

Manipulating the Mexican Press: the Mexican government's regulatory role in freedom of information, gatekeeping and eliciting self-censorship among the press

Brittany Crocker

Sandra Davidson, Committee chair

ANALYSIS

In a functioning democracy, the role of the press is that of a gatekeeper. The press absorbs the countless stories, messages and bits of information coming at them from all angles and disseminates that information to the public based on importance. Gatekeeping theory describes “the process of culling and crafting [...] information to the unlimited number of messages that reach people everyday” (Shoemaker, Vos). Karine Barzilai-Nahon (2008) created a typology for news consumers within gatekeeping theory called “the gated.” She listed four attributes that determine how the “gated” interact with the “gatekeepers”: political power in relation to the gatekeeper, the ability to produce information, the relationship with the gatekeeper and alternatives in the context of gatekeeping. In a democracy, the gatekeeping role is vital in keeping “the gated” informed about their government, but freedom of information must exist for the process--and the democracy--to work.

Mexico is a new democracy. To be exact, Mexico's government is a presidential representative democratic republic in which the president is both the head of state (what the United States might call a monarch) and head of government (what the United States would call a president). And while the country's 1917 Constitution mentions some democratic structures, the country was under authoritarian rule by the Institutional Revolutionary Party (PRI) until 2000, when the National Action Party (PAN) ousted the ruling party. Nationwide violence ensued following the declaration of war on drugs in 2006 by the second PAN president, Felipe Calderon. PRI restructured, and in 2012, Enrique Peña Nieto won the presidency. PRI is currently the ruling party in Mexico again (Rama A. & Stargardtner G.).

The first PAN president, Vicente Fox, signed the *Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental* into law two years after PRI lost its authoritarian rule. Despite the country's young and tumultuous democracy, the law is credited to be one of the most progressive freedom of information laws in the world (AIE & CLD 2011), even covering unions and nonprofits.

The National Security Archive called the law a “very good law: well-conceived, well-articulated and unequivocal in its intent to guarantee the right of citizens to obtain information about their executive branch.” (Doyle) The law's provisions are significant, beginning with the declaration that all government information is public property, particularly information related to human rights.

The law requires governmental bodies to routinely publish information regarding their budgets, operations, salaries, internal reports, staff, daily functions, contracts and concessions in an easily accessible manner. If a person making a request can not find certain information, the citizen is within his or her legal rights to request that information and appeal if the request is denied. Citizens also have the right to take a denied appeal to court. (Ley Federal de Transparencia, Artículos 2, 6, 7, 40, 49, 59)

One clause explicitly prohibits the government from withholding information regarding human rights violations or crimes against humanity. The law also created the *Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales* (called the *Instituto Federal de Acceso a la Información* until the law was updated in 2015), which is an independent constitutional body to ensure the public's right to information and protect government employees' private information. The *Instituto* even has the power to compel disclosure of information on behalf of a citizen who wants to remain anonymous. It should be noted, however, the body operated only at the federal level until 2015, and while the federal institute can now override state and local freedom of information refusals, it requires a federal-level appeal (Transparency International).

However, my research shows the country still struggles with common issues, such as flawed information negotiation. Mexican reporters also face unique issues related to the government's influence on newsroom revenue. In addition, the same expansion that made

unions, interest groups, and nonprofits more transparent also came with privacy provisions the government uses to reject requests or heavily redact information.

Mexico has 31 states not including Mexico City, the home of the federal government, sort of like Washington, D.C. These 31 states range from 600,000 to 15 million people in population. Among these states, there are 2,438 municipalities, the smallest of which contains only 102 people at the last census (Censo). I have found that the more local the system of government, the less transparent the government is, inhibiting the abilities of the press.

