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DRAFT IMPLEMENTATION GUIDE FOR THE MODEL INTERAMERICAN LAW ON ACCESS TO INFORMATION
[AG/RES. 2514 (XXXIX-O/09]

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Chapter 1:
Adoption of Comprehensive Framework

It is widely acknowledged that access to information laws don't stand on themselves in a good-governance, transparent and democratic realm. In fact, an access to information law is only one of many steps. This section describes how to build a comprehensive legal and policy framework considering the elements that an access to information regime will require in order to function efficiently.

Subsection A. starts with the need to scan and study all the existing laws and policies, or portions within them that deal with classification and disclosure of information, transparency principles, accountability, public servants' professional secret and sanctions to public officials regarding records management and release of information. In subsection B. and C. the process of adoption of the new model law and the need to amend or rescind existing law that clashes with the access to information principles and procedures are explained. Subsection D. presents a non-exhaustive but complete list of the supporting legislation that will contribute to the best compliance of the model law and promote further openness. In the final point E. a phased in approach to plan implementation of the model law is discussed.

A. Study of existing laws and policies

The enactment of a new law always requires scanning and analyzing the existing legislation and policies related to the matter of the prospective law. For the sake of an effective implementation, the new law should ideally be incorporated into the existing scenario and rules, rather than through the creation of new ways to proceed and manage administrative procedures.

By scanning it is meant to review, among the norms to be enforced of the complete legal system of a country, those that could impact in any way the coming into force of the new law. The scan is primarily needed in order to *localize* the law by applying the right terminology and to make sure that the existing public institutional structure, procedures and coercive mechanisms of the national legal system are taken into consideration. Some of the norms that would impact the new law are the following:

1. *Legislative decrees that define the nature and operation of the State powers and autonomous bodies that would be under the law's scope*. In order to fully cover the powers of the State and all those bodies that receive public expenditure, the State's organization of certain country and the public interest institutional terminology used in the legal system have to be studied.

2. *Norms that establish administrative procedures*, or legislation that uniforms procedures in each of the powers and organisms and where the new law must be coherent as long as the *expedito* principle of the right to information is protected.

3. *Royalties*. Laws that establish the cost of the government royalties for photo-copies or reproduction of documents in various formats, also known as *Leyes de Derechos.*

4. *Administrative silence*. In most countries the legal concept already exists and its procedures and sanctions, so the new law would have to incorporate those for the actions where government does not respond to information requests.

5. *Norms that establish administrative responsibility*. The existing system of sanctions, penalties and fines corresponding to administrative misconduct must be observed and entrenched in the new law. For instance, norms that sanction the conduct of leaking or sharing documents without the official consent are often spread over several laws.

6. *Norms that include any provision to classify or disclose government documents under the request bases (usually known as petition laws)*. In many countries, the right to petition poses certain obligations and procedures to public servants in answering the publics' petitions. The new access to information law's procedures must not be mixed up with those, rather, public servants should be clear about the new process and be able to handle differently petitions and information requests.

7. *Norms that create special secrets, such as fiscal, bank, fiduciary, commercial, and industrial*. The new access to information law should, in any case, define more accurately these preexisting secrets in relation to the categories it presents (exempt or public information).

8. *Norms that establish judicial or quasi-judicial procedures*. The independent access to information body will review citizens' complaints and this procedure should match that of the Ombudsman, or will be similar to the administrative appeals courts, or for an information commission. Disregarding this element could diminish legitimacy of the oversight body's actions.

9. *Rights balancing tests / constitutional control*. When existing, this mechanism is found in the country's higher-level legislation. In constitutional legal systems, the new access to information law must not install such tests if there is no public interest or rights balance control provided by the constitution.

10. *Constitutional and legal provisions on data protection or Habeas Data,* since access laws create a different administrative procedure to handle requests and also, distinct protection of the documents and data, a close look must be assigned to preexisting provisions on this subject.

11. *Regulation on records management*. Implementing an access to information law without a records management regulation in place creates endemic problems that reverberate in legal efficacy. This legislation must be differentiated from that of historic records.

B. Adoption of new model law and amendments to existing law

The Model Law responds to a need to set standards of access to information protection in the region, therefore, existing AI legislation that contradicts the principles set forward by this Model Law must be amended. Reformation of existing access to information laws in the line of the Model Law must be seen as a sensitive democratic step to meliorate and dignify people's life and

the bureaucratic relationship with citizens. Regardless of its moral justification, states party to the American Convention on Human Rights are legally obliged to comply with the holding of the *Claude Reyes vs. Chile* case, where the Inter-American Court of Human Rights mandates to amend existing legislation contrary to the principles of the right of access to information. In this line, the Recommendations on Access to Information of the OAS, CP/CAJP-2599/08 states that states must "ensure that any exception is previously established by law and responds to an objective permitted under international law". The Declaration of Principles of the Inter-American Commission on Human Rights recalls article 13 of the American Convention of Human Rights where (principle 4) "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

Regarding the adoption processes of access to information laws, experience has shown that it is best when governments, civil society and media work together with congressional leaders. This type of alliance often leads to access to information laws that are more protective of the interests of citizens, and also to a law that is publicly debated and shared with the rest of society thanks to the dissemination role of the media. Indeed, a law enactment process that has been publicized and socialized enshrines a merit of transparency in itself, when citizens learn about the right to seek information and the obligation of the governmental organizations to share it. In all, the process brings about a more legitimate and democratic final outcome, and even public servants become more convinced of how of the good their work will achieve in complying with the new regime.

Once the law is passed, it is important to keep the credibility of the law as high as possible among citizens and stakeholders, even when the implementation is problematic and slow. It is especially important that public servants remain confident in the law and its future benefits, despite the work that they confront.

Finally, in order to have as efficient an implementation possible, governments must consider that a process of "cleaning the house before opening the door" should take place. Administrative rules that allow state secrets, secret budget items and the no conflict of interest prohibiting laws, are the types of measures to be removed before adopting the access to information law, since they entrench principles contrary to good governance and respect for rights.

C. Rescinding of laws and policies contrary to access to information regime

Inconsistent legislation causes confusion between the past reserved information legislation and the new grounds of refusal that the access to information law provides. Public servants, who are the day-to-day applicants, need to implement this law under a safe ground of predictability and certainty, therefore, rescinding and amending an information regime contrary to the limited exemptions in the access to information law is essential.

There are some ways to ensure this. In countries like Colombia, Ecuador and Mexico, the supremacy of the right to access to information is ensured by a constitutional provision, which is the highest-level norm of the civil legal systems. In such cases, it is in the same constitution where it is established that any law that contradicts a constitutional fundamental right is against the constitution and shall be derogated. Also, Constitutions like the Mexican one, reinforce the respect of fundamental rights by stipulating that international treaties, along with the Constitution

and national laws are the *supreme norms*. Hence, in those countries, the Inter-American Convention on Human Rights article 13 has the same legal power as any internal law.

To proceed ensuring the supremacy of the access to information model law among contrary provisions, it is recommended that the new access to information law overrides all other secret or classification of information laws and provisions within special legislation, by rescinding or amending those norms contrary to access to information. In no case should the access to information law recognize other classification of information regime and remit to it. For instance, the access to information law of Nicaragua and Panama explicitly mandates that this law will prevail above any other law in case of consistency or contradiction.

Legislation that conflicts with this Model Law is mostly the following:

1. State secret laws, official secret laws have a long history in the penal codes of the region. They sanctioned the revelation of "state secrets", meaning any information that could harm economic or military activities of a State, consisting in "national offence" (*delito contra la patria*). The laws are characterized by using the grounds of "national security" as a broad shield to hide information from public knowledge. State secret provisions were derogated from penal codes of Mexico and Peru during the twentieth century, where they were mainly used to cover discretionary actions and maladministration taken by the government.

2. Ministerial certificates are laws that permit a minister to issue a conclusive certificate that cannot be questioned by appeal body or courts ordering that a document is secret. Lower level legislation must not undermine or contradict the high-level access to information law. This also subtracts credibility in government's implementation of the law. Best practice in Chile and Peru shows that a constitutional prescription ensures an absolute majority of the Congress to introduce new secrets or reserved information legislation.

3. Privacy and data protection, or *Habeas Data* laws contrary to the access to information regime. The rights to privacy and to access information should exist in harmony. Many countries in the region have *habeas data* provisions previous to the access to information laws, so classification procedures and protection is already a familiar concept for the government. Caution must be kept when denying information under the grounds of each different law. For instance, the access to information law of Mexico defines the confidentiality with very narrow language so that this category only protects the private lives of individuals.

4. Second level laws or regulations that create other categories of classification of documents than the ones listed in the law. Agencies and organisms under the access to information law, because of reasons of autonomy, can develop secondary legislation to incorporate the law's principles to their own system. Second level legislation must not be contrary or exceed the access to information law's mandate, where new classification categories or different procedures for requesting and classifying information appear.

D. Enacting supporting laws which promote openness

The supporting legislation not only is recommended to promote openness in the various areas of government' actions. Most importantly, is to grant the effectiveness of a transparent and rights protection regime.

1. Whistleblower protection, they encourage public officials to denounce wrongdoing of other officials providing effective punishment to offenders and protection to the reporters in order to remain in their positions without the risk of being judged or isolated internally.

2. Open meetings, not all meetings must be open, but strict policies should be established to withhold "executive meetings". In any case, a minute of the latter should be released.

3. Public records, the standardization of records management must be in place along with the access to information regime.

4. Data protection regime should live harmoniously with the access to information legislation.

5. Civil service laws. In many countries, the implementation of access to information laws fails because of the hierarchical way of working of offices and the decision making that the hierarchical relations absorb the new law needs.

6. Constitutional control or rights balancing tests. Because access to information is a right that must live harmoniously with other rights, like privacy and security rights, a balancing mechanism must exist. The harm tests and public interests tests must develop special criteria to be applied by courts and administrative tribunals. This should be established by the constitution or the higher-level legislation. These are substantial tools for the oversight bodies to balance conflicting rights on a case-by-case practice. The burden of these tests should not fall in the petitioner.

