
The New "Transparency & Access to Public Information Act" enters into force.

Access to information is a fundamental right that is currently the focus of significant attention. In its public aspect this right has been regulated for some years; however, recently a new Act came into force that expands the responsible parties for the purpose of harmonizing the principles, bases and procedures in order to guarantee access nationally and which, additionally, increases the information that must be disseminated by the responsible parties on their websites and in a new platform for consultation on the Internet.

The new Transparency and Access to Public Information Act also specifies in greater detail the procedures for classifying the information as reserved or confidential. This new Act also strengthens the means of defense for those who request information and, in turn, the regulatory framework of penalties in order to prevent violations.

This past May 4th, the Decree issuing the Transparency and Access to Public Information Act was published in the evening edition of the Official Federal Gazette, which according to its first transitory article entered into force the day following its publication.

This Act regulates article 6 of the Political Constitution of the United Mexican States in relation to transparency and the human right to access to information and it will be generally observed throughout the Republic. Its purpose is to establish the principals, general bases and procedures to guarantee the right of access to information in the possession of **any authority, entity, body or organization of the Legislative, Executive and Judicial branches, autonomous bodies, political parties, public trusts and funds, as well as any individual, entity or labor union that receives and exercises public resources or carries out acts of authority of the Federal Government, the States or Federal District, and the municipalities.** In other words, this new Act increases the responsible parties in relation to the right of access to information (which right includes requesting, researching, dissemination, searching for and receiving information). In addition, this Act seeks to generate homogenous conditions in relation to transparency and access to information in the sphere of the Federal Government as well as in the sphere of the States, Federal District and the municipalities¹.

In line with what has been called "open government", the Transparency and Access to Public Information Act regulates a significant number of new legal concepts as well as obligations for the State in order to strengthen the

¹ According to the fifth transitory article of the Transparency and Access to Public Information Act, the Congress of the Union, the State legislatures and the Legislative Assembly of the Federal District will have a term of up to one year from the entrance into force of the Act to harmonize their related laws with what is established in this Act.

mechanisms for access to information at the national level. This is a framework law that primarily refers to the guidelines that the Federal Law and the laws of the States and Federal District should include.

In order to share with you the aspects of this new Act we consider most important, below we divide our studio into seven sections:

I. EXPANSION OF THE OBLIGATIONS OF THE RESPONSIBLE PARTIES².

One of the most important advances with this new Act is the expansion of the minimum transparency obligations that public institutions must comply with. To this effect, Title Five of the Transparency and Access to Public Information Act lists, in article 70, forty-eight lines with information on topics, documents and policies that those responsible must make available to the public and keep updated in the electronic media. Such list groups those called common obligations but, complementary to those, this new Act establishes other specific transparency obligations which are set forth in articles 71 to 83 of the Act. These specific transparency obligations refer to additional information that must be made available to the public and kept up to date for each of the responsible parties (each of these articles refers to specific information of the Executive Branch of Federal Government the States/Federal District and municipalities, the Legislative Branch of the Federal Government, the States and the Federal District, the Judicial Powers of the Federal Government and of the States and Federal District, of the National Electoral Institute and the local public bodies of the States/Federal District, the National and State/Federal District Human Rights Protection Agencies, of the Organizations guaranteeing the right to access to information and the protection of personal data, of the public higher education institutions, the national and local political parties, the national political groups and the civil associations created by citizens wishing to run as independent candidates, of the trusts, public funds, mandates or any similar contract, of the administrative and judicial authorities in labor matters, of the unions that receive and exercise public funds and any responsible party in the energy sector. Similarly, in relation to the individuals or entities that receive and exercise public resources or that carry out acts of authority, it will be determined if they must comply with the transparency and access to information obligations directly or through the responsible parties that assign them such resources or that carry out the acts of authority.

As described in this Fifth Title, the information must be made available on the Internet sites of the responsible parties and also through the National Platform. Furthermore, as another novelty, compliance with the transparency obligations, as provided by articles 70 to 83 of the Transparency and Access to Public Information Act, will be safeguarded through virtual verifications done ex officio on the web pages of the responsible parties or on the National Platform. Finally, notwithstanding such oversight, it is important to emphasize that under article 89 of this Act “any person may denounce the failure to publish the above mentioned transparency obligations (initiating, to that effect, an accusation process having four stages: (i) presentation of the accusation, (ii) request for a report from the responsible party, (iii) ruling on the accusation and (iv) enforcement of the ruling)”.