The political power in relation to the gatekeeper typology (Nahon) within gatekeeping theory allows us to afford the press a middle ground in dealing with the government. Peter J. Fourie describes the government's role in the gatekeeping relationship in *Media Studies: Policy, Management and Media Representation*, as that of the "regulator," a deliberate influencer in what the pool of information the gatekeeper's have to work with actually contains (Fourie). According to Fourie, political power acts as a regulator through specific expectations on how the media "should fulfill their role in society," and he says these expectations become "normative pointers" that shape media behaviors. Forms of government feedback enforce these intrinsic "pointers." These "pointers" arise in newsrooms, in the reporting process and in the information-negotiation process.

Government money is the first pointer. Having numerous small publications within a community in Mexico is common. In 2011, there were 4.20 newspapers per million inhabitants (Engesser & Franzetti). Newspapers do not rely on circulation to keep going, they rely on advertising revenue--the greatest sums of which come from the government at various levels (Marquez-Ramirez, personal communication. September 10, 2016) (Mora, personal communication. October 3, 2016) (Torres, personal communication. September 19, 2016). The government will often take out advertisements in the paper to make statements, called *publicidad oficial*. Sometimes these statements are even placed in or disguised as news stories, like a reading notice. These reading notices are called *gacetillas* and are a primary source of advertising revenue for Mexican publications (Benavides). Newsroom ties with the government can discourage reporters from making information requests, and editors often do not back their

reporters up when advertising revenue is at stake according to Marquez-Ramirez and Mora, who have interviewed and supported reporters using the law to request government information.

A journalist from Puebla came to David Mora at Article 19, a nonprofit organization focusing on freedom of information, after an editor asked him to call off his investigation into *publicidad oficial*, or government advertising as a method of eliciting self-censorship.

...He was requesting information about how much the government was spending in public advertising and there was this really tense situation with this editor. The editor approached him like “Yeah, you do not have to investigate that because...we’re...even using it.” It was really funny because the newspaper he worked for was a consumer of the public advertising of the government he was investigating about, so the editor was like “You know what, you should stop asking that information.” (Mora, personal communication. October 3, 2016)

As a result, investigative reporting can be a bargaining chip for executives of smaller news organizations to compel the government to give their papers more advertising. “There are not many incentives for small-and medium-sized outlets to conduct investigative journalism and go and dig the dirty laundry of the politicians unless they want to use critical journalism as a blackmailing tool,” said Mireya Marquez-Ramirez, a press freedom scholar at the Universidad Iberoamericana in Mexico City. “Critical journalism is always the means or the tool these editors have to exchange favor or you know, commission a favor,” she said. (Marquez-Ramirez, personal communication. September 10, 2016)

Making an information request also exposes reporters to political repercussions within their work. Reporters fear being subject to threats, identifying themselves as a problem, and losing potential sources. It is possible to submit a government information request anonymously using the the *Instituto*’s platform, InfoMex, which redirects requests to the appropriate section of government (Langunes and Pocasangre). A person can use an anonymous email account to submit the request; however, no journalism practitioner interviewed has submitted an anonymous request. Mago Torres, from Inforight and Periodistas De a Pie, said journalists are still concerned their IP addresses make them identifiable. Article 19’s David Mora said .TOR and encryption software can make a request even more untraceable by stripping the IP address, but he has not seen a reporter attempt an anonymous request, especially at that level, in his two years

supporting Mexican reporters at Article 19 (Mora, personal communication. October 3, 2016). Even if a reporter submits an anonymous request, government agencies can tell the reporter to come in and pick the information up in person, or he or she has to go through the documents at the government agency or the Instituto, thereby making the anonymous request pointless.

The Infomex system works at the federal level by design, but requests can get complicated at the local level and submitting an anonymous request in a rural or indigenous municipality is nearly impossible. “Everybody knows everyone,” said Mago Torres of Periodistas de a pie and InfoRight. Torres saw the consequences of making an information request at the local level when she gave a class to journalism students that required them to use the law to make an information request.

