



Homeland Security

The Privacy Office
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Privacy Office Workshop Series
Transparency and Accountability:
The Use of Personal Information Within the Government
April 5, 2006

OFFICIAL WORKSHOP TRANSCRIPT

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Ronald Reagan Building and International Trade Center
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KEYNOTE SPEAKER

María Marván

President, Mexican Access to Information Institute (IFAI)

MR. KROPF: Good afternoon, ladies and gentlemen. Can you hear me okay in the back? Okay. Great.

I'd like everybody to take their seats. My name is John Kropf and I am the Director of International Privacy Programs for the Department of Homeland Security's Privacy Office.

And I see that our numbers have thinned out just a little bit since lunchtime, but I am hopeful that folks will return and hear what we have to say because I think in my unbiased opinion as the international person in the Privacy Office, I think this is going to be the most interesting panel of the day.

I am absolutely delighted to be able to introduce to you a very distinguished visitor from Mexico for our keynote opening in the afternoon, Ms. María Marván.

Ms. Marván was appointed to the -- as President of the Federal Access and Information Institute or IFAI by the President of Mexico on November of 2002. And specifically she is responsible for ensuring and promoting the effective use and the right

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of access of information and the protection of personal data within the Executive Branch of the Mexican government. And prior to this distinguished appointment, she was a writer and an SAS and very accomplished in the academic world.

But I think with that, I will turn the floor over to Ms. Marván, and we look forward to your remarks.

MS. MARVÁN: Thank you very much. First of all, I have to thank you, the Homeland Security Office, for inviting us.

And as a good Mexican, I have to apologize for my bad English. I hope it's good enough so you can understand it.

And I must say that access to information is a law in Mexico. It's part of the democratization transition that we have been living. After 70 years to be under the rule of one party, finally in the year 2000, a different party wins the Presidency. And this is part of the transformations that the Pan, P-A-N, and the President folks has take care of in his Administration.

The law was approved in 2002 unanimously in the Congress, which was really amazing with a very split Congress like in three almost even parties. And the regulation has the purpose to -- of two civil rights, freedom of information and privacy rights.

It is very difficult at the same time enforce both of them. Sometimes we can say it's even schizophrenic within the very same agency to do both things at the same time.

It also gave us a lot of opportunity to really try to establish what are the obligations of the federal employees in order to take care of the personal data that is in the hands of the federal government. That's our main task. This is the kind of databases that we control or have to control where we are starting to set some policies and to enforce them.

It seems the approval of the federal law, therefore, has spurred at the state level out of -- 28 states out of 34 already has a regulations about access of information, "FOIA", and privacy law.

This is, as I said, something very, very new in Mexico. And there is an obligation at all of the states to have this kind of law. So it's good news that in just four years, almost all of the states have this set of rules.

The transparency laws have those objectives, simple and fast procedures of access,

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and we have accomplished that through two main things that are working together.

First, of course, the law which scheduled a limited time to give the answer to the people which is 20 working days. And if there is not an acceptable answer, we are processing your request. You have to deliver, actually deliver the information in those 20 working days which is around a month.

And the other part that has been very helpful for us is the use of internet. We do this as a people, as a person, can do the request through the internet. You don't have to be Mexican. You don't have to be citizen. You don't have to live in Mexico City. You can ask the government and they have to answer you. And sometimes their response can be through internet also.

The idea is to transparency in public affairs. One of the main acts for people in the PRI Times were the lack of transparency and the lack of vulnerability. They were very worried about corruption within the government. So one of the main acts of this Administration was trying to improve transparency, to deliver information to the people, and to diminish corruption.

The law obliges also to the protection of personal data. You can request your information, your own information through the internet, but you won't receive in the internet, so we are sure that the right person deliver -- receives the right information and not someone else impersonating someone and ask for the information of a third person.

The idea also is the promotion of accountability to citizens, set rules for archives. The archives in the government were really a mess. There are very, very few rules before of this act. And each federal agency has a different set of rules. So it has been one of our main problems and our main task to really try to make some standards in the archives of the government.

At the end of the day, of course, we will try to foster democracy and the rule of law and to enforce that any public servants comply the law and do what they have to do and don't do what they are not supposed to do.

One of the main characteristics of the transparency law in Mexico which works in some things similar to the "FOIA" in the United States -- and a lot of the organization, it's really different -- is to hunt government information on the internet. There are some kind of information, especially about budgets, that has to be on the internet and has to be renewed every quarter of the year and sometimes twice a year.

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And establish classification of the information. Unlike "FOIA" in the United States, Mexico didn't have any kind of framework before that to classified information. I am not meaning to say that information was available. It was impossible to get it. But it was not classified under some kind of normative framework that tells you this kind of information has to be reserved for 12 years or 30 years or 90 years and this is the reasons why I am reserving the information.

