

## THE RIGHT OF ACCESS TO INFORMATION IN MEXICO

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### **I. Transparency in Mexico**

The right of access to information in Mexico was established for the first time in the Federal Constitution reform made back in 1977, when the Sixth Constitutional Article was amended by adding ten words: "The right to information is guaranteed by the State". Since then, this right has been recognized as a fundamental right in the Mexican Constitution.

In 2002, after the publication of the Federal Transparency and Access to Public Information Act that created the first organism in charge of guaranteeing the right to access to information (IFAI), many states as well as the Federal District began to create their acts on access to information, along with the creation of organisms to guarantee the exercise of this right.

In this context, in 2006, 31 states, the Federation and the Federal District, already had specific laws on access to information and agencies to ensure this right, and to monitor the compliance of the law. In this first stage, only four states did not have an Authority to watch over this right: Aguascalientes, Jalisco, Tamaulipas and Veracruz.

The first years of practice of the right of access to information presented a series of failures caused by the heterogeneity of the Acts:

Most Acts established a set of requirements counteracting the right of citizens to obtain public information (obligation to affix signature in information requests and complaints with regards to given answers, accreditation of personality through the presentation of an ID, failure to submit applications electronically), or in some cases there was no agency where citizens could address their complaints with regards to the given answer to a request, or in the case where they did not receive a response from the public entity. Finally, if there were any, agencies were not proficient to make this right effective as far as the attention of complaints was responsibility of other bodies, mostly within the judicial branch.

These deficiencies impelled further reforms to article 6 of the Federal Constitution, mostly because the disparity in the exercise and protection of the right of access to information from one state to another was unacceptable. Consequently, in July, 2007 seven fractions were added to this article in order to include a set of principles under which this right should be guaranteed.

The latest reform emphasized the importance of three major issues: access to information, personal data protection and public records, establishing the following obligations:

- \* All information held by any authority, institution, body or federal agency , local and municipal, is public and can only be reserved temporarily for reasons of public interest in terms of the legislation. In the interpretation of this right the principle of maximum disclosure should prevail.
- \* Everyone has free access to public information, to personal data (or to correct it) through the set up of prompt mechanisms to access information and reviewing procedures, to be substantiated by specialized autonomous impartial agencies with autonomy (freedom to spend its own budget, and to determine its management procedures and decision-making processes). In all cases these agencies should protect the information related to privacy and personal data in the terms and exceptions established by the appropriate law.
- \* All public entities should protect and guard its documents in actualized administrative records, and have the obligation to publish in their websites, comprehensive and updated information on their performance, along with indicators and their public resources accountability.
- \* The laws should determine how the information about public resources delivered to public or private institutions or entities should be disclose.

These amendments implied two obligations: 1) To modify the existing Acts in a term no longer than one year after the publication of the amendment, in order met the requirements set in the Constitution; 2) To establish electronic systems to make easy the access to information (this system would be available two years after the publication of the amendment).

It also included basic principles such as: all information possessed by public bodies of the Mexican state is public, with the only exceptions provided by law; information made public is subject to the principle of maximum disclosure; citizens have the right of Habeas Data (protection of privacy, right of access and correction of personal data); there is no need to prove legitimated interest, or to

justify the use of the requested information and finally, public information is free, except when the documents holding the information must be reproduced.

The main objectives of this reform were:

- a. Establish expedited procedures to access information and the mechanisms of attention of complaints. To do so, it was necessary to implement electronic systems for the presentation of information requests in order to break with the tradition of receiving applications in person at the Offices of Public Information (OPI's).
- b. Establishment of specialized and impartial guarantor agencies with operational, budgetary and decision making autonomy:

Agencies in charge of safeguarding the right to access information must have certain characteristics. The first one is specialization, which ensures that decision makers have the necessary expertise to adequately assess arising cases. The second element is impartiality, to ensure that both the integration and operation of the bodies or agencies will not respond, directly or indirectly, to authority bodies and act professionally and objectively.

To achieve this, the reform established that transparency organisms should have three types of autonomy aimed to ensure impartiality and specialization: **operational freedom** which means that the organism is responsible for its own administrative criteria; **budget management freedom**, this is, the organism should be able to approve projects from the budget assigned to it and exercise it based on the principles of effectiveness, efficiency and transparency, considering at all times the specifications set by the Law, and also being able to authorize changes and determine the corresponding adjustments in its budget. Finally they must have **freedom of decision**, which involves a law-based performance and independent judgment capacity duly founded and motivated, regardless of the authorities in charge.

- c. Obligation for all public bodies to publish their performance indicators.
- d. Obligation to have up to date and reliable administrative archives that allow the easy location and the release of information.
- e. Publication of information on public resources.
- f. Establishing penalties in case of failures in the compliance of the law.

Three years after this reform, 23 laws comply with the provisions of said Constitutional article 6 and 9 laws do not (including the Federal Law). Likewise, only 12 states have constitutionally guaranteeing-autonomous bodies, (autonomy derives from the constitution of each state), 18 are autonomous and two states (Baja California and Sonora) and the Federation do not have autonomous bodies.

Within the group of laws that do not meet the new content of article 6 we have 3 cases: The laws of the states of Puebla, Campeche, and Querétaro.

