

Learning from international experience

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Access to Information Act, Canada

Federal transparency & access to Information Law, Mexico

Objective

In this chapter, the implementation of “RTI/Country specific Information Act” was studied for Canada and Mexico with the objective of identifying solutions to issues and constraints mentioned in Chapter 3. It is interesting to note that there are rules/practices in these countries which can be customized to the Indian situation.

The Right to Information, commonly understood as the “right to access information held by public bodies” in international parlance, was adopted by 13 countries in 1990. However, this number now is upwards of 70, and this Act is under active consideration in another 20-30 countries. In 1990, no inter-Governmental organisation had recognised the Right to Information, and now all multilateral development banks and a number of other international financial institutions have adopted information disclosure policies. In 1990, the Right to Information was seen predominantly as an administrative governance reform, whereas today it is increasingly being seen as a fundamental human right²².

During the course of the study in the First National Workshop meeting held on 17th April 2008, it was discussed and decided that learnings from international experience should be incorporated in the study. It was decided that the implementation structures in Canada and Mexico should be studied as they are similar to the implementation structure envisaged in the RTI Act. This chapter focuses on practices in these two countries which could be helpful, if implemented in India.

4.1. Access to Information Act, Canada

4.1.1. Background

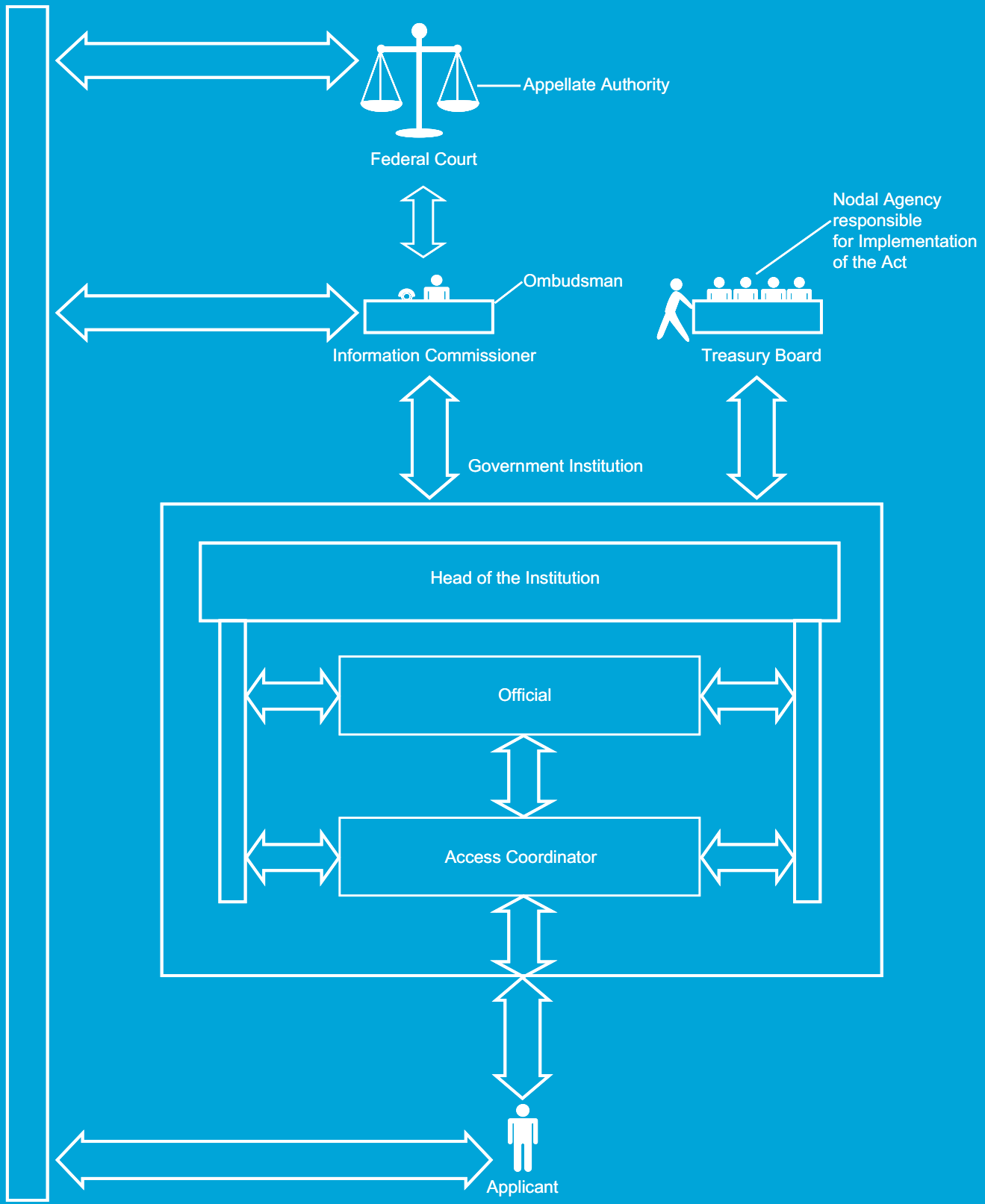
Access to information Act of Canada grants the Canadian citizen the right to access records held by Federal bodies. States have their own version of Access to Information law. In most cases the Access to Information law is accompanied by a privacy law that acts as a check on the provisions under the Access to Information law to seek information on other individuals. The Canadian Access to Information Law came into force in 1983 with the objectives of improved dialogue between the political leader and the public, improved decision making and greater accountability of the federal officers.

