

# DATACTIVE

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## Auditing the State

Everyday Day Forms of Institutional Resistance in the  
Mexican Freedom of Information Process

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# Auditing the State: Everyday Day Forms of Institutional Resistance in the Mexican Freedom of Information Process.

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## Abstract

Governmental transparency through Freedom of Information (FOI) Laws has become a standard in modern liberal democracies. However, a recent trend documented by practitioners and academics alike consists of governments stating in paper their support for transparency, but in practice implementing various kinds of strategies to limit the flow of information towards engaged citizens, increasing secrecy and opaqueness. While scholarly attention has mostly been set on the motivations and effects of secrecy within institutions, the consequences experienced by politically engaged citizens have received less interest. In this paper I focus on how information activists experience and make sense of instances of information control during the performance of the FOI process, through a case study set in Mexico. I suggest that the constant denials, delays and obstructions activists face during the process of requesting information can be productively analyzed through the concept of Everyday Forms of Resistance.

**Keywords:** transparency, resistance, ontological politics, datafication, data activism.

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## Introduction

Although the connection between transparency and political accountability has been thoroughly questioned (Fox 2007; Hood 2010; Gaventa & McGee 2013), research seems to confirm that access to public sector information is a key (albeit not sufficient) factor fostering citizen empowerment (Fox 2015; Fenster 2015). Thus, during the past two decades governmental transparency through Freedom of Information (FOI) Laws has become a standard in modern liberal democracies (Bennett 1997; Ackerman & Sandoval-Ballesteros 2006; Birchall 2011; Relly 2012). However, a recent trend documented by practitioners (Rumbul 2016) and academics alike (Luna 2008; Almanzar, Aspinwall & Crow 2018), consists of governments stating in paper their support for transparency, but in practice implementing various kinds of strategies to limit the flow of information towards engaged citizens, increasing secrecy and opaqueness.

While a considerable body of research on organizational studies has thoroughly studied the more general topic of institutional secrecy (see Bail 2015; Gibson 2014; Ellsberg 2010), and there is even a specific set of literature looking particularly at governmental responsiveness to FOI requests (Rumbul 2016; Bagozzi, Berliner & Almquist 2016; Fox, Height & Palmer Rubin 2011; Yang & Callahan 2007; Roberts 2006), scholarly attention has mostly been set on the motivations and effects of secrecy within institutions, while the consequences experienced by politically engaged citizens have received less interest. In this paper I choose a different path, focusing on how information activists experience and

make sense of instances of information control during the performance of the FOI process. I explore this phenomenon through the analysis of a case study from Mexico.

The Mexican FOI process is an interesting case to approach because of the stark contrast between the sophistication and progressiveness of the legal framework<sup>1</sup> and its abysmal performance.<sup>2</sup> Given the crucial role played by information in contemporary democratic processes, as well as the amount of public resources invested yearly in transparency and accountability efforts, such discrepancy between policy goals and performance is worth of attention. I suggest that addressing this gap requires a shift in the way in which the implementation of the Mexican transparency framework has been evaluated until now, namely through performance indexes and quantitative studies that attempt to measure how far policy goals are from their results. Instead, I propound to center the attention on the lived experience (Moi 1998) of a particular category of citizens who make intensive use of the FOI process as part of their political activities: information activists. I define information activists as politically engaged individuals whose main input for political work is Public Sector Information (PSI).

In what follows, I combine insights from the fields of Science and Technology Studies and Resistance Studies, to bring attention to two issues related to transparency, accountability and civic engagement. The first is the aforementioned lack of attention paid by both policy makers and the academia to how citizens experience the process of requesting PSI. I achieve this goal by presenting activists' accounts of their experience with the FOI process, thus producing a contrasting account to most research on the subject which has seldomly incorporated citizens' voice. Although I conceive the Mexican FOI process as a sociotechnical assemblage composed both of institutional and citizen elements, and the data and tools needed to store, process and repurpose it, (cfr. Luscombe & Walby 2017 and Hansen & Flyverbom 201), I pay particular attention to what are the consequences of FOI's *malfunctions*<sup>3</sup> for the activists who use it, in order to recenter attention on people.

The second issue addressed in the paper is the undertheorization of the concept of resistance in the transparency and accountability literature. Although the idea of resistance has lately been used by practitioners and academics alike to characterize governmental behaviour regarding citizens' use of accountability mechanisms such as transparency (Berliner 2017; Worthy, John & Vannoni 2016; Shkabatur 2012; Bauhr & Nasiritousi 2012; Gill & Hughes 2005), its political dimension remains to be fully questioned. In fact, in most of these works 'resistance' could be switched for the word 'reluctance' without distorting their analysis. In contrast, this paper seeks to contribute to the literature on governmental transparency and Resistance Studies, by offering the germen of a theoretical framework that fully acknowledges the political dimension of institutional resistance during the FOI process. Thus, I attempt to move beyond treating incompetence, institutional inefficiency or outright opaqueness, as

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<sup>1</sup> Despite its multiple reforms, the Mexican Law has been consistently ranked amongst the best since its inception in the early 2000s. Currently, it holds the second place in the Right To Information Index built by Access Info Europe and the Centre for Law and Democracy (see <https://www.rti-rating.org/country-data/Mexico/>).