7. Legal electronic procedures and electronic documents feasible to be used as judicial evidence and also that allow requesters to file an information request by internet.

E. Phased in approach

Once the law is enacted, governments need to develop a plan of action. The plan must have key activities, responsible areas for actions, and timelines for completion of the implementation of the law. Consequences of not having an implementation plan are mayor. Without a plan, responsibility of implementation blurs and each agency will try to implement the law on it's own convenience. Also, it is likely that if no high-level political will is leading the initiative, although the law came into force, actions for implementation will certainly not be taken. Overall, an implementation plan contributes to keep implementation homogeneous among the offices and ensuring that the same service is provided to requesters within the government, at the same time, reassures that the government is ready to comply with the legal mandate.

There are various ways to design a phased in approach plan. In some countries, the implementation was simultaneous among all offices under the law, after a *vacatious legis* period of at least a year. But others have adopted a stagger plan allowing the most ready offices to comply with the legislation rapidly, while allowing those mainly concerning security and vast

administrative records storage to the end. In any case, this basic plan should be clearly established in the access to information law.

From experiences like the United States, Chile and Mexico, it is recommended that the full implementation process takes place in no more than two years overall. During this period of time, the first stage could be for example to comply with the proactive publication of information in official websites taking the first six months of implementation process. This followed by the installation of information offices, public officials training and the set of a public records management strategy. Taking into account the poverty levels of many countries in the region, implementation at the municipal levels of government usually takes the longest, when budgetary and infrastructure resources are scare. Therefore, efforts at the very local level must be taken from the first day of implementation timetable.

Experience also has shown that a longer period than two years for implementation is detrimental for the effective process because of the great personnel rotation within the governmental agencies, that by the time the law comes into force, new imperative training needs arise. Indeed, to stagger implementation agency by agency is not recommended when transfer of information requests is only possible once all agencies are covered.

Chapter 2:
Allocation of Resources Necessary to Create and Maintain an Effective Access to Information System and Infrastructure

This Chapter focuses on allocation of resources for core functions of the ATI program. Due to the varying wage levels for public servants among the members, and the size and legislative ambit of the various programs, this chapter does not include projected costs.
This chapter should be adapted to the content of the model law and implementation guide.

Budgeting constitutes a key feature of the attainment of policy goals set out in any access to information legislation. The adoption of access to information legislation requires governments to assume new functions, as well as funding for an enforcement body to oversee compliance. Establishing realistic resource levels prior to proclaiming the legislation is crucial but at the same time, it can be a daunting task. Such an exercise requires a *whole of government* estimate of the costs involved in creating and maintaining an access to information program and infrastructure. It also requires specific estimates of resources needs at the institutional (public bodies) level.

Without an appropriate allocation of resources for all functions of an access to information program, its effective implementation can be compromised. Appropriate funding is even more important in the face of the proliferation of information with the advent of new technologies and citizens' pleas for greater accountability. The risks of inadequate funding are:

- A failure to meet the aims of the access to information program;
- An inability to provide high levels of service;
- A decline in institutional and overall government performance;
- An increase in number of complaints; and
- A negative public perception of the transparency and openness of government.

A. Factors for consideration

As access to information is multifaceted, the following factors are to be considered in determining resource requirements for an implementation (start-up) budget and an operating (annual) budget:

1. *Access to information is demand-driven*
   It is therefore difficult to project resources levels based on the number of requests likely to be received in the first years of operations. Indicators such as the level of public engagement, degree of literacy of the population, the presence of strong media and civil society, and the existence of alternative means of delivery/disclosure can help to gage interest for access to information.

2. *Wages and compensation make up most of the cost of an access to information program*
   Based on studies, the primary cost component of an access to information budget is salary expenditures. The wages of personnel involved in answering information requests and investigating complaints will vary in terms of expertise and experience and, consequently, in rates. In Mexico, there are four types of employee required including rank-and-file (clerical), trusted, managerial and senior. In Canada, the four types are

similar in public bodies responsible for handling information requests: clerks, analysts, managers, coordinators/directors and in the enforcement agency: clerks, investigators, chiefs (managers) and directors.

3. *Base budgets should be provided on a permanent basis*
Most political and bureaucratic players are usually reticent to release any information that could potentially embarrass the government or the bureaucracy. They are accustomed to developing and controlling messages and are cautious about disclosing "unfiltered" records. Lawyers are cautious not to expose public bodies to liability. Officials responsible for program and service delivery may view access to information as interfering with their core duties. The absence of adequate or stable funding may signal a lack of commitment of the government to achieve the policy goals of the legislation. Over time, budgetary cuts can weaken the entire access to information system and render the program irrelevant.

4. *Central source of funding*
Units responsible for handling requests for information can be found within each public body or can be central to the government. Budget design will vary depending on the regime in place. In Canada, federal institutions absorb the costs of administering the access to information program into their individual budgets. This means that existing resources must be diverted from other programs, operations and corporate services of that institution. This funding method may lead to uneven application of the legislation across the government. When a public body has to make a funding decision, access to information is rarely the winner. A central source of funding may be a more effective means of supporting government-wide initiatives especially if the costs of the program are steadily increasing over the years.

5. *Fees should not be used to offset the costs of an access to information program*
The fundamental principle of access to information, as set out in the model law, is to promote open access to government information. It ensures that access to information is a legislated right and not only a privilege. As a result, Article 3 of the model law suggests that the exercise of the right to access information shall bear minimal costs for the requesters so not to act as a barrier to exercising this right.

> *Access to Information as to what decisions are made by government, and the content of those decisions, are fundamental democratic rights. As such, FOI is not a utility, such as electricity or water, which can be charged according to the amount used by individual citizens. All individuals should be equally entitled to access to government-held information and the price of FOI legislation should be borne equally.*[1]

To our knowledge, no program around the world is based on a cost recovery model. In Canada, studies concluded that the cost of access to information programs exceed by far any revenue collected from applicants. This is not to say that fees are inherently bad. They are often introduced to deter frivolous, overly broad or unfocused requests. They

1 Electoral and Administrative Review Committee, *Report on Freedom of Information*, December 1990, p. 181; Reported in The Right to Information, Reviewing Queensland's Freedom of Information Act, June 2008.

should not, however, hamper accessibility. Waivers of fees should also be considered where the information requested is in the public interest.

6. *Information management has a direct impact on how effective an access to information program is.* For more information on this, please refer to Chapter 3 of this Guide for Implementation.

B. Assessment of resource levels

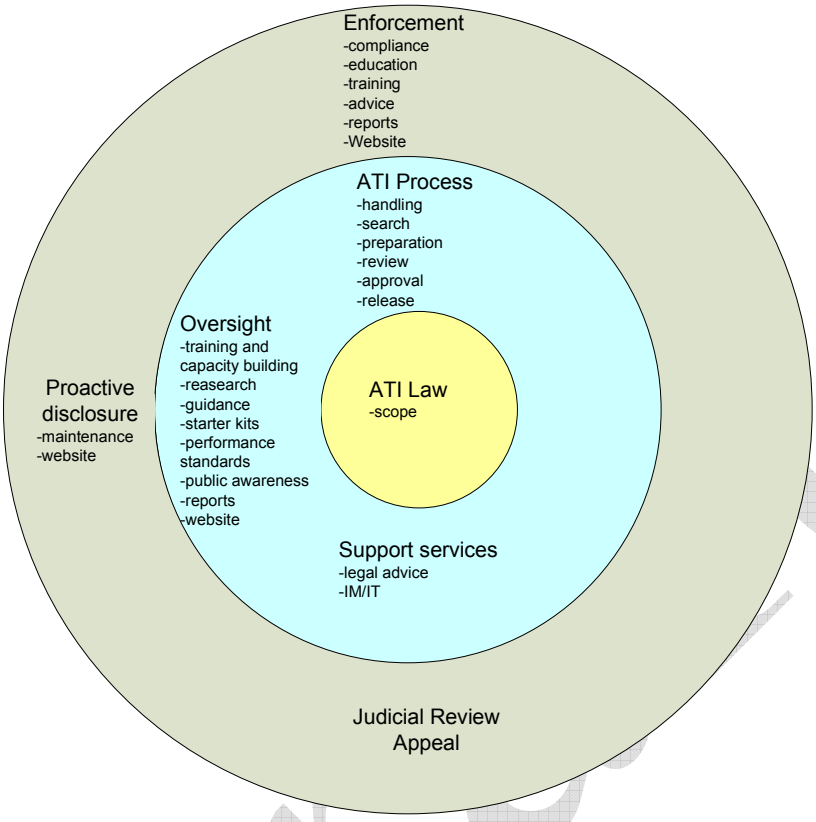
In order to assess budgetary needs of a new access to information legislation and developing cost projections for a startup budget and a base budget, qualitative and quantitative information needs to be collected. In terms of qualitative information, public officials from all levels of government that will have responsibilities with administering part of the program should be consulted. Interviews and questionnaires should be undertaken to understand in detail the cost of all functions. Comparative analysis of similar programs and functions is very useful. The benchmarks for this analysis can be domestic or international. Finally, relevant documentation such as audits, financial projections, funding submissions, should also be reviewed. The quantitative analysis should focus on assessing numerical and statistical information such as workload trends, performance indicators and risks involved.

Qualitative and quantitative information from different sources should be consolidated and analyzed to develop averages and ranges. Start-up and operating budgets will vary depending primarily on access to information functions as elaborated in the law. They will also include workload and overhead costs. A startup budget encompasses all resource requirements needed for implementing the access to information program in the first years of operations. An operating or base budget is composed of budgetary needs required to run the access to information program on a daily basis.

1. *Access to information functions*

   In forecasting the costs associated with the introduction of an access to information program, it is important to look at government-wide functions or activities created by the adoption of the access to information law, including the roles and responsibilities of all institutions: public bodies, central agencies (including oversight body and support services), enforcement and the judiciary. Figure 1 illustrates the elements of the model law and the implementation guide.