Access to Information Act, Canada also defines the Government Institutions that it applies to, the kind of information that can be accessed through it and the type of information that falls outside its scope. Further it also delineates the process for making an information request including the timelines and procedure for notifying third parties. Besides the Act, certain supplementary legislations determine the implementation details and they are:

- The Access to Information Regulations contain more detailed rules relating to the making of a request under the Act, the transfer of requests from one Government institution to another and fees payable to avail the information
- The Access to Information Policy sets out requirements for all Government institutions to follow, in order to ensure effective and consistent application of the Act.
- The Access to Information Guidelines provide detailed guidance and Leading practices, primarily for the use of Government officials in the day-to-day administration of the Act.

²² Source: Freedom of Information: A Comparative Legal Survey by Toby Mendel

Figure 4.1: Access to Information Act, Canada



4.1.2. Major stakeholders in the Canadian information regime

- Federal Court: It is a Canadian trial court that hears cases arising under certain areas of federal law. The Federal Court is a superior court with nationwide jurisdiction and any person who has been refused access to a record requested under Access to Information Act, may apply for review of the matter within 45 days of the results of investigations by the Information Commissioner.
- Information Commissioner: He is an independent ombudsman appointed by the Parliament. He has strong investigative powers and mediates between dissatisfied applicants and Government institutions. As an ombudsman, the commissioner may not order a complaint resolved in a particular way. Thus the commissioner relies on persuasion to solve disputes, asking for a Federal Court review only if an individual has been improperly denied access and a negotiated solution has proved impossible.
- Treasury Board :
 - The President of the Treasury Board has been designated as the Minister responsible for overseeing the administration of the Act, for the issuance of guidelines and directives to Government institutions, and for producing publication (*Info Source*). Each year, the President of the Treasury Board also tables an aggregate of the statistical data in these reports, containing information about Government institutions and their information holdings.
 - The Treasury Board Secretariat, through its Information and Security Policy Division, is the primary source of expert advice, training and guidance to federal institutions. Government institutions subject to the Act are required to report to Parliament annually on their administration of the Act.
- Government Institutions: Every Institution covered by the Act is listed in Schedule 1 of the Act. A Minister or a person appointed is responsible for the administration of the Act in her/his institution. Information requests at the institution must be made to the Access Coordinator of the institution, who in turn interacts with the official possessing the relevant information.

