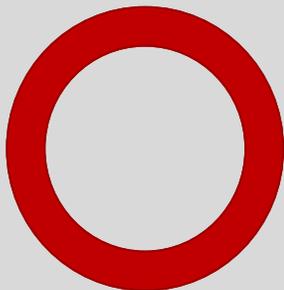
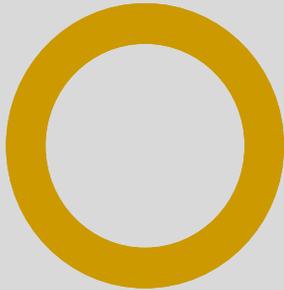


THE
CARTER CENTER



Pilot Findings from Select Agencies: **GUATEMALA**

The Carter Center's
Access to Information Legislation
Implementation Assessment Tool



Pilot Findings in Select Agencies: Guatemala

The Carter Center's Access to Information Legislation
Implementation Assessment Tool

November 2014

THE
CARTER CENTER



One Copenhill
453 Freedom Parkway
Atlanta, GA 30307
(404) 420-5100
Fax (404) 420-5196

www.cartercenter.org



Economia informal venta de jugetes de Guatemala, the capital city of Guatemala. Photo courtesy of Gabriela81286 (own work) [CC BY-SA 3.0 (<https://creativecommons.org/licenses/by-sa/3.0/deed.en>)]

For additional information, contact:

Laura Neuman

Director, Global Access to Information Program

Phone: +1-404-420-5146

Email: laura.neuman@cartercenter.org

www.cartercenter.org/accesstoinformation

The Implementation Assessment Tool and its indicators are
© 2009-2015 by The Carter Center

All rights reserved. No part of the materials protected by this copyright notice may be reproduced or used in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without prior written permission of the copyright owner.

Contents

Acknowledgments	5
Introduction	7
Methodology	11
Piloting the IAT	13
Country Context	15
Pilot Phase III Findings for Guatemala	20
Focal Group Narrative	35
Summary of Findings	37

Acknowledgments

The development and pilot application of The Carter Center's access to information legislation Implementation Assessment Tool (IAT) would not have been possible without the efforts of many talented and dedicated individuals. Laura Neuman, director of The Carter Center's Global Access to Information Program, through 15 years of experience working in the field of access to information and good governance, identified the need to more closely focus attention on better implementation of access to information laws. Ms. Neuman was responsible for developing the IAT methodology and indicators and spent countless hours training and supporting the researchers, engaging local partners, reviewing thousands of indicators and findings for accuracy and coherence, and drafting and editing this report.

Working with the Carter Center team to develop and perfect the indicators was transparency expert Jorge Romero León. A special thank-you is extended to Mr. León for his time, dedication, and good humor. Moreover, during the course of the development of the IAT, the Center received ideas, advice, and encouragement from literally dozens of the world's premier experts on the right of access to information. Please see the following page for a full list of contributors.

The research team in Guatemala was led by renowned transparency expert Manfredo Marroquin, who oversaw application of the tool. He was joined by Marvin Pol Álvarez, who conducted all of the interviews and input all of the indicators into Global Integrity's Indaba platform. Successfully engaging as the blind-peer reviewer was access to information expert professor Silvio Gramajo. The knowledge and expertise of the research team and reviewer combined with their commitment and passion helped assure the reliability of the IAT findings.

Additionally, we wish to thank our friends at Global Integrity, especially Nathaniel Heller and Monika Shepard, who mentored us through the process of engaging Indaba as a means to upload and review data for this assessment.

The Carter Center is privileged to have incredibly committed staff who worked to make the IAT development and piloting, as well as this report, possible. Kari Mackey, senior program associate, supported all aspects of the work from the onset of the project and provided the layout for the report. A particular thank-you is extended to former assistant project coordinator Sarah Lovatt, who worked tirelessly to draft and update training materials, budgets, and donor reports. Ms. Lovatt also helped to set up Indaba for pilot phases II and III and provided logistical coordination for trainings and validation meetings. Without her energy, the project surely would have faltered. Moreover, we would like to thank the many interns who provided research, report-drafting, and logistical support for IAT development and piloting over the past several years.

Importantly, we thank our donors, the International Development Research Centre of Canada, Irish Aid, and The William and Flora Hewlett Foundation. Their trust in this work allowed the project to advance.

Finally, we thank the many public servants who met with the researchers and civil society leaders that participated in the focal group reviews. Their enthusiasm for a meaningful right of access to information is inspiring. We are hopeful that the findings of the IAT serve to identify areas in which access to information implementation has been insufficient or is faltering and that it can focus efforts and resources to ensure full and effective implementation, thus advancing the ability of the

Guatemalan people to enjoy the myriad benefits of the right of access to information.

Contributors to the development and piloting of the IAT include:

Shaheen Anam • Jorge Mario Andrino Grotewold
Atzimba Baltazar Macías • Tom Blanton • Stephen Bruce
Tanti Budi Suryani • Agnes Callamard • Richard Calland
Tamar Chugoshvili • Sandra Coliver
Maja Daruwala • Lalanath de Silva • Mukelani Dimba
Chad Dobson • Nancy Dubosse • Kevin Dunion
Amy Ekdawi • Tatia Eliadze • Carole Ewart
Carole Excell • Ahmad Faisol • Joe Foti • Silvio Gramajo
Juan Pablo Guerrero Amparán • Libby Haight
Nathaniel Heller • C.R. Hibbs • Farhad Hossain
Michael Hoyle • Hilda Ijeilat • Sirajul Islam • Bruce Jenkins
Raymond June • Suneeta Kaimal • Monica Kalemba
Chantal Kisoon • Giorgi Kldiashvili • Manfredo Marroquín
Emilene Martinez Morales • Marcos Mendiburu
Daniela Moreno Tacchi • Gerardo Munck • Laura Neuman
Dan Ngabirano • Tavinder Nijhawan • Juan Pablo Olmedo
Marvin Pol Álvarez • Alberto Precht • Jeffrey Prescott
Miguel Pulido • Melanie Pustay • Charles Raab
Gabriella Razzano • Alasdair Roberts • Jorge Romero León
Alyamsah Saragih • Gilbert Sendugwa • Monika Shepherd
Yahia Shukkeir • Shekhar Singh • Stephanie Trapnell
Alberto Urzúa Toledo • Negbalee Warner
Muhammad Zamir

Introduction

The right of access to information is a powerful tool in the fight against corruption and in achieving good governance and development. It serves both government and its citizens by increasing citizen confidence as governments become more transparent and accountable. It enables citizens to participate more fully in public life, understand public policies, and help determine public priorities. Citizens also can use the information to exercise their fundamental human rights and to hold their government accountable for responding to their needs and providing high-quality service delivery.

