



# Peering Behind the Curtain

by Jude Joffe-Block and Brian Palmer-Rubin

Can a political system be described as democratic if its own citizens are unable to access official documents or even basic information about government processes? Analysts argue that “access to information” or “transparency” reforms are a key element of the second step of democratization, the ongoing political transformations that secure the rule of law and open up opportunities for greater political participation in fledgling democracies. In the last decade, these types of reforms have been adopted by several Latin American governments, transforming the relationship between agencies and the citizens they serve.

Transparency reforms are not only important in young democracies, however. As demonstrated by the notoriously opaque Bush administration — particularly with regard to national security — basic political freedoms and the

quality of democracy are vulnerable to abuse if politicians are not subject to public scrutiny.

The United States and Mexico are both at pivotal moments in achieving greater government transparency. In 2002, the Mexican Congress passed a federal transparency law and created an agency to handle information requests from citizens, the Instituto Federal de Acceso a la Información Pública (Federal Agency for Public Information Access, IFAI). And in the U.S., as one of his first acts in office, President Barack Obama wrote a memo to the heads of federal agencies and departments, calling on them to help usher in what he called “a new era of open government.”

While these advances are welcome steps in the right direction, both countries still have work to do

to ensure greater openness and accountability in their political systems, according to Kristin Adair, Staff Counsel at the National Security Archive, a research institute based in Washington, D.C., and Juan Ernesto Pardinás, a consultant with the Instituto Mexicano para la Competitividad (Mexican Institute for Competitiveness). Adair and Pardinás delivered presentations on these topics at the U.S.–Mexico Futures Forum panel on Transparency and Accountability.

The U.S. pioneered access to information legislation with the 1966 Freedom of Information Act (FOIA), which was one of the first laws ratified worldwide to allow citizens to request access to state documents. Yet in the four decades since this law was adopted, the U.S. government has experienced ebbs and flows in its level of transparency. The latest transition of power is only the most recent example. Adair explained that transparency policy in the U.S. remains at a crossroads between the Bush administration, which operated under the “presumption of secrecy,” and the Obama administration, which has pledged to disclose any information that does not clearly fall under the category of classified.

Still, even with the Obama administration’s renewed commitment to transparency, the American system is grappling with a number of challenges, according to Adair. National security concerns still loom large and are often in conflict with the public’s “right-to-know.” For example, the Obama administration cited security concerns when it refused to release photographs of tortured detainees in U.S. custody.

Furthermore, the procedure for responding to information requests is not yet seamless. Federal agencies do not have adequate resources to respond effectively to citizen information requests, sometimes leading to long delays in answering these petitions, which renders the service unsuitable for media organizations operating on short deadlines or lawyers who need information for pending legal proceedings. In addition to these logistical concerns is the technical challenge of archiving government records and communications when so much government business is now done over email.

Moreover, the system lacks any built-in oversight or enforcement mechanisms; complaints for unjust denials of information requests must go through the courts for resolution — a lengthy and arduous path. There is reason for optimism, however. Adair noted that in the fall of 2009, the Office of Government Services will be introduced, employing an ombudsman who will take up the cause of citizens in cases where agencies did not comply with their information requests.

One hope for the Obama administration’s new policy of openness is that it will translate into freer information sharing between U.S. and Mexican authorities. Adair argued that security interests would benefit if law enforcement agencies on both sides of the border were to have a more streamlined process for coordination. Also, improving bilateral communication regarding environmental health issues is necessary to avoid public health disasters in border areas, pointed out Adrián Fernández Bremauntz, president of the Instituto Nacional de Ecología (INE, National Ecological Institute), a research organization of the Mexican government.

Not only are there likely benefits to information sharing across the border, Adair also highlighted several ways in which the U.S. could improve access to information by following the example of Mexico’s IFAI. First, the IFAI handles information requests through a streamlined and user-friendly, Internet-based system in contrast to the U.S. system, where requests must be submitted to individual agencies. Second, the IFAI consistently sets and monitors deadlines for government agencies to respond to citizen requests. While Mexican agencies have up to 30 days to respond, Adair cited cases of U.S. agencies taking as long as 20 years.