4.1.3. Major provisions

- Proactive Disclosure: Section 5 of the Access to Information Act lays out the kind of information to be proactively disclosed by every Government institution on a periodic basis (and not less frequently than once each year).
- Service Levels:
 - The head of the Government institution to which the information request has been made, will within thirty days intimate the person who made the request regarding the status of his request and if access is to be given, give her/him access to the requested information, if required. If access to information is not given within the time-limit, the request is deemed to have been refused.
 - If the information request needs to be transferred to another Government institution, the request will be transferred to the concerned Government institution within 15 days after the request was received and a written notice for transfer of request will be given to the applicant.
 - Under Section 9 of the Access to Information Act, there is a provision for extension of the thirty days time limit for the processing of the request. A notice is issued to the applicant as well as the Information Commissioner for the extension of the time limit and length of extension within thirty days of the request. The applicant has the right to complain to the Information Commissioner about the extension.
- Fee Structure: The application fee for an information request is \$ 5, the information charges are decided based on the form of information required and are subjective in nature. There is an additional charge for copying and processing fees, if the total is less than \$25. There is no fee associated with filing a complaint at the office of Information Commissioner

4.1.4. Relevant lessons

- A designated Minister for RTI: According to Section 3.2(1) of the Access to Information Act the Governor, Council may designate a member of the Queen's Privy Council to be the Minister for the purposes of any provisions of the Act. Canadian Act lays down the duties and functions of the designated minister:
 - Cause the record management practices at the Government Institutions to be kept under review to ensure compliance with the provisions of the Access to Information Act.
 - Prescribe forms as required for the operation of the Act. This also includes forms for reporting statistics to be included in the annual report to the parliament
 - Cause the guidelines required for the implementation of the Act to be prepared and distributed
 - Cause statistics to be collected on an annual basis for the purpose of assessing the compliance of Government Institutions with the provisions of the Act

Key Observations:

- There is a Minister level position for the purpose of any provisions of the Act, which gives prominence to the implementation aspects.
- In Canada, emphasis is given to the record management practices at the Government Institutions and is under the Minister for causing the record management practices at the Government Institutions. Compared In the RTI Act (India), under section 4(1), it is the responsibility of the Public Authority to "maintain all its records duly catalogued and indexed in a manner....." However the problem of record keeping is too significant to be left to a Public Authority. There is a need to have much detailed and updated "RTI Act friendly" record management practices.

- Readily Available information on Organization & its information holdings: Info Source: It is a document published by Treasury Board Secretariat to assist an Applicant in finding out about the Government of Canada, its organization and its information holdings. It helps in determining whether one should go, whether one should write, or call to make Government enquiries, and is likely to be the first and only step one will need to take to locate the source of the information you want. Info Source is distributed to libraries, municipal offices and federal Government offices across Canada. The key features of the Info Source are as follows:
 - Provides information about the Government of Canada, its organization and its information holdings;
 - Helps individuals determine which institution to contact about requesting for information formally or informally; and
 - Contains addresses and telephone numbers for federal Departments and agencies subject to the Access to Information Act and/or the Privacy Act; and
 - Other institutions associated with the federal Government are included to facilitate access.
- A one-stop shop for Suo-Moto Information
 - Provides information about the Government of Canada, its organization and its information holdings;
 - Helps individuals determine which institution to contact about requesting for information formally or informally; and
 - Contains addresses and telephone numbers for federal Departments and agencies subject to the Access to Information Act and/or the Privacy Act; and
 - Other institutions associated with the federal Government are included to facilitate access.
- Annual report and Statistics:
 - Provides statistical information about the number of Access to Information and Privacy requests on an annual basis and cumulative statistics since 1983; and
 - Contains a summary of federal court cases related to Access to Information and Privacy.

Key Observations:

- In India, implementation of 4(1)(b), (proactive disclosure of the information) is still a challenge. The responsibility of providing this information has been left to the Public Authority. But in Canada the Federal Government is responsible for the publication of this information. While the information still is received from the institutions, there is a check/control to identify the failure of providing the information by respective Public Authorities.
- The responsibility of collection of statistics is given to the Federal Government. As per RTI Act (India), this responsibility has been given to the Information Commission under section 25(1). As mentioned in the earlier chapter, the Information Commissions in India face resource constraints in effectively collecting the information from the Public Authority as required under section 25(3).