With approximately 100 countries with statutory legislation, more than 5 billion people around the globe are afforded some legal rights to information. However, many of these countries are failing to fully implement their access to information laws, and there remains a dearth of information about the extent and quality of legislative implementation. Furthermore, there are few evaluative tools by which to measure implementation progress. With an insufficient focus on implementation, the community of practice is failing to adequately identify and analyze the structures and procedures that produce successful transparency regimes; governments lack the necessary diagnostic information to improve their practices in order to meet citizen demands and to promote greater transparency and accountability.

Since 1999, The Carter Center has been a leader on the issue of passage, implementation, enforcement, and use of access to information regimes. Over the past 15 years, we have witnessed firsthand the difficulties that governments face in fully and effectively implementing access to information laws and the negative effects of a lack of standardized measures for developing implementation plans and evaluating their efforts. To fill this gap, The Carter Center's Global Access to Information Program developed

and piloted the access to information legislation Implementation Assessment Tool.

The IAT is the first diagnostic tool of its kind to assess the specific activities/inputs that the public administration has engaged—or in some cases failed to achieve—in furtherance of a well-implemented law. It is deliberately designed not to focus on the sufficiency of the legal framework, the user side of the equation, or the overall effectiveness of the access to information regime, but rather to look at the internal “plumbing” of the administration's implementation. The IAT does not serve as a comparative index across countries but rather is constructed as an input for each public agency in which it is applied. It provides a *more surgical tool for civil society to monitor government's implementation practice and progress.*

Beginning in 2009/2010, The Carter Center's Global Access to Information Program developed the IAT methodology, including a set of indicators and a scoring system. Over the course of almost 4 years, the IAT was tested in three pilot phases in 11 countries (Mexico, South Africa, Bangladesh, Chile, Indonesia, Uganda, Scotland, Jordan, Georgia, Guatemala, and the United States) and 65 agencies. These pilot phases consisted of the application and review of more than 8,000 indicators. Each pilot phase concluded with a review meeting of the researchers as well as some of the blind-peer reviewers, government representatives, and access to information experts. The final piloting concluded in April 2014, and the IAT was shared with the community of practice.

Objectives and Considerations

The objectives of the access to information legislation Implementation Assessment Tool are to:

-
1. Establish a comprehensive set of access to information implementation benchmarks
 2. Identify the extent (and in some cases quality) to which a ministry/agency has implemented its law
 3. Provide a road map for improvements, based on the tool's findings
 4. Contribute to scholarship on implementation and to the understanding of implementation successes and challenges

The IAT looks at “the boring bits¹,” the ingredients necessary to ensure the effectiveness of implementation and the desired outcomes. The findings from the assessment provide key stakeholders the data necessary to easily identify the extent and quality of access to information (ATI) implementation in each government agency. It also signals places there is a need for additional input or focus, so that the public administration may overcome challenges and positively advance in their implementation efforts.

Experience has demonstrated that governments are not monolithic and that not all parts of government are as successful (or unsuccessful) as others. Thus, it is misleading to characterize a government as succeeding or failing in implementation. The IAT targets assessments to individual public administrative bodies rather than to the government as a whole. Moreover, for the IAT to meet its stated goals and be accepted and used by governments – critical as they are the primary data source and the main target audience – we have chosen not to develop the findings for an index or ranking of countries. Our methodologies were established with this philosophy in mind.

While there have been a number of important studies undertaken to review access to information laws and to assess government compliance with its law, the focus has been on the outcome of implementation, i.e. whether people are able to receive the information requested consistent with the statutory provisions. The Carter Center's IAT focuses



exclusively on the central theme of government's efforts toward implementation—the “plumbing” – providing critical data and knowledge as well as spurring additional areas for research.

There is a very important difference between addressing the outcome of an agency performing ATI duties and assessing the input required for the agency to fulfill such obligations. If we look at the agency as a patient, and the lack of capacity as a virus within the system of access to information implementation, the IAT can be described as a medical tool diagnosing the extent to which the governmental body is prepared to provide information. The IAT provides government agencies with specifics on where and how to improve their capacity to implement access to information legislation.

¹ Professor Alan Doig coined this term in his paper “Getting the Boring Bits Right First” when discussing capacity building for anti-corruption agencies.

Developing the IAT

The Carter Center designed and created the IAT through desk research, consultant support, and periodic peer reviews. As a first step, the Center engaged in considerable research to identify the breadth of national and subnational implementation plans and to evaluate the commonalities. Remarkably, we found very few available national or agency-specific access to information implementation plans. Additionally, we did an extensive literature review related to access to information implementation and public policy and administration; again, there were relatively few articles or studies. Based on the initial research and our experience, we developed a preliminary draft matrix of similarities and unique/innovative approaches to implementation.

Following the research phase, The Carter Center convened a group of renowned experts to consider the value and efficacy of an implementation assessment instrument and to provide input into its basic design. This first meeting considered both the key issues in implementation and prospective indicators and the means by which to measure them. It was agreed that a major goal of the IAT was to create a tool that would be useful for governments, allowing them to assess the breadth and quality of their implementation efforts, rather than as a more punitive ranking or “hammer.”

During this initial consultation, we modified our original design, in which we had considered implementation in a series of phases.² The two days of robust discussion established the importance of the IAT but also highlighted a number of potential problems and risks associated with an implementation assessment. Underlying both days of discussion were the following questions:

1. How do we make the study replicable and portable across varying countries?

2. How do we ensure that the tool also assesses quality of the implementation rather than simply falling into a “check the box” exercise showing that an input/activity occurred but not demonstrating whether it was done well?

In order to assure the tool’s portability across countries and diverse legislative contexts – and to avoid substantiating a law that does not rise to the international norms – we agreed that the tool could not be an assessment of compliance with a specific law and would not directly engage the particulars of national legislation. Rather, the tool’s framing question should be, “**To what extent is the agency capacitated and prepared to provide information and respond to requests?**”

Perhaps the most challenging aspect in developing the IAT was the lack of clearly agreed-upon universal best practices for access to information legislation implementation. This concern signaled the need for an increased emphasis on developing key elements for full and effective implementation and good practices and required additional time to vet these determinations with expert colleagues from government, civil society, and academia. We also were aware that the tool should work equally well when used in a mature system (where the law has existed for years) as well as in a country with a newly passed access to information law. This mandate forced us to verify that each indicator be valid in a variety of disperse contexts.

With the initial design of the IAT completed, The Carter Center convened a broader based group of access to information and transparency experts to peer review the first draft indicators, application methodology, and sampling (country and ministry/agency) determinations. After long discussions and considerations, the Center decided to retain

² As there is no agreement on sequencing implementation efforts, and this would be more descriptive than substantive, we removed sequencing from the IAT methodology.

the initial design to focus on administrative input (“the plumbing”), rather than assessing the quality of the outputs, i.e., compliance with the law/user satisfaction. We also made the decision to include internal reconsideration but not go further to include indicators related to judicial or quasi-judicial enforcement in the assessment.

Over the course of the next months, the design of the IAT was modified to allow for assessment on both the x- and y-axis and a series of indicators was developed. Finally, to validate the defined indicators and measurements/scaling, The Carter Center again undertook an extensive analysis of existing implementation plans and practice.