...This journalist from one of the states--not from Mexico City--made a request in his state...It was like part of the semester. He came to me like a few weeks later and he was just like, he was super excited...He was so excited. He sent me the number of this information request, he showed me the question, everything. Then he came back a couple of weeks later, he was just like, “The officer...the office that I made the request, they called my mom because they are looking for me. They want to know why I am asking this.” (Torres, personal communication. September 19, 2016)

Second, negotiating for documents at the state and local level discourages reporters and citizens from continuing to use the law to access information. Reporters must have a basic level of legal and political literacy in order to make a records request, or their request will be either denied or come back with irrelevant results. Again, there is a distinct disparity in which reporters know how to make a request that is based largely on geography. “You have to phrase your requests in ways that do not get you rejected,” Marquez-Ramirez said. Most of the information used to specify a range of documents can only be found through the internet, which is not something that all Mexican citizens or even Mexican newspapers have access to. Some Mexican reporters are wary of engaging the government in a conversation about information they are not sure they are allowed to have in the first place.

You also have to know that it is your right to know these things and a lot of citizens unfortunately still have not gotten to that level of political culture in which they see themselves as the counterbalance of the government. We have

grown up, unfortunately, in such an opaque kind of political culture that sometimes it seems authoritarianism is inevitable and the lack of transparency and the lack of accountability is sometimes seen as part of the status quo, and sometimes it's difficult to create incentives for people to demand that these things are transparent... It has been very good tool, very good for exposing wrongdoing and corruption and all sorts of criminal activity, but for very few journalists--those who know how to use it well, those who are high profile, those who are elite journalists--it's unfortunately, it is not still as widespread as we would like. (Marquez-Ramirez, personal communication. September 10, 2016)

Some of the fault lies with news editors who do not train their staff in the process or allow them time to practice investigative reporting. Journalists frequently have to conduct investigations in their spare time, and if the government charges a fee for paper to print a request, reporters pay the fees out of pocket (Garza, personal communication. September 15, 2016). Exorbitant fees for paper are one way journalists can get caught in red tape when requesting information. Information officers have also told reporters that certain information does not exist or the officers deny requests because of improper wording.

“They comply with your request but will put so many stones in your way so that people get bored or do not find exactly what they’re looking for,” Marquez-Ramirez said. “The evidence in our latest survey tells us that journalists would rather go on their own or conduct interviews or seek comments from or on the part of officials, and they would do that before going at great lengths and filing a freedom for information act because it is time consuming.” While these roadblocks are often intentional, they can also result when some state or local agencies do not process and store their information in a manageable way. “...There are some specific limitations of each local government,” said Manuel Borbolla from the *Huffington Post* in Mexico. “Because sometimes there are very disorganized...there are a lot of administrative processes and it’s difficult so much to find the specific documents or information that people question to the government.”

“You have a lot of different degrees of transparencies,” said Javier Garza, from World Association of Newspapers. “It sometimes depends on the bureaucratic culture of the institution, and sometimes it depends on the person running that government agency.” The more distant from federal oversight, the more nuanced the process becomes. The 2015 update to *Mexico’s law*

for information access, the *Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*, expanded the definition of public entities to cover nonprofits and labor unions. Since then, Garza said in an interview, journalists have seen that unions can be much more opaque than government agencies.

For example, the labor union of PEMEX, the state owned oil company, hasn't responded any information requests that have been filed asking for, you know--union dues, the payment of union dues or how they are running their finances or things like that. So as more and more entities come into requirements to provide information, to make information public, we start seeing there was a higher level of darkness in them, that was in the case, for example, of the unions. (Garza, personal communication. September 15, 2016)

Corruption is the third pointer, seen in PRI's attempts to shroud pieces of the transparency law in darkness after they returned to rule in 2012. The 2015 law did open labor unions to the public, but it took a step backward when it changed the name and the duties of the *Instituto* to include protecting data regarding government personnel and national security. Tighter requirements for what constitutes public information have given Mexico's executive branch much more discretion in a field that is supposed to be managed by the *Instituto* as an independent public body.