<sup>2</sup> Mexico is consistently ranked amongst the most opaque and corrupt countries around the world, according to international organization Transparency International. (see <https://www.transparency.org/country/MEX>)

<sup>3</sup> In the next pages I will argue that malfunctions do not exist, and rather should be conceived as policy decisions that can be held accountable.

mistakes or instances of unintended state failure, and rather opening the possibility to consider them political innovations (Barry 2007) aimed at achieving specific goals in a context of increased citizen engagement.

Although a more comprehensive reflection around the concept of resistance is left to a future paper, here I advance some preliminary ideas which allow me to connect this notion with the experience of the state lived by information activists. Thus, I approach these experiences through the lenses of *ontological politics*, according to which what is in the world is done in relational practices and therefore varies from locality to locality (Mol 1999; 2002, de Laet & Mol 2000; Law 2002, Law & Singleton 2005; Law & Lien 2013). Such approach allows me to show that certain everyday and local enactments of the state might be experienced as resistance by information activists. I argue that the constant denials, delays and obstructions activists face during the process of requesting information bring about a local instantiation of the state that makes difficult rather than fosters citizen empowerment. Furthermore, I suggest that, given their subtlety and apparent non-political nature, these practices can be understood as Everyday Forms of Institutional Resistance, a term I build on the basis of James C. Scott's work (Scott 1989; 2008; 2014).

The paper is divided into five sections. The first briefly presents my methodology. The second consists of a short review about the performance of FOI in Mexico. The next two sections present a case study focused on the challenges faced by citizens in accessing PSI. In the final section I put forward the notion of Everyday Forms of Institutional resistance.

## Methods

This paper presents preliminary findings of my doctoral research in the broader context of the DATACTIVE project at the Media Studies department of the University of Amsterdam.<sup>4</sup> The empirical material originates from a one year long intermittent conversation with members of two Civil Society Organizations (CSO) who use information activism among their strategies of political intervention. Five semi-structured in-depth interviews were conducted face to face during March and November, 2018, and one member of each CSO remained in touch with me via email or Skype to address specific issues arising from the interviews. Furthermore, my research also draws from the documents both organizations have published to showcase the results of their work.<sup>5</sup> The analysis also builds upon my own experiences as an information activist, initially working for one of the CSOs approached in this paper, and later as an individual researcher. Such insider position increases my chances to remain faithful to activists' embodied accounts (Haraway 1988) of their experience of the state, in comparison to the distant readings which are more common in transparency research.

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<sup>4</sup> See [data-activism.net](http://data-activism.net)

<sup>5</sup> When quoted, material coming from interviews or activists' documents have been translated from Spanish by the author.

The organizations were selected for their involvement in projects that required accessing public sector information which, *prima facie*, lacked any controversial nature, although the process of requesting it turned into a long stand-off with institutions who refused to disclose the data. The interviewees were asked about aspects of the everyday dimension of their relationship with the institutions with whom they constantly interact. A specific focus of my conversations with the informants was set on how denied requests affected their work. Thus, during the interviews I included a few questions addressing this topic in particular, for example: what happens within your organization when an information request is denied or delayed? How do denials or delays impact your work? How do denials and delays make you feel? The interviews were transcribed and coded, and afterwards analysed with a focus on instances in which activists referred experiencing resistance to their efforts to access public sector information. Although the participants agreed to the use of their names and the names of their organizations, the data resulting from the interviews was anonymized and processed through a security protocol detailed in Kazansky & Milan (forthcoming).

### The responsiveness of Mexican Institutions to FOI requests

Research on the inner politics of organizations has traditionally understood secrecy as a structural feature of bureaucracies, intended to produce and maintain their power superiority (Weber 2004). Thus, information control through secrecy is said to allow state actors to speak their ideas freely during decision making processes without fearing backlash (Chambers 2004), avoid repercussions of information going public and prevent scandals (Vaughan 1994), and prevent challenges to official state discourses or hide internal conflict (Bail 2015). Some researchers have even suggested that institutional secrecy emerges occasionally out of habit rather than necessity (Ellsberg 2010). These hypothesis have been somewhat confirmed in Latin America by a recent cross-national study (Rumbul 2016) which linked institutional reluctance to disclose public sector information with the fear of individual public officials of being punished by their superiors.

In the particular case of Mexico, the responsiveness of institutions to information requests has been the object of various quantitative researches, most of which have also touched, even if indirectly, upon the motivations of institutions to deny requests. In an early analysis of the first years of the FOI law, Gill & Hughes (2005) concluded from interviews with federal civil servants that a relevant source of opposition to disclosing information originated from the fear of low-level bureaucrats of misreading cues from their superiors about what information was appropriate to disclose. In 2011, Fox et al. analyzed random samples of institutional answers during the first three years of the Mexican FOI law, comparing their results with previous research carried out by the National Security Archive in the U.S., which looked at a massive amount of requests posed between 2003 and 2006 (Doyle et al. 2008). They found that although more than three quarters of requests were fulfilled appropriately, there was an increasing trend to deny information under the argument of non-existence -one of the few cases accepted by law to release institutions from the obligation of disclosing. The researchers concluded that institutions might have identified the use of this exception as the least risky way of replying to requests when attempting to cover their inability to record, preserve, and efficiently provide information.