These cases are being reviewed by the National Supreme Court of Justice in order to declare the unconstitutionality of the rule but this has happened only in the case of the Querétaro Act.

Particularly, in the case of Puebla, the Act provides that the Guarantor Authority, named Commission for Access to Public Information of the State of Puebla (CAIP), has jurisdiction only over the executive branch and not over the municipalities, obligating each of them to create municipal authorities. This interpretation constitutes a violation of the Constitution due to the fact that it establishes a unique guarantor body for each state with broad competence over all its municipalities.

The law of the state of Campeche was amended establishing that attention of complaints regarding unacceptable replies to requests would be issued and solved by a judicial body, action contrary to what is established in section IV of article, stating that all procedures regarding access to information must be issued and solved by specialized agencies. In this sense, if the rule provides that the guaranteeing transparency body is the only organisms specialized on this topic, the review function cannot be placed in any other institution.

Finally, the Querétaro state law was amended to incorporate the functions of the guaranteeing transparency body to the Human Rights State Commission in order to create a single agency responsible for two different tasks.

The National Supreme Court of Justice declared Article 33 of the Constitution of the state of Querétaro to be unconstitutional, therefore it was amended to provide that functions of safeguarding the right to access information would fall only into one specialized agency in the matter, according to fraction IV of article 6 of the Federal Constitution.

Although there have been many improvements that allowed a growing trend on the exercise of these rights, yet there is much to do. One of the most important

points still pending in the Constitution is the recognition of the fact that resolutions emitted by the guarantor bodies are final and definitive because, as it happens in the state of Campeche, today there are many legislative projects seeking to limit this right through the review of resolutions issued by these organisms, which, no doubt, given the Mexican political and social context, would diminish and subsequently deny the exercise of the rights.

## **II. Transparency in the Federal District (Mexico City).**

Four years after the foundation of the Institute for Access to Public Information of the Federal District (InfoDF), as guarantor of the right to access public information in the Federal District, it can be categorically stated that citizenship is increasingly obtaining information of public institutions of the nation's capital, as an effective measure of their effort to participate in public affairs that will lead them to a better life quality status.

Achieving this goal implied for InfoDF the consolidation of objectives and overcoming challenges and weaknesses characteristic of a political and administrative system that begins in the practice of delivering and providing public information about the distribution, use and destination of public resources.

Enhancing transparency as a transforming agent of the relationship between citizens and the state has been a priority for InfoDF. The willingness of citizens to obtain public information by any lawful means must be reflected in the integrity of public servants. Therefore, we have monitored the information posted in websites and given to applicants to be timely appropriate and accurate. These actions contribute to empower citizens in order to influence public policy.

Dynamism on the regulations governing access to public information in the Federal District is a sign of the strength they have acquired due to two transverse demands of citizenship: accountability and the protection and preservation of information withheld by public institutions. Since the publication of the original legislation in 2003, there have been many reforms in sought to consolidate the right to access information and protection of personal data.

In July 2<sup>nd</sup>, 2007 with the amendment to Article 6 of the Constitution the institutional framework supporting the right to access public information became stronger. As a result of this dynamic process the new Transparency and Access to Public Information of the Federal District Act (T&ATPI Act), on March 28<sup>th</sup>, 2008, the Personal Data Protection Act for the District Federal (PDP Act.) on

October 3<sup>rd</sup>, and the Archives Act of the Federal District on October 8<sup>th</sup> were published.

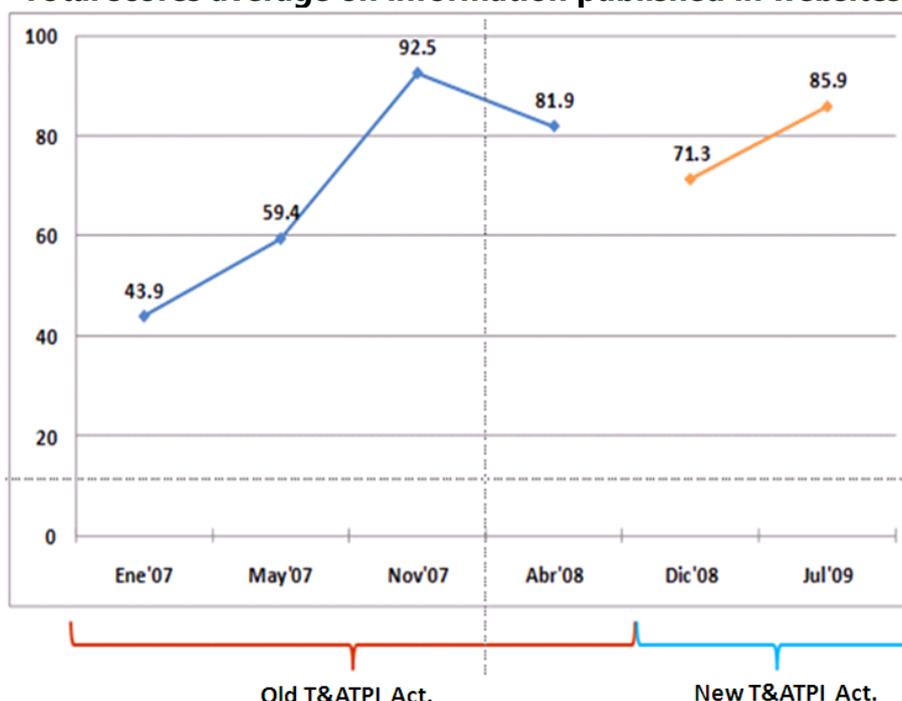
The new T&ATPI Act introduces new elements in transparency:

