IFAI mandates suggests that future research on limits and possibilities for open government reforms should address the institutional dynamics that are specific to a given agency. Given the absence of a pre-existing methodology with which to address this question, one of the authors carried out a pilot study in 2007, intended to develop independent indicators of agency responsiveness to IFAI resolutions (Gama Ríos and Haight, 2007).²⁵ The research strategy combined quantitative analysis of trends involving IFAI adjudication decisions and agency responses with qualitative analysis of their content. The research design focused on a large sample of rulings on citizen complaints involving just one of the most-solicited agencies, the SHCP. The SHCP was chosen for this case study because the findings of the "top five" study cited above suggested that the agency was relatively unsympathetic to open government but was also attentive to legal procedures. The set of cases of complaints studied included all of the IFAI's decisions on complaints about SHCP responses to information requests in 2005 and 2006.²⁶

During these two years, citizens filed a total of 4,747 information requests to the SHCP, which led to 258 published IFAI rulings on citizen complaints (5.5% of all SHCP information requests during these two years – close to the overall average). Following IFAI rulings that mandated disclosure ("con instrucción a entregar informacion"), the SHCP released additional information to citizens only 59% of the time. In the rest of the cases, the SHCP responded to IFAI instructions to release information with "declarations of non-existence" of some or all of the information required.²⁷ Yet almost half of the original complaints were provoked in the first place by agency claims that the information did not exist or the agency was not responsible for the information ("incompetente"). The IFAI ruled in favor of the citizen in 30% of these two kinds of

²⁵ The authors' access to the data was granted by the IFAI's office of Coordination and Monitoring of the Federal Executive Agencies.

²⁶ The second half of 2003 and all of 2004 were left out because both requesters and the agency itself were considered to be still in a learning phase, and therefore results from that period would not necessarily be representative of the agency's most institutionalized responses.

²⁷ "Partial" denials occur when the responding agency determines that it is capable of providing part of the information that the citizen requests, but that some of the information requested is denied under one of the categories of denial, such as incompetencia, inexistencia, or reserved or confidential.

cases, thereby rejecting SHCP claims (Gama Ríos and Haight, 2007: 27). If one includes other SHCP claims that involved at least partial declarations of “inexistencia” or “incompetencia,” but were registered by SHCP as having delivered information, then 65% of citizen complaints came in cases that were registered as one of these two categories of denials (Ibid: 22-25). Indeed, 30% of citizen complaints questioned SHCP claims that the agency had responded “positively” to the initial request (Ibid: 27). Another category of information denial involved SHCP claims that the information requested was considered to be “reserved or confidential.” Of the 48 complaints about denials based on those grounds, the IFAI supported the SHCP in only 2 cases (Ibid: 29).

If the quality of agency responses to citizen information requests is an indicator of the state’s “answerability” to society, the propensity of agencies to respond adequately to IFAI rulings is an indicator of horizontal accountability – that is, the capacity of one agency to encourage another to be more accountable. As mentioned in the introduction, the IFAI, as the agency mandated to uphold the 2002 transparency law, is an innovative institution. Mexico is the only country in Latin America with a semi-autonomous agency specifically dedicated to this mission. Yet in practice, the issue of agency non-compliance with IFAI decisions puts the agency’s capacity to play a “horizontal accountability” role to the test.

The preceding analysis of citizen complaints about responses to information requests and the level of agency compliance with IFAI rulings on these complaints finds mixed results. On the one hand, the official complaints process seems to be perceived as a legitimate and often effective resource for petitioners who question official information denials, as demonstrated by the sizable number of complaints (representing roughly five percent of requests) and the frequency with which the IFAI finds on the side of the complainant. A more in depth analysis of the complaints process, however, reveals deficiencies in the system. Because the IFAI is only just beginning to go beyond a “complaint-driven” approach to determining whether its rulings are respected, data still do not exist that would allow a precise determination of the degree to which agencies actually comply in practice. Moreover, the IFAI’s reliance on persuasion to deal with non-compliance, while occasionally effective, is a reflection of its lack of capacity to offer either carrots or sticks with which to encourage compliance. Nevertheless, in the course of the formal complaints process, unexpected new patterns of information disclosure emerged.