The IAT is designed to address the question, "**To what extent is the agency capacitated and prepared to provide information and respond to requests?**"

Methodology

The IAT is intended to assess the specific activities/inputs that the public administration has engaged in furtherance of a well-implemented access to information regime. A series of indicators is used to assess the extent to which the agency is capacitated and prepared to provide information and respond to requests, proactively disclose information, and assure quality records management. These inputs/activities are similar to what others might call “good practices.” At present, there is no universal consensus or norm on what constitutes access to information implementation “best/good practices.” This fact is useful in understanding the limitations of the tool.

The tool is designed not to focus on the sufficiency of the legal framework, the user side of the equation or the overall effectiveness of the country’s access to information regime. Because the IAT is not designed to measure outputs/compliance, its methodology does not include the systematic filling of information requests.

Moreover, the IAT is constructed as an “open instrument,” carried out with the collaboration of public authorities. Its success does not depend on the level of confidentiality held during its application. On the contrary, it is crucial for governments to welcome the tool’s application, as gathering many of the key data points requires access to documents and information in the ministries’/agencies’ possession.

The Architecture

The IAT is designed as a matrix, with indicators related to government functions/responsibilities on the x-axis and baskets of components/elements on the y-axis. Regardless of the type of information an agency possesses, there are universal components that allow public officials to fulfill their functions of managing information properly, handling requests for information adequately, and making information

available to the public efficiently. These functions and elements were identified and serve as the framework for the IAT.

Functions

All access to information regimes rely on the public agencies’ capacity to fulfill three main functions: 1) receiving and responding to requests; 2) automatically publishing certain information; and 3) managing records. There are a number of initiatives/efforts specific to these functions while others apply to more than one of the functions. For those initiatives/efforts that apply more broadly – for example, the designation of a responsible officer or the agency’s strategic plan – we have created the category “fundamental functions.”

Components

In order to successfully implement a comprehensive access to information law, government needs a number of verifiable components. These elements are assessed by a set of indicators that can be observed through different data-points or sources of information. The elements are the bone and marrow of access to information implementation, and include leadership, rules, systems, resources, and monitoring.

Key Elements

The components are comprised of key elements that have been identified as necessary for supporting successful implementation. When properly combined, these elements provide government with the capacity to successfully perform all access to information duties and obligations. The elements that comprise the assessment, among others, included whether the agency has established, reviewed, and



This instrument **will not** tell whether public agencies are in compliance with established laws. It **will** tell you if the agencies have the necessary components to implement a vibrant access to information regime.

revised access to information policies, regulations, and guidelines; the issuance of plans/instructions for the implementation and institutionalization of the access to information regime; the identification of responsible officers for overseeing the application of the law; sufficient training and capacity-building; determination of necessary financial resources; infrastructure; and, awareness-raising within the agency and for the public.

Assessment Results and Output

The IAT indicators engage both quantitative and qualitative assessments of the comprehensiveness and quality of a ministries'/agencies' access to information implementation. The indicators are scored on the "stoplight method," with a scale that includes green, yellow, red, and black and white stripes (for those rare cases in which the indicator will not apply). In using the stoplight method, we easily display the extent and quality of implementation while dissuading the potential for indexing/ranking countries. The stoplight colors signify the following:

- **Green:** The administration has done well and has met the defined good practice.

- **Yellow:** There has been some activity/engagement, but the administration does not meet the defined good practice.
- **Red:** The administration has either not engaged or done very little to advance on this part of its implementation.
- **Black and white stripes:** The indicator is not applicable.

Data are acquired through both desk research and interviews and then input into Indaba, an online software platform that allows The Carter Center to manage the researchers and data and review the inputs. The data is then reviewed by a blind-peer reviewer and, subsequently, the preliminary findings are validated through focal group review. In addition to quantitative data, we include a narrative that provides supplementary qualitative information and accompanying explanations for the measurements.

Types of Indicators

The IAT utilizes two types of indicators: 1) self-reporting indicators that are addressed through an interview (questionnaire) with the head of the agency/ministry, general director, public officials tasked to oversee ATI functions and duties, or other relevant public officers;³ and 2) document-based indicators that require desk research or onsite verification of different documents and/or sources of information.

³ As these indicators have the greatest potential for bias, we have limited their use in the IAT and they will rarely serve as the preferred data point.

Piloting the IAT

To assure the efficacy and value of the IAT, the Center decided to apply the tool in a phased approach in more than 10 countries. Pilot phase I assessed three countries, pilot phase II assessed four countries and pilot phase III assessed an additional four countries. While the initial intent was to assess each country once, we decided to include the initial countries in the subsequent phases in light of the modifications of the indicators following each phase. In pilot phase III, we applied the revised indicators in all 11 countries.

Selection of Countries/Agencies

In preparation for selecting the pilot countries to test the IAT, The Carter Center created a list of criteria and variables. For the pilot selection, we considered the following conditions:

- Regional diversity
- Variety in length of time that the ATI law/regulation has been in effect
- Distinct legal system/framework (common law versus civil);
- Types of civil service (professionalized versus more partisan)
- Development status/income level
- Availability of social scientists/civil society leaders to undertake the study
- Existing data sets or studies related to access to information
- Political will/interest
- Divergent participation in the Open Government Partnership

Bangladesh, Mexico, and South Africa were chosen as pilot phase I countries, while Chile, Indonesia, Scotland, and Uganda served as the pilot phase II countries. Pilot phase III included all of the above countries as well as Georgia, Jordan, Guatemala, and the United States.

The IAT was applied in seven ministries and/or agencies in each country. For uniformity, we decided to engage the same ministries/agencies in each of the countries. Criteria used in determining the specific ministries/agencies included:

- Those ministries or agencies that held information critical for fundamental human and socioeconomic rights
- Ministries and agencies that play a role in poverty reduction and in fulfillment of the Millennium Development Goals
- Ministries and agencies that are key in the overseeing or promoting the ATI regime
- A mix of ministries and agencies, in particular public agencies of varying size and resources

Ultimately, the ministries/agencies selected were: Finance, Education, Health, Justice, Agriculture, Customs, and, Statistics (or another small/less-resourced agency). In some cases, the specified ministry did not exist or was combined with another ministry or agency. In those cases, we substituted an equivalent ministry/agency.

Pilot Phases

In 2011, The Carter Center completed pilot phase I of the tool in three countries – Bangladesh, Mexico, and South Africa, followed by an expert review and extensive modifications to the methodology and indicators. Pilot phase II was completed in the spring of 2013 and included application of the indicators in the original three countries as well as Chile, Indonesia, Scotland, and Uganda. Once again, The Carter Center conducted a review meeting to refine the tool and methodology. In the fall of 2013, pilot phase III commenced and included four new countries: Georgia, Jordan, Guatemala, and the United States. The researchers in these

countries applied all revised IAT indicators and were joined by the researchers from pilot phase I and pilot phase II who applied all new or modified indicators in their respective countries.