Indeed, Mexico’s approach to government transparency is both innovative and far reaching. The IFAI, which serves the role of intermediary between citizens and government agencies, is a unique institution. In most other countries with access to information laws — like the U.S. — citizens submit their requests directly to the agencies from which they require the information. The procedure and the success rate often vary widely between agencies. In contrast, the IFAI centralizes the process, allowing citizens to submit all of their requests for information from federal government agencies through a single, user-friendly website. With the click of a mouse, a citizen can also register an appeal if she feels that an information request was unduly denied or an agency’s response was inadequate. A board of IFAI commissioners then considers the appeal, with the mandate to insist on disclosure in cases where the information requested is not explicitly exempt according to the 2002 transparency law. This system has yielded positive results: a recent analysis found that over 80 percent of information requests handled by the IFAI were fulfilled within the established deadline.

The IFAI is not without its faults, however. Requesting government information remains a difficult proposition for the average citizen. Information requests that are not composed using bureaucratic jargon or referencing official documents are often unsuccessful. Agencies can deny

&gt;&gt;

requests by claiming that the information sought does not exist. These denials are close to impossible for the citizen requester or the IFAI to verify.

Mexican statesman Cuauhtémoc Cárdenas noted that one of the IFAI's greatest weaknesses is its inability to compel compliance in cases where agencies refuse to provide information that the appeals board has already directed them to release. Mexico's Secretaría de la Función Pública (Ministry of Public Administration), a federal agency charged with promoting governmental transparency and accountability, is vested with the power to enforce compliance with the rulings of the IFAI appeals board. As Cárdenas pointed out, however, this enforcement body often appears to be more interested in catching people in the act of malfeasance than actually preventing abuses, missing many opportunities to improve the provision of information. Pardinas agreed with Cárdenas' observation but was cautiously optimistic that a newer agency, the Auditoría Superior de la Federación, which is modeled on the U.S. Government Accountability Office, has the potential to improve the oversight system for Mexico's transparency mechanism.

Several of the shortcomings of Mexico's access to information system are described in an article by Jonathan Fox, Professor of Latin American and Latino Studies at UC Santa Cruz, entitled "Mexico's Right-to-Know Reforms," published in the Fall 2008 edition of this journal. Fox recounts the experiences of grassroots civil society organizations in the Mexican state of Guerrero that attempted to use the public information system to uncover official documents revealing misappropriation of federal funds for state-run rural health clinics. Even though activists from these organizations had personally seen the documents requested, they were told by the Department of Health that the documents did not exist. Their appeals were unsuccessful because the IFAI appeals board was unable to verify whether or not the documents existed.

This example demonstrates another weakness in Mexican government transparency. State and local governments are not subject to the federal access to information law or to the jurisdiction of the IFAI, leading to generally lower levels of transparency for these entities.

Pardinas' presentation highlighted the serious inadequacies in government oversight at the state and municipal levels in Mexico. He argued that Mexico's decentralization of executive agencies in the 1990s was too hasty and failed to create adequate provisions for ensuring responsible governance at the local level. In particular, he cited a lack of standard budgeting practices at the state and local levels. As a case in point, Pardinas



PODER LEGISLATIVO

DECRETO 1725

EL HONORABLE CONGRESO DEL ESTADO DE BAJA CALIFORNIA SUR

DECRETA:

**SE APRUEBA EL PRESUPUESTO DE EGRESOS DEL ESTADO DE BAJA CALIFORNIA SUR, PARA EL EJERCICIO FISCAL DEL AÑO 2008**

**ARTICULO ÚNICO.-** Se aprueba el Presupuesto de Egresos del Estado de Baja California Sur, para el ejercicio fiscal del año 2008, que asciende a la cantidad de \$ **\$6,593,140,778.00** (Seis mil Quinientos Noventa y Tres millones Ciento Cuarenta mil Setecientos Setenta y Ocho pesos 00/100 Moneda Nacional) que atendiendo a su presentación programática, presentación económica y clasificación por ramo presupuestal, se aplicará de la siguiente manera.