The study of complaints about SHCP responses to information requests found that official agency responses to IFAI mandates do not capture the full pattern of information disclosure generated by the complaints process. In 50% of the cases in the sample, the complaints process itself, *before* the final decision, led the SHCP to disclose all or some of the information originally requested. This does not include information that was made public by the SHCP following the

IFAI rulings, in response to IFAI instructions. In half of the complaints, in other words, the SHCP added information to the complaint that either directly responded to the request or was directly relevant (Ibid: 20). The authors observe:

“This information remains in the public domain because of the publication of the files of the resolutions on the IFAI’s website. This outcome has two possible interpretations. First, it underscores the high impact of the appeals process, the research work on the part of the Commissioners and IFAI staff, and the high value of the resolution files as “public goods.”... The second interpretation is that in half of the cases in which a request is appealed, the Finance Ministry did not provide an appropriate reply in the first place. Given that the information comes to light in the appeals process, that means the Finance Ministry did not include it in its first reply to the requester.”²⁸

V. Potential Explanations for Cross-Agency Variation in Responsiveness: Conceptual Dilemmas

This study focuses on documenting patterns of institutional behavior that could be described as the “supply side” of access to official information. It does not delve into the “demand side” of access to information, which reflects the priorities and strategies of citizens and civil society organizations.²⁹ Characteristics of the information requests themselves are relevant for understanding patterns of institutional response. Recall that the NSA study, described in Section III, found that citizen requests for information were most successful when they referred to the specific government documents that they sought and when they used the technical language that was the parlance of the agency in question. However, it is not clear why variation in “demand side” factors would be sufficient to account for the wide variation in response patterns across agencies found here. Indeed, the societal process of learning how to make requests would lead one to expect an increase in the precision and effectiveness of the requesting process over time

²⁸ Original in Spanish: “Esta información queda en el dominio público por la publicación de los expedientes de las resoluciones en la página Web del IFAI. Este resultado tiene dos principales interpretaciones. En primer lugar, destaca el alto impacto del proceso del recurso de revisión, la labor de investigación en los casos por parte de los Comisionados y la DGEI, y el alto valor del ‘bien público’ que son los expedientes de las resoluciones. ...La segunda interpretación..., es que en la mitad de los casos donde una solicitud se ha convertido en recurso de revisión, la SHCP no había dado una respuesta adecuada inicialmente. Dado que la información sale gracias al proceso del recurso de revisión, quiere decir que la SHCP no la entregó en su respuesta original al solicitante.”

²⁹ See Fox, Haight, Hofbauer and Sánchez Andrade (2007).

— yet the IFAI’s own 2008 pilot monitoring of the quality of agency responses found a lower rate of satisfactory responses than the “top five” independent assessment in of 2003-2005.

At the broadest conceptual level, possible explanations for variations in the quality of agency compliance with the transparency law tend to fall into two interconnected categories: “the culture of transparency” and institutional resources and incentives. While the first approach emphasizes values, the other focuses on interests and power. This section takes an inductive approach to posing possible explanations for the variations in agency response that are documented throughout this study, in order to inform the design of more explicitly analytical studies in the future.

The Culture of Transparency ³⁰

One set of explanations for whether institutions comply with transparency mandates is conceptually grounded in culture, a term often used as shorthand to refer to values, attitudes and worldviews. In this broad view, if the rules are not seen as legitimate by those tasked with following them, then the likelihood of non-compliance increases. In principle, many can agree on the importance of “the culture of transparency” — perhaps because it can be understood in so many different ways. Here, this concept refers to changes in the beliefs, practices, and expectations, embedded in both the state and society, about the public’s right to know. Clearly, this idea goes beyond legal formalities, since legal changes do not automatically create a widely shared recognition that government information belongs to the citizenry, rather than being the patrimony of officials. The term implies that attitudinal changes are needed for functionaries to accept the public’s right to know—especially since, in practice, the threat of tangible sanctions for noncompliance is so weak.

A 2007 official survey of more than 1,200 federal officials regarding their attitudes towards information access reforms revealed substantial skepticism, to say the least. The survey was based on a random sample of administrators at the rank of area head or director general. More than 43 percent agreed with the statement “most information requests are used by requesters for some personal benefit,” and 30 percent reported that since the information law went into effect, “some officials save fewer work-related documents.” When asked when information should be “protected” from the public, 45 percent agreed with “when the superior has not authorized its release,” and 53 percent agreed with “when we suspect that the information will be used to attack the agency.”³¹ These attitudes help explain the increase in denials of information requests

³⁰ This section draws on Fox and Haight (2010: 155-157).

³¹ For details, see Probabalística (2007).

accompanied by claims that information requested does not exist. At the same time, this survey does provide some reason for optimism about the culture of transparency in government agencies. For instance, 62 percent of respondents agreed that “thanks to the archive law and the transparency law, files are better organized in my agency” and 80 percent of respondents agreed that “access to public information has led to changes in culture of public administration.”

