

Right to Information in a developing country: the case of Mexico

**Juan Pablo Guerrero A.
Information Commissioner
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The Mexican Federal Experience on RTI

- Fundamental right established in the Constitution
- RTI applies to all branches of Federal Government (no exclusions)
- Exemptions are clearly established and frequently require harm test

The Mexican Federal Experience on RTI

- Time framework for response and complaints is clearly established
- Complaints to independent Commission with binding decision powers (IFAI)
- Complaints can challenge administrative silence and other ways of not providing information

Institutional Settings: Government Agencies

- Requests are made directly to government agencies: 20 working days to respond
- Special liaison units in charge of searching for documents
- Internal Information Committee (top level authorities) intervene if unit classifies or does not find information

Institutional Settings: the Information Commission (IFAI)

- Requesters have 15 days to complain to IFAI (administrative appeal)
- IFAI has investigative powers and calls for public hearings when necessary
- IFAI is obliged to help the applicant (*remedy deficient complaints*)

Role of the Commission (IFAI): Administrative Court of Appeals

- IFAI manages the electronic system for requests and appeals
- IFAI can verify classified information at any time
- Rulings are mandatory for government agencies
- IFAI can initiate a process of responsibility administrative against violators

2002-03: Main Challenges for the Implementation Phase (1)

- Establish detailed regulations for request procedures, proactive disclosure, exemptions criteria, mode of record transmission
- Build an efficient and credible system to request & deliver information, and make complaints

2002-03: Main Challenges for Implementation (2)

- Appoint and train officials in charge of implementation in government agencies
- Build an efficient in-house system for managing requests and transmitting records
- Establish strict deadlines for implementation

2002-03: First Strategic Plan

- Make requests possible and persuade users to trust the system
- Ensure acceptance and compliance by public servants
- Promote the RTI: as many requests as possible
- Build credibility as to independence and enforcement capacity of Commission

International paradigms at the beginning

- Official websites and IT use for RTI
- Electronic systems to manage requests (given inefficiency of postal system)
- Case studies of disclosure (national security, budget, international relations, privacy)
- CSO and specialists on RTI: other side of the desk point of view

The Strategic Plan Evolution (2004 on)

- Establish criteria for disclosure (clarify exemptions)
- Tackle legal loopholes (fiscal, banking and trusts secrecy; openness vs. right to privacy)
- Ensure enforcement of the positive list and compliance with IFAI's decisions
- Address the challenge of record keeping and archive organization
- Extend the use of RTI, reduce the concentration of demand

1. Culture of secrecy: some remedies

- Elaborate independent research to show how much is already publicly available
- Use comparative examples: information that was disclosed abroad without causing any prejudice (harm, damage)
- Convince by setting the example: IFAI is also subject to transparency

2. Culture of secrecy: remedies

- Avoid as much as possible concerns about who requests information with what intentions; concentrate on whether information is public or not (anonymous requests)
- Apply consistently the presumption in favor of disclosure & the principle of maximum openness
- Set a clear list of exemptions
- Develop “public versions” of available documents

Information technology at the core of RTI in Mexico

- IT has been widely utilized to support RTI
- Time framework for response & complaints is clearly established and monitored
- Proactive information, requests, complaints and search tool on the Web

Information request system:

www.infomex.org.mx

INFOMEX allows anyone to:

- Request information from the federal government
- Follow-up on the request
- Retrieve the agencies' responses
- File a complaint to IFAI

ZOOM: www.ifai.org.mx

- Web-based search mechanism
- User-friendly: by subject word, date or agency/department
- Anyone can consult the system to find:
 - Requests submitted to the federal executive branch
 - Responses from government agencies
 - Complaints filed, IFAI rulings and information disclosed

Transparency site:

portaltransparencia.org.mx

- Web system that organizes & homogenizes the presentation of proactive information across agencies
- One single location for updated list of contracts, procurement, subsidy beneficiaries, authorizations, regulation, directory, salaries...
- Allows users access to executive branch disclosure requirements, search & compare by item, categories, amount, name, etc.

Main results: trust & efficiency

- Anyone, anytime, anywhere, can request information via the internet
- Anonymity: officials focus on whether the information is public or not; concerns about who is requesting and why are eliminated
- Reduced risk of harassment or retaliation, results in less than 4 months

Main result: Trust & Efficiency

- Decentralization of demand (considering unreliable postal service & highly centralized Federal Government)
- Accessibility is enhanced by publicizing information already released through the Internet
- The Commission can better supervise and enforce ATI