Figure 1
Mapping of functions associated with ATI



2. *Workload*

As indicated previously, access to information is demand-driven. In order to project resource levels required to administer the government-wide program, the starting point is the number of requests likely to be received in the first years of operations. The workload distribution across the government will not be even. Certain public bodies may receive a greater number of information requests than other institutions depending on the type of lines of business they are involved in. For example, public bodies responsible for national security, foreign affairs, the environment and health may likely receive larger numbers of information requests. In addition to normal levels of demand, it is also inevitable that governments will also have to respond to unpredictable peaks.

The complexity of information requests can also have a negative impact on workload. Indeed, many issues facing governments today, such as environmental and health issues, are crosscutting. Complex requests may require consultations with several other public bodies, require more experienced analysts, advisory services and create protracted approval processes.

As suggested in the model law, the access to information process contains a right to complain. Fortunately, not all requests become complaints. In Canada, approximately 5 to 7% of requests become complaints. This number has remained steady over the years. For the public bodies subject to the access to information law, their workload will include time

associated with resolving complaints. For the enforcement body, the number of complaints will be the primary workload indicator.

To mitigate demand and facilitate the access to information process, governments may want to use available technologies to automize the access to information process and to proactively provide information to citizens. For example, routine disclosure of information on websites may avert access requests (see Mexico experience).

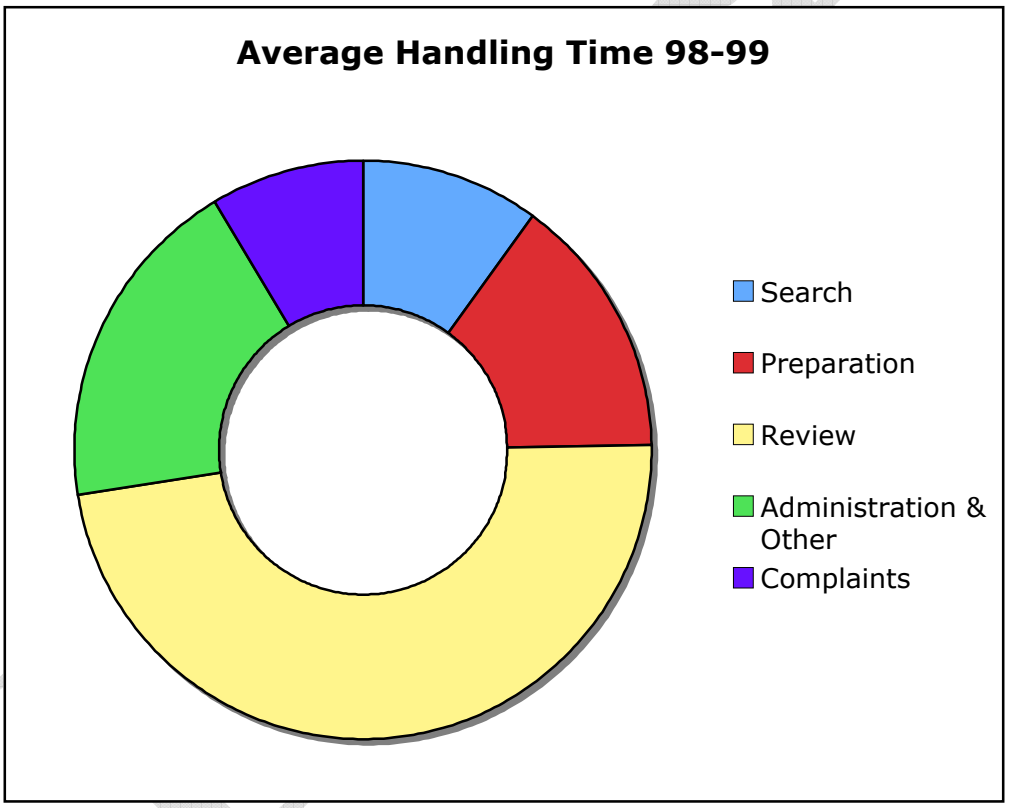
Table 1
Forecasting workload

Workload indicators	Key questions
Number of requests	*Government-wide estimates* How many public bodies does the access to information law cover? What records are subject to the access to information law? What is the level of public, civil society and media engagement? What is the degree of literacy of the population? Will there be alternative means of disclosure? *Institutional estimates* Is the public body involved in a line of business of interest to a large segment of the population?
Complexity of requests	Does the access to information law allow for severance? Does the law allow consultations with other public bodies? Does the access to information law include a public interest test?

Assessing personnel requirements – public bodies

Although outdated, a study done on the average completion time of information requests in the federal access to information program in Canada can provide a measure of proportionality in determining how many full-time employees are required in processing access request.[2] As can be shown below, it took an average of 38 hours to respond to an individual request, including the time to resolve related complaints. By far, the lengthiest part of the process is the review of the document to ensure that all protected information is severed.

Figure 2



A recent study of the Mexican access to information program shows that, on average, 27.2 hours are devoted to responding to an information request and 25.1 hours to handle an appeal.[3] Hence, public bodies spend more time responding to information requests than complaints.

In the same study, the author provided the following formula for calculating the number of full-time public servants required in mandated public bodies:

2 Review of the Costs Associated with Administering Access to Information And Privacy (ATIP) Legislation, Treasury Board Secretariat, 2000, p.6.
3 See note 1, at page 18.

Figure 3
Number of full-time employees

Number of requests
Multiplies by
Average completion time
Divided by
Average annual hours of a full-time public servant
Equals
Number of full time public servants required

This formula does not consider the complexity of the request. Although simplistic, it offers an approximate number.

Assessing personnel requirements – enforcement bodies

An important aspect of the enforcement function is that it can include much more than compliance activities. The need for careful budgeting is therefore crucial to ensure that will be able to perform all of its (implicit and explicit) duties.

In terms of complaints, the average time to complete an investigation or to resolve the matter can vary tremendously. In Canada, an investigation can take on average between 10 to 45 hours to complete. Investigators can be assigned, annually, between 35 to 45 complaints.

3. Costs

The costs of administering an access to information program fall under the three following themes for public oversight and public bodies.

A. personnel compensation and benefits (including wages)
B. operations:
    a. specialized services
C. overhead costs
    a. supplies and materials
    b. facilities (rental, assets, maintenance, machinery, equipments)

The larger portion of the costs will always be for personnel compensation and benefits. As a rule of thumb, budget distribution is around 75% for salaries expenditures and 25% operating/overhead expenditures. This can vary based on the activities of each body. Startup budgets will usually require more resources for overhead costs (mainly facilities) than base budgets.

C. Negotiating the ATI budget of an enforcement body

As will be provided in greater detail in Chapter 6 of the Implementation Guide, the role of an enforcement body is to scrutinize government's compliance, which requires an appropriate degree of independence and financial autonomy. If the enforcement body has to seek approval

from the government for operating budget, there is a risk for political influence or interference, which could result in an overall inability to deliver on the oversight body's mandate.

The choice of a funding model is crucial to ensuring that the enforcement body is adequately resourced and that financial needs are met on a permanent basis and not reduced arbitrarily. The following illustrates various funding models and their advantages and disadvantages.

1. *Funding from the executive branch of government*

   One model for the funding of an access to information enforcement body is through an executive branch ministry or agency, or the central ministry responsible for providing oversight of the financial management in government departments and agencies. In essence, this model requires the enforcement body to seek budgetary approval from the executive.

   This model raises significant issues with regards to the independence and the financial autonomy of the oversight body. It is dependant for funding on the very government it is mandated to investigate. As a result of this conflict of interest, the Executive Branch can significantly weaken the enforcement agency's ability to investigate complaints and its credibility.

2. *Funding from the legislative branch*

   Another model is to have the enforcement body report directly to Parliament. Under that model, the enforcement body would regularly submit to Parliament its requests for funding (ongoing and additional funding). This model emphasizes the independence and financial autonomy of the enforcement body.

3. *Funding from the executive branch on recommendation by legislative branch/Congress*

   An alternative to the previous models could be the establishment of a mechanism whereby an enforcement body could report to, and get funding from a parliamentary committee specifically designed to provide an oversight function for independent Parliamentary/Congressional agents. The special parliamentary committee would provide the challenge function and make a recommendation to the government for approval of the funding. This model has the advantage of reducing the perception of and potential for budgetary obstruction.

4. *Funding by statute*

   A model that offers a maximum of autonomy and independence is funding by statutory authority. In Canada, an example of this model is for the Commissioner responsible for federal elections. Part of the funding is obtained from the central agency responsible for providing oversight of the financial management (salaries of permanent, full-time staff), and part obtained by statutory authority (all other expenditures).

Chapter 3:
Adoption of Effective Information Management Policies and Systems to Properly Create, Maintain, and Provide Access to Public Information

Providing appropriate access to information begins with establishing an effective information management policy. A central tenet of this policy should be to protect designated information and make it accessible to the public. While the underlying components of an information management policy may be the same from organization to organization, what a particular policy will ultimately look like will depend on the organization's function, business needs and legal requirements. The policy must be tailored to fit the needs and the objectives of the organization and should be developed by balancing the competing interests of providing prompt and easy access to information with controlling the increasing amount of information being created within the organization. Various technology solutions are available that may help address and automate these issues. However, no tool will be able to do all that is required to develop and implement an information management system. To successfully accomplish this task, organizations will need to utilize internal human resources to define the goals, build the policy and develop consensus. Once this has been accomplished, technology solutions appropriate to an organization's size and resources can be leveraged to implement and maintain the information management policies.

A. Archives/Record Keeping

Information is being created today at an unprecedented pace. More and more official communication is done via email, and documents are often created electronically and never printed. Much of the information being created may be stored in locations outside of the organization's network (e.g. a personal file storage device or personal email account), increasing the risk of loss and the complexity in trying to recover this data.