Since the change, archives on Mexico's Dirty War--a period spanning the 1960's to 1980's in which the authoritarian PRI rule fought and suppressed social and guerrilla movements--have been a subject of dispute. During the Dirty War thousands of people were killed and hundreds disappeared. President Vicente Fox ordered that all documents the intelligence authority had pertaining to the Dirty War be placed into the National Archives Institution for public access. Now, the *Archivo General de la Nación* is classifying the information on the grounds that it contains personal data and banning the public from viewing the records without filing an information request and receiving heavily redacted versions of the files. Mora said historians and historical journalists who come to his office at Article 19 for help are struggling to produce history with the regulations PRI has again placed on the records of their actions in the Dirty War.

Something really important for the historians is not only to access in a specific archive--in a specific document--but to see the context of this document;

to see where it was kept, how it was kept, in what type of series, in what conditions....It's really worrying for a person like a bureaucrat to go on behalf of you, to take the document, to redact the document, and to give you, like, this really censored version....We're pushing for the fight against impunity to keep in mind memory of the crimes committed in the past, and so on. Right now we don't have the means to do that because the archives regarding the Dirty War, we say they are censored those archives. So that's really huge problem. The privacy argument is used to...illegally classify information. (Mora, personal communication. October 3, 2016)

And while Mexico's transparency law contains a clause making it illegal to classify information regarding human rights violations, loopholes such as those created by the privacy expansion have not only affected records from the Dirty War but also have limited the law's results for human rights investigations. "It has been very useful I would say for middle-sized scandals," Marquez-Ramirez said.

For example when they want to know, say, how much this construction work costed, I think that they do not deny those types of things. I do not think officials get that sensitive even if they are going to be criticized for things like that. I think that would not work in cases where they are investigating mass murdering scenes or disappearances or things related to...criminal activity, organized cartels or corruption or collusion of police and the criminal organizations. (Marquez-Ramirez, personal communication. September 10, 2016)

The most heart-wrenching example for journalists and citizens of late pertains to the disappearance of 43 students from the Raúl Isidro Burgos Rural Teachers College of Ayotzinapa. The students, who were on their way to Mexico City to commemorate the 1968 Tlatelolco Massacre, were intercepted by local police. The official investigation stated the local police turned the students over to a local crime syndicate, the Guerreros Unidos, and the Guerreros Unidos then murdered the students. The populace suspects the national army, which has a base nearby, was complicit, if not involved, in their murders. The national government has accused the local police of conspiracy but denies the national army's involvement. Citizens and journalists across Mexico have submitted information requests to find out what the nearby soldiers and security forces were doing that night. The government has closed any records it has

on the event claiming the information presents a security issue or that the information does not exist (Marquez-Ramirez, personal communication. September 10, 2016). The official investigation was performed by a group of outside experts, but because the experts are not a government entity, many of their records are also unattainable using Mexico's transparency law (Perez, personal communication. August 17, 2016).

It is these loopholes and partisan regressions that create obstacles to information access. After the first version of the law was passed when PAN came to power, Benavides (2006) said, this principal corruption in the Mexican government laid the groundwork for Mexico's freedom of information laws and right-to-know approaches for government transparency to materialize. Some of Mexico's barriers to information access--like flawed records negotiation--are universal. And while PRI's reactive attempts to invalidate the transparency law and the *Instituto* have set transparency back, and while government advertising still controls newsrooms, the journalism practitioners in this study say the evolving information access law is a small step in the right direction.

In order for transparency to move beyond the first step, the country needs to see political determination toward a transparent government, a more autonomous *Instituto* (Mora, personal communication. October 3, 2016), federal transparency laws to trickle down to the state and local level (Benavides), proactive, rather than reactive transparency (Garza, personal communication. September 15, 2016), and newsrooms finding autonomy from government advertising (Marquez-Ramirez, personal communication. September 10, 2016). "It all depends whether you want to see a half-empty or half-full glass," Marquez-Ramirez said. "We are much better than we were 30 years ago in the top of the authoritarian rule, but there is a long long way to go because the perfect law in the wrong hands doesn't work as it should."