1. Specific obligations to publish information on Internet websites were established for government agencies.
2. It recognizes the possibility to submit information requests by telephone; also, different deadlines were established to attend information requests: 10 days for public information and 5 days for information published in their websites.
3. The period to attend complaints with regards to given answers was reduced to 40 days or less. If the action is brought as a result of the non replying of inquiries for information, the deadline to issue a resolution is 15 days;
4. New entities are bound to the compliance of the law (the number grew up from 83 to 146): among others, 14 political associations, 8 decentralized, deconcentrated and auxiliary authorities and 8 political parties were incorporated.
5. General obligations were established for all public entities and in addition, the Act sets specific obligations for each type of branch. General obligations include the following:
  - \* Article 13: Obligation to publish catalogs of public information in accordance with the general filing archives.
  - \* Article 14 requires the publication of 27 items, among we find: budget information, staff, bidding, purchasing and procurement, regulatory framework, directories, functions, organization, information on social programs, etc.
  - \* Article 28: Standards to publish public information.
  - \* Article 29: Obligation to publish calendars for the updating of information.
6. Transparency obligations are set specifically to the Executive, Legislative, Judicial and Autonomous institutions:
  - \* Executive (art. 15) 10 obligations, crime rate statistics and law enforcement indicators, statistics on previous inquiries, arrest warrants.
  - \* Judicial (art. 17). 25 obligations outstanding issued resolutions, agreements, and the legal newsletter.
  - \* Electoral Institute and Electoral Tribunal (art. 19). 13 obligations, including: election results, electoral territorial division, notes and resolutions of the plenary, legal resolutions and results of the audits practiced to political parties.

- \* Human Rights Commission (Art. 20). It establishes 3 obligations including public versions of the recommendations and statistics of their duties.
  - \* InfoDF (art. 22). It contains 8 obligations including: Plenary resolutions on complaints with regards to given answers, results of evaluation and promotion of the right to access.
7. Any person may file a complaint at the InfoDF when this information is not being correctly published, nor completely (Art. 14). The institute has to solve the complaints in 15 working days.

Due to the greater accuracy and high standards established in the T&ATPI Act for information published in websites, many improvements can be observed in the quality of this information, such as in the compliance of their transparency obligations.

**Graphic 1**  
**Total scores average on information published in websites**



Source: InfoDF, Evaluation and Studies Department.

### III. Advances in the exercise of the right to access to public information

Since its creation in 2006, InfoDF evolved as the institution in charge of watching over the right to access public information. In 2008, the PDP Act allocated the same task regarding protection of personal data held by public bodies. With this new mission the Institute acquired a public commitment of

unquestionable relevance in the construction of democracy and in the protection of the rights of citizenship.

The first four years were devoted to establish conditions and institutional procedures necessary to ensure a solid foundation of these rights in terms of regulations, technological treatment and to procure services.

At that time the Federal District was the first federal entity to adopt the electronic system named Infomex (electronic platform created by the IFAI), an electronic filing and responding system to attend information requests.

Also, considering that in Mexico only 13.5% of people has access to Internet, while 51% has telephone service from a landline and 61% from a cellular phone, InfoDF implemented a mechanism called "Tel-InfoDF", where you can submit information requests by phone. It also established a SMS notification service, useful to citizens who submitted information requests via Infomex. This way, they will receive notifications about the status of their request, after providing their cell phone number in Infomex.

With these three mechanisms the access to public information becomes easier for people interested in exercising their right to be informed, because they do not need to go personally to the OPI's to present their applications.

As shown in the table below, the implementation of electronic systems to present information requests ranked first with a 54% of the total. Alongside in 2009, 40% of the information requests were submitted through the Tel-InfoDF system:

**Table 1**  
**Presentation of information requests**

Tools	2006	2007	2008	2009
INFOMEX	13.2%	57.9%	57.5%	54.0%
TEL-InfoDF		13.4%	29.2%	40.0%
E- mail	32.6%	10.6%	4.6%	2.0%
Personally in OIP's.	51.3%	17.5%	8.7%	4.0%
Other	2.9%	0.6%	-	-
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: InfoDF, Evaluation and Studies Department.

Corruption and impunity weaken public and private institutions, distort our economies and undermine the social moral. The responsibility for the prevention and control of these problems lies in all branches of the local government, with the collaboration of society as a whole. By delivering government information to society, the number of guards increases; it enhances their capacity to assess and empowers people to identify actions that fall outside the established legal parameters.

Strengthening democratic governance calls for overcoming poverty and promoting equitable economic growth through public policies and good governance practices that promote equal opportunities, education, health and full employment. Thus providing citizens the tools to avail from information enables them to effectively exercise their rights and it is also essential for making informed business decisions and to create strategies to influence public policy through society's active participation.