More recently, Bagozzi et al. (2016), analyzed the entire corpus of information requests made in Mexico between 2003 and 2015, to predict the occurrence of denials. Their findings imply that certain topics increase the likelihood of having a request denied, for example, investigative requests which inquire financial matters. Another study by Almanzar, Aspinwall and Crow (2018), focusing specifically on requests related to the ongoing Mexican war on drugs, found that institutions consistently attempted to deceive petitioners by replying that the information did not exist or had already been publicly released, when neither of the two were true. Researchers found that up to one quarter of the total requests related to the war on drugs were answered in this fashion. In line with the literature on secrecy, the study concluded that the most likely reason for this institutional behavior was to avoid providing information that could put at risk the operations of the drug war, that is, to preserve the information advantages of the State. Nevertheless, the study also claimed that Mexican institutions would commonly use non-security related arguments to justify their refusal to disclose, rather than attempting to mobilize a national security argument, perhaps because the latter would not survive legal scrutiny.

As it is evident from this brief (albeit representative) recount of the research about FOI in Mexico so far, the informants have always been the texts of the institutional answers themselves, rather than the users of FOIA. Even when researchers attempted to determine how institutions respond to different kinds of citizens (i.e., journalists, highly educated individuals, activists, etc.), their methodology consisted in “simulating” actors rather than directly accounting for actual users’ experiences (see, for example, Cejudo & Zavala 2011). On the other hand, although the quality of the information provided has also been a matter of scholarly interest, the criteria to evaluate it has always been set by the researchers and not by the users of the information. Neither of these two factors is necessarily a problem per se, but they result in the disappearance of an important perspective during the evaluation of the FOI process: that of the citizens who use it. Here, I intend to pursue a different strategy..

### Setting the FOI process

In 2015, *Controla Tu Gobierno*<sup>6</sup> (CTG) and the *Instituto de Liderazgo Simone de Beauvoir*<sup>7</sup> (ILSB), two Mexican Civil Society Organizations (CSO), set out to perform a social audit of the implementation of one of the most advertised policies of Mexican president Enrique Peña Nieto’s term (2012 - 2018): the National Strategy to Prevent Teenage Pregnancy (ENAPEA). The goal of the CSOs was to test whether the transparency legal framework in place could actually be leveraged by non-specialized citizens to oversee the implementation of public policies.

The first step in process of auditing the ENAPEA was to use Mexico’s National Transparency Platform -whose constant malfunctions deserve a discussion of its own (Castillo 2016)- to find out the budget of the policy. This required filing information requests to the four institutions whose involvement in the implementation of the policy could be inferred by the available documents: The Mexican Institute for Youth (IMJUVE), the National Institute for Women (INMUJERES), the Ministry of Health (SSA) and the National Population Council (CONAPO). None of these institutions responded initially with useful

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<sup>6</sup> Spanish for “Control Your Government”. See <https://controlatugobierno.org>.

<sup>7</sup> Spanish for “Simone de Beauvoir Institute for Leadership”. See <https://ilsb.org.mx/>

information, which resulted in a long struggle between institutions and activists. Some of the institutions took more than the time allowed by law to respond, others pretended to have delivered the information but instead sent documents explaining why they could not provide it, and others provided loosely related documents that far from responding to activist's questions, showed that the institutions were not even following the implementation of their own policies.<sup>8</sup>

Rather than stopping their social audit due to the unavailability of information, the activists decided to continue testing the possibilities of the legal framework in Mexico by contesting a particular answer provided by one of the institutions initially contacted: CONAPO. This was strategically the best decision given that CONAPO was the only one who did not use the unavailability of the information as an argument to not provide it, but rather answered that the budget of the ENAPEA was *zero* Mexican Pesos. Given the unlikelihood that a public policy would have a null budget, the activists decided to appeal this particular response. During the appeal process, the governmental institution in charge of FOI in Mexico, the National Institute for Access to Information and Personal Data Protection (INAI), ordered CONAPO to reconsider its answer, since a superficial search of CONAPO's archive performed by INAI's personnel found bits and pieces of the information requested by the activists, which contrasted with CONAPO's *null* answer. However, rather than looking further and providing a final and complete answer, INAI only requested CONAPO to take the matter in its own hands again and modify its initial response about ENAPEA's budget and how it was spent. CONAPO took the scarce data found by INAI, captured it in a one-page text file with a table, and delivered it as the final answer to the information request. According to the activists, the text file included no reference to the source of the information or even an official signature from a public official.