#### The terse budget for the state of Baja California Sur.

compared the state of Jalisco's detailed 2008 budget, which totaled 277 pages, with the single paragraph produced by Baja California Sur.

Many analysts support Pardinas' assertion that the shortcomings of Mexico's federal political system are the result of the haphazard way in which decentralization reforms were adopted. Decentralization began to pick up steam in the 1990s, when the Carlos Salinas de Gortari and Ernesto Zedillo administrations expanded state and municipal budgets as much as tenfold and allowed state governments to drastically increase taxation of their citizens. By 1997, state and municipal governments had acquired much greater control over such policy areas as education, health care, public works and economic development. These reforms took place during a period in which the once-hegemonic Partido Revolucionario Institucional (Institutional Revolutionary Party, PRI) began to face serious threats to its electoral dominance at the national level. The party was able to strengthen its electoral base at a more local level by decentralizing budgets and policymaking to governors and municipal presidents. However, these reforms were undertaken without the necessary preconditions: capacity building for state and municipal governments; legislation to guide budgeting and public administration; and mechanisms for coordination between federal, state and local leaders.

To illustrate his point that decentralization had led to inadequate government oversight, Pardinas shared the colorful case of José Antonio Ríos Granados, the former

mayor of Tultitlán, a small city in the state of Mexico, who took advantage of lax oversight to alter the municipal budget and to elevate his own salary to roughly \$250,000 — a figure that compares favorably with the salaries of many G-8 leaders. The enterprising mayor also used government funds to attract the B-movie industry to Tultitlán, with the condition that he appear in films shot in his city. Pardinias theorized that a lack of oversight led many other local and state governments to squander their budget surpluses during times of prosperity, an outcome that is exacting a painful cost for Mexico in today's dire economic climate.

Still, a great triumph of Mexico's access to information law is that citizen watchdog efforts can expose these instances of government mismanagement. Uncovering corruption with facts obtained through IFAI information requests can also be a source of empowerment for groups that are traditionally marginalized.

C.R. Hibbs, Managing Director of the Hewlett Foundation's Mexico Program, recounted one such case to the group of participants in the session. She told of a woman's organization in rural Veracruz that used an information request to access health records that proved that the government had falsified documents in order to deny them essential medical procedures to which they were entitled. By exposing this misconduct, these women were able to draw attention to their cause and pressure the state to provide the promised medical services. In light of cases such as these, Hibbs urged the forum participants not to lose sight of "the power of the information itself to change lives and have an impact on even the poorest of the poor and the least-empowered citizens."

As Harley Shaiken, Chair of the UC Berkeley Center for Latin



DVD cover from Woodhaven Entertainment.

This B-movie, shot in Tultitlán, features the town's then-mayor, José Antonio Ríos Granados.

American Studies observed, the discussion went beyond transparency and accountability and was, in fact, about the infrastructure necessary for a democratic society. "Absent transparency, development becomes far more complicated. Absent transparency and accountability, democratic processes are much more uncertain," Shaiken concluded.

The Transparency and Accountability Panel was a session of the U.S.–Mexico Futures Forum held at UC Berkeley on August 23-25, 2009.

Presenters included Kristin Adair, Staff Counsel at the National Security Archive, and Juan Ernesto Pardinias, Consultant for the Instituto Mexicano para la Competitividad.

Jude Joffe-Block is a student in the Graduate School of Journalism at UC Berkeley.

Brian Palmer-Rubin is a Ph.D. student in the Travers Department of Political Science at UC Berkeley.