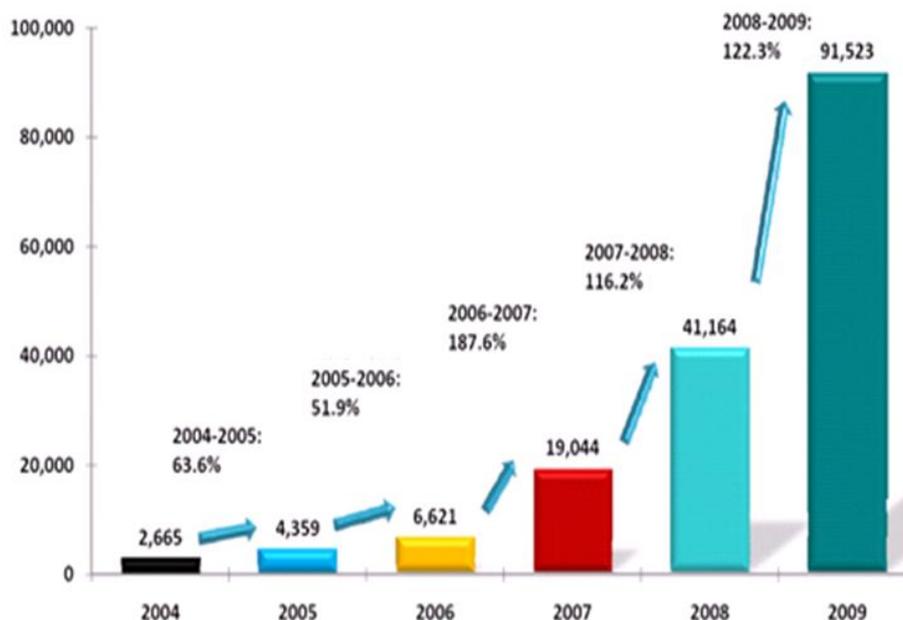
In this context the right to access public information is of great importance, especially in those sectors of society that do not have information to make decisions that significantly affect their quality of life. For this reason, since 2008, the InfoDF defined as a priority the extension of knowledge of the right to access public information in order to encourage the participation of citizens in the consolidation of a democratic system.

With the aim of broadening awareness of the right to access public information, mass communication strategies were established through alternative media channels to launch, with a low expenditure, the transparency message to more people.

Special attention was also paid to promote this right through the creation of a specific Department in the Institute expressly created to contact citizens directly to inform them of their rights. In these sense, face to face dialogues with civil society organizations and public authorities take place every day to promote social participation.

These efforts, combined with the media campaign, as well as alternative marketing strategies and relationship to society, allowed to increase significantly the number of applications as shown in the chart below.

**Graphic 2**  
**Total Information request from 2004 - 2009: 165,376**



Source: InfoDF, Evaluation and Studies Department

The increase in the number of information requests was possible due to the promotion strategy and the implementation of two mechanisms: the Tel-InfoDF system and the SMS service. As a result, other sectors of society were incorporated to the exercise of the right to access public information:

**Table 2**  
**Applicants' occupation**

Occupation	2007	2008	2009
	%		
Academic/Student	15.9	10.5	30.2
NGO's	4.3	4.2	2.4
Media	24.3	14.5	4.0
Public Servant	9.3	2.4	11.8
Political Association	1.4	1.3	1.1
Employee/Worker	9.9	36.7	19.2
Merchant	4.4	5.3	6.8
Entrepreneur	3.3	1.6	6.4
Home	0.9	2.4	-
Other	26.4	21.1	18.3
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: InfoDF, Evaluation and Studies Department

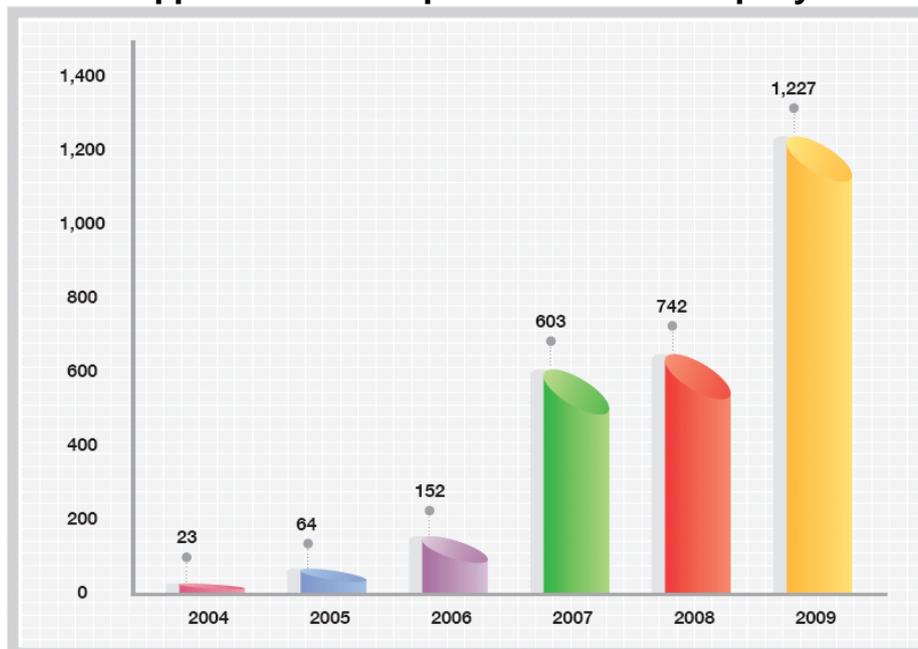
Moreover, as a mechanism to guarantee the exercise of this right, citizens have the possibility to appeal the responses received by public authorities. Through this mechanism, InfoDF reviews that the response was emitted according to the principles established in the Law, to ensure that citizens acknowledge legal, verifiable and public information.