Still not discouraged, the two CSOs decided to take the scarce information given by CONAPO as a starting point to formulate more FOI requests. What followed was a year-and-a-half-long battle between activists and a number of institutions whose involvement in the ENAPEA could be inferred from the data found by INAI, all of whom at least initially denied most of the hundreds of information requests filed. Let the previous description of what happened with only four requests for information give an indication of what might have happened with the 300+ filed during the social audit of the ENAPEA; delays, denials, low quality answers, and incomplete data were the usual answers given by institutions.

Many months later, after putting together the information given in dribs and drabs by institutions, ILSB and CTG found that a considerable part of ENAPEA's budget was spent on things unrelated to the prevention of teenage pregnancy, such as paying for the water and electricity bills of various institutions, or even artistic gardening services (ILSB 2016). All in all, the experience would lead the activists to state that the amount of work needed to obtain information is disproportionate to the quality and quantity of information obtained. In reference to the obstacles set by institutions throughout the whole FOI process, the activists concluded in a report documenting their experience: "One has to ask what (institutions) get from it?". (ILSB 2016).

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<sup>8</sup> This extremely brief recount of the strenuous process lived by the ILSB and CTG does not make justice to their work. Interested parties may find a detailed account of the whole process here: <http://www.ilsb.org.mx/embarazoenadolescentes/>



## Making sense of the state

Having experienced myself the frustration connected to denied or delayed information requests, I expected to receive from activists aggravated replies to my questions about how this type of institutional behaviour affects their work. I expected them to go into details about how denials and delays derail their work, forcing them to focus momentarily on other matters and reducing the momentum of their endeavours, and that such impact would make them feel anger and frustration. Surprisingly, their replies were very different. Although activists were indeed annoyed about having to request various times the same piece of PSI to overcome denials on the basis of legalistic arguments, according to their accounts the process also built up their knowledge of the institutional and legal framework they deal with. Eventually, this process of pushing and pulling equips them with a surgical ability to ask questions in ways that cannot be easily circumvented by institutions. In fact, whenever an information request is denied, activists respond by filing more requests, as one of my informants describes: “When they don’t reply or they reply badly, we file seven [requests] more. And when they deny those, we file another seven for each of those rejected”.<sup>9</sup>

Thus, whereas a positive information request indeed helps the organization to, for example, supervise how the budget of a policy is spent, it is actually denials that push them to build up their knowledge. A negative reply is not always evidence that the information does not exist or that it is secret due to national security concerns, but rather that the request was not written with enough accuracy to give no leeway for public officials to dispose it right away.<sup>10</sup> In this case, accuracy stands for a carefully constructed knowledge about the different competencies of various institutions and the regulations that oblige bureaucrats to keep quality archives.

The process of crafting information requests requires a collective meeting in which the experience of different members of the organisation becomes relevant. The goal of these meetings is twofold: firstly, tracing the flow of power through laws and regulations to find out what is the right way of wording a request, and secondly, to come up with a translation of activist’s concerns into matters connected to a particular set of governmental activity susceptible of having being quantified and archived in the form of PSI or Open Data. During these meetings, the question “how many contraceptives were distributed in 2015 in this town” is translated into the information request “We request all the documents containing information about how the \$8,000,000 budget assigned to ENAPEA was distributed, as it is shown in the Federal Spending Budget 2015, under the allocation ‘Actions that foster the equality between men and women, the eradication of gender violence and any form of discrimination based on gender’” (ILSB 2016 p. 18).

In a way, requesting information can be seen as a process of mapping uncharted institutional territory, since to have a successful information it is needed to accurately identify that the relevant data should be in the hands of the institution to which the request is addressed, as well as framing correctly the scope

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<sup>9</sup> Interview 1. March 2018.

<sup>10</sup> Interview 2. March 2018.

of time in which it could have been produced and therefore archived. Activists spend many hours attempting to connect a specific governmental act with the laws, regulations and other administrative documents that govern what institutions can do and how they should do it. This creates the notion that activists are doing part of the work public officials should be doing, as this quote from one of my informants suggests “You almost had to tell them in what drawer they should look for the document we were asking for”.<sup>11</sup>

From my talks with the activists it became clear that using PSI for political purposes requires designing strategies to reduce the complexity of dealing with the uncertainty implied by setting in motion the FOI process. In the case of my informants, this was achieved through the creation of a database to register the evolution of information requests. This registry is an ever-growing matrix of 51 columns and, by the moment of my fieldwork, 300+ rows, in which many different aspects of the requests are valued and quantified. Most of the columns are filled with metadata related to each request (the relevant institution, the date they were filed, when they should be answered, the text of the answer). Others are dedicated to internal organizational management (who filed it and who is responsible for it). A considerable amount of the cells are used to evaluate the quality of the information received according to criteria set by the law; a few are filled with preliminary thoughts on how to use the information received, and another few cells are filled with preliminary thoughts on the legality of the negative responses, including references to articles of the national or local laws, and past decisions made by INAI while solving appeals. These databases are necessary because, although the National Transparency Platform has a series of tools that allow requesters to manage and follow their questions, the system is overrun with bugs, glitches and malfunctions (Castillo 2016). It is not uncommon for requests to disappear, be duplicate or not be registered. Thus, to avoid losing control of the process, activists carefully keep track of their interactions with the platform.