² The responsible parties, except for those listed in article 43 of the Transparency and Access to Information Act, shall form, in order to meet the objectives of this Act, a Transparency Committee made up of an uneven number. The primary function of the Transparency Committees will be the determination of the classification of the information (according to the standards previously established by the responsible parties for its protection or safeguarding and also, among other functions, they shall institute, coordinate and supervise the actions and procedures to ensure the greatest efficiency in the management of the request for access to the information. Similarly, each responsible party will have a Transparency Unit that, among other functions, shall collect and disseminate the information referred to in the Fifth Title and receive and process the requests for access to information in accordance with the Seventh Title of the Transparency and Access to Public Information Act.

II. CLASSIFIED INFORMATION.

In this point, the Transparency and Access to Public Information Act starts by indicating, in article 5, that the information that is related to serious violations of human rights or crimes against humanity cannot be considered classified. The Act also indicates, in this article, that “no person will be subject to judicial or administrative inquisition as a result of the exercise of the right to access to information, nor may this right be restricted by direct or indirect means”.

The Sixth Title of the Transparency and Access to Public Information Act establishes that classification is the process through which the responsible party determines that the information in its possession falls under one of the premises for reservation or confidentiality contained in articles 113 and 116 thereof. In this respect, and under this Act, the premises for reservation imply the denial of access to the information and such reservation may be maintained for a period of up to five years from the date on which the document is classified as such (this reservation period may be extended if it is justified and the causes giving rise to their classification as such persist, through evidence of harm³). This new Act also indicates that confidential information⁴ is considered information that contains personal data concerning a person identified or identifiable and, with respect thereto, there is no temporality in its classification and only the holders of the information, their representatives and the authorized Public Official may have access to it (the Act also establishes that in order for responsible parties to be able to permit access to the confidential information they must have the consent of the private parties to which the information belongs unless it falls under a case of exception as indicated therein).

III. GUARANTOR ORGANIZATIONS IN TERMS OF ARTICLES 6, 116 SECTION VIII AND 122 PART C, FIRST BASIS, SECTION V OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES.

The guarantor organizations are organizations with constitutional and specialized autonomy in the area which will be locally responsible for guaranteeing the exercise of the rights of access to information and the protection of personal data. In other words, the name “Guarantor Organization” refers with this new Act to the organization that, in each State or the Federal District, will guarantee to the citizens the exercise of their rights of access to public information.

In order to achieve this objective such guarantor organizations must work together with the now National Transparency and Access to Information and Protection of Personal Data Institute (INAI)⁵, according to its responsibilities and in the scope of its jurisdiction, for the establishment of the principles and procedures of access to information.

³ In the evidence of harm the responsible party must justify (i) that the disclosure of the information represents a real, demonstrable and identifiable risk of significant harm to the public interest or to national security, (ii) that the risk of harm that the dissemination would presume surpasses the general public interest that it be disseminated and (iii) that the limitation is adjusted to the principle of proportionality and represents the least restrictive means available to avoid the harm.

⁴ In this regard, article 116 of the Transparency and Access to Public Information Act indicates the following is considered confidential information: bank, fiduciary, industrial, commercial, tax, stock market and postal secrets held by private parties, subjects of international law or responsible parties when they do not involve the exercise of public resources. Confidential information will also be information that private parties present to the responsible parties, provided they have the right to it in accordance with the laws or international treaties.

⁵ Previously the Federal Access to Information and Protection of Data Institute (IFAI).

IV. GUIDING PRINCIPLES IN THE AREA OF TRANSPARENCY AND ACCESS TO INFORMATION.

The Transparency and Access to Public Information Act provides an entire chapter on the development and the detailed explanation of the guiding principles of the guarantor organizations and the principles in relation to transparency and access to public information.

Article 8 of the Act indicates that the guarantor organizations shall be governed according to the principles of certainty, efficacy, impartiality, independence, legality, maximum publicity, objectivity, professionalism and transparency. Similarly, throughout articles 9 to 22, this new Act establishes that the following are principles in relation to transparency and access to public information, applicable to all the responsible parties: equality of conditions in access to the information and the guarantee that in the generation, publication and delivery of the information it be (i) accessible including procuring, if necessary, the translation to indigenous languages and the reasonable adjustments to guarantee that disabled persons can enjoy or exercise their right to access, (ii) reliable, (iii) verifiable, (iv) true, (v) timely and (vi) that, at all times, the right of access to information of every person will be respected.

V. PROCEDURE FOR ACCESS TO PUBLIC INFORMATION.

The procedure for access to public information did not change substantially with this new Act. In fact, the Transparency and Access to Public Information Act restates that any person may file a request for access to public information before the responsible parties and that the latter shall do an exhaustive and reasonable search in their archives in order to respond (within a term not to exceed twenty business days from the filing of the request).

Notwithstanding the above, this new Act does make some changes in the area of appeal. Title Eight of the Transparency and Access to Public Information Act refers to challenging proceedings.

The motion for review, which is heard by the guarantor organizations, may be filed against the failure to respond, the negative response or the incomplete response of the responsible party or against the declaration of the non-existence of information or the classification of the information requested, among others⁶. This must be filed within a term of fifteen business days from the response and will be resolved within a maximum term of 40 days. The motion for reconsideration may be filed against the resolutions issued by the guarantor organizations and it is heard by the National Transparency, Access to Information and Protection of Personal Data Institute (INAI); however, in relation to these resolutions the private party may choose to pursue the amparo proceeding before the Federal Judicial Branch (instead of filing a motion for reconsideration).

It is important to emphasize that the provisions of Titles Seven and Eight will serve as a regulatory framework for the States to harmonize their local laws since the primary objective of this act is, as mentioned, to harmonize the governmental transparency system in order to thereby effectively guarantee the fundamental right of access to information contained in our Constitution.

⁶ One aspect worth emphasizing is that, under this new Act, it is not possible to challenge the veracity of the information provided by the responsible party, since this would result in the rejection of the appeal as invalid.

VI. ENFORCEMENT MEASURES AND CATALOG OF PENALTIES FOR FAILURE TO COMPLY WITH THE TRANSPARENCY AND ACCESS TO INFORMATION OBLIGATIONS.

Title Nine of the Transparency and Access to Public Information Act indicates that public warnings or fines may be imposed (which cannot be paid with public resources and thus impose an economic liability on public officials⁷) as enforcement measures to ensure compliance with the resolutions on transparency and access to information by any Public Officer responsible for complying with a resolution, members of unions, political parties or the responsible individual or entity. Furthermore, this Act also indicates that if in spite of the application of the enforcement measures indicated above a certain resolution is not complied with, compliance will be required from the superior of such officer and enforcement measures may even be applied to that officer. If the non-compliance persists sanctions will be determined in accordance with article 206 of the Transparency and Access to Public Information Act which lists fifteen different causes of sanctions for non-compliance which include:

- Failure to abide by the resolutions issued by the guarantor organizations,
- Failure to dissemination or update the information related to the transparency obligations,
- Failure to respond to requests for information or the delivery of information that is incomprehensible, incomplete, in an inaccessible format or in a mode of sending or delivery different from what was requested by the user,
- The denial of the information when it is not classified as reserved or confidential or the classification as reserved when the characteristics indicated by this Act are not met,
- The carrying out of acts to intimidate the requesters of the information or to inhibit the exercise of their right of access, and
- The use, removal, disclosure, hiding, alteration, mutilation, destruction or non-utilization, total or partial, without a legitimate reason, of the information that is under the custody of the responsible parties and of their Public Officials when they have access to or knowledge thereof through their employment, position or commission.

VII. CREATION OF THE NATIONAL TRANSPARENCY, ACCESS TO PUBLIC INFORMATION AND PROTECTION OF PERSONAL DATA SYSTEM AND OF THE NATIONAL TRANSPARENCY PLATFORM.

Finally, it is also relevant to mention that the Transparency and Access to Information Act creates the National Transparency, Access to Public Information and Personal Data Protection System the purpose of which is to coordinate and evaluate the actions related to the transversal public policy of transparency, access to information and personal data protection and to establish and implement the criteria and guidelines indicated by this Act and by the other applicable regulations. The System will have a National Board and an Executive Secretary designated by the plenary of the Institute.

The National Transparency Platform is also created by this Act which is an electronic platform developed, administered, implemented and started up for purposes of complying with the procedures, obligations and

⁷ The last paragraph of article 201 establishes that the economic enforcement measures cannot be paid for with public resources.



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provisions indicated in the Transparency and Access to Public Information Act. For this purpose, the national platform will have at least the following systems: (i) system of requests for access to information, (ii) system for handling appeals, (iii) system of transparency obligations websites and (iv) system of communication between the responsible parties and the guarantor organizations.

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Sincerely,

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