This function is carried out through the resolution of appeals which derived from a procedure in the form of trial, the Plenum of the Institute determines to confirm, revoke or modify the reply of the public body when the disagreement stems from the response issued or, ordering the public body to issue a response to the information request when request of information was non replied.

Placing monitoring and control mechanisms into society encourages greater compliance of the law. This is evidenced by the multiple appeals for review solved by this Institute where citizens were able to obtain information about construction of buildings, social defense programs, licenses of various commercial establishments, environmental impact studies of a variety of public works and information on market inspectors and supervisors. In all these cases citizens learned how information helps effectively to protect and exercise other rights.

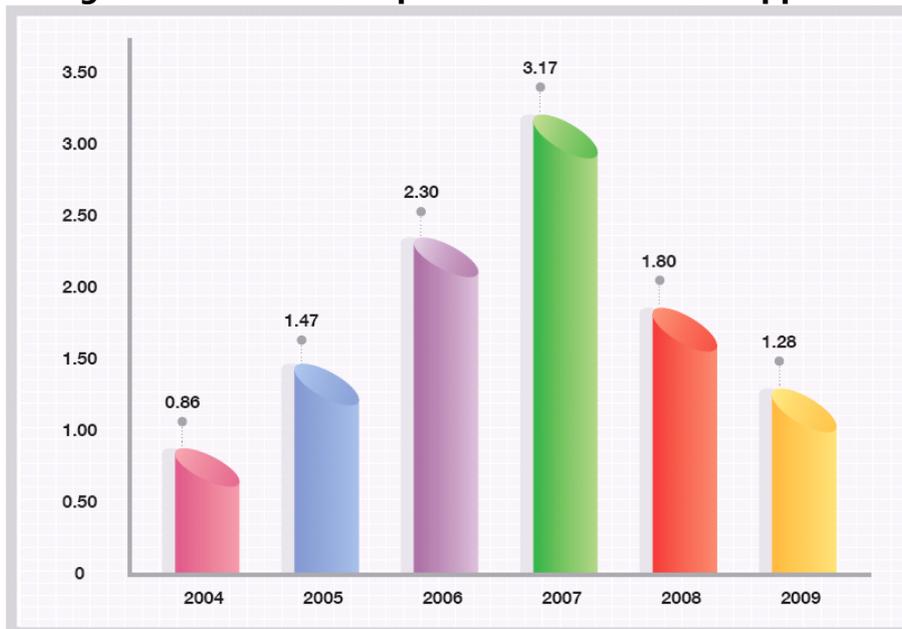
Although the number of appeals for review filed has increased, the relative terms we see that there are fewer applicants unsatisfied with the answers to their requests.

**Graphic 3**  
**3.1 Appeals for review presented to InfoDF per year**



**Source:** InfoDF. Legal and Regulatory Development Department & Technical Secretariat.

### 3.2 Percentage of information requests that turned into appeals for review



Source: InfoDF. Legal and Regulatory Development Department & Technical Secretariat.

InfoDF guarantees the right to access public information by strengthening the processes of substantiation and resolution of appeals for review presented by applicants in terms of the T&ATPI Act. This action reflected a reduction in the resolution time: it went from 41.9 days in the first quarter of 2008 to 31.8 days in the last quarter of that year.

By resolving these appeals the Institute seeks to maintain a healthy balance between the protection of personal data, protection of confidential information and the principle of maximum disclosure. In table 3 you can see how the Institute has solved these appeals.

**Table 3**  
**How do appeals for review are solved**

Resolution	2007		2008		2009	
	Number of Appeals for Review	%	Number of Appeals for Review	%	Number of Appeals for Review	%
<b>Plenary resolutions</b>	358	69.2	476	63.3	662	60.8
Confirm	33	6.4	81	10.8	91	8.4
Modify	126	24.4	155	20.6	242	22.2
Revoke	88	17	119	15.8	109	10
Confirm omission to respond	55	10.6	66	8.8	99	9.1
Dismiss	56	10.8	55	7.3	121	11.1
<b>Solved by Agreements</b>	159	30.8	276	36.7	427	39.2
Dismiss	32	6.2	42	5.6	38	3.5
Discarded as inadmissible	26	5	104	13.8	198	18.2
Not Presented	101	19.5	130	17.3	191	17.5
<b>Total</b>	<b>517</b>	<b>100</b>	<b>752</b>	<b>100</b>	<b>1089</b>	<b>100</b>

Source: InfoDF. Legal and Regulatory Development Department & Technical Secretariat.

Moreover, since its creation InfoDF has taken inter linkage actions with public entities and universities, with civil society organizations and with national and foreign counterparts in order to create conditions that will encourage greater disclosure and use of the right to access public information, which allows to form a common knowledge among public servants and civilians interested in the subject.