Formulating requests and building a database of the responses implies turning state action into data that is later used to fuel political actions and justify demands for exercising civic rights. Indeed, these are processes of datafication -understood as the gathering and processing of data that allows actors to orient themselves in the world (Kennedy, Poell & van Dijck 2015)- that increase the chances of holding the state accountable for its actions. When the database shows that one of FOI requests is about to reach its due date without answer, the activists will start exerting pressure over the responsible institutions; when the database shows that the request has not been answered according to the quality criteria set by the law, they will appeal and force the officials to answer properly; when the result of the collective processing of PSI & OD shows that an institution has not been distributing its budget according to the law or that part of it is missing or has been used incorrectly, they will partner up with the media and denounce with evidence to back their claims, and when the promises of a public policy do not match the data they have gathered and analysed, activists will look for the institutional mechanism to force its improvement.

Although all of these activities could be carried out without the existence of the database, its role as a coordination device is crucial to organize the different strategies needed within CSOs to manage their

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<sup>11</sup> Interview 1.

interaction with the state. The discussion around the database determine activists' personnel, budgetary, strategic and time-management decisions, which subsequently trigger further state action which is, again, turned into data points to be captured and processed. In that sense, the database is a crucial element in stabilizing and making durable (Latour 1990) not only the social relations within CSOs, but also the dynamic of the interactions with the state, and therefore, the resulting power configurations. These datafication practices that occur from below (cfr. Milan & Treré 2017) are also instances of data activism that although not relying on massive databases, still "[engage] with the new forms information and knowledge and their production take today, challenging dominant understandings of datafication" (Milan & van der Velden 2016).

Surprisingly, from the talks with my informants it is possible to conclude that this datafication-from-below of the Mexican State is a response to tendency with an opposite direction coming from institutions, which, although having signed all kinds of international commitments related to Open Government, attempt to remain opaque. Activists' accounts suggest that the Mexican State produces schizophrenic instances of its own datafication, since, as many critics of the narratives of open data (Bates 2013; Birchall 2015; Goëta & Davies 2016) have warned, it prioritizes those occasions in which the data produced and shared has economic value, while paying less attention to data that may increase citizens' involvement in more contentious matters. In stark contrast to the welcome economically-focused datafication, what my informants do is a different kind of translation: All their efforts to process PSI & OD allow them to exert a level of civic control over institutions that has not been seen before.

Thus, the problems faced by CSOs in their quest for datafying state action point towards the existence of a problematic tension between civil society and the state. While using their right of access to information, my informants expect to participate in bringing about a *transparent* Mexican state (cfr. Ruppert 2015) as it is intended in the legal framework. However, this expectation crashes against the actual behaviour of institutions responding to citizens' requests, who bring about a rather *opaque* state. Furthermore, this tension creates a vicious feedback loop in which the more opaque institutions become, the more attempts at oversight will emerge, which in turn seem to trigger more opacity. Such trend towards opacity is sometimes explained by the activists in very non-political ways by referring to the abysmal archiving practices of the Mexican state. This is evident in the following account given by one of the members of CTG, regarding what she imagines happens within institutions after she asks for information, taking as an example a real request for information filed during the ENAPEA audit:

When the information request is delivered to the information officer through the platform, this man says 'I wonder which one of these three (departments) could have that information?' He makes an *oficio*<sup>12</sup> and sends it to the three units; 'someone is asking us yaddi-yadda'. Each of this unit has two million things to do. Two million! So, when they get the request they go:  
-Argh! Another information request! Now what is it that they want?!  
- Well, they want the contraceptives by place, year and sex.

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<sup>12</sup> An *oficio* is the name given to any document used for internal communication within or among Mexican institutions. Given the hyper-reliance of Mexican bureaucracy in paper documents, *oficios* are a very important part of institutional life, used for everything from signing collaboration agreements, to complaining about daily matters.

- Gosh, you know what? Just make a little table and we reply and that is it. Then those three units, which are in the same overworked circumstances, make a little table, best case scenario. They reply, add it [the table] to their own *oficio* because a lot of documents are generated in this process, and they reply to the information officer: 'Well, what we have is this little table in annex. We distributed 12'. The same process goes for all three. The information officer puts together all the replies and sends it back to the requester. But this process does not always go so well. They may not have any information at all to even create a little table out of the blue. Once we got a reply in Veracruz that said 'Pfftt... no, impossible', well they actually didn't say 'Pfftt' but you could infer it from the tone of answer: 'Mr. John Doe who was in charge of that information just quit and he left no archive!' That is what they replied! It's a problem. These bureaucrats are not used to document each of their actions. This is the other side of transparency. For transparency to exist there has to be archives. If public officials do not get used to document each of the decisions they take, it will not work. What does that mean? That if I need to send five boxes of contraceptives to a Hospital in *San Sirindango de las Iguanas*, I have to make an *oficio*. They take the *oficio* with the five boxes. They sign it when receiving them. They return it and they should have time to put that in a file that someone has to classify so we know it exists.<sup>13</sup>

If, following Andrew Barry, we understand politics as "a way of coding a historically variable cluster of practices", and the political "as a space of dissensus and contestation that is not reducible to politics" (Barry 2007, p. 295), it seems there is nothing inherently political or unpolitical about the archival practices of the Mexican bureaucrats described in the previous paragraph. It would be far-fetched to suggest, without evidence obtained by speaking to public officials themselves, that the inexistence of the data requested by the activists is part of a politically motivated strategy to prevent them from joining decision making processes. However, part of the work that activists do is turning such institutional failure into a political matter by making evident how it affects their ability to become involved in the performance of public policies which are supposed to be implemented with citizens' collaboration.