Requests statistics

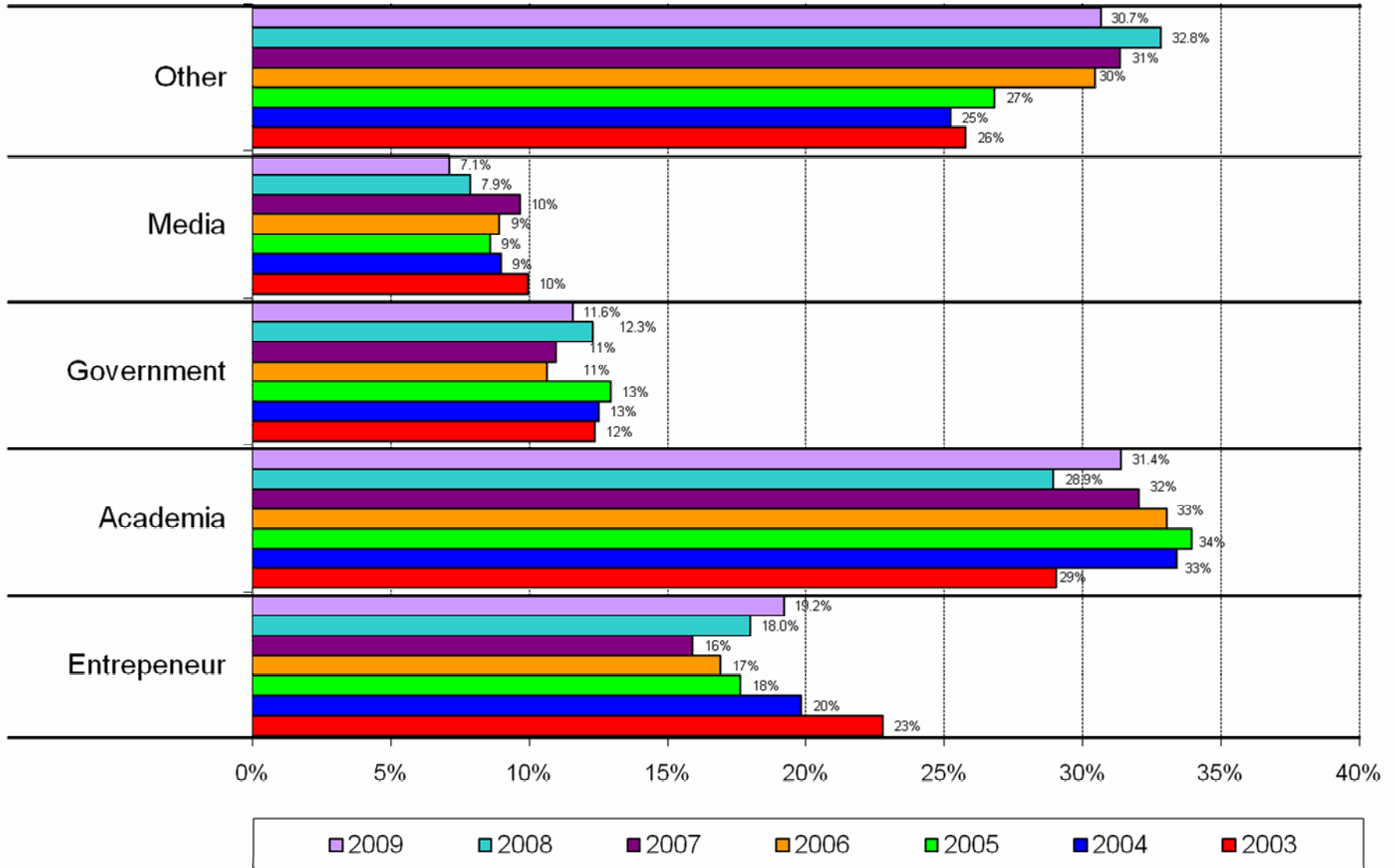
Electronic requests, responses, and appeals filed to the IFAI through May 15th, 2009								
	2003	2004	2005	2006	2007	2008	2009	TOTAL
ELECTRONIC REQUESTS	22,488	35,055	47,874	57,739	92,261	102,297	43,972	401,686
WRITTEN REQUESTS	1,609	2,677	2,253	2,474	2,462	2,953	1,410	15,838
Total Requests	24,097	37,732	50,127	60,213	94,723	105,250	45,382	417,524
Total Responses	21,276	34,113	44,598	53,098	83,387	91,420	38,089	365,981
IFAI APPEALS FILED	635	1,431	2,639	3,533	4,864	6,053	2,273	21,428

Who uses the RTI?