In order to support a public access to information law, an effective system for creating, managing and archiving this information is imperative. Without such a system, it will be more difficult and time-consuming to locate and identify information and provide it within the timeframes mandated by applicable law. In addition, lack of an effective system can create suspicion as to the transparency and legitimacy of public officials and their actions. "Any Freedom of Information legislation is only as good as the quality of the records to which it provides access. Such rights are of little use if reliable records are not created in the first place, if they cannot be found when needed or if arrangements for their eventual archiving or destruction are inadequate." *Draft UK Code of Practice on the Management of Records.*

Assess the Current Process

In order to implement an effective information management policy that allows for improved access to public information, an organization must begin by reviewing its current information management and record keeping practices. Information exists in many different forms – paper documents, electronic documents, emails, notes, presentations, audio files, video files, etc. A "record" of the organization is a subset of information that has a distinct value to the organization. This value may be proscribed by law or regulation (e.g. the emails of a public official), or it may be due to the business nature of the communication. In most cases, the media on which the information appears is irrelevant, as it is the content of the information itself that determines whether something is a "record" of the organization. Retention policies will identify

the types of information that must be retained, the appropriate length of time, and whether and when the information may be expired or destroyed. The importance of properly identifying and maintaining these records for the public interest is paramount in order to facilitate the purpose and intent of an access to information law.

It should be clearly understood that every organization is different and each will have its own particular needs and limitations. Individual circumstances, budgets and risks will inform how an organization assesses its information management strategy and the timeline by which it chooses to implement programs and processes to address its needs. What is reasonable for one organization may not be reasonable for another, and individual factors must be taken into account when evaluating a process or technology. The suggestions provided in this chapter should not be considered exhaustive. Rather, the information is intended to help organizations think through some of the issues to consider when evaluating an information management process designed to promote access to information.

Consider a Data Map

Before an organization can determine an appropriate information retention policy, it should understand what information is being created every day by its employees and the systems they use to do it. Having this high-level understanding of how information is created and where it is used will help inform decisions around how to organize and maintain this information. The product of this effort is often referred to as a "data map" as it maps the information within an organization.

The data map typically includes the types of information that exist within an organization, where this information is located, and who is responsible for maintaining it. The data map can be as detailed or as simple as the organization desires, can be paper or electronic, and should be updated on a regular basis to reflect any changes. While there is technology available to help create a data map, it can also be created manually by developing a simple index or catalog of information types.

In developing a data map, it is often beneficial to designate one individual who can lead this initiative and coordinate among the many people that may be involved with identifying systems and information within the organization. Undertaking the process to understand what exists on your systems is not easy and may take some time to work through. However, if done correctly, this process will effectuate better decision making and will facilitate the eventual information retrieval process.

Determine Appropriate Retention Policies

Once record information has been identified, clear and established retention rules should be established detailing the various records that need to be preserved and how long these records should be retained. This analysis should include not only electronic information, but any paper records that may exist as well. The determination and application of retention rules will depend on the laws and regulations of the country and the local jurisdiction, and the business needs of the organization. For some, it may be beneficial to engage an expert to help develop this plan. Generally speaking, when dealing with information management, the simplest approach is often the best as it promotes compliance. Fewer retention categories mean fewer decisions that must be made about particular information or a particular record. In addition, grouping categories of information together helps facilitate its retrieval when a request for access is made.

Destruction of Information
An important part of the information management lifecycle is the destruction of information that does not need to be kept for legal, regulatory or other business purposes. Without a methodical approach to expiring information, systems can become clogged with data that no longer has any value to the organization. This overload makes searching for particular or relevant information difficult and it can delay efforts to respond to a request within required timeframes. As the creation of electronic information continues to accelerate, the lack of routine expiration can overwhelm an information management process and stymie public access to information.

Once determined, retention policies should be memorialized and published, and a schedule should be created for reviewing and updating the policies on a regular basis. If changes are made to the policy or if there are deviations from the policy in practice, this should be recorded with notes explaining why such actions were taken. Where destruction of information is scheduled pursuant to retention policies, it should be routine, and to the extent possible, automated. Automating this process helps promote transparency and fosters confidence in the predictability and reliability of the information management process.

Training
Officials and employees should be trained on the retention process to understand its purpose and its functionality. When users are educated as to why a process is being implemented and the end goal, they may be more inclined to alter the way they create information to align with the intent of the policy. There are various training methods and approaches that can be employed depending on the audience. For some employees who may be responsible for managing records, training will need to be detailed. For others, the training may be conducted at a higher level. In all events, officials and employees should understand the intent of the access to information law so they can help promote its principles through information management. Establishing and implementing a policy across an organization will help ensure consistency and compliance with the applicable law.

Suspension of Routine Destruction
In some countries, it may be necessary to suspend normal information expiration or destruction practices in response to pending litigation or some other legal request for information. In the United States, this process is often referred to as a "legal hold." For instances where this is required, steps should be taken to document the request and what information was placed on "legal hold" or otherwise withheld from the normal expiration process. In these cases, the distinction between "information" and "records" is often irrelevant, as a legal request will require the production of all information that may be available, not just records.

Easing the Implementation of Retention Policies
If this is the first time an organization has undertaken to implement a retention policy, it should consider creating a timeline detailing by when the implementation will be completed. In many cases, this will need to occur in phases.

There are various technology solutions available that can help automate the classification and enforce the retention of information. Tools like email and file archiving can place information into a centralized repository where more granular retention policies can be applied. For example, retention periods for email can be automatically applied based on the person sending or receiving the email, or the department to which he/she belongs. Using an archive, information can automatically be run through its lifecycle such that it will be expired when it is no longer useful

or necessary. In addition, an archiving tool can suspend these destruction practices in the event that information needs to be preserved pursuant to a legal or other request for information. As mentioned above, there are a variety of tools that can help make this process more efficient.

Although the process of assessing an organization's information management strategy may be time-consuming at the outset, the benefits derived from this undertaking will far exceed the initial investment. Enabling this process not only helps control the amount of information on existing systems, it will also facilitate the identification of and access to information by making the process more efficient. Failing to implement such a process can undermine an organization's ability to respond to requests for information, may decrease constituent confidence in the system, and may ultimately hinder public access to information.

B. Information Production

When dealing with a request to produce information, whether it be in the context of a public access request or in response to litigation, an organization will need to be able to do the following: 1) identify potentially relevant information; 2) collect that information; 3) produce the information in a format that is usable by the requestor; and 4) maintain a record of the information produced and when a response was provided.

Identifying Relevant Information/Collection of Information

In order to identify relevant information, an organization will need to implement a system by which records may be searched and ultimately retrieved. The approach to this will differ depending on whether the information is kept electronically (e.g. email, electronic files, etc.) or whether it is retained in hard copy.

When dealing with information kept in hard copy documents, organizations typically create some sort of index depicting what categories or types of files exist and where they are located. This can be done by filing structure, author, department, etc. What is most important is that the organization understands what documents exist and implements a practical way to locate them.

The approach with electronic information is the same. Although the amount of electronic information can be exponentially greater than what exists in hard copy, the electronic nature of this information makes it easier to categorize and identify. Indexing tools can quickly "read" information and make it accessible to electronic search methods. When evaluating how to proceed, an organization will want to evaluate what information within a particular piece of data will need to be searched. For example, for emails, will the organization need to search the author and recipient fields, the content of the email, or the content of any attachments to the email? There are various ways to approach this and differing degrees of complexity involved. To assess this, it may be helpful for the organization to review the types of requests for information it typically receives. The level of detail within these requests will help inform the level of granularity to which the search capability will need to be developed. When determining these parameters, the organization should keep in mind that the information will need to be produced in a timely manner, often with very little lead time. To that end, search functionality should be enabled to accommodate identification and production within a short timeframe.

Production Format

In addition to the search methodology and timing issues, it is important to consider the ultimate output of the search and how this information will be used. There may be specifications within the law regarding the format in which information should be produced. If such specifications exist, the organization should ensure that the system it uses to search and produce information is able to conform to these requirements. In many cases, a requester may not have access to a particular system in which information was created within the organization, for example, a particular database. If that is the case, the organization will need to take steps to produce the information in a format that is readable by the requestor, unless there is some circumstance which makes this unreasonable or impractical.

Maintain a Record of Requests

Transparency is a fundamental principle of an approach to open government and access to information. Developing a system to proactively document and track requests for information and the process and results of these requests will help instill confidence and openness between the organization and the public. Organizations may also consider publishing the requests and results or otherwise making them available to the public. In some cases, an exception or a requirement in the law may prohibit the production of certain information. Where this occurs, it should be documented and explained. Likewise, if requested information is not produced for any other reason, the organization should document and explain the reason.

C. Proactive Disclosure

An access to information law may contain provisions requiring organizations to proactively disclose certain information and documents. These requirements are generally intended to foster transparency and confidence in government and provide useful information to the public. An added benefit of these policies is that they may reduce the number of requests an organization must process, as the information sought may already be available. This may translate into cost savings for the organization as employees are relieved from searching for, reviewing and producing information.

A threshold issue to consider is what information should routinely be disclosed. If the law requires specific information to be proactively disclosed, policies should be memorialized to address the scope of the information to be disclosed and the schedule for doing so. In addition, the policies should define the person or department responsible for maintaining and updating the information. The policies should also specify where the information will be disclosed (i.e. a public website), and how (in html format, Pdf, etc.). The organization may want to publish the policies in this location as well, as this will further aid the efforts at transparent information sharing.

D. Technology

While the demands of an information management process can seem daunting, there are a number of technology solutions available that can address the various issues that may impede an information management program. Using available tools, an organization can make the information management process more efficient and less costly, and free up human resources to work on other important projects. Most organizations are used to handling paper documents and may be more comfortable developing information management strategies based on this experience. Paper documents should be included in the overall information management

strategy, but due to its escalating volume, electronic information requires a different approach. In many cases, it is easier to manage electronic information as its very nature makes it more accessible to index, categorize and search.

Just as the development of a retention strategy should reasonably conform to the purpose of the organization and its users, so too should the acquisition and implementation of technology enhance the functionality of the organization. There are technical solutions available to suit almost every level of sophistication and competence. When evaluating these solutions, an organization should identify what issues it needs to address with a tool and prioritize those issues. For example, if maintaining records is the issue, an organization may want to focus on an archiving tool that provides the ability to retain information based on its classification. Any selected solution should be scaleable so it can meet the needs of the organization today and grow with it as needs evolve. Technology should make the process easier, not more difficult.