In that sense, whether the reluctance of the Mexican state to turn certain aspects of its performance into data is specifically addressed to curb citizen engagement or not, it makes no difference to information activists during their attempt to audit the state. The fact is that, intentions or accidents aside, the data they need is not available. Activists themselves are less concerned with the intentions of the institutions than with its effects: as long as the information is not available, activists will have a harder time holding institutions accountable of their performance, because it is not possible to properly evaluate the distribution of contraceptives if there is no information about it or if the information is not accessible. In response, activists come up with their own ways of producing data on their own. Even extremely dramatic *missing datasets* (Onuoha 2016) such as the number of feminicides in certain areas of the country are produced by citizens and not the state, for example by monitoring 'red top' media. In producing this data, activists manage to keep a foot in the door of closing civic space, because in the age of the informational state (Braman 2006), the lack of information might equal to the inability to participate in decision-making processes.

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<sup>13</sup> Interview 1.

The push and pull process between organized citizens and the State can thus be seen as a struggle to politicize something via its displacement through various spaces of contestation. In the example of the ENAPEA, budgetary data considered non-political by the state are given a political dimension by citizens who request it through FOIA. Thus, the budgetary data moves from inhabiting the non-political space of bureaucrat's spreadsheets to be the center of a discussion among organized citizens. This movement triggers an attempt from the state to move the data back to a non-political space by arguing against its disclosure or by stating that it is not available due to inadequate -and non-politically motivated- archival practices. However, the strategy can backfire given that the unavailability of data itself is turned by the activists into a political matter. The latter is done, for example, by conducting press conferences to publicize the unavailability of information needed to hold the state accountable.

Throughout this process there are at least two instances of ingenious *political innovation* (Barry 2007): The first is that in which activists device tools and strategies that allow them to turn State action into data which can be used as an input to demand accountability. The second is that in which institutions find ways to perform their legal mandate pretending to be transparent while remaining opaque. In the following section I focus on the latter.

### Everyday Forms of Institutional Resistance

Although there is a finite number of exceptions stated in the Mexican law to justify non-disclosure of information, activists constantly refer to the incredible ingenuity that officials display when arguing against disclosure. Requests may be denied or delayed on the basis of a series of "conceptual acrobatics"<sup>14</sup> performed by information officers, which may be overturned by higher authorities at a later stage of the process but that in the meantime cost citizens time and energy. In that sense, these attempts at secrecy through the FOI process in Mexico do not clearly point to the emergence of governing principles of what information can be disclosed and what cannot (cfr. Gallison 2010). If this was the case, activists could make predictions about the likelihood of receiving information prior to requesting it, but this hardly occurs.

Nevertheless, the absence of predictable guidelines about disclosure/non-disclosure does not mean that non-disclosure is the result of individual rogue bureaucrats rather than institutional work. Not providing information while appearing to do so is a process that requires a considerable collective effort from within public offices,<sup>15</sup> perhaps comparable to the gigantic workload that burdens activists. As the long quote presented before makes evident, information requests often require the intervention of more than one office, as well as the production of official documents that travel up and down in the

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<sup>14</sup> Interview 1.

<sup>15</sup> Feminist scholar Sara Ahmed has analyzed a somewhat similar phenomenon for the case of diversity policies (2016; 2012; 2007; 2006). Her work focuses on how institutions may pledge to implement policies to increase diversity, and even develop a considerable amount of work to achieve this goal, but not effectively alter their status quo. Ahmed's argument is that this kind of institutional commitment allows institutions to reap the benefits of saying they will do something considered valuable by society, without effectively doing anything. The concept that Ahmed uses to explore her hypothesis is that of non-performative acts, those which "work precisely by not bringing about the effects that they name" (Ahmed, 2006, 105).

bureaucratic hierarchy. Very often they also imply weekly meetings between middle-management officials whose long discussions about the decision to disclose or not are themselves public documents which are also often requested by activists. Such institutional work creates an official discourse of compliance to openness that turns opacity into an unwanted effect attributable to errors, malfunctions, or national security concerns. In comparison to other types of governmental action, this institutional work is carefully archived by officials to protect themselves from accusations of opacity or incompetence coming from higher ranking bureaucrats or citizens, respectively. From the text of the institutional responses it is possible to conclude that all the institutional work implied by denying or delaying information requests is done following the relevant national and local laws, official regulations regarding internal communications and using official computers, phones and messaging services. It happens, as well, to a great extent within the confines of business hours. In this sense, as far as it is done through the State assemblage (Carroll 2012), I suggest it should be considered institutional work, and therefore governmental actions that constitute public policy.