Since 2007, InfoDF has implemented correlation policies with the society to promote awareness and exercise the right to access public information, including general population and civil society organizations. This policy aims to enhance the impact of promoting the right to access public information that is made by other means, while generating social knowledge in order to evaluate and monitor the performance of local public institutions and, to the extent of their possibilities, the opportunity to influence the design of public policies.

The specific mechanism to achieve this goal has been the strengthening of relationships with Non Governmental Organizations (NGO's) and in the implementation of face to face activities with the general population.

On this matter we can highlight four actions that were implemented to link society with the right access public information: Social Participation Programs, Roundtable for Transparency, the 1st Transparency Fair and various International Seminars were new contributions on focalized transparency were made.

The Social Participation Program is divided into two categories: the first one called "General Population" includes the making of promotional events in political communities, educational institutions, public agencies, academic and cultural events, talks and brochures distribution on the streets (action also known as the Transparent Wave) and specialized care centers (PAC).

The second item called "Organized Civil Society" InfoDF has invited the NGO's to become strategic players in the development of the right to access public information and in strengthening the culture of transparency and government accountability within society. This line of work seeks to build bridges between the Institute and marginalized groups in the City to use this right to solve specific social problems and to improve their quality of life.

NGO's participated in this effort trough the presentation of projects financed by various social programs and supervised by the Institute with the aim of promoting the right of access to information as a tool to get a better quality of life.

The Roundtable on Transparency in the Federal District was formed in 2008, an initiative of InfoDF to procure a mechanism for the exchange of ideas and the analysis about the status of transparency in public institutions, and as a space for agencies to generate strategic agreements to promote the culture of transparency and accountability in the local level. Alongside with InfoDF, the actors involved in this project are public entities representatives, NGO's and other bodies of the capital's society (academics, journalists, trade unions representatives, political groups, businessmen, etc.)

There have been four roundtables where there was an approach to topics of Public Safety, Environment Transparency and in policies and social programs of the Federal District. This mechanism has proven to be an articulated strategy of effort between authorities and citizenship that has improved the dialogue between suppliers and demanders of information, has increased the impact of policies on transparency, makes simpler the language of the information published on the government, created websites with relevant information, it has improved organized civil society capacity to influence in public policies, etc.

Furthermore, as an unprecedented event in Mexico and with the participation of 60 public bodies, 14 civil society organizations and 9 transparency guaranteeing bodies, on Monday, September 28, 2009 the 1st Transparency Fair took place on the main square of Mexico City, an event that brought together more than 10 thousand attendees. This event was made to commemorate the Right to Access Public Information International Day adopted in Bulgaria in 2002 with the purpose of recognizing the importance of this fundamental right in democratic life, and encourage countries to adopt measures to combat and overcome the obstacles that hinder this right.

Public bodies and NGO's that participated in this event provided attendees with information on the practice of transparency and access to public information within their respective responsibilities and areas of interest. Allusive materials were distributed to invite citizens to become aware of the importance of knowing and exercising this right.

During the development of the Fair different cultural and leisure activities were held such as a Puppet Theater, flamenco dancing, a theater play called *The Crystal Circus* was performed and there was a chance to *score a goal* against corruption. In addition, clinical services were offered (mammography), talks by the Heroic Fire Department and an orientation module from the Ministry of Finance were established to clear up doubts and inform about services provided by it.

This event allowed spreading among citizens, the knowledge about all social benefits of using and practicing the right to access public information, transparency and accountability.

Finally, in the framework of the 3rd International Seminar *Towards a New Generation of Transparency*, there were several tables of analysis in order to know and reflect on new trends in the policies of transparency and access to public information, in the search to provide greater social benefit, and the role they play in them the technological tools and the social and political actors.

Finally, it is important to highlight the contributions on focalized or pro-active transparency as a mechanism to respond to the need for specific benefits. As well as the demand for a more organized and useful information posted in government web pages.

#### **IV. Personal data protection**

With the enhancement of the Personal Data Protection Act, the Institute implemented specific regulations to ensure proper protection of personal data and verify the application of the so-called ARCO rights: access, rectification, cancellation and opposition.

In this context, since October 14<sup>th</sup>, 2009 the Federal District has general guidelines on how data should be collected and processed to facilitate the execution of ARCO rights and to ensure that data will only be used for lawful purposes under security measures that will guarantee its confidentiality.

Also an electronic registration system of personal data systems was developed to facilitate the updating of the information currently contained in the Institute's register of personal data systems.

The development of the right of access to public information since 2004 has opened a way to exercise the rights of protection of personal data with its own characteristics and dynamics.