Pilot Phase I

Pilot phase I included 72 indicators. During this phase, we were still considering whether we could identify universally applicable best practices. However, during the review discussion, it became clear that this would be too prescriptive and not capture the nuances of each country context. Moreover, it would not reflect the terminology utilized by leading oversight practitioners, who use the term “good practice.” The participants recommended, and we concurred, that the implementation assessment tool should serve to develop and measure “good practice” and in this way more meaningfully reflect the reality that there may be multiple good practices, depending on country circumstances and administrative dynamics. Methodological changes were made following this phase, including adding a blind-peer review in addition to the focus group, assessing a smaller, less-resourced agency, and using the Indaba platform for data collection.

Pilot Phase II

With the revisions and refinements based on the pilot phase I review, the IAT now included 75 indicators to test in pilot phase I and II countries: Chile, Indonesia, Scotland, and Uganda joined South Africa, Bangladesh, and Mexico. The local researchers tested the tool in the original six ministries as well as in the seventh smaller agency, and in this phase we engaged the Indaba platform. During the two-day review meeting following data collection, analysis, findings, and validations, the experts actively revised the indicators, removing any indicator deemed repetitive and making necessary language changes to accommodate a variety of government contexts. One of the main modifications made for the final pilot phase was to

include indicators that looked more specifically at implementation in practice, which was accomplished through the use of four “wild cards.” We also reduced the indicators to a more manageable 65, and strengthened the indicators related to records management.

Pilot Phase III

Pilot phase III was the final testing of the indicators. For this phase, we retained the same methodology and workflow, including the blind peer reviewer and the focal groups. As with the other phases, Carter Center staff reviewed each finding, submitted questions to both the researchers and the blind peer reviewers, and assured the quality and consistency of each finding. At the conclusion of pilot phase III, we held the final expert review to make any necessary last adjustments to the indicators (researchers felt there were still too many) and presented the IAT to the community of practice.



Country Context⁴

After 36 years of civil war in Guatemala, the government and the guerilla forces signed a peace agreement that strengthened civil power and human rights in the country. It also laid the groundwork for democracy and citizen participation. Article 30 of the Constitution of Guatemala, written in 1986, identifies the right of access to public information as a human right guaranteed by the state; however, the push for legislation to put that right into practice did not manifest itself more than a decade later.

Following the atrocities, the military obstructed the Historical Clarification Commission from accessing government records on the war. As one researcher for the Center for Studies on Freedom of Expression and Access to Information noted, “It is difficult to talk about the evolution of the right to know in Latin America without considering the battles for the right to the truth: the right of the families of the disappeared to know what happened to their loved ones and what role the state played, independent of the viability of criminal prosecution.” When the “Military Logbook” – which contained information on 183 people who were “disappeared by security forces,” – was leaked from the military and disclosed to the public in 1999, Guatemalans learned that records detailing the state’s role in the killings and disappearances still existed. This encouraged transparency advocates to lobby for a statutory right of access to information law, in order to assure access those documents. Key players from civil society included *Asociacion para el Estudio y Promocion de la Seguridad en Democracia* (The Association for the Promotion of Security and Democracy), *Accion Ciudadana* (Citizen Action), *Asociacion de Investigacion y Estudios Sociales* (The Association for Investigation and Social Studies), *La Fundacion Myrna Mack* (The Myrna Mack Foundation), and *Periodismo por el Acceso a la Informacion Publica* (Journalists for Access to Public Information). In 2002,

the efforts of those organizations led to the introduction of the first ATI bill in Congress. From that point, the push for the legislation advanced slowly over the next six years.

In 2008, it came to light that members of the National Assembly had misused and/or stolen \$11 million of public funds. While that scandal inspired many ATI advocates, it particularly provoked the media to push for the passage of a law guaranteeing freedom of information. Five out of six news articles in the leading newspaper in Guatemala, *Prensa Libre*, were related to access to information in the four months leading up to the ultimate passage of such a law.⁵

The Guatemalan Access to Information (ATI) law was passed unanimously by the National Assembly in September 2008 and went into effect in April 2009. The legislation calls for many categories of information to be made available to the public, such as government salaries, agency expenditures, and the criteria used to choose which contractors and organizations receive state funds. It applies to over 1,000 government bodies and 8,000 NGOs and private contractors.⁶

According to the Access Info Europe and Centre for Law and Democracy Global RTI Rating, Guatemala’s ATI legislation ranks 33rd in the world.⁷ Requesters are not required to provide reasoning for their requests, and public authorities must respond to requests within 10 days. The law also provides for significant proactive disclosure of information.

⁴ The country context was largely drawn from the narrative drafted by researcher Marvin Pol Álvarez.

⁵ <http://www.freedominfo.org/2009/05/freedom-of-information-legislation-and-the-media-in-latin-america/>

⁶ http://en.centralamericadata.com/en/article/home/Guatemalan_Congress_approves_Public_Information_Access_Law

⁷ http://www.rti-rating.org/view_country.php?country_name=Guatemala

Public authorities are required to appoint and train Information Officers; and the law provides for sanctions to be imposed on authorities that undermine the right of the public to access information. The Procurador de los Derechos Humanos (Human Rights Prosecutor) is identified as the central body responsible for implementing the legislation, and like individual agencies, is required to report annually on implementation efforts. The ATI law is nonetheless limited in several respects. The law does not override existing secrecy provisions. Requesters do not have the option to appeal to an independent oversight body, nor does one exist to oversee implementation, adjudicate appeals, or impose sanctions in case of obstruction of the right to information. Their only avenue of appeal is to the judiciary, and the procedures for doing so are not made clear in the legislation. Additionally, the law does not call for mandatory public awareness-raising efforts and fails to outline standards for maintaining records.⁸

As of fall 2014, the law has not been reviewed or amended; however, in August of 2009, with implementation of the ATI law underway, President Alvaro Colom published a resolution that classified information related to presidential communication (with both public and private bodies) for up to five years. NGO Article 19 called for the repeal of this resolution on the grounds that it violated the ATI legislation.⁹ Reports do not indicate that the resolution has been moderated or repealed.

In spite of this challenge, Guatemala demonstrated a continued commitment to transparency by joining the Open Government Partnership (OGP) in 2011. Through the OGP, it undertook several commitments related to ATI. The government created the Transparency and Control Secretariat in 2012, but it was struck down by the Constitutional Court later that year. Immediately thereafter, the Presidential Commission for Transparency and Electronic Government (COPRET) was established and tasked with coordinating OGP activities.¹⁰

Implementation

Even before the ATI Law went into effect, transparency experts in Guatemala predicted that the government would have difficulty obtaining the resources necessary for its full and effective implementation.¹¹ According to several reports, those fears may have been realized, as many experts assert that the law has been poorly implemented.