Archiving technology

Archiving technology provides a central repository for electronic information that allows for categorization, searching, preservation and disposition. Many different types of information, including email, files, etc. can be ingested into the archive and secured from inadvertent or purposeful destruction. Archiving technology provides immediate access to information and allows that information to be preserved in conformance with the organization's policies and legal requirements.

When specific information is requested, an archive may be searched using an electronic index of the information contained within it. The use of search technology can have a significant impact on efficiencies and response time, often reducing this time exponentially. Utilizing even basic search criteria can help refine the information that is potentially relevant to a request. For example, an archive can be searched using keywords, or using relevant metadata such as the author or recipient of an email or file. Once relevant information has been identified, it can be reviewed and extracted from the archive in response to a specific request.

In addition, some archiving technologies provide the ability to apply a retention policy to designated documents. For example, an organization may designate that all emails created or received by a certain group (e.g. accounting) be retained for 10 years. Once this has been determined, the archive will automatically retain that information for the specified time period. The benefit of this type of system is that it relieves individual users from having to determine how long something should be kept. It also enables the automatic expiration of information that has reached the end of its normal life cycle (i.e. at the end of 10 years the information is automatically deleted unless otherwise preserved).

Archiving technology can also provide the capability to de-duplicate exact information and store it only once. This relieves the need for additional storage space and the associated costs. In addition, duplicate information can be removed from a search set. When responding to a request for information, this reduces the amount of information that must ultimately be reviewed in response and reduces the cost associated with processing and producing that information.

Back up technology

Disaster recovery plans that enable back up technology allow an organization to recreate its electronic information systems and continue to operate in the event of an unforeseen system

failure. The timeframe that data should be stored for these purposes will vary depending on the organization and the information at issue, but as a general rule, the information should be stored for as short a time period as possible. Back up technology was not designed to function as an archiving or records management system, as it can be cumbersome to categorize and ultimately retrieve information. In the event back-up technology is called upon to retrieve information or to manage preservation of content for legal hold, organizations would be advised to use a content indexing capability. This can provide some level of targeted search and retrieval and reduce the cost and complexity associated with the back-up environment.

As with archiving technology, certain backup technology also has de-duplication capability allowing the same information to be stored only once. This has the potential to reduce storage costs and ease the search process.

Enterprise Content Management technology

Enterprise Content Management ("ECM") technology has been broadly defined as "the strategies, methods and tools used to capture, manage, store, preserve, and deliver content and documents related to organizational processes."4 ECM technology is an all-encompassing term that includes, among many other solutions, records management software and document tracking and control systems. These technologies generally enable users and records managers, where possible, to classify records based on their content. Once classified, these records can then be organized and stored in a manner that makes sense to the organization. Additionally, the records can then be integrated into an archiving system such that they are retained for the appropriately designated period of time.

Additional technology

There are additional categories of technology, including records management, security and data loss prevention technologies, that may also be beneficial to governmental organizations. Where appropriate, these technologies should also be considered as the organization develops its information management strategy.

Making the Case for Technology: Cost Savings

For some governments, it may be difficult to garner the support necessary to purchase technology aimed at addressing information management concerns. However, in many cases, an investment in software can often pay for itself in a short timeframe. To garner support, an organization may be able to identify cost savings derived from a technological solution by tracking 1) storage requirements, and 2) the time and cost associated with responding to requests for information.

Automating an information management system by using archiving and backup technology can help reduce storage burdens by moving information off higher-cost equipment to lower-cost storage. This can translate into significant cost-savings when projected year over year. To track potential savings, an organization may want to estimate how much additional storage space is typically required every year to keep pace with the growth of its information. Comparing this with the storage savings an organization can expect to receive from a specific technology can help quantify actual storage savings. This can help offset the cost of such a tool.

4 Association of Information and Image Management, http://www.aiim.org/what-is-ecm-enterprise-content-management.aspx

It can also be useful to look at the costs associated with searching for information in response to a request. This includes the cost associated with the time required to conduct the search and prepare a response. If an organization is able to implement an automated system, this cost can be lowered as the search can be done electronically in a short timeframe, relieving the burden on the individual. In one example, a United States government entity was faced with a request for information concerning a public health issue. By using an archiving system, the entity was able to locate the information responsive to the request in under an hour. The entity reported that locating this information without such a system would have taken approximately seven days. The entity further estimated that it would save over $100,000USD per year in employee time by reducing the search time required to locate information in response to records requests.

If resources are limited, information management processes can be implemented using a phased approach. In these situations, organizations can assess their biggest challenge in terms of time and cost and focus on the technology available to address that need. While technology can certainly improve efficiencies and help make the information management process easier, a lack of resources or support should not hinder progress on assessing the current environment and defining a process to manage information. Technology can come later, once the foundational elements of an information management process have been defined.

Implementing Technology Solutions

Implementing technology can be a time-consuming process. If installing a new system, an organization may want to establish a timeline by which certain milestones will be reached and identify the parties who will be involved. If the timeline is made public, it will help keep the implementation team on schedule and will also encourage open communication with the public.

The roll-out of the technology and its use should be monitored so that successes and set-backs can be chronicled and shared with other agencies, providing them helpful guidance on what works and what may best be re-thought. The more communication that flows from this process, the more the spirit of the access to information law is achieved.

E. Achieving Conformity

Various state agencies and organizations may have different information management methods and processes yet still be subject to the same access to information requirements. In these instances, it may help to facilitate inter-agency communication around methods and process so there is consistency between the agencies or departments. Best practices documents may be drafted and internal websites may be used to disseminate this information, and it may be helpful to conduct regular meetings or audit sessions between organizations to share information.

Chapter 4:
Capacity Building for Information Users

Chapter 5:
Capacity Building for Information Providers

"Training needs to focus on changing the attitudes that distance governments from people and must aim at mitigating the disquiet that changes to institutional culture always create."[5]

It is widely accepted by scholars and governments that formulating and adopting legal frameworks, though essential, are only the initial steps in the larger process of promoting and ensuring the right of access to public information. This process includes creating institutional mechanisms to implement the existing norms; developing strategies to increase awareness among leaders, public servants and citizens on the importance of the matter, as well as carrying out initiatives to educate and develop capabilities to make those mechanisms and norms function adequately. The purpose of this chapter is to offer some elements to be considered in the process of implementing laws of access to public information in OAS member countries, in particular initiatives concerning capacity building for information providers, which involve training and promoting a culture of transparency among public servants.

The importance of capacity building initiatives has been taken into account in national and international standards related to access to public information. In accordance with the Inter-American Court of Human Rights Judgment regarding the Case of *Claude Reyes et al v. Chile*, "the State should provide training to public entities, authorities and agents responsible for responding to requests for access to State-held information on the laws and regulations governing this right; this should incorporate the parameters established in the Convention concerning restrictions to access to this information that must be respected."[6] As shown in the 2009 Access to Information report of the OAS Special Rapporteur for Freedom of Expression, on the other hand, the States have the obligation to "disseminate among the public in general the existence and methods of exercising the right of access to information." On this matter, the Resolution on Principles on the Right of Access to Information of the Inter-American Juridical Committee states that: "[m]easures should be taken to promote, to implement and to enforce the right to access to information, including creating and maintaining public archives in a serious and professional manner, training public officials, implementing public awareness-raising programs, improving systems of information management…"

Some examples of national standards that include specific norms related to the issues of training and promoting access to public information are the Chilean Law of Transparency of the Public Function and Access to Information Administered by the State (Law 20.285, published: 2008) and the Ecuadorian Organic Law of Transparency and Access to Public Information (Law 24, 2004). In the first case, the Transparency Council, the national oversight agency on the matter, has among its functions: training public officials and carrying out dissemination activities. The second, on the other hand, compels all public institutions to disseminate and to implement training and promotion activities for public officials and civil society organizations. It also instructs the National Archives System to provide training to all government officials in all pertinent matters related to its functions.

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5 Commonwealth Human Rights Initiative, Human Rights and Poverty Eradication: A Talisman for the Commonwealth, New Delhi, CHRI, 2001, p. 96.

6 Inter American Human Rights Court. Case of *Claude Reyes et al. v. Chile*, judgment of September 19, 2006, Series C No. 151. Par. 65.

A. Access to information and democratic values

Adopting and implementing laws that guarantee to the citizens a right to information "implies that the government of the day should be accountable for what it is doing and for the policies it implements in the name of the people it is governing."[7] Following Riley's definition, we can also say that, under an existing regime of access to information, a government is responsible for its actions by providing or facilitating access to relevant, reliable and good quality information. This benefits the public interest by promoting democratic values, such as transparency and accountability, and by encouraging a vigorous civic and politically active society. "Democracy requires an aware, involved, and active citizenry with democratic values and practices."[8]

The intrinsic connection between democracy and access to public information is clearly shown by Villanueva by pointing out two basic principles of access to information that correspond to a democratic system of rule of law: the search for effective internal and external controls to government actions, and the acknowledgement of civil liberties as limits to governmental power.[9] In the same vein, the 2008 UN Public Sector Report states that fostering and sustaining transparency and accountability, as well as linking citizens to public decision-making concerning policies and public programs and producing outcomes that are equitable not only in generating benefits, but opportunities, are some of the results of "deepening democracy."[10] All these actions mentioned in the report, which are at the core of a democratic system, are also directly or indirectly connected to an effective system of access to information.

For such a system to be effective, in addition to having an adequate legal framework, and the required institutional mechanisms in place, it is also necessary that other conditions are satisfactorily met. In particular, it is necessary that both, citizens and public servants are taken into account in the definition of the related policies and initiatives. They also have to be aware of the general implications of the "right to information"; and need to know how it operates. They have to be conscious of the benefits of access to public information for the society as a whole, and should be willing and well prepared to contribute to the fulfillment of its objectives. This entails both: a culture of transparency and democratic values, and knowledge of the norms, procedures and the instruments involved.