- Front Desk Facility: Every Government Institution has an Access Coordinator who acts as an intermediary between the applicant and the official in the institutions who possess the information requested for.

Key Observations:

- In India, there has been a provision for Assistant Public Information Officers (APIOs) whose responsibility is to receive the applications for information or appeals under this Act and forwarding the same to the Public Information Officers/First Appellate Authority. However at the State Government, the availability of the APIOs is a challenge.

- Timelines and availability of Annual Reports: Annual report for assessing the compliance of Government Institutions with the provisions of the Act is to be tabled before the Parliament within 3 months of the end of the financial year. All the annual reports published by the Treasury Board are also available online.

Key Observations:

- The RTI Act (India), under section 25(4) mentions the Information Commission should table the annual report to each house of Parliament or each house of the State Legislature.

4.2. Federal transparency & access to Information Law, Mexico

4.2.1. Background

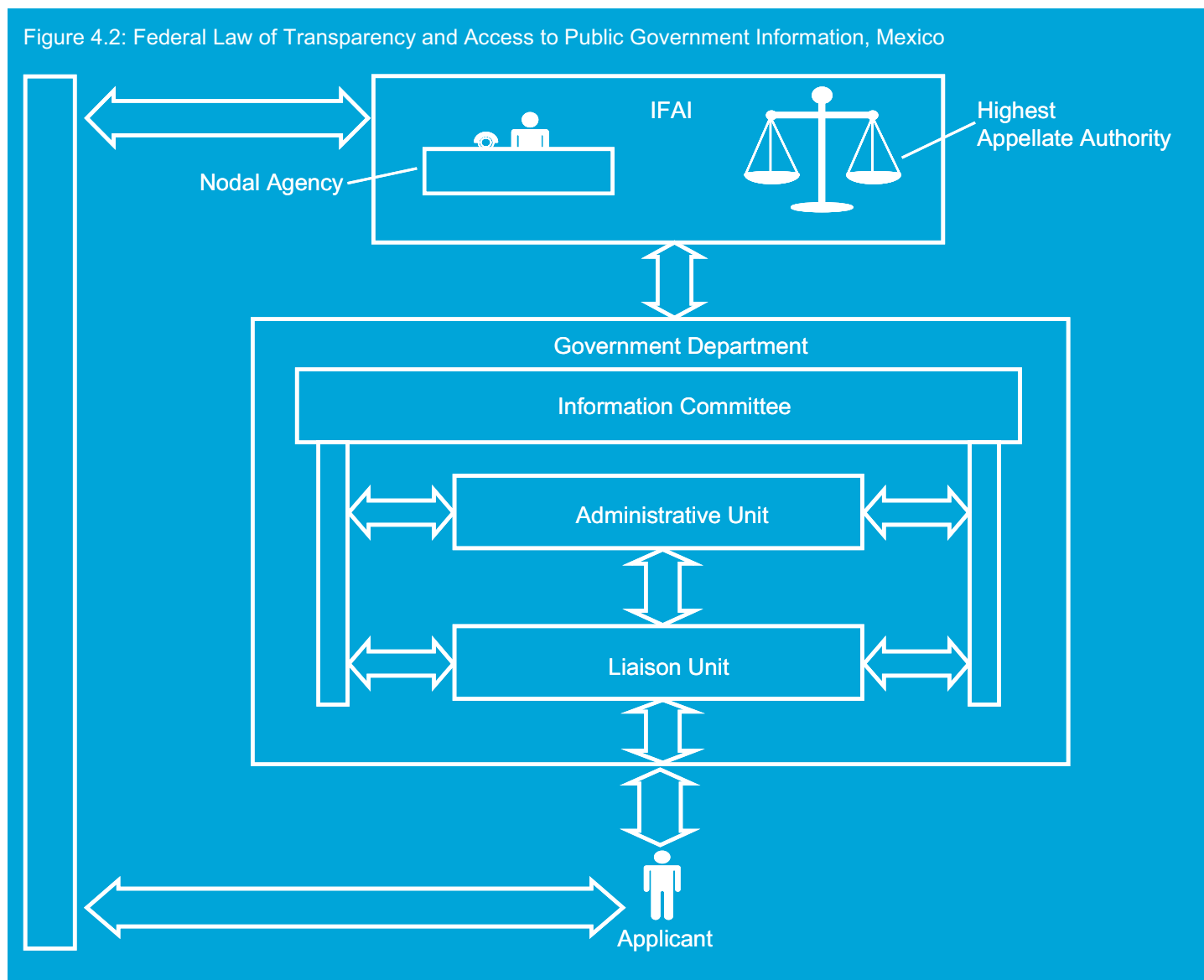
Mexico was one of the first countries in Latin America to pass a “right to information” law, with the signing into law by President Fox of the Federal Transparency and Access to Public Government Information Law (RTI Law) in June 2002. The objective of the law was to tackle corruption and foster democracy in Mexico. The overseeing body has the power under the Law to adopt regulations on various matters including, importantly, on classification. A regulation was adopted by Instituto Federal de Acceso a la Información Pública (IFAI) in June 2003 addressing a range of issues. All 31 Mexican states, as well as the Federal District (Mexico City) have also adopted Right to Information laws.