Transparency advocates from the group Accion Ciudadana characterize the flawed implementation as a result of “a lack of political will, the reluctance to create information offices, and the lack of an independent oversight body.” The legislation calls for the Human Rights Ombudsman to oversee its implementation, but the powers and resources available to that position are severely limited.¹²

As a result, the Human Rights Ombudsman has not issued common guidelines or rules that individual agencies can follow in order to implement the law. Systems of organizing, maintaining, and dispensing of information are not standardized. The absence of any common implementation framework has limited the capabilities of agencies to implement ATI principles. In fact, a 2013 Plaza Publica study found that of 75 different bodies examined, each one responded to requests for information in a different way.¹³ One major challenge as a result of insufficient and standardized guidelines is the continuation of poor records management. While the ATI law specifically calls for the proper management of records, it does not outline a system for doing so. As a result, it is

⁸http://www.rti-rating.org/view_country.php?country_name=Guatemala

⁹<http://www.article19.org/data/files/pdfs/press/guatemala-article-19-calls-on-president-to-annul-resolution-which-violates-a.pdf>

¹⁰<http://www.state.gov/documents/organization/228176.pdf>

¹¹<http://www.freedominfo.org/2009/02/guatemala-looks-to-mexican-model-for-access-implementation/>

¹²<http://www.freedominfo.org/2009/10/saber-mas-new-report-on-access-to-information-in-latin-america/>

¹³<http://knightcenter.utexas.edu/blog/00-14743-transparency-laws-present-professional-institutional-challenges-mexico-guatemala-and-n>

difficult for bodies that are subject to the law to retrieve requested documents. Additionally, some information that would be useful to the public, such as information related to infrastructure and geographic boundaries, simply has never been documented/reduced to writing.

Another barrier to implementing the law is a lack of human and financial resources. In 2012, the US Department of State criticized Guatemala for failing to provide an adequate supply of these resources.¹⁴ Also, a cloud of secrecy continues to surround the decades-long civil war. Many documents related to that conflict remain inaccessible to the population.¹⁵

Under the law, public bodies are required to issue annual reports outlining their responses to information requests. In 2013, only 46 percent complied with this mandate. While underwhelming, that figure marked a 95 percent improvement from 2012. According to the Human Rights Ombudsman, the inconsistent publication of annual reports demonstrates a continuing “culture of opacity” that acts as a substantial barrier to the proper implementation of the ATI law.¹⁶

Through its participation in the OGP, Guatemala has recently made strides to address these problems. First, they created a guide for evaluating public bodies in order to determine whether they are fulfilling their ATI-related responsibilities and whether they have the resources necessary to do so. Second, an Inter-Agency Working Group was established to facilitate roundtable discussions among executive agencies. Through those dialogues, the group established a set of criteria that agencies should meet in order to implement and comply with the law.

Additionally, Guatemala established a Civil Sector Working Group in which ATI experts identified good implementation practices. Those dialogues created several concrete improvements on the way in which the law was being implemented. For example, the government translated the ATI law into all Mayan languages spoken in Guatemala. They also began the practice

of proactively publishing the budget process. Further, they placed the “clearance certificates” of public officials online, which allows the public to view which officials are compliant and not compliant with the legislation.¹⁷ The government also initiated the Emerging Knowledge Communities exercise to encourage local, rural communities to document information related to infrastructure and geographic boundaries. Lastly, the National Police Historical Archive was completely declassified, making some of the information related to the civil war available to the public.¹⁸

Despite these improvements, experts argue that the implementation of the Guatemalan FOI law is still flawed. The Independent Reporting Mechanism (IRM) of the OGP identified several shortfalls in their most recent report on Guatemala’s progress. According to this assessment, inter-institutional coordination is still insufficient, there is still a substantial amount of crucial information that is not yet recorded, and merely translating ATI law into indigenous languages may not have a meaningful effect on their engagement with the right. Further, the government still has not allocated enough human or financial resources to implementing the law and significant amounts of information remain classified and inaccessible to requesters.¹⁹

¹⁴<http://www.business-anti-corruption.com/country-profiles/the-americas/guatemala/initiatives/public-anti-corruption-initiatives.aspx>
¹⁵file:///C:/Users/mdavies/Downloads/Guatemala_2012_Unofficial_Eng%20(2).pdf

¹⁶<https://knightcenter.utexas.edu/blog/00-15634-almost-half-government-institutions-guatemala-failed-present-transparency-reports-repo>

¹⁷http://www.opengovpartnership.org/sites/default/files/Plan_de_Acci%C3%B3n_de_Gobierno_Abierto_Guatemala_2014-2016_%20INGLES.pdf

¹⁸file:///C:/Users/mdavies/Downloads/Guatemala_2012_Unofficial_Eng%20(2).pdf

¹⁹file:///C:/Users/mdavies/Downloads/Guatemala_2012_Unofficial_Eng%20(2).pdf

Use of the Law

A report by the Moynihan Institute of Global Affairs indicates that citizen usage of the law was very low in the months immediately after the ATI legislation went into effect.²⁰ More recently, though, awareness and use of the law has increased. According to a report released by the Human Rights Ombudsman, the number of requests has increased every year since the inception of the law and nearly tripled between 2009 and 2013.²¹

The cultural constitution of Guatemala presents a substantial barrier to achieving widespread usage of the law. Guatemala has a very large indigenous population, which is mostly made up of Mayans, for which Spanish is their second language. The language disconnect between the government and the indigenous population creates a substantial obstacle to guaranteeing the right to information for the entire Guatemalan population.²² Many Guatemalans, but especially the indigenous population, lack access to the Internet, which prohibits them from accessing information that is made available online or from making requests for information through the internet.²³

Citizens pay no fees to make information requests, thus encouraging them to take advantage of the right to do so. This aspect of Guatemala's ATI regime is especially important as it eliminates a potential financial barrier that could dissuade many requesters.²⁴

Enforcement of the Law

According to experts, the enforcement mechanisms of the Guatemalan ATI Law are deeply flawed.