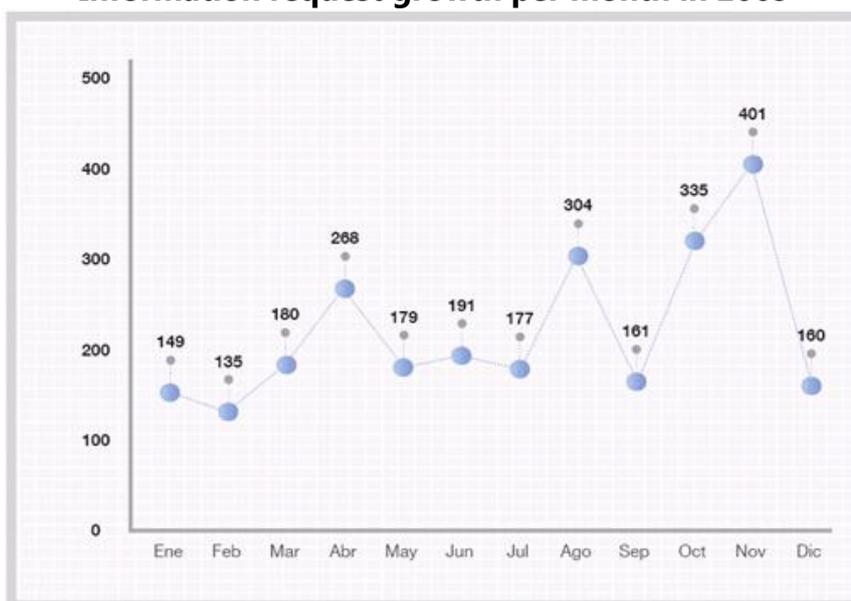
In this regards, in 2009 requests for access, rectification, cancellation and opposition of personal data (ARCO applications) reached in the Federal District a total of 2640 and over 75 percent of them were made through the Infomex System.

This result implies an increase of 157 percent over the ARCO applications received in 2008 (1024). Moreover, this result also represents 2.8 percent of the information requests received in 2009 (91,523 applications), a positive change

compared to the year 2008, where ARCO applications represented only 2.5 percent of them.

The following chart shows the intensification of applications in the second half of 2009, a period in which 1538 ARCO applications were made. This represents 58.6 percent of all the applications received. The incidence was evident in the months of August, October and November, where 39 percent of the applications were issued.

**Graphic 4**  
**Information request growth per month in 2009**



Source: InfoDF, Evaluation and Studies Department

Of the four rights protected by the PDP Act, lead the exercise of personal data **access**, with 98.8 percent of the 2640 ARCO applications. While the exercise of rectification, cancellation and opposition the rights was marginal accounting only 1.3 percent of the applications, as shown in the following table:

**Table 4**  
**ARCO Rights exercised**

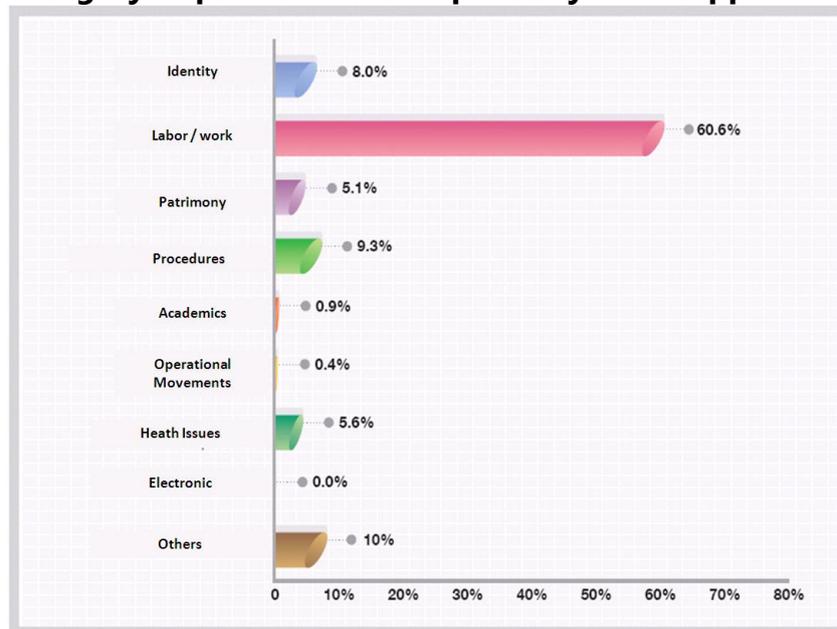
ARCO rights exercised	Applications received	%
Access to Personal Data	2,607	98.8
Rectification of Personal Data	21	0.8
Cancellation of Personal Data	5	0.2
Opposition to Personal Data	7	0.3
<b>Total</b>	<b>2,640</b>	<b>100</b>

Source: InfoDF, Evaluation and Studies Department

The analysis of ARCO applications is complemented by considering the categories of personal data requested. Graphic 5 shows that the predominant category was access to labor data, with 60.6 percent of the applications (1601 applications for a total of 2640), followed, regardless of the category “Others”, for the category administrative procedures data (with 264 requirements) and identification data (with 246 applications), representing 9.3 and 8.0 percent of the total, respectively.

Making a cross reference exercise of this information with the information about applicant’s profiles, it can be stated that most of the requirements came from public servants who wished to access personal data, contained mainly in labor-type files. (Please check Graphic 6 )

**Graphic 5**  
**Category of personal data required by ARCO applicants**



Source: InfoDF, Evaluation and Studies Department

**Graphic 6**  
**Applicants Profile**

Occupation	ARCO Applications	%
Entrepreneur	8	0.6
Media	1	0.1
Merchant	33	2.6
Public servant	1079	84
Academic / Student	33	2.6
Employee / Worker	64	5
Political association	2	0.2
Home	16	1.2
Other	49	3.8
<b>Total</b>	<b>1285*</b>	<b>100</b>

Note: only 1285 applicants answered the socio-demographic data base in Infomex.