It is this institutional work which, in what follows, I approach from the standpoint of ontological politics. My goal is to show that a very specific kind of state emerges in each interaction between activists and institutions. However, a small clarification is needed before: citizens experience a state that is as big as they can trace back the connections between themselves and the political power affecting them, flowing through bureaucrats, regulations and related objects implied by the setting in motion of the practices that make up the FOI process. Thus, they do not necessarily refer to the State (with capital "S") as a mode of authority, but rather to the much smaller assemblage they can effectively grasp through their own social audit projects. Consequently, if following Annemarie Mol and John Law, among others (Mol 1999; Law 2002), we propose that what is in the world is done through relational practices (Law & Lien 2013), the emerging qualities of the local state brought about by citizens and public officials (and their associated assemblages) during the FOI process depend less on the way in which laws and policies define them, and more on the way in which the state assemblage is actually manipulated in specific practices. From this point of view, the state emerging from institutional work that results in the non-disclosure of information is one that resists rather than fosters citizen engagement.

Such picture of the State corresponds to the accounts given by activists about their interaction with institutions through the sociotechnical assemblage that has a nodal point in specific bureaucrats, but spans the regulations, technologies, buildings, documents, etc., that make up the Mexican State. The presence of this assemblage makes it difficult to talk about individual resistance exerted by rogue bureaucrats, since they cannot act without enrolling (Callon 1984) all the other components of the network. However, denials, delays and other obstructions are not characterized by my informants as discrete actions performed with regularity and following a set sequence. They are rather haphazard deeds performed at irregular intervals and with goals that vary with each iteration. In some cases, the aim may be to give the institution more time to search and locate the data. In other cases they may be used to cover for inappropriate archival practices. Yet in other occasions they can be attributed to a culture of secrecy within institutions who believe citizens ask too much. Despite their apparent disorganisation, these practices produce relevant consequences for activist work, namely reducing their capacity to join decision making processes or bring about accountability. The non-political appearance

but very political consequences of these practices is what makes them conceptually similar to what James C. Scott has called Everyday Forms of Resistance.

In their most general formulation, Everyday Forms of Resistance can be defined as a “stratagem deployed by a weaker party in thwarting the claims of an institutional or class opponent who dominates the public exercise of power” (Scott 1989, p.52). Such acts consist mainly of “invariably quiet, disguised, anonymous, often undeclared forms of resisting claims imposed by claimants who have superior access to force [...]” (Scott 1989, p.37), and are always “light” on the symbolic dimension, in the sense that they do not seem to overtly challenge the fundamental power relations that give shape to particular social orders, and they are deployed without “openly contesting the dominant norms of law, custom, politeness, deference, loyalty and so on” (Scott 1989, 57). Whereas more outspoken and confrontational forms of resistance provide clearer evidence of the organizational efforts they require, the material means that make them viable, the social links that sustain them through time, and the politics that moves them, Everyday Forms of Resistance purposely make every sign of their existence as subtle as possible to avoid detection. However, as Scott has shown, this subtlety does not mean that they lack political motivations and goals. In fact, it is precisely because of their covert nature that they may be extremely effective.

The subtle, anonymous and covert nature that Scott attributes to Everyday Forms of Resistance can easily be located within some of the institutional work performed by public officials during the ENAPEA audit, which my informants interpreted as attempts to block their work. Consider, for example, the following practices:

- In order to cater for population who have no access to computers, Mexican institutions provide a telephone number which can be used to file information requests. However, the system cannot be used unless the requester has an email account. Informants refer that in the worst case, this effectively prevents people from filing requests, or at least forces citizens to spend time (and money, in rural areas) creating and monitoring an email account to use the telephone FOI system.
- Requesters who have access to computers are usually expected to submit their information requests through the National Transparency Platform. The platform is difficult to use, suffers from numerous bugs, high down-time and answered and unanswered requests often disappear. The amount of issues with the platform forces users to invest more time that would be needed were the tool to function properly.
- The most common answer to an information request is a long silence from the authorities obliged to reply. The lack of answers might extend over the time-frame allocated for institutions to respond, without any consequence. On top of that, the regulations allowing authorities to request clarifications about the information sought or more time to respond are abused strategically. This behaviour is understood by activists as an attempt to decrease the value of information over time.
- The second most common answer to information requests is an initial denial. According to my informants, this is a strategy through which institutions test whether the requester is willing to invest time to obtain the information. This strategy often results in non-disclosure, since

forgetting to contest or not knowing how to contest an initial denial effectively prevents a similar request from being filed at a later stage.

Understanding these institutional practices as instances of resistance has an important political consequence: it helps to explicitly connect everyday actions which are purportedly non political, with the politically relevant effects that activists experience as a result. Since delaying or denying information can become the difference between being able to join collective decision-making processes or not, the seemingly accidental components of these practices should not be overlooked. Approaching them as a type of resistance allows me to highlight how they are the result of institutional work, regardless of the intentions behind it. However, the use of the concept of resistance also brings two conceptual problems. The first is the common usage of the concept to look almost exclusively to the practices of “subalterns”, which therefore makes it *prima facie* inappropriate to look at the state as a resisting agent. The second is the discussion around intentionality, which is sometimes understood as a requirement to talk about resistance and sometimes not (see, for example, Shaw 2001).