B. A Capacity Building Strategy on Access to Public Information

Consequently, the basic elements that constitute a capacity building strategy on access to public information should also include initiatives and instruments that pursue the same objectives: developing knowledge and capabilities, on one hand, and fostering a cultural transformation towards transparency among citizens and public institutions on the other. It is the combination of these elements that will have a significant effect, much larger and deeper than the mere sum of

7 Riley, Tom and Relyea, Harold. (eds.) *Freedom of information trends in the information age*, Frank Cass and Company Limited, London, 1983, p. 1-2.

8 Organization of American States, Council for Integral Development (CIDI). Inter-American Program on Education for Democratic Values and Practices, *Adopted in August 12, 2005,* p. 3.

9 Villanueva, Ernesto. "Tendencias en el reconocimiento constitucional del derecho de acceso a la información pública", en: Serio Lopez-Ayllón, coordinador. *Democracia, transparencia y constitución: propuestas para un debate necesario,* México, Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 2006.

10 United Nations, Department of Economic and Social Affairs. "People Matter, Civic Engagement in Public Governance", World Public Sector Report, 2008, p. 41-42.

the effects of the individual application of each.

This chapter will focus only on identifying some aspects that should be taken into account for the design and implementation of a capacity building strategy within governmental institutions or "information providers".

C. Promoting an "access" culture among information providers:

In accordance with Eleonora Villegas-Reimers, democratic values "are not innate human values. They are learned and must be taught as explicitly and clearly as democratic knowledge and skills are taught." Education for democracy implies "to prepare citizens to believe in and think and behave like democratic citizens…, [by] an explicit and purposeful process of teaching and promoting the development of democratic knowledge, skills, values and attitudes."[11]

The same author, referring to a study carried out by USAID in 1996, states that civic education programs for adults can have a positive impact on some democratic values and behaviors, such as political participation (voting, taking part in community problem-solving activities, attending local government meetings, participating in protests, contributing to election campaigns, and contacting elected officials.); and "political efficacy", or the extent to which individuals feel that they have the knowledge, skills, and power to participate effectively in the political process (including contacting public officials -requesting information-). There are also less positive effects when observing other aspects, for example, political tolerance and changing democratic values, finally, the results are negative regarding trust in political institutions.[12] In agreement with the results of this study, it is possible to have an impact on citizen's democratic values. However, it is important to highlight the significance of developing initiatives to cultivate democratic values and citizenship starting at the earliest levels of education; and also to stress the relevance of emphasizing education for democracy and citizenship education among citizens and public servants.

Capacity building in access to information involves a systematic effort to transform a culture of secrecy that appears to be "ingrained" in some public institutions. This is the case in many countries where the state capacity is weak and their bureaucracies are historically reluctant to share information with others or to be transparent with the information they hold.[13] Additionally, transparency and other democratic values seem to have lost relevance within systems of public administration that emphasize outputs and outcomes over inputs and processes. This is the case of the New Public Management, which focuses on achieving results cost-effectively.[14]

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11 Villegas-Reimers Eleonora. "Education for Democracy", Revista, Harvard Review of Latin America, Fall, 2002. http://www.drclas.harvard.edu/revista/articles/view/173 (consulted: Nov. 11, 2009)

12 U.S. Agency for International Development, Office of Democracy and Governance (USAID). *Approaches to civic education: lessons learned*. Technical Publication Series, Washington DC. June 2002 http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacp331.pdf (consulted: Nov. 7, 2009.), page 17-18.

13 United Nations Development Program (UNDP), Bureau for Development Policy, Democratic Governance Group. Right to Information, Practical Guidance Note, July 2004, page 29.

14 *See* Piotrowski, Susane and Rosenblom, David. *Nonmission-Based values in results-oriented public management: the case of freedom of information*, Public Administration Review, November/December 2002, Vol 62, No.6; Luna Pla, Issa. *Aspectos culturales de la implementación del acceso a la información en México*, Revista del CLAD Reforma y Democracia, No. 42. October 2008, Caracas.

Aiming at correcting or preventing these and other situations that might hinder the implementation of the right of access to information, it is necessary to develop a Capacity building strategy on access to information that integrates people's values, perspectives and behaviors, in order to assure a deeper and longer lasting impact at the cultural level. Promoting democratic values and fostering transformations to the organizational culture of the public institutions entail formal and non-formal systems of education. Therefore, this kind of approach encompasses the use of a variety of materials, workshops and innovative learning strategies as well as meaningful awareness raising campaigns. It also entails a better knowledge of public servant's values and perceptions of public ethics, transparency, accountability and access to public information; as well as of their perspective of weaknesses and problem areas that need special attention. In this regard, it could be helpful to have a preliminary diagnosis, before designing and initiating the capacity building strategy.

Monitoring and assessing play a crucial role in obtaining evidence based information on the results and impact of Access to Information strategies, including awareness rising and training and promotion campaigns. They are also important means for setting goals and generating incentives.

An example of a study specifically conceived to gather information on perceptions, values and attitudes on transparency, accountability and access to public information is the survey: "Public servants culture regarding issues of transparency and access to Public Information" *("La cultura de los servidores públicos alrededor de los temas de transparencia y acceso a la información")*, carried out in Mexico, in 2007 by the Instituto Federal de Acceso a la Información Pública (IFAI)) and the Centro Internacional de Estudios de Transparencia y Acceso a la Información (CETA)

Some of the issues that were taken into account in the survey were the following:

- Values associated to good governance, public service and access to public information;
- Civil servants opinions on peoples rights that are connected to government actions, regarding in particular, transparency and accountability;
- General knowledge and perceptions on access to information (regulations, coverage, limits, procedures, actors, etc.);
- Knowledge of the laws and regulations;
- Working procedures to manage and classify information; to communicate between areas of the institution/organization; to register different documents, actions and decisions made by public servants;
- Procedures and attitudes when receiving/answering an information request from the public;
- Perceptions on costs and benefits derived from actions and policies related to access to information; among others.

Based on empirical data from the mentioned survey, and on the findings of the study by Gills y Hughes: "*Bureaucratic Compliance with Mexico's New Access to Information Law*" (2004), Issa Luna Pla, points out that for Mexican public servants in order to implement the norms on access

to information it is important to know the law, but it is not enough. It is also necessary to have adequate incentives, inside and outside the law, to encourage transparency and good practices of access to public information. She also emphasizes the importance of promoting a civic culture among public servants based on social responsibility and public ethics.[15]

To recognize the social benefits of access to information could be a strong incentive, not only for public servants to adequately implement the norms; but for citizens to actively participate and make use of their right to information. As mentioned by Villanueva, people need to know how access to information could make a difference when making decisions related to public and to private matters.[16] Other types of incentives for civil servants include, for example, recognizing information officers as a professional class within public service ranks and providing official certification thereof, as well as considering merit based incentives for well performing officials.

Experiences of implementation of access to information in different countries also provide valuable information about the importance of having a comprehensive capacity building strategy. The implementation of the Canadian Access to Information Act has shown, among other things, that developing or improving administrative practices and tools, by themselves, are not enough to ensure that the objectives of the law are achieved. They must be supported by a strong "access" culture within the government that can be achieved "through training, tools, awareness, values, leadership and incentives."[17]

It also shows some of the challenges: "Many observers are critical of the slow progress made in changing attitudes and behaviours in the public service after almost 20 years of legislated access to information. This is understandable. However, values change very slowly. Compared with long-standing public service values such as the pursuit of the public interest, neutrality, loyalty to the government, and respect for ministerial responsibility, access is a relatively new value. It has yet to be fully integrated with the older values. We believe that more attention must be given to embedding access to information into the organizational culture and values of the public service; that is, into its mind-set and its everyday work routines."[18]

D. Learning the basics

In general terms, a training program for information providers should deal with issues such as why access to information is important; the laws and their scope; the procedures by which people request information and how requests should be responded to; how to maintain and access records.[19] Public officials have to be familiar with the structure, programs, culture and organization of their institution; and should understand the regulations, policies and processes. It

15 Luna Pla, Issa. "Aspectos culturales de la implementación del acceso a la información en México", Revista del CLAD Reforma y Democracia, No. 42. October 2008, Caracas, page 10-12.
16 Villanueva Ernesto and Luna Pla, Issa. Coordinadores. "La importancia social del derecho a saber: preguntas y respuestas en los casos relevantes del IFAI", LIMAC, Libertad de Información – México, A.C., México 2005.
17 Access to Information Review Task Force, (2002) Access to Information: Making it work for Canadians. http://www.atirtf-geai.gc.ca/accessReport-e.pdf. as on August 2003, page 157.

18 *Id.*
19 United Nations Development Program (UNDP), Bureau for Development Policy, Democratic Governance Group. Right to Information, Practical Guidance Note, July 2004, page 29.

is also important that they have abilities to communicate, negotiate, make sound decisions and solve problems, and need to have information management and time management skills.[20]

Regarding the processes involved in requesting and providing public information, information providers should be trained to guide citizens in formulating and presenting information requests and not only on the specific contents of the norms and on the functioning of the related mechanisms.

Basic concepts and elements of transparency and access to public information should be accessible to all members of public institutions at all levels, and not limited only to those directly involved in the processes defined by the access to information norms and mechanisms.

The combination of having both, government and civil society organizations developing training programs on Access to Public Information is an effective way to ensure that advances in the legislation on this topic are accompanied by an effective cooperation that leads to solid grounds for implementation.

It is important to assure political and financial support to training programs so that countries are able to take advantage of the opportunities offered by the law, in a way that it is seen as a positive benefit to officials and institutions, rather than as a burden.[21]

E. Creating a training program on Access to Public Information:

A training program for information providers should contain:

1. A program of workshops and courses, including a basic plan and curriculum with the issues that need to be taken into consideration for training purposes;
2. A handbook that includes guidelines for training officials, that can be used as a reference tool as well as learning material.

Some suggestions for the basic Contents of a curriculum:

1. Concepts and basic principles underlying access to public information
2. Importance of access to public information: why access of information is beneficial and to which areas of society.
3. The principle of maximum disclosure: what kind of information the right of access to information should cover, and what kind of information should be excluded.
4. Legislation: international and national standards
5. Existing oversight bodies and how they operate
6. Public bodies that are obliged to provide public access to information, and how can they comply with this obligation?

    a. Publishing information- proactive disclosure
    b. Allocating responsibility to the staff

20 Access to Information Review Task Force, (2002) Access to Information: Making it work for Canadians. http://www.atirtf-geai.gc.ca/accessReport-e.pdf. as on August 2003, page 128.

