

Mexico City, February 3, 2015

**Tripartite Technical Secretariat of the
Open Government Partnership in Mexico**

Dear members of the Tripartite Technical Secretariat:

The Civil Society Organizations that participate in the Open Government Partnership in Mexico (OGP-Mexico) would like to express our deep concern with the modifications recently proposed by the Federal Government's Executive Branch to the General Transparency Law initiative. These modifications, far from strengthening one of the fundamental pillars of Open Government –transparency and access to information–undermine the scope of the constitutional reform and considerably weaken the regulatory framework surrounding the right of access to information.

On December 2, 2014, the Senate (with representation of the PRI, PAN, PRD and PVEM political parties) partnered with Civil Society Organizations, and developed a General Transparency Law initiative that considerably broadened the protection of the right of access to information. However, last minute provisions have been included that hinder the scope of said reform; these changes include a) the economic stability clause as a legal reserve; and b) the possibility of sanctioning officers of oversight bodies of access to information and data protection, if the information they disclose adversely impacts the obligated parties.

Furthermore, in the last few weeks, a document circulated with “technical” and structural modifications to the General Transparency Law initiative, undermining some achievements of the 2014 and the 2007 constitutional reform.

Some of the most worrying aspects proposed by the Executive Branch are:

1. Obligated parties no longer need to document every act that derives from the exercise of their authority, competencies or functions (Art. 24).
2. Security, intelligence and crime-prevention offices are no longer required to have a Transparency Committee, transferring such powers to the head of each office. (Art. 42).
3. Obligated parties no longer need to generate the corresponding information that is derived from their functions, as long as they explain the reasons why they did not do so (Art. 43).
4. Consulting committees of oversight bodies of access to information and data protection are no longer able to register opinions on matters they consider relevant. (Art. 47).
5. Lists of people who have received tax exemptions are no longer required to be made public (Art. 71).

6. The obligation to incorporate the transparency obligations related to exploration, extraction, production and refinement activities of oil and hydrocarbon (solid, liquid or gaseous state) has been modified. As well as the obligation to make publicly available rules, income, costs, considerations, contributions and payments established in contracts assigned to providers and the procedures derived thereof. (Art. 83).
7. The period for classifying information has been extended from five to seven years, and the time-span for prolonging the classification period has been extended from two to five years (Art. 101).
8. The obligation for Transparency Committees to legally ground the classification of information and the obligation to do a “proof of harm” have been eliminated (Art. 103).
9. The obligation to demonstrate “legitimate interest” to classify information related to national security is eliminated (Art. 104, Art. 113, Art. 120).
10. The possibility of reserving information that affects tax revenue has been included (Art. 113).
11. Two causes for classifying as restricted information have been added (Art. 113):
 - Judicial files or administrative procedures that have not been concluded,
 - Those that by specific provision of law are considered reserved.
12. Criteria established by the Supreme Court is ignored and it is determined that it would only be possible to access information regarding severe violations and crimes against humanity, if a competent authority has issued a resolution in that sense. (Art.115)
13. The Federal Institute for Access to Public Information and Data Protection (IFAI) will only be able to attract cases when the plenary of said organism decides to do so by qualified majority (Art. 182).
14. The Federal Institute for Access to Public Information and Data Protection (IFAI) will only be able to file a motion against an unconstitutional act when the qualified majority of the plenary decides to do so (Art. 40).
15. The Federal Institute for Access to Public Information and Data Protection (IFAI) will only be able to file a motion of constitutional controversy when the qualified majority of the plenary decides to do so (Art. 40).
16. Obligated parties (not only those of the Executive Branch) are granted the possibility to inform the Legal Counsel of the Executive Branch when they consider that a resolution of the Federal Institute for Access to Public Information and Data Protection (IFAI) could endanger national security, so the Legal Counsel determinates the course of action. (Art. 190)
17. The authority of the Federal Institute for Access to Public Information and Data Protection (IFAI) to impose sanctions regarding public funds and trusts to ensure the fulfillment of their resolutions is eliminated (Art. 202).

18. Declaring lack of information, when generating said information is part of the powers and obligation of the obligated parties, as well as classifying information without complying with the necessary process to do so as detailed in said law, is eliminated as a cause of sanction (Art. 207).
19. Whistle-blower protection is eliminated. (Art. 214).

The Civil Society Organizations that are part of the OGP-Mexico, as a platform of interaction between civil society and government, request to the Executive Branch represented in this Tripartite Technical Secretariat, to withdraw its proposals and let pass the General Transparency Law initiative that was jointly created between civil society and legislators in an unprecedented co-creation exercise.

We also ask the Federal Institute for Access to Information and Data Protection, as the guaranteeing body of the right to access of information and member of the Tripartite Technical Secretariat of OGP-Mexico, to make a pronouncement on this important matter that will set the principles governing its action as an autonomous constitutional body as well as that of the subnational oversight bodies of access to information and data protection.

The Open Government Partnership is grounded on four pillars, transparency and access to information is one of them. The approval of a General Transparency Law that includes the proposed provisions, would seriously question the willingness of this government to work towards a government that is open to its citizens.

Regards,

CSO part of OGP-Mexico

Artile 19, Cidac, Cultura Ecológica, Fundar, Gesoc, Imco, SocialTic & Transparencia Mexicana.