Source: InfoDF, Evaluation and Studies Department

Unlike requests to access public information, where the delivery of information / resolution can be accomplished by various means, including electronic and Infomex system, in ARCO applications the delivery of the response emitted by the authority can only be made and delivered by the OPI's, after the applicant or legal representative have accredited its personality. For this reason, even when the notifications can be made by any mean (e-mail, Infomex, etc.) they will only have to inform whether or not the application was suitable or not.

This condition of delivery ensures that only the person concerned, or his legal representative, will have legitimate access to information concerning his privacy.

The PDP Act is the legal instrument that ensures the protection, guard and proper use of individuals' personal data held by public bodies in Mexico City. As already indicated, the PDP Act acknowledges and grant access, rectification, cancellation and opposition of personal data rights.

The rule provides that in case these rights are violated, the persons concerned may present an appeal to the InfoDF, institution in charge of guaranteeing the PDP Act.

In this regard, in 2009 there were 31 appeals against the answers given by 16 public organizations, which represent 1.2 percent of the 2640 ARCO applications.

At the end of 2009, InfoDF's Plenum adopted 16 appeals resolutions related to ARCO requests. Of these, 14 were presented in 2009, while the other two were left unresolved in 2008.

Of the 16 appeals determined, two were filed because there was no reply to the request (RR.937/2009 and RR.031/2009), and the remaining 14 by dissatisfaction with the answers given by public bodies. It is noteworthy that only one resource (RR. 734/2008) was filed on an application for cancellation of personal data, while the remaining 15 were related to requests for access to personal data. Thus, we conclude that, in 2009, there were not appeals by dissatisfaction with the response related to the exercise of the rights of correction and opposition of personal data

Additionally, InfoDF's Legal and Regulatory Development Department resolved 8 appeals due to the fact that public bodies did not comply the formalities laid down in the Act for its procedure.

In compliance with the PDP Act, InfoDF acquires a dual role. First, is the body liable for supervising and monitoring its compliance and on the other hand, it must fulfill its requirements like everyone other public entity. For this reason, in addition to satisfying the obligations established in the PDP Act, the Institute develops several activities to promote greater awareness and observance of the Law.

The protection of personal data is a topic of recent treatment in the Federal District. In addition to the training activities undertaken by the InfoDF, the activities of public bodies, related to compliance with the provisions of PDP Act, were accompanied in 2009 by providing personal advice to the personal in charge of the of the OPI's and Systems of Personal Data; telephone consultations, meetings with public bodies and conferences on focalized topics.

Training public servants responsible for the Systems of Personal Data is a strategic task in addressing and overcoming the problems detected in the protection and treatment of this type of information. It is important to emphasize that for the first time, the training provided on the contents of the PDP Act, include an additional content on the Guidelines for the Protection of Personal Data in Mexico City, a complementary legislation set to establish guidelines and criteria to apply the law.

Thus, in the design of the Training Workshop on Personal Data, the Institute included not only dealing with the contents of both normative instruments, but was complemented with a workshop in which, interactively, the participants refined their knowledge about personal data, organization's systems, its use along other systems, among many other contents essential for the officer of the personal data to complies fully its responsibilities.

Training journeys allowed presenting a functional presentation on Electronic Registration of Personal Data Systems, an electronic tool that will give greater functionality to the development of the obligations that the law requires for Public Entities, and for InfoDF as guarantor organism.

As previously mentioned, the PDP Act was enacted on October 4<sup>th</sup>, 2008, and its main objective is to protect personal data held by the various organs of government in Mexico City.

With the publication of the Act, the InfoDF was given the task of spreading its content and the obligations implicit in it. This way the Institute led the awareness on the importance and projection involving protection work to public servants accountable and responsible for the care and treatment of personal

data. This is and will be an indispensable step to achieve greater impact in protecting such information.

Similarly, establishing specific requirements to process personal data under standards that ensure its protection generates confidence on people, because they will be sure that personal data provided to public entities will be guarded, protected and used only for the reason which it was collected. Conversely, public servants that provide personal data in their jobs are assured that their data is well-protected and used appropriately.

## **V. Conclusions.**

In these first four years significant progress has been reached. We have identified areas of opportunity and set up strategies to strengthen the compliance of the right of access to public information in the Federal District. This effort was reflected by winning the first place in the national study called "Index of Access to Information in Mexico (IDAM)" elaborated by Article XIX and FUNDAR. This study analyzed different criteria (national and international) under which this right is guaranteed in the country and determined to give this award to the Federal District due to its high standards, conditions and results to protect and ensure this right.

It is still necessary to overcome the deficiencies produced by the budgetary constraints faced by the OPI's, which reduces their ability to respond to a growing number of information request. Due to complaints presented from citizens who review the agencies websites we noticed that some information is not updated in a timely manner, that the representatives from the OPI's have yet to face resistance from some of the administrative units which translates into problems to attend information requests and in many cases into omissions in the information disclosure. A greater effort is yet need to be done in order to train public servants to fulfill the requirements established by law.

We know that there is still a long way to go to strengthen access to public information and personal data protection as the cornerstone for the defense of other rights. It is essential work for its consolidation in order to ensure a social democratic state in the nation's capital, in which an informed citizenry will be capable of participating actively, defend their political and social rights, to help reduce corruption and improve their living conditions. In this way society and government will ease the transition to a more equitable and democratic society.