21 United Nations Development Program (UNDP), Bureau for Development Policy, Democratic Governance Group. Right to Information, Practical Guidance Note, July 2004, page 29.

c. Training information officers and other public officials
d. Setting up or improving existing information and records management systems

7. Requesters who are entitled to information, and the process whereby information requests are handled.

Chapter 6:
Monitoring Enforcement/Effectiveness of the Law

In instituting a functioning access to information regime, it is critical to pay great attention to the oversight and enforcement mechanisms and to the establishment of tools for determining effectiveness of the system. A national oversight agency monitors and supports implementation of the access to information legislation; may set policy and offer recommendations; assures consistency among agencies; promotes the right of access to information; and can provide requisite training and capacity building for key civil servants.

Assuring a procedure that allows persons to enforce their right to information when a request is ignored or denied, or when their rights are otherwise impeded, is arguably the most important set of provisions within an access to information law.[22] Without an independent review procedure of decisions, the right to information will quickly become discretional and based on the whims and desires of the persons receiving the request. If the enforcement mechanisms are weak or ineffectual it can lead to arbitrary denials, or foment the "ostrich effect", whereby there is no explicit denial but rather the government agencies put their heads in the sand and pretend that the law does not exist. Thus, some independent external review mechanism is critical to the law's overall effectiveness.

The institutional framework and apparatus developed for oversight and enforcement of the right to information vary. As will be discussed below, models for monitoring and enforcement range from more limited oversight and intermediary enforcement mechanisms to those whereby the bodies are mandated and vested with wide-ranging powers and responsibilities. The decision regarding which model will function best depends greatly on the specific political, economic and social context and needs of the jurisdiction. However, what is increasingly clear is that in order to ensure full and continuing compliance with the law, there is a need for statutorily mandated instruments dedicated to the promotion, monitoring and enforcement of the access to information regime.

Finally, access to information statutes should incorporate a mandate and the means for determining the overall effectiveness of the regime. Quantitative and qualitative data related to the use of the law, agency responses, costs, and impact will allow governments to identify and resolve challenges and recognize successes and best practices.

A. Oversight

An oversight body with the responsibility for coordinating implementation efforts across government agencies, promoting training of functionaries and public education, responding to agencies questions, and ensuring consistency and sustainability is critical to the success of any access to information law. Experience indicates that without a dedicated and specialized oversight body the compliance rate is lower, the number of requests more limited, and the right to information eroded.[23] Moreover, without a continuous oversight body, government efforts are dispersed and diluted with no clarity in responsibilities, lack of clear guidelines, and reduced

22 *See* Neuman, Laura, "Access to Information Laws: Pieces of the Puzzle," in The Promotion of Democracy through Access to Information: Bolivia, Carter Center, 2004.
23 Id.

ability to conduct long-term planning and to promote best practices, thus costing governments more in terms of human and financial resources. For those jurisdictions without an oversight body, there is no one for the agencies to contact for support or with questions and concerns, and the weight of implementation and public education falls squarely on their already overburdened shoulders. In these cases, users are forced to navigate the systems on their own and public servants are burdened with additional responsibilities, but often less training and resources.

There are a number of models for establishing an oversight body. For example, in some cases the duties are vested in an existing body, such as the Ombudsman, in others oversight is joined with the same institution responsible for enforcement, while a third model witnesses the oversight body as a fully independent, specialized body. In all cases, the oversight bodies have served to enhance the government's implementation efforts and ensure that the objectives of the law are more fully met.

Regardless of which system is selected, it is vital that the oversight body or unit enjoy a statutory mandate. Where oversight is voluntary, over time the initial units have seen staff reduction, insufficient funding or complete disbandment. Voluntary oversight mechanisms have emerged when the legislature failed to mandate a national coordinating body as part of the law or regulations, but practice dictated the need. In these situations, the lack of a specifically legislated oversight body has resulted in a corresponding low awareness of the law, no tracking or monitoring of implementation, and a dismally low request rate. As experience builds in the field, it points to the need for an oversight body that is specialized, dedicated to the issue, well-staffed and properly resourced. In many cases, this suggests that adding the access to information oversight function to an already stretched Human Rights Ombudsman or like institution with disparate mandates may not serve the overall goal.

Therefore, in developing statutory language and implementation of a proper oversight mechanism, the access to information law should make specific provision for an agency or individual to be in charge of reviewing the manner in which records are maintained and managed by public authorities; monitoring implementation efforts and the automatic publication of documents by the public authorities; receiving monthly reports and assisting in the annual report to the legislature and public training of public servants and material development. Such an agency additionally would be responsible for public education and promotion campaigns, including raising awareness about the Act and the government's successes. The agency itself should be designed and staffed to ensure capabilities to collate reports and provide statistical analysis, including number of requests and complaints, and to monitor all systems.

B. Enforcement

Compelling adherence to the tenets and principles of access to information laws through well-designed and implemented enforcement mechanisms is paramount to ensuring the statute's overall effectiveness, particularly in cases with poor implementation or wavering political commitment.[24]

Although jurisdictions around the world have varied in the design of their enforcement mechanisms, there is a growing recognition that the optimal system would be:

24 *See* L. Neuman 'Enforcement Models: Content and Context", Access to Information Working Paper Series, World Bank Institute, 2009.

- independent from political influence;
- accessible to requesters without the need for legal representation,
- absent overly formalistic requisites,
- affordable,
- timely, and
- preferably specialist, as access to information laws are complex, necessitating delicate public interest balancing tests.[25]

More specifically, advocates have called for legal provisions that guarantee "a right to appeal any decision, any failure to provide information, or any other infringement of the right of access to information . . ."[26] The more recent Americas Regional Findings and Plan of Action for the Advancement of the Right of Access to Information calls on all states to assure that "enforcement mechanisms are accessible and timely, including establishing intermediate appeals bodies, providing necessary human and financial resources, and capacitating all judges and any others responsible for resolving access to information claims."[27]

In most jurisdictions with an access to information law, a requester that has received a negative decision, whether it is a complete or partial denial of information, lack of response, or other determination ripe for appeal, may seek internal review[28]. This often entails a review of the decision by a more senior administrator or Minister within the same agency that made the initial negative determination. In many jurisdictions, internal appeals are mandatory before the aggrieved requestor is eligible for external review.
There are a number of laws, most notably the United Stated Federal Freedom of Information Act, that do not provide for internal review. In considering the inclusion of an internal review mechanism, there are arguments that focus on delay as a claimant exhaust administrative appeals and whether it serves as merely an obstacle before one can seek an independent review. However, surprisingly perhaps, anecdotal and statistical evidence indicates a high level of positive resolutions by internal review, without necessitating appeals to the Commission or Courts, which would potentially bear more costs in terms of time and resources.

C. Models of Enforcement

Following an internal review, if still dissatisfied, the information requester is afforded the opportunity for appeal to an external body. The model of enforcement selected for appeals outside of the agency depends highly on the specific context and culture – political, economic and bureaucratic - of the country. As with the oversight mechanisms, there are a number of potential models, including:

1. Judicial Review

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25 Id.
26 *See* Carter Center "Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information," International Conference on Access to Public Information, Atlanta, GA, 2008.
27 *See* Carter Center "Americas Regional Findings and Plan of Action for the Advancement of the Right of Access to Information," Americas Regional Conference on the Right of Access to Information, Lima, Peru, 2009.
28 There are a few countries that do not provide internal review of initial decisions, such as France, but these are unique cases.

2. An Information Commission(er) or Appeals Tribunal with the power to issue binding orders
3. An Information Commission(er) or Ombudsman with the power to make recommendations[29]

In cases where an Information Commissioner is established, the office could join enforcement with oversight responsibilities.

1. Judicial Review

The first enforcement model provides for appeals directly to the judiciary. When a request for information is denied, the requester must appeal to the federal court or administrative court. The main benefits of such a model are that the courts have the power to order the release of information if inappropriately denied, possess wide-ranging powers of investigation, have clearly established mechanisms for punishing agency non-compliance, and they may determine the procedural and substantive matters *de novo*.

However, in practice there are a number of disadvantages to this model. For most citizens, the courts are neither accessible nor affordable. Often for successful litigation under the judicial model, the information requestor may need to hire an attorney or advocate and pay the many court costs. In most jurisdictions, the court calendars are overwhelmed and it may be months or years before the case is heard and even longer to receive the written decision, perhaps making moot the need for the information.

The cost, the delay, and the difficulty for citizens in accessing the courts serve a chilling effect on the utilization of this enforcement mechanism. With all these obstacles, the deterrent effect that courts often play is minimized and may actually encourage a perverse incentive among some civil servants to ignore the law or arbitrarily deny requests as they recognize that most persons will not be able to effectively question their decisions. Moreover, in many newer democracies there is often a lack of trust in a judiciary that may not yet have matured into a strong, independent branch of the state. Finally, consideration must be given to the litigation costs for the government (and taxpayer) and the burden on the court system[30].

2. Information Commission(er) or Tribunal: Order-Making Powers

In the second model, external appeals are made first to an access to information commission(er) or specific appeals tribunal with the power to issue rulings and binding orders. This model often is considered the best of the three models in meeting the basic set of enforcement principles. Appeals to bodies such as an Information Commissioner or Tribunal often are more accessible as there is no need for legal representation, it is affordable as there are no court costs or other fees[31],

29 This and the following sections draw largely from L. Neuman "Enforcement Models: Content and Context", Access to Information Working Paper Series, World Bank Institute, 2009.

30 In a 2002 case in South Africa that went to the High Court, the Auditor-General theorized that they had spent over $300,000 Rand (close to $30,000 US) in defending their decision to deny information. See, "The Promotion of Access to Information Act: Commissioner Research on the Feasibility of the Establishment of an Information Commissioner's Office", The Open Democracy Advice Centre, Cape Town 2003.