The law is amongst the more progressive Right to Information laws found anywhere. It includes a number of positive features, including strong procedural guarantees along with an innovative approach towards ensuring application to all public bodies regardless of constitutional status, and a prohibition on classifying information needed for the investigation of grave violation of human rights or crimes against humanity. It establishes a very strong and independent oversight mechanism in the form of the IFAI. Federal Transparency and Access to Public Government Information Law of Mexico grants the Mexican citizen a right to access information held by the public servants. (Those mentioned in Para-1 of the Article-108 of the Constitution) and any other individuals that make use of or manage federal public resources.

1. Departments and Entities: Those mentioned in the Organic Law of Federal Public Administration, including the Presidency of the Republic, decentralized bodies and Attorney General’s Office of the Republic.
2. Autonomous Constitutional bodies: The Federal Electoral Institute, the National Commission of Human Rights, the Bank of Mexico, the Universities and any other academic institutions of higher studies that have received autonomy by law, and any other organization established in the Political Constitution of the United Mexican States.
3. Administrative Units: Those that in accordance with the rules of each of the compelled bodies have information based upon the powers conferred to them.
4. Compelled Bodies:
 - The Federal Executive Power, the Federal Public Administration, Attorney General’s Office;
 - The Federal Legislative Power, formed by the chamber of Deputies and the Chamber of Senators. The Permanent Commission and any of its bodies
 - The Federal judicial powers of the Federation and the Council of Federal Judicature;
 - Any autonomous Constitutional body
 - Any Federal Administrative court, and
 - Any other Federal Body.

5. All Government information to which this Law refers is public, and private persons will have access to this information as the Law stipulates.
6. The Mexican Federal and Access to Public Government Information Law came into force in 2002 with the objective of improving transparency, making information fast and easy to access, improving management of documents and democratising Mexican Society.
7. Federal Transparency and Access to Public Government Information Law of Mexico also defines the Government Departments that it applies to, the kind of information that can be accessed through it and the type of information that falls outside its scope. Further it also delineates the process for making an information request including the timelines and procedure for notifying third parties.

Figure 4.2: Federal Law of Transparency and Access to Public Government Information, Mexico



4.2.2. Major Stakeholders in the Mexican Information regime

IFAI

It is an independent organization with the necessary autonomy and authority to enforce the Information Law, review those cases in which the authorities deny access to information and determine whether the requested information is public, privileged or confidential. The IFAI has trained several federal staffers on how to comply with Access to Information (ATI) law requirements. IFAI only covers the executive branch of the federal Government.

Government Departments: The Information Law provides the criteria and procedures, which must be followed by the institutions of the Federal Public Administration in order to provide access to information. The Federal Public Administration has more than 250 departments and entities, which are obligated to comply with the procedures depicted in this Guide. Three members integrate the Information Committee:

Liaison Unit

The Principal of each one of the Departments or entities shall appoint a Liaison unit which shall have the following functions:

- Processing of information request
- Interacting with the concerned Administrative unit to collect information

Administrative Unit

Each Department or entity shall appoint an Administrative unit which shall carry out all needed internal procedures in order to deliver requested information.