- **Practically anonymous requests provide trust, but make it difficult to obtain the applicant's profile:**
 - 65% of users have agreed to provide their profile
- **The average requester is a young metropolitan male with higher than average income and education :**
 - 64% male
 - 58% residents of Metropolitan Area (Mexico City, State of Mex)
 - 61% between 20 - 34 years old
 - 29% academic
 - 18% business men
 - 12% public servants
 - 8% journalists

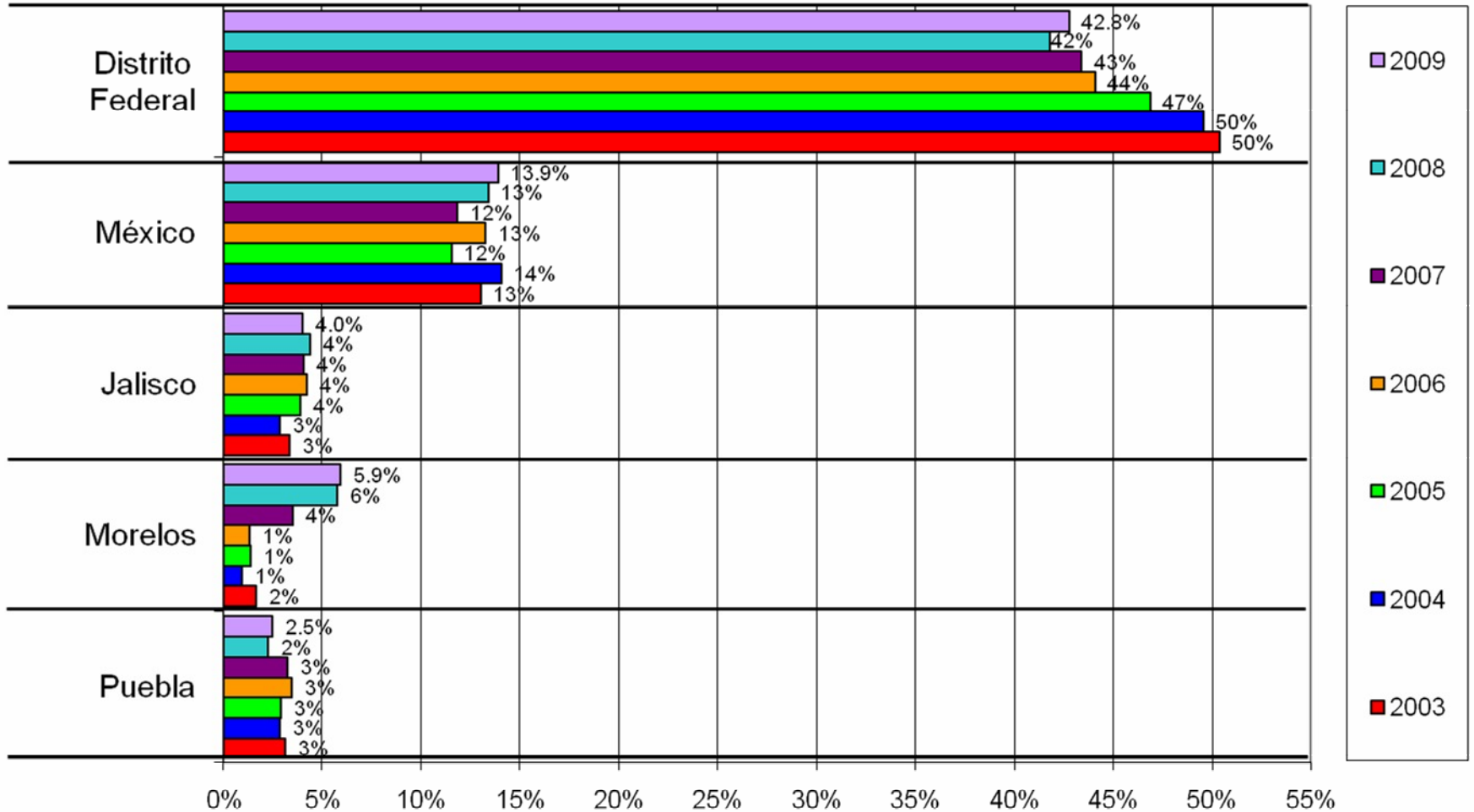
REQUESTERS' OCCUPATION

June 2003 - May 2009



FEDERAL STATES WITH HIGHEST NUMBER OF REQUESTS

June 2003-May 2009



Demand Concentration

To May 15, 2009

- 152,961 users have submitted a total of 416,984 requests

BUT

- **20,318** users submitted over **63.6%**
- **8,140** users submitted half of them: **53%**

Requester's Concentration

Up to May 15, 2009

- 8,140 submitted 221,652 (53%)
- 2,024 submitted 161,550 (39%)
- 311 submitted 92,062 (22%)
- 30 users submitted 35,708 (8.6%)