31 In some jurisdictions, such as Ireland, there are application fees for submitting certain types of cases to the Information Commissioner for review. For example, if the request is for personal information or the agency has failed to respond then the application fee if waived. In other cases the application fee may be £50 or £150,

and, in the best cases, highly independent. This system can allow the decision-makers to become specialists in the area of access to information. With the power to order agencies to act or apply sanctions, this model serves as a deterrent to the government and can alleviate the need for further appeals to the Courts. Binding decisions are issued through a written ruling, which in mature jurisdictions creates a body of precedent that can guide future internal agency and commissioner decisions and facilitate settlements.

This model lends itself to the principles of independence, affordability, accessibility, timeliness and specialist, but as with any model, these benefits are not always realized. There are some additional disadvantages. Quasi-judicial proceedings, such as those before a body with order-making powers, may become overly formalistic and legalistic. Decisions contain jargon, which may be challenging for requesters to understand, and the administration may be slower than the Commissioner model with fewer powers as more exhaustive investigations are undertaken, due process requirements must be fulfilled, and lengthy judgments must be written and issued. These models may be more costly for the state as new institutions are established and staffed, and technical procedures (such as summons and notice, in-camera reviews, and hearings) are met to satisfy legal necessities. Finally, although called "binding," in the face of agency non-compliance there remains the need for judicial involvement and in the most extreme cases police engagement.

3. Information Commissioner or Ombudsman: Recommendation Power

Like the system before, the third model utilizes an Information Commissioner or Ombudsman[32], but in this case there are more limited faculties for enforcement. In this design, the intermediary body responsible for enforcement is vested solely with the power to issue recommendations to the relevant administrative agency or public functionary. These Commissioners or Ombudsmen often possess weaker powers of investigation, such as investigating cases *sua sponte*, and with no order-making powers tend to emphasize negotiation and mediation. Benefits of this model include a lack of formalism, encouraging accessibility for complainants, and it can be the speediest, as the investigations are generally limited to unsworn representations[33]. The abridged powers may encourage less adversarial relations between the recommender and the implementer, with the Ombudsmen relying more on resolution through persuasion and dialogue, thus potentially leading to greater compliance. Finally, the independence of an Ombudsman may be augmented by their status as officers of the legislature (Parliament) rather than as a quasi-independent part of the executive, which often is the case for Information Commission(er)s with order-making powers.

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depending on the nature of the appeal. For comparison, the Circuit Court application fee is £60 or £65, depending on the type of case, £60 for notice of trial plus £11 for every affidavit filed, £50 for official stamp of an unstamped document given as evidence, and £5 for every copy and the Supreme Court application fee is £125 plus additional costs for filings and copies. See The Court Services of Ireland, Circuit Court Fees, Schedule One and Two and Supreme Court and High Court Fees Order Schedule One Part Two.

[32] For purposes of this paper, I will use the term Information Commissioner with recommendation powers and Ombudsman interchangeably.

[33] In Hungary, the annual report from 2001 indicated that the Information and Data Protection Commissioner took an average of only 52.6 days to fully process a case and issue a recommendation. See Neuman, Laura "Mechanisms for Monitoring and Enforcing the Right to Information Around the World" in Access to Information: Building a Culture of Transparency, Carter Center, 2006.

But without the "stick" of order-making powers, recommendations may not be followed[34]. Over time, even those bodies vested with the more limited powers of investigation and recommendation may become increasingly formalistic, contentious and slow. Moreover, with this model a body of rulings may not be created that can serve to guide future agency determinations on disclosure[35], and the Ombud may be prohibited from instigating inquiries without a formal complaint. Emphasis often is placed on mediation and negotiated resolution, notwithstanding that one of the parties (requester or agency) might clearly be correct in its assertions. With fewer powers of investigation and order, there may be more limited resources, and if the Ombudsman has a shared mandate to receive complaints on a variety of issues he or she may have less dedicated time to freedom of information and potentially less specialization. "

D. Establishment of Commission

In the cases where a Commission(er) has been chosen as the enforcement model, regardless of the extent of its powers, consideration must be given to the establishment and implementation of the office.

1. Independence

Paramount to the success of this model is its independence. A series of factors may determine the real (or perceived) independence of this office and its officers, including the manner of selecting the Commission(er)s, their term limit and procedures for dismissal, from which branch of government they receive their powers and to whom they report, and the autonomy in budgeting.

The selection process, and threshold assents for appointment are integral to the perceived legitimacy of the Commission. There are a number of ways in which selection may occur. Most common are through executive appointment, sometimes in partnership with the leader of the opposition. This is the case in both Canada and Jamaica, where the Commission in Canada and the Appeals Tribunal in Jamaica are appointed after consultation with the Prime Minister and leaders of the opposition. In other cases, appointment is through Congressional or Parliamentary selection. The Commissioner(s) may be elected wholly by Parliament with no Executive branch involvement, or more often, the President presents a closed list of candidates to the Legislature for selection or approval, either through assent or lack of dissent. For example, in Mexico, the five commissioners of the Federal Access to Information Institute are nominated by the executive branch, whose nominations may be vetoed by a majority of the Senate or the Permanent Commission. In Honduras, the Commissioners are elected by Congress with a two-thirds vote, after nomination by a committee comprised of the President, Attorney General, Human Rights Commission, National Convergence Forum, and Superior Court of Accounts.

Once appointed, the term and potential for dismissal become foremost considerations for continuing independence. Periods of appointment are in many respects a balancing act. If term limits are too short, then the Commissioner may be more concerned with pleasing those

[34] This is not always the case. For example, since 1987, there has been 100% compliance with all New Zealand Ombudsmen recommendations on access to official information. Prior to that, non-compliance only was due to individual Ministers exercising the veto power provided in the legislation.

[35] Some jurisdictions, such as New Zealand, may publish "casenotes," which can be relied upon by government agencies as a decision-making guide.

responsible for subsequent appointments than in serving the duties of his or her post. On the other hand, if terms are too long then officers may be less responsive to the shifting trends of openness and needs of all constituencies. The length of term is relevant not just to ensure sufficient independence, but also the functioning of the Commission. As previously noted, enforcing the right of access to information often necessitates some specialization, which takes time to acquire. Thus, shorter terms could signify less proficiency in the body. Examples of terms include Canada's seven-years, with possibility of one seven-year extension, Chile's seven-years with no potential for additional terms, and Honduras and Jamaica's five-year non-renewable terms. In each case, the term of commission is longer than the Presidential or Congressional terms, thus reducing potential for politicization.

For dismissal or termination, members of the enforcement body should only be suspended or removed "for reasons of incapacity or behavior that renders them unfit to discharge their duties."[36] The statute or implementing regulations should not provide additional reasons for removal that could in time become politicized or manipulated.

Lastly, budget sovereignty is a significant component to overall independence and autonomy. If the Commission is vested with its own line item in the budget, it is less obliged to a specific ministry or agency for proposing and promoting its financial needs. In cases, for example, where an executive branch ministry must submit the Commission's budget for legislative approval, there is an inherent dependency created with that "host" agency.

2. Other Considerations

Beyond issues of independence, in implementing the enforcement mechanism, attention should be paid to the seniority and expertise of the Commissioner(s), the amount of time dedicated to serving the role, salary for Commissioner(s), and the staffing of the Commission offices. Increasingly, Access to Information Commissioner, or at a minimum the President of the Commission, is a dedicated full-time position.

In terms of salary, Commissioner(s) often play an adjudicating role. As such, their salary should be commensurate with a similarly placed Judge or Appellate body. In Mexico, the Commissioners hold the rank of Vice-Minister, with a pay scale equivalent to top federal judges. In juxtaposition, the Appeals Tribunal in Jamaica is a part-time, honorary post and the effectiveness of the body suffers in comparison.

To ensure the functioning of the Commission, a staff or secretariat may be required. Experience has shown that for intermediary appeal bodies to be successful they must be endowed with appropriate resources, including full-time personnel that can become expert on the intricacies of applying the access to information law and support the Commission in their investigations,

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[36] Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. See also, Principles relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (Paris Principles), endorsed by the Commission on Human Rights in March 1992 (resolution 1992/54) and by the General Assembly in its resolution A/RES/48/134 of 20 December 1993.

mediations, and hearings. Finally, a professional secretariat is helpful in assisting claimants, particularly when the rules for appeal are quite formalistic.

E. Inter-American System

[[[TO ADD]]]

F. Sanctions

In order to assure full functioning and compliance with the law, the best access to information legislation includes a comprehensive section on sanctions for failure to fulfill the procedural responsibilities or for affirmative actions to subvert the law. Sanctions, which often carry a fine or other administrative remedy such as suspension or termination, should apply when civil servants fail to comply with the provisions set forth in the law, such as time for response or obligation to assist requesters. Additionally, actions to impede the release of information – from obstruction and hiding information to destruction of documents – should also carry a sanction. Finally, the law should extend to provide sanctions for failure to follow a Commission order. Without clear sanctions, the civil servant's obligations under the law may be ignored.

G. Effectiveness

The overall effectiveness of an access to information regime – from passage, implementation and enforcement of the law to its ultimate use – will depend on a variety of factors. However, to begin to disaggregate the elements that translate into impact, systems for reporting, analysis and benchmarking must be developed.

As described above, a key role for an oversight body is to receive monthly or annual reports from the public agencies, to systematize the findings and develop recommendations. This, however, only is possible when benchmarks are instituted and sufficient reporting requirements are ensconced in legislation and then enforced.

Clear targets and best practices guidelines should be established and relayed to implementers and citizens alike. These may serve to guide the civil service in their implementation efforts, as well as assure greater uniformity among the public bodies.

Moreover, at a minimum, public bodies should be mandated to submit annual reports on the number of requests received, the number of requests fulfilled and denied, the reasons for denial, the time periods for responding, and any obstacles or challenges that the agencies are encountering in meeting the benchmarks. Once the reports are received and analyzed, the oversight body should be mandated to report to the legislature and the public the effectiveness and impact of the right of access to information. The annual reports should be available to the public, and citizens could be encouraged to engage with governments in evaluating the extent of implementation efforts and influence of the law.