Information Committee

Each Department or entity shall appoint a Committee of Information which shall have the following functions:

- Coordination and supervision of all actions taken by the Department or entity relating to the granting of information provided by this law.
- Implementation and supervision of specific classification criteria for the Department or entity and proper maintenance of all administrative documents and file organization based upon the guidelines issued by the Institute and by the National General Archive, as applicable.

4.2.3. Major provisions

Proactive Disclosure: Article- 7 of the Major Provisions of Federal Transparency and Access to Public Government Information Law lays out the kind of information that is to be proactively disclosed by every Government Institution on a periodic basis.

- Service Levels:
 - The interested party must be notified of the response to his request in the shortest possible time, which cannot be in any case be longer than twenty working days, counted from time of the presentation of the request. The cost and the form, in which the information will be delivered, moreover, will be specified. This time limit may be extended for a period of up to equal length when justifiable reasons exist, as long as the person making the request is notified.
 - When a person making a request has been notified, following a Committee's resolution, that access to information is denied or that the requested documents do not exist, he may lodge an appeal with the Institute or through the liaison section where his request was accepted within fifteen working days of the date of notice, by himself or through a representative. The liaison section must send the matter to the Institute the day after receiving it.
- Service Levels:
 - Lack of response to a request for access within the time limit indicated in Article 44 will be understood as an acceptance of the request, and the agency or entity is still required to provide access to the information within a time period no greater than ten working days, covering all costs generated by the reproduction of the

responsive material, except when the Institute determines that the documents in question are classified or confidential.

- Fee Structure:
 - The costs of obtaining information may not be greater than the sum of:
 - The cost of the materials used in reproducing the information, and
 - The cost of sending it
 - The applicable fees must be established in the Federal Duties Law.
 - The subjects compelled by the Law must endeavour to reduce the costs of delivering information as much as possible.

4.2.4. Relevant lessons

- Timelines and Availability of Annual Report: Article 39 of Freedom of Information Law, Mexico states that annual report must include at least, the number of requests of access to information filed before each Department and entity, as well as the time of reply, number and result of cases taken care of by the Institute, the current state of claims filed before the internal control bodies and the problems encountered during the fulfilment of the Law. All the annual reports from the inception of Information Act in Mexico are available online.

Key Observations:

- a. In India, currently there is no mechanism to get reliable information on the number of requests filed.

- The Government Departments have 3 units – a Liaison unit, b) administrative unit and c) information committee to manage the RTI and comply with the procedures.

Key Observations:

- b. Unlike India, Mexico has provisioned for the capacity building for the administration at an institute/Department level. Further the implementation seems to be centralised as compared to India.
- c. Secondly there is an Information Committee which focuses at a Department/Public Authority level for coordination and supervision of all actions taken up by the Department or entity (similar to Public Authority in India) relating to the granting of information provided by this law. This Committee is also responsible for maintenance of all administrative documents and file organization based upon the guidelines issued by the Institute and by the National General Archive, as applicable. In India, these responsibilities has been left to the Public Authorities. While it is implicit that the Public Authorities would take all necessary steps to carry out the above mentioned activities, but it has not happened in reality.

- Service Levels: Mexican law specifies the service levels for intimating the applicant about the information charges as 20 working days and grants additional 10 days for delivery of information to the applicant. The Service levels of disposing an appeal at the Federal Institute for Access to Information is 50 days

Key Observations:

- d. In India, there exist strict timelines at the Public Authority Level. However there is no time limit for disposal of appeals at the Information Commission. Even though it is not mentioned in the Act, the Information Commissions have to improve the “productivity” by deploying computerization at the Information Commission.

- Online Request Submission: The whole request process can be conducted electronically through the System for Information Requests (SIS), which has a separate website dedicated to it. This includes a facility for posting questions, as well as the answers. It also provides access to all electronic documents to which access has been provided since 2003.

Key Observations:

- e. Though going completely “on-line” is inspirational for India as of now, it is a good practice which should be aimed for.