Requesters who receive unsatisfactory responses cannot appeal the decision to an independent oversight body. Instead, requesters seeking to appeal are forced to do so through the court system. There are a number of problems associated with this. First, the legislation does not clarify procedures for doing so, and as a result, there are no timelines or deadlines for reconciling an appeal. Additionally, unlike other ATI laws,

Guatemala's legislation does not place the burden of proof on the government.²⁵ According to the 2010 Global Integrity report, the process of appealing to the judiciary is extremely lengthy and expensive, and thus unaffordable to the vast majority of Guatemalans.²⁶

While some appeals to the courts have been successful, they are almost always too time-consuming to be considered a viable option for the average requester. For example, in 2009, Congresswoman Nineth Montenegro requested the names and identification numbers of beneficiaries of Mi Familia Progresá, a conditional cash transfer program at the heart of President Alvaro Colom's agenda. Colom was suspected of using the program to reward his partisan supporters. The Ministry of Education, which held the information, issued only the names of the recipients in response to the request, refusing to issue the identification numbers. Montenegro challenged the denial in the courts, and the case ultimately went to the Constitutional Court, which mandated the release of the information and the removal of the Minister of Education. Despite the successful outcome, this process took over six months and was quite expensive, ruling it out as an option for the average requester.²⁷

The legislation does call for sanctions to be imposed on bodies subject to the law that obstruct access to information.²⁸ The Human Rights

²⁰https://plan-international.org/files/global/publications/about-plan/Plan_Guatemala_Strategy_Evaluation.pdf

²¹<https://knightcenter.utexas.edu/blog/00-15634-almost-half-government-institutions-guatemala-failed-present-transparency-reports-repo>

²²<http://www.minorityrights.org/2555/guatemala/maya.html>

²³<http://www.freedomhouse.org/report/countries-crossroads/2012/guatemala#.VD1Z-vldVdc>

²⁴<https://www.globalintegrity.org/global/the-global-integrity-report-2010/guatemala/2010/>

²⁵https://www.rti-rating.org/view_country.php?country_name=Guatemala#appeals

²⁶<https://www.globalintegrity.org/global/the-global-integrity-report-2010/guatemala/2010/>

²⁷https://www.huffingtonpost.com/daniel-altshuler/constitutional-court-orde_b_479096.html

²⁸http://www.rti-rating.org/view_country.php?country_name=Guatemala#appeals

Ombudsman can request a criminal investigation against government entities; however, the request is non-binding and rarely, if ever, acted upon. As Ombudsman Jorge de Leon characterizes his role, “I am a regulating authority, but without any teeth.”²⁹ In 2014, de Leon presented a report to the Public Ministry that listed the institutions that have failed to comply with the ATI Law.³⁰ As a testament to the weak enforcement power of the Procurador de los Derechos Humanos, there are no indications that any sanctions have been imposed as a result of this report.

Likely due to weak enforcement of the law, agency compliance has been inconsistent. According to the 2010 Global Integrity Report, there is a large discrepancy between how agencies respond to requests for sensitive and non-sensitive information. The latter is generally delivered promptly, within the 10 day limit. However, many government agencies are liberal in their labeling of information as sensitive, resulting in late or non-existent responses. One expert commented in this report that, “Sometimes institutions don't want to disclose the information requested so they simply don't give an answer or they deny the information, naming it ‘reserved’.”³¹ Additionally, a 2010 study by Accion Ciudadana indicated that over 50 percent of state institutions did not respond adequately to requests for information. Further, they did not provide justifications for refusals.³² Similarly, the Global Integrity report indicates that information presented to requesters that is not considered sensitive by the state is generally of high quality, whereas information that the state does consider sensitive is often vague, if presented at all.³³

²⁹<http://knightcenter.utexas.edu/blog/00-15634-almost-half-government-institutions-guatemala-failed-present-transparency-reports-repo>

³⁰<http://ghrcusa.wordpress.com/tag/attorney-general/>

³¹<https://www.globalintegrity.org/global/the-global-integrity-report-2010/guatemala/2010/>

³²<http://accionciudadana.org.gt/Documentos/accesoinfo/Indice%20de%20acceso.pdf>

³³<https://www.globalintegrity.org/global/the-global-integrity-report-2010/guatemala/2010/>

Pilot III Findings for Guatemala

Aggregated Findings by Indicator

Table 1. Key for Findings

Key:	
color	significance:
	Green: administration has done well and has met the defined good practice
	Yellow: there has been some activity/engagement, but does not meet the defined good practice
	Red: administration has either not engaged or done very little to advance on this part of its implementation
	Black and white stripes: indicator is not applicable (n/a) in this agency

Table 2. Guatemala Pilot Phase III Findings

Fundamental functions, Leadership															
#	Indicator question:	Guatemala Agriculture		Guatemala Communications		Guatemala Education		Guatemala Finance		Guatemala Governance		Guatemala Health		Guatemala Statistics	
1	Does an agency official with authority over policy actively participate in the creation, adoption, or review of ATI specific policy?	Finding: red		Finding: green		Finding: red		Finding: green		Finding: green		Finding: green		Finding: green	
2	How often does agency official with authority over policy participate in meetings with public officials responsible for ATI activities?	Finding: green		Finding: green		Finding: green		Finding: green		Finding: green		Finding: yellow		Finding: green	
3	Does the agency's strategic plan incorporate ATI, such as by including principles of access to information in goals, objectives, and/or outcomes?	Finding: red		Finding: red		Finding: red		Finding: green		Finding: green		Finding: red		Finding: green	

Fundamental functions, Rules															
#	Indicator question:	Guatemala Agriculture		Guatemala Communications		Guatemala Education		Guatemala Finance		Guatemala Governance		Guatemala Health		Guatemala Statistics	
4	Does the agency create or adopt specific guidelines on ATI?	Finding: green		Finding: green		Finding: green		Finding: green		Finding: green		Finding: green		Finding: red	
		A		A		A		A		A		A		B	
5	How often are ATI guidelines reviewed by an agency official with authority over policy?	Finding: red		Finding: green		Finding: n/a		Finding: red		Finding: yellow		Finding: red		Finding: yellow	
		C		A		D		C		B		C		B	
6	How often are ATI guidelines revised by an agency official with authority over policy?	Finding: n/a		Finding: red		Finding: n/a		Finding: n/a		Finding: green		Finding: red		Finding: green	
		C		B		C		C		A		B		A	
7	Does the agency make all guidelines available for reference?	Finding: green		Finding: red		Finding: yellow		Finding: red		Finding: green		Finding: green		Finding: green	
		A		C		B		C		A		A		A	
8	Does the agency have a document(s) that establishes instructions for ATI implementation and/or operation?	Finding: red		Finding: green		Finding: green		Finding: red		Finding: green		Finding: red		Finding: red	
		C		A		A		C		A		C		C	
9	Does the document(s) detailing instructions for ATI implementation and/or operation currently reflect the agency's ATI policy?	Finding: red		Finding: green		Finding: green		Finding: red		Finding: green		Finding: red		Finding: red	
		B		A		A		B		A		B		B	
10	Has the agency internally disseminated the document(s) detailing instructions for ATI implementation and/or operation?	Finding: red		Finding: green		Finding: red		Finding: red		Finding: green		Finding: red		Finding: red	
		C		A		C		C		A		C		C	

Fundamental functions, Systems															
11	Does the agency's public outreach specifically include a component regarding ATI?	Finding: red		Finding: green		Finding: red		Finding: red		Finding: green		Finding: green		Finding: green	
		B		A		B		B		A		A		A	
12	Does the agency's public outreach specifically include information on ATI procedures?	Finding: green		Finding: red		Finding: green		Finding: green		Finding: green		Finding: red		Finding: red	
		A		B		A		A		A		B		B	