Requests by number of users

Information requests submitted by requester			
From June 12, 2003 to May 15, 2009			
Range	Users	Requests	%
One request	113,437	113,437	27.2
Two requests	19,206	38,412	9.2
3-5 requests	12,179	44,023	10.5
6-20 requests	6,115	60,102	14.4
21-100 requests	1,713	69,488	16.6
101-300 requests	240	40,627	9.7
301-500 requests	41	15,727	3.8
501-1000 requests	23	15,144	3.6
Over 1000 requests	7	20,564	4.9
Total	152,961	417,524	100

Costs of Right to Information

- IFAI's yearly average budget since 2003: **USD \$ 25 million**
- Federal Executive's yearly average budget : **USD \$ 250 billion**
- One dollar of IFAI's budget represents 1 million of the Federal Budget
- One dollar to support RTI can shed light on one million dollars expended at the Executive Branch
- If one takes into account human resources for management of the RTI systems in all 240 agencies (close to 2,000 public servants).
- **Total annual spending would be \$60 million USD for RTI management: i.e. \$2.4 dollars for transparency costs to follow the information on about one million USD of Federal Public Administration budget.**

1. Results: RTI making a difference

- Public information on military procurement
- Disclosure of emails from Interior Department and Presidential House
- Disclosure of public trust funds (previously classified as banking secret)
- Disclosure of files related to investigations into crimes of the “dirty war” (70’s)

2. Results: RTI making a difference

- List of guests & expenses of Presidential Birthday party
- Access to poverty alleviation subsidies by local community
- Personal access to medical files
- Disclosure of results of personnel examinations for civil services posts

Ifai-Comunidades: information for the disadvantaged

- Former gang-members and other at-risk teenagers requested the operating rules of a federal "Safe Schools Program"; they learned that there were no formal rules. As a result, the program has been suspended while rules are developed - with the input of students.
- Poor women in the state of Veracruz learned that their names are on the lists of beneficiaries for health and housing programs - benefits they have never received. They also identified men on the list of beneficiaries for Pap smears and mammograms. These women are now pressing for the benefits they are entitled to.

Ifai-Comunidades: RTI for the disadvantaged (2)

- A poor community in the state of Mexico used the law to halt a federal construction project on their land, by proving there was no environmental impact study, as required by law.
- Federal prisoners - the majority of whom are too poor to have a lawyer and are behind bars for petty offenses, used the law to gain access to their personal files. They were initially denied the information so they appealed, and in a precedent setting ruling, they won the right to information for all prisoners. Once they exercised that right, 36% of them walked free.

Mexican RTI: access to federal government documents

- Access to information means access to documents that contain information
- No documents: no information; legislation allows declaration of “inexistence” of information
- Document: any record in any support that can be stored or preserved in archive system

Access to electronic documents

- Documents in electronic format are granted for free if requested
- Documents with classified information can be modified & reissued if they have an electronic format
- Once a document is requested it should be kept for at least five years; the conservation period for classified documents should be twice as long as the classification period
- Legal validity of electronic documents must still be defined by a judiciary authority

Electronic record keeping

- Archive regulations do not contemplate electronic record keeping, except for printed versions or physical integration in paper file
- No Federal Law of archives (yet)
- Two examples: short list of documents and institutional email requests

Information contained in less than ten pages

- Recently, IFAI (information commission) established that a short list of sheets should be scanned to grant access in order to match the preferred requested format and to reduce time & costs (less than 10 pages)
- For a higher number of pages, information should be photocopied and sent by certified mail

Request of institutional emails

- Interior Department, Presidential residence, Information Commission, Health & SS Institute for Public workers, and Colegio de México (among others) received requests for emails
- Common responses: “we do not keep them” (inexistence); request does not fulfill RTI conditions; confidential information (bureaucrats’ privacy); email not used (President Calderón)

IFAI criteria on institutional emails

- Emails are documents (contain information)
- Might include classified information, subject to same treatment as any other document (public versions, to be filed, conservation)
- Emails related to government and any other activity related to public officials activities should be kept
- Requesters can be asked to specify subject and period
- Conservation methods decided by agencies

Challenges of electronics records

- Lack of specific regulation on electronic records based on international standards
- Lack of regulation of electronic signatures and validation in order to assure certainty and security of electronic records

1. Future agenda

- Inequality of the law: opacity in the income side of the budget (subsidies are public; tax privileges are not)
- Other state or public actors are left behind: legislative, judicial, political parties, labor unions
- Risk of capture of the IFAI: how to keep the Commission independent & accountable?

2. Future agenda

- Quality and relevance of information provided is not verified (complying/lying)
- Record keeping failure: frequent “inexistence” of documents in a chaotic archive environment
- Limits of enforcement and open insubordination of some agencies
- Institutional lack of accountability: RTI cannot resolve, by itself, problems like corruption or impunity

Juan Pablo Guerrero

Commissioner

**Federal Institute for
Access to Public Information**

Mexico

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juanpablo.guerrero@ifai.org.mx

www.ifai.org.mx