Both problems will be more thoroughly discussed in a different paper, but there are a few things that can already be said here. Regarding the idea of resistance being something that mostly *subalterns do*, my suggestion is to think of the subaltern not as a fixed quality, but as a fluid relational condition in which actors settle and leave depending on the interactions in which they are embedded. The legal framework regulating the FOI process in Mexico sometimes locates citizens in a position from which they are able to force institutions to disclose information they initially intended to keep secret. In that sense, institutions are temporarily brought into a social (Latour 2005) relation that results in a position of power comparatively weaker to that of citizens, even if they can quickly return to a more advantageous one by changing the configuration of the network of associations through their resistance strategies.

Regarding the relation between intentionality and resistance, given the intricate nature of the conceptual debate, I suggest that it is politically more productive -both for activists and academia- to circumvent the controversy altogether by moving our attention from the intentions of actors, to the effects of what they do. Highlighting the disempowering effects of information control is a much more fruitful project than questioning the motives fueling the resistance of institutions, particularly when these intentions are pragmatically difficult to locate; as the literature on secrecy has made evident, the goals of information control are myriad. Thus, when the focus switches from the controversial and heavily orchestrated operations of secrecy that the literature often takes as objects of study, to the everyday hindrances experienced by activists that I presented, the need to look for a coherent and politically legitimate rationale of secrecy disappears. This allows us to focus on the disempowering effects felt by citizens, rather than depoliticizing their accounts by locating a plethora of motives for secrecy. Actions constitute resistance when they are felt as such.

Conclusions and implications



In this paper I have suggested that, by focusing on how information activists experience the FOI process in Mexico, it is possible to locate practices of information control which, when approached from the theoretical standpoint of ontological politics, paint the picture of a rogue state that resists rather than fosters citizen empowerment. Framing practices of information control as practices of resistance allows me to suggest that they appear on the stage of modern liberal democracies because a small but increasing cumuli of well-informed citizens, who take their civic rights seriously and exercise them to full extent, is turning into an actor who at times is more powerful than the state. Informational control then, can be understood as a practice of resistance because recent changes to the Mexican legal framework related to transparency and accountability sometimes put institutions in a subaltern position (Hollander & Einwohner 2004) from where they resist empowered citizens.

My arguments have two implications that I would like to make explicit as concluding remarks. The first is related to the framing of problematic institutional behaviour as resistance. Understanding certain instances of information control as resistance has a political consequence that needs to be acknowledged: every time the result of citizens and institutions coming together to practice the state is a state that makes access to information harder, we are witnessing a political project rather than a political failure. In the past few pages I have shown how the achievement of opacity requires a considerable amount of institutional work, rather than unfortunate accidents. Thus, despite the naturalization of power asymmetries (Haraway 1988) that give certain actors the monopoly over ways of collecting, processing, producing and making public data and information, the ensuing governmental opacity is always a political matter that constitutes public policy. The relevant matter is that activists experience a reduction in their capacity to join decision making processes, regardless of whether that is the goal of the other actors involved or not. This is a public policy problem that requires further attention, particularly considering that informal strategies of information control are far from being a phenomenon confined to Mexico. For example, Donald Trump's war against environmental data (Dillon et. al. 2017) implied various types of subtle attempts of information control whose dubious goals were well documented by the Environmental Data and Governance Initiative (EDGI).<sup>16</sup>

The second implication is related to the ontological politics approach to the study of the state and what it implies for the evaluation of public policies. If the state does not pre-exist the practices through which it is done, performance evaluation mechanisms which do not look synchronically to state action -and even those, perhaps (see Law & Singleton 2014)- are very likely not evaluating the same state whose actions are supposedly under scrutiny. That is, the state *done* through performance indexes, audits or accountability mechanisms, is a different one than the one who implemented a particular policy in a given time and a given place. It follows that the state citizens interact with may hold little relation with the state evaluated even when the focus of the assessment is the responsiveness to citizens. Thus, I suggest that a productive way of improving evaluation mechanisms of state performance is by paying attention to the embodied experience (Mol 1998) of activists who participate in the process of bringing it into reality. From this perspective, the performance of the State is not only about a distant reading of the quality, legitimacy, adequacy and efficiency of a set of rules, a network of actors, or about the result

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<sup>16</sup> See, for example, the monitoring carried out by EDGI of the various websites where environmental data is -or should- be made available: <https://envirodatagov.org/website-monitoring/>

of the performance of a set of social relations, but predominantly “a matter of the relation between the organism and its environment” (Mol 1998, p.275). This implies understanding the process of engaging with the State through FOIA mechanisms as a matter of transparency from somewhere for someone, rather than from nowhere for everyone (Jerak-Zuiderent 2015), in order to not obscure the people, their work and their needs located in both ends of the process.

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