To promote the culture of transparency also implies a series of changes in civil society, involving the horizontal spread of the right to know as part of the broader “right to have rights.” Mexico’s years of civil society mobilization, reinforced by the IFAI’s public media campaigns, appear to have made an impact. According to a major public opinion survey, when asked, “Do you or do you not have the right to access the information generated by the government,” 89 percent of respondents answered in the affirmative. Their reasons included “Because I am Mexican” (25 percent), “Because I pay taxes” (14 percent), “Because it’s the government’s obligation” (22 percent), and “All of the above” (27 percent). The survey also reported that 64 percent of respondents had heard of the IFAI. Yet only 15 percent reported that they had requested information from the government.³²

Changes in the culture of transparency within both the government and civil society involve not only new expectations, but also new practices. For citizens, the effective exercise of information rights requires significant investments in learning — involving both the technical side of *how to make requests*, as well as the broader strategic question of *what to request*. This speaks to the importance of incorporating the exercise of information rights into broader campaigns in defense of the public interest (e.g., Méndez Lara 2009). Increasingly, civil society organizations are making this investment in learning how to use the new tool kit. The tangible impacts, though promising, remain incipient and vary widely across issue areas. Government officials are also acquiring the skills and resources to store information and to deliver requested information to citizens in accessible formats. Equally important, the respect for information rights is becoming a much more central aspect of bureaucratic culture in Mexico than it was a decade ago.

Incentives and Resources

Another set of possible explanations for institutional behavior is conceptually grounded in institutional incentives and resources. Do institutions have the resources needed to carry out their goals, and is staff behavior framed by appropriate combinations of positive and negative incentives? The responsibility to comply with transparency laws constitutes an unfunded mandate

³² See Pacheco Luna (2006: 67–68, 72, 80). See also Sobel, et al (2006).

for government agencies. This leaves the decision of how much to invest in compliance up to agency leadership, which may well account for some of the variation in patterns of responsiveness. For example, agency claims that documents requested “do not exist” could simply mean that they could not be found given the staff time allocated to look in easily accessible places (for example, in electronic databases rather than in paper files). Dedicated resources are required to designate staff who are capable and equipped to respond to the demands of incoming information requests. Furthermore, agencies must have sufficient resources and have a system in place that allows them to effectively store data about their functioning so as to be able to efficiently access the information necessary to respond to citizen requests. Yet the Mexican state’s sophisticated management structure already requires ease of information flow “upwards,” to senior officials, so much of the relevant information on key state decisions not only exists, it is accessible to administrators. This would suggest that improving public access to the same information “downwards” to society may not necessarily require substantial additional resources. Future studies of variation in resource allocation for information responses across agencies may well find some correlation between responsiveness and funding for information response systems. Yet variation in resources alone is unlikely to be a sufficient explanation, especially in light of the Weber’s time-honored propositions cited in the introduction.

Explanations that focus on resource allocation are closely linked to, yet distinct from those that focus on incentives, which include both rewards and sanctions facing all levels of agency personnel. The extent to which agencies respond effectively to citizen information requests is a function of their institutional *incentives* and the *resources* that are available to them. Institutional design issues are relevant here. Indeed, the contrast between the entities charged with implementing the information law and one of the Mexican government’s anti-corruption innovations — the Internal Control Offices — is notable. Though embedded directly within each federal agency, these offices are accountable “diagonally,” to an external oversight body — the Ministry of Public Administration (SFP). This institutional design is intended to encourage compliance by avoiding conflicts of interest. In contrast, the government’s Information Committees, the entities within each agency charged with compliance with the information access law, are accountable upwards, to agency leadership, rather than downwards to citizens or horizontally to the IFAI. This dynamic creates an inherent incentive problem, since the Information Committees have few incentives to give priority to the public’s right to know over vested interests within the same agency that might be affected by information disclosure. The fact that revealing information increases the possibility that agency malfeasance would be discovered certainly counts as a major disincentive for compliance.

Future research on internal agency dynamics of compliance is needed to determine whether there are positive incentives that favor compliance, and how they work. From the outside, however, there appear to be few negative incentives for non-compliance, since the IFAI lacks sanctioning capacity and in the 60 cases in which the IFAI turned over cases of non-compliance, the SFP has been very reluctant to sanction them, with only seven such cases so far (IFAI, 2009c). In some cases, however, the IFAI has had some success with encouraging agency compliance by using a two-step evaluation process. In their monitoring of compliance with Article Seven of the transparency law, which involved pro-active information dissemination, the IFAI first scored agencies in a confidential assessment, and then shared the results with the agency with the understanding that the findings of the next evaluation would be made public. IFAI's new systems for monitoring agency compliance, described in section III of this study, have the potential to affect the public image of agencies that continually score poorly. The public dissemination of these internal IFAI rankings of agency performance would test the notion that associated costs to agency prestige could induce changes in actual institutional behavior.