Fundamental functions, Resources															
#	Indicator question:	Guatemala Agriculture		Guatemala Communications		Guatemala Education		Guatemala Finance		Guatemala Governance		Guatemala Health		Guatemala Statistics	
13	Has one or more public official been formally tasked/appointed responsible for ATI functions and duties?	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: red	C
14	Has the name of the public official(s) tasked/appointed responsible for ATI functions and duties been made known to the public?	Finding: green	A	Finding: green	A	Finding: red	B	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A
15	Does the public official(s) tasked/appointed responsible for ATI functions and duties have the authority needed to comply with ATI mandate?	Finding: red	B	Finding: green	A	Finding: red	B	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A
16	Does the public official(s) tasked/appointed responsible for ATI functions and duties have the time and staff needed to fulfill his/her ATI responsibilities?	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: red	D	Finding: yellow	B
17	Does the public official(s) tasked/appointed responsible for ATI functions and duties and his/her staff receive specialized training on ATI?	Finding: green	A	Finding: yellow	B	Finding: green	A	Finding: green	A	Finding: green	A	Finding: red	C	Finding: green	A
18	Are all public officials made aware of basic ATI principles?	Finding: yellow	B	Finding: red	D	Finding: red	D	Finding: red	D	Finding: red	D	Finding: yellow	C	Finding: yellow	B
19	Are training materials related to ATI created and maintained for future reference by public officials?	Finding: red	C	Finding: red	C	Finding: red	C	Finding: red	C	Finding: red	C	Finding: red	C	Finding: red	C
20	Does the public official(s) tasked/appointed responsible for ATI functions and duties have regular access to necessary equipment?	Finding: green	A	Finding: green	A	Finding: green	A	Finding: yellow	B	Finding: green	A	Finding: green	A	Finding: green	A
21	Does the agency specifically allocate the financial resources necessary for fulfilling its ATI functions and duties?	Finding: red	B	Finding: red	B	Finding: red	B	Finding: red	B	Finding: red	B	Finding: red	B	Finding: red	B

Fundamental functions, Monitoring															
#	Indicator question:	Guatemala Agriculture		Guatemala Communications		Guatemala Education		Guatemala Finance		Guatemala Governance		Guatemala Health		Guatemala Statistics	
22	Does the agency monitor its ATI functions and duties?	Finding: red	C	Finding: yellow	B	Finding: red	C	Finding: green	A	Finding: yellow	B	Finding: red	C	Finding: red	C
23	Is an agency report on its ATI functions and duties prepared and released annually to the public?	Finding: yellow	C	Finding: yellow	C	Finding: yellow	C	Finding: green	A	Finding: green	A	Finding: yellow	C	Finding: yellow	C
24	Does the agency's internal oversight body/auditing mechanism take into account ATI functions and duties?	Finding: red	B	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: red	B	Finding: red	B
25	Does the agency's performance review take into account ATI?	Finding: red	C	Finding: red	C	Finding: red	C	Finding: red	C	Finding: red	C	Finding: red	C	Finding: red	C

Fundamental functions, Wild Card															
26	In your expert opinion, in practice does the agency effectively fulfill its fundamental function related to access to information?	Finding: yellow	B	Finding: red	C	Finding: yellow	B	Finding: yellow	B						

Receive and Respond to Requests, Rules															
27	Has the agency created or adopted written guidelines for receiving requests?	Finding: green	A	Finding: green	A	Finding: red	C	Finding: red	C	Finding: green	A	Finding: green	A	Finding: red	C
28	Has the agency created or adopted written guidelines for processing requests?	Finding: green	A	Finding: red	C	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: red	C
29	Has the agency created or adopted written guidelines for responding (release or deny) to requests?	Finding: red	C	Finding: green	A	Finding: red	C	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A
30	Has the agency created or adopted written guidelines for internal review?	Finding: red	C	Finding: green	A	Finding: green	A	Finding: red	C	Finding: green	A	Finding: green	A	Finding: red	C
31	Does the document(s) detailing instructions for implementation and/or operations have the necessary components for receiving and responding to requests?	Finding: red	C	Finding: red	C	Finding: yellow	B	Finding: red	C	Finding: yellow	B	Finding: red	C	Finding: red	C

Receive and Respond to Requests, Systems															
#	Indicator question:	Guatemala Agriculture		Guatemala Communications		Guatemala Education		Guatemala Finance		Guatemala Governance		Guatemala Health		Guatemala Statistics	
32	Has the agency created or adopted a system for logging and tracking requests and responses?	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: yellow	B	Finding: red	C
33	Has the agency created or adopted a system for processing a request?	Finding: green	A	Finding: green	A	Finding: red	C	Finding: green	A	Finding: green	A	Finding: red	C	Finding: red	C
34	Has the agency created or adopted a system for transferring requests to other agencies?	Finding: n/a	D	Finding: n/a	D	Finding: n/a	D	Finding: n/a	D	Finding: n/a	D	Finding: n/a	D	Finding: n/a	D
35	Has the agency created or adopted a system for issuing and serving responses?	Finding: green	A	Finding: green	A	Finding: yellow	B	Finding: green	A	Finding: green	A	Finding: green	A	Finding: red	C

Receive and Respond to Requests, Resources															
36	Is there a designated space, physical or virtual, for receiving and responding to requests?	Finding: green	A												

Receive and Respond to Requests, Monitoring															
37	Does the agency capture statistics related to receiving and responding to requests?	Finding: green	A	Finding: red	C										

Receive and Respond to Requests, Wild Card															
38	In your expert opinion, in practice does the agency effectively fulfill its function related to receiving and responding to requests?	Finding: yellow	B	Finding: yellow	B	Finding: yellow	B	Finding: green	A	Finding: green	A	Finding: yellow	B	Finding: yellow	B

Proactive Disclosure, Rules															
39	Has the agency created or adopted written guidelines for proactive disclosure?	Finding: red	C	Finding: yellow	B	Finding: red	C	Finding: yellow	B	Finding: green	A	Finding: red	C	Finding: red	C
40	Does the document(s) detailing instructions for implementation and/or operations have the components necessary for proactive disclosure?	Finding: red	C	Finding: green	A	Finding: red	C	Finding: red	C	Finding: green	A	Finding: red	C	Finding: red	C

Proactive Disclosure, Systems															
#	Indicator question:	Guatemala Agriculture		Guatemala Communications		Guatemala Education		Guatemala Finance		Guatemala Governance		Guatemala Health		Guatemala Statistics	
41	Has the agency created or adopted a system for proactive disclosure?	Finding: red	C	Finding: yellow	B	Finding: red	C	Finding: red	C	Finding: green	A	Finding: red	C	Finding: yellow	B