So at the same time, the public servants have to learn to classify information and to deliver documents to the public when they are -- is some kind of request.

Of course, we have to make some guarantees serving access to protection of personal data. And one of our first tasks, as Lina Ornelas will say in the panel, was trying to make a list that what kind of sets of government -- of data have the federal government about you.

Organization of archives, we are an authority to say to the federal agencies how to file the documents and how to make it handy to the people. The law established no need to show ID or justify your request. You can just -- the only reason that you need to justify your request is because you like the information, because you like to know what your government is doing and how they are making some kind of decisions.

The idea is universal, free, and easy access through internet. As I told you before, you can do all your transactions through internet which makes really a fast and easy the process to the people.

IFAI acts like a sort of administrative court. We are five commissioners appointed all of us by the President and ratified by designate. And if the people ask information to a federal agency, if the information is denied, then they come to us to appeal and our decisions are mandatory to the federal government.

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If we say even to the presidential office that he has to deliver some kind of information about how much they spent in some program or in some event, et cetera, they have to deliver it. There are no possible for them to avoid this kind of act.

Requesters, on the other hand, can appeal to the judicial power if we ratify that the information is really classified and they cannot have it.

Our main task is disseminate benefits of the transparency law and enhance culture of transparency and accountability. And that, of course, suppose the two sides of the coin.

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On the one hand, people have access to federal government document. On the other hand, they have the right of privacy and they have different forms to ask for their own data and ask the government that their own data don't go from hand to hand without their knowledge.

We have -- we are like an authority to review the federal government's, transparency obligation or the information that the government, the federal agencies have to have internet, who is working in each federal agency, how much they are earning a year, and what they do, how much have they in budget as institution, and how they spend it in the different programs and policies.

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We have to review every now and then. We do it like usually twice a year for each federal agency which are around 220, if they are really complying with their obligations and putting the information and if this information is updated.

We have to enforce also a privacy right. It's very difficult in Mexico to convince the people after 70 years of being under the rule of one -- of just one party to convince them that they really have rights in front of the government. They don't believe they have rights to know and they don't believe at the same time that they have right of privacy.

Part of our work is to convince them and to make some kind of education programs to the people to let them know that they have both rights and the federal government has the obligation to comply with that. That's supposed also.

A labor of education, we the federal public servants. So we have to work with bureaucracy and with the citizenry, convince them that those are rights and they have to respect this kind of rights.

We adjudicate appeals when conflicts emerge and when there are some kind of controversy that one federal agent says this information is reserved. I should not release to the public because of national security or any other reason.

There are three articles in the law that allowed us to reserve information. They can come to the office and we have to decide if this information is really reserved or it has to be delivered to the public.

Most of the time, not always, of course, most of the time when a public servant tried to say this is information, this information has to be reserved, they are trying to protect themselves rather than the public.

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So that's why it is important to have an independent agency that says, no, no, no, this is in the public interest trying to balance exactly what we were hearing a moment ago in the panel.

The kind of information that you have to find in different (unintelligible) obligation are the directory organization and structure task and services, salaries and benefits of public officials, budget and public finances, contracts, procurements, concessions, permits, subsidized citizen participation mechanisms, audit results, as well as legal framework. This is information that has to be in the internet all the time and it has to be updated.

In terms of protection of personal data, the main task that we have is guarantee that sensitive information such as personal data in custody of the federal government is protected. And the guidelines for protecting personal data, we have to issue the guidelines of protecting personal data and releasing it to the rightful owner when requested.

We have also the possibility that the people, any person, can correct their information that is held by the government. So far, we have had a good response of the public servant.

I must say that it has been in the interest of the President, because it was one of the main innovations that he did in his Administration, and he want to make like a big remark of difference within the PRI.

He personally has enforced and promote to the public servants from ministers to a lower level bureaucrats to deliver information, even though sometimes that caused him a lot of media scandals. Nevertheless, he has to stick to the policy.

We find that the federal government is really delivering information. We have the types of answers that the people are receiving. In almost three years of the law that the people were able to start demanding information, we have received around 125,000 requests in the federal government. In almost 75 percent, a little bit more, the information was delivered to the people.

A lot of times, we find nonexistent information and that was one of our main concerns about the archives. Sometimes people ask issues not included on the law and, of course, we have also some denied information.

As we can see of the data, from June 2003 to mid March 2006, government agencies

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under IFAI's jurisdiction received 124,000 requests. Seventy-six percent of the cases, requesters obtained actually the information. The proportion of appeals to request is four percent. And as mid March, 90 percent of the appeals have been solved.

One of the keys for the functioning of this program is that the federal agencies have a limited time to respond. They have 20 days. I already said 20 labor days. And the average response is like in 11 days.

And we also as a court of appeals have limited time which is 50 days to review the case and decide if information is or not public, if the personal data should or not should be corrected because it's wrong, and that has to be delivered to the owner of the data.

In most of the cases, 58 percent of the total of appeals have gone to the court of the issue. And of this 58 percent, 74 of the appeals defies resolution, has been to disclose some or all the disputed information. In the remaining 26, the answers of the agencies has been confirmed.

Of course, we have had a lot of requests about national security, the movements of the Army in Chiapas. We don't have the concerns that you have about terrorists, but we have two main concerns in matters of national security.

The main one is drug traffic and the second one is guerilla. And those are problems that people ask about it when we usually confirm the decision. Not all the information about the Army is reserved which was a big and huge step and difference from the PRI and this government.

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Some of the successful stories that we have to take and we are really very proud to talk about are the disclosure information in some very sensitive fields that back then were impossible to know and impossible to keep track of on some of the account -- of the acts of the government, even to the Congress.

One of the main issues is about savings and loans security commissions, EPAB (phonetic). They were not accountable before this law in the rescue of the banking system which was a huge bankruptcy in '94, as some of you may remember, and most of the records were kept secret, usually protecting the minister of treasury and the acting of the privates in the banks. And a lot of this information is not just now disclosed, but you can consult of this information through the internet.

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They ask so many information that the EPAB decide to -- which is a sort of -- I don't know what is the equivalent in the United States. I will think about it -- they decide to put

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the information through the internet mainly because this information was asked by the journalists. And if they put it through the internet, they give it to a journalist, but to the public in general. So that kills the scandal and the public gets informed.

The other thing that is very important and we are really very proud is about the achievements in medical files. Believe it or not, before this law, there was no piece of normative regulation that obliged the medical system to give the complete file to the patient. They can have just a resume of their own file and the idea of the patients are minors and they were -- will not be able to really understand what's on the files.

This is the first time that any kind of patient that has been treated in the federal health system can have the whole file and go to another medical doctor and ask for a second opinion. There has been a great deal of resistance between the -- from the medical people, the medical doctors within the system saying that we will have a very legal defensive health system and that will not help the society. We, of course, don't think so. We don't endorse this kind of saying.

There has been some kind of a very interesting experience in just three years that accountability about public resources. These two cases that I place there, Provida (phonetic) and HIV AIDS cases where two different NGOs trying to follow part of the money from the authorization of the Congress in the budget to the health offices to each and every single hospital trying to see what have they done with the money that the Congress said it has to be for HIV treatment and HIV education.

And there were unpleasant surprises like saying that with some kind of the money that the government gives to HIV was spent in Ajax or any other kind of different cleaning products in the hospitals instead of medication for HIV.

What are our main challenges at this point? Consolidate the right of access to public information and the efforts to promote transparency both in the management of the government documents as well as in the privacy policies.

We are really concerned of not making any backward movement of the current legal framework. There has been some attempts in Congress, especially now that we are in an electoral time, for the next government to go backwards, and we are aware of that and we are trying to make any kind of lobby that we can to really defense this kind of situation.

We have to have collaboration and support with government agencies to improve the work in transparency. As I said, education is a main task for us, especially since this is

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of such a new agent. Guarantee the best standards to protect personal information, avoid unlawful dissemination or marketing of personal data, that has been a main issue.

A very clear difference in Mexico from the United States, like, for example, they list the registered votes is federalized and it was sold by an unloyal servant like three years ago, four years ago. It was a huge scandal. So we have to protect this kind of databases, as well as guarantee the access to public information without undermining the right of privacy.

The main idea of this kind of public policy and the impacts that they should have over the whole society, over the whole country, is to reduce corruption through transparency and rules and practices, improves government efficiency.

I was telling with the people that we have lunch that there are amazing stories that sometimes under ministers are able to get information faster under "FOIA" than through the bureaucratic channels because here the time is limited and through the bureaucratic channels, it can take -- it can take months and even get lost the request between all the memos that we don't like to attend.

Of course, we believe that that (unintelligible) legitimacy and confidence in the government and encourage society to demand information in search of better solutions of community problems. We have a lot of success stories. We have a lot of challenges.

And we really believe at the office that democracy can be defined very -- in very simple terms as that political system where a citizen can know everything about their government and government officials cannot stick their nose in their private life.

Of course, there is no clear boundaries between one and the other and that is the reason that we believe it's very convenient to have an independent authority trying to set boundaries in the specific cases.

Thank you very much.

(Applause.)