Ultimately, the cultural and interest-based explanations for agency compliance are not dichotomous. Instead, they can be mutually reinforcing. In other words, institutional values shape agency incentive structures, which in turn shape staff attitudes. Agency leadership and staff cultures affect both the allocation of resources to respond to information requests and the level of tolerance shown for "opaque" transparency. Yet in a reciprocal fashion, the internal incentive structure and access to resources also influence attitudes towards the extra work associated with responding to information requests, as well as the degree of internal tolerance for merely "opaque" transparency. This brief conceptual discussion suggests that the design of future research intended to explain patterns of agency responsiveness should take into account *both* attitudes and incentives.

VI. Conclusions

While many have placed their hopes in transparency as a means to promote accountability, this study addresses a prior question, the issue of how much transparency is delivered in the first place. Specifically, this study focuses on two different arenas of "answerability." The first dimension, the responsiveness of government agencies to citizen information requests, is a measure of the quality of the state-society interface. The information request system was carefully designed to take agency incentives for opacity into account. The expectation that citizens would frequently question the legitimacy of information denials led to the

creation of an institutionalized complaint mechanism. This body constitutes the second arena of “answerability,” an adjudication process led by “third parties” — the IFAI commissioners — that obliges agencies to justify their alleged information denials, both to the IFAI and to the public. This system constitutes a case of checks and balances, in which one agency encourages others to comply with the law — and is therefore a measure of horizontal accountability.

The main findings of this study for both of these dimensions indicate both substantial progress and entrenched obstacles. First, a very substantial fraction of citizen information requests to federal agencies do get the information that they seek. The official data indicate an overall positive response rate of 75 percent. The independent assessment of the five most-requested agencies between 2003 and 2005 found that, in practice, 87 percent of the reported “positive” responses were satisfactory. The IFAI’s much larger 2008 pilot monitoring exercise found that 83 percent of “positive” responses were really positive, and approximately half of all responses to information requests were positive. Though substantially lower than the public official data suggest, this is still a remarkably high response rate. The new IFAI system for monitoring agency responses to information requests has the potential to encourage greater responsiveness, if its findings are proactively disseminated.

The second finding is that federal agencies are increasingly denying the “existence” of requested information, and the IFAI’s new internal monitoring tool found that the *actual* rate of this type of denial is 20 percent higher than the reported rate. This issue takes on greater significance in light of the lack of evidence of overall improvement in the rate of positive responses over time, in spite of presumably increased experience with the process both on the “demand” and the “supply” sides. In other words, while one would expect that, over time, citizens would improve their capacity to formulate successful information requests, and agencies would get better at responding to them, the year-to-year data do not reflect an improvement in the rate of positive information responses.

Third, in the case of citizen complaints about information denials, the IFAI still frequently sides with claimants, but increasingly sides with agencies. In 2008, IFAI rulings sided with agencies at a rate one third higher than previous trends. This suggests that 2009 data will deserve close examination, to see whether 2008 was an outlier year or the beginning of a clearer trend.

Fourth, when the IFAI mandates agencies to release information to citizens, two new internal monitoring systems are encouraging agency compliance. The first tracks agency delays in responding to the rulings, while the second verifies whether agencies respond at all. The IFAI has yet to pro-actively make the results of these two compliance initiatives public. Nevertheless,

this verification process is extremely significant in light of the high degree of under-reporting of non-compliance, when measured through citizens' own pro-active complaints. The official complaint process also generates a little-known source of information disclosure, through the process itself. An independent assessment, focused on the Finance Ministry, shows that the process of contesting and adjudicating the denials itself sometimes generates new information disclosure.

Fifth, the different indicators and data sources presented here all show wide variation *among* federal agencies regarding their degree of responsiveness — *both* to citizens *and* to IFAI mandates. The explanations for this variation are not clear, especially considering that the system for discouraging non-compliance with the information access law lacks effective sanctions. The study found that the agency responsible for applying sanctions for non-compliance with IFAI mandates, the SFP, is also one of the federal ministries that is most resistant to responding to citizen information requests, as well as one of those most reluctant to follow IFAI mandates. As a result, there appears to be a conflict of interest problem in the information access regime.³³ At the same time, this finding suggests that incentives other than sanctions must account for the behavior of those agencies that do respond at high rates to citizen information requests.

More detailed explanations of variation in agency response will require more systematic comparative institutional analysis. Yet externally-based comparisons of agency “outputs,” such as those presented here, will inherently be constrained by their inability to get inside the “black boxes” of specific agencies, to shed light on their respective internal priorities, cultures and incentive structures. While this study has *described* patterns of state responsiveness to society, actually *explaining* these patterns calls for an analysis of those who are doing the responding — both their cultures and their interests.

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³³ Indeed, in response to formal IFAI charges against the Attorney General's office for non-compliance with resolutions, the SFP has claimed the de facto power to reinterpret the federal transparency law by claiming that the IFAI's resolution was incorrect (personal email communication, Juan Pablo Guerrero Amparán, Oct. 14, 2009).

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