Proactive Disclosure, Resources															
42	Has one or more public official been formally tasked/appointed responsible for proactive disclosure functions and duties?	Finding: yellow	B	Finding: green	A	Finding: red	C	Finding: yellow	B	Finding: green	A	Finding: yellow	B	Finding: green	A
43	Does the public official(s) tasked/appointed responsible for proactive disclosure have the time and staff necessary to effectively fulfill his/her functions and duties?	Finding: red	D	Finding: yellow	B	Finding: green	A	Finding: red	D	Finding: green	A	Finding: red	D	Finding: green	A
44	Is the public official(s) responsible for proactive disclosure trained to comply with their duties?	Finding: red	C	Finding: green	A	Finding: green	A	Finding: yellow	B	Finding: green	A	Finding: red	C	Finding: yellow	B
45	Has the agency established space, physical or virtual, for public viewing of information proactively disclosed?	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A

Proactive Disclosure, Monitoring															
46	Does the agency capture statistics related to proactive disclosure?	Finding: red	C	Finding: red	C	Finding: red	C								
47	Does the agency monitor its proactive disclosure?	Finding: red	C	Finding: yellow	B	Finding: red	C								

Proactive Disclosure, Wild Card															
48	In your expert opinion, in practice does the agency effectively fulfill its function related to proactive disclosure?	Finding: red	C	Finding: red	C	Finding: yellow	B	Finding: red	C	Finding: yellow	B	Finding: red	C	Finding: red	C

Records Management, Leadership															
#	Indicator question:	Guatemala Agriculture		Guatemala Communications		Guatemala Education		Guatemala Finance		Guatemala Governance		Guatemala Health		Guatemala Statistics	
49	Does an agency official with authority over policy actively participate in creation, adoption, or review of records management policy?	Finding: green	A	Finding: green	A	Finding: green	A	Finding: red	B	Finding: green	A	Finding: green	A	Finding: green	A
50	Has the agency created or adopted an information policy for managing paper based and electronic information?	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: red	B

Records Management, Rules															
51	Has the agency created or adopted written guidelines for records management, regardless of format (including electronic records, maps etc.)?	Finding: yellow	B	Finding: green	A	Finding: green	A	Finding: red	C	Finding: green	A	Finding: yellow	B	Finding: red	C
52	Has the agency created or adopted written guidelines for classification of documents?	Finding: yellow	B	Finding: green	A	Finding: yellow	B	Finding: red	C	Finding: green	A	Finding: red	C	Finding: red	C
53	Does the document(s) detailing instructions for implementation and/or operations for a records-management system have the necessary components?	Finding: red	C	Finding: green	A	Finding: green	A	Finding: red	C	Finding: green	A	Finding: green	A	Finding: red	C

Records Management, Systems															
54	Has the agency created or adopted a system for classifying documents?	Finding: green	A	Finding: green	A	Finding: green	A	Finding: yellow	B	Finding: green	A	Finding: red	C	Finding: red	C
55	Has the agency created or adopted a system to manage its paper records?	Finding: yellow	B	Finding: yellow	B	Finding: red	C	Finding: red	C	Finding: green	A	Finding: yellow	B	Finding: red	C
56	Has the agency created or adopted a system to manage its electronic records?	Finding: yellow	B	Finding: yellow	B	Finding: no data		Finding: red	C	Finding: yellow	B	Finding: yellow	B	Finding: red	C
57	Has the agency created or adopted a system to retrieve and access paper records?	Finding: red	C	Finding: green	A	Finding: no data		Finding: red	C	Finding: green	A	Finding: red	C	Finding: red	C
58	Has the agency created or adopted a system to retrieve and access electronic records?	Finding: red	C	Finding: green	A	Finding: no data		Finding: red	C	Finding: yellow	B	Finding: red	C	Finding: red	C

Records Management, Resources															
#	Indicator question:	Guatemala Agriculture		Guatemala Communications		Guatemala Education		Guatemala Finance		Guatemala Governance		Guatemala Health		Guatemala Statistics	
59	Has one or more public official been formally tasked/appointed responsible for records management?	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A	Finding: green	A
60	Does the public official(s) tasked/appointed responsible for records management functions and duties have the time and staff needed to fulfill his/her responsibilities?	Finding: green	A	Finding: green	A	Finding: no data		Finding: red	D	Finding: green	A	Finding: green	A	Finding: green	A
61	Does the public official(s) tasked/appointed responsible for records management and his/her staff receive specialized training on records management?	Finding: red	C	Finding: yellow	B	Finding: red	C	Finding: green	A	Finding: green	A	Finding: red	C	Finding: red	C
62	Are all public officials made aware of basic records management procedures?	Finding: red	D	Finding: red	D	Finding: red	D	Finding: red	D	Finding: red	D	Finding: red	D	Finding: red	D
63	Has the agency created space for storage (including electronic records) and archives of records?	Finding: green	A	Finding: green	A	Finding: green	A	Finding: yellow	B	Finding: green	A	Finding: green	A	Finding: green	A

Records Management, Monitoring															
64	Does the agency monitor its records management system?	Finding: yellow	B	Finding: red	C										

Records Management, Wild Card															
65	In your expert opinion, in practice does the agency effectively fulfill its function related to records management?	Finding: yellow	B	Finding: red	C	Finding: yellow	B								

Ministry/Agency Summary of Findings

Table 3. Ministry of Agriculture

	Fundamental Functions	Receive and Respond to Requests	Proactive Disclosure	Records Management
Leadership (directs)	Engagement ● ● Strategic Planning ●			Engagement ● ●
Rules (guide)	Guidelines ● ● ● ● ● Instructions/plans ● ● ● ● ●	Guidelines for receiving/processing ● ● ● Guidelines for responding ● ● Guidelines for internal review ● ● Instructions/plans ● ●	Guidelines ● ● Instructions/plans ● ●	Guidelines ● ● ● Instructions/plans ● ●
Systems (order)	Public awareness raising ● ● ●	System for receiving/processing ● ● ● ● ● System for transfer/responding ● ● ● ● ●	System for proactive disclosure ● ●	Classification ● ● ● Manage Records ● ● ● Retrieve Records ● ● ●
Resources (enable)	Staffing ● ● ● ● ● ● Training ● ● ● ● ● ● Infrastructure ● ● ● ● ● ● Budget ● ● ● ● ● ●	Infrastructure ● ● ● ● ● ●	Staffing ● ● ● ● ● ● Training ● ● ● ● ● ● Infrastructure ● ● ● ● ● ●	Staffing ● ● ● ● ● ● Training ● ● ● ● ● ● Infrastructure ● ● ● ● ● ●
Monitoring (adjust)	Internal oversight ● ● ● ● ● ● Reporting ● ● ● ● ● ● Performance monitoring ● ● ● ● ● ●	Capturing of statistics ● ● ● ● ● ●	Capturing of statistics ● ● ● ● ● ● Reporting ● ● ● ● ● ●	Reporting ● ● ● ● ● ●
Wildcard	Researcher ● ● ● ● ● ● Blind Peer Reviewer ● ● ● ● ● ●	Researcher ● ● ● ● ● ● Blind Peer Reviewer ● ● ● ● ● ●	Researcher ● ● ● ● ● ● Blind Peer Reviewer ● ● ● ● ● ●	Researcher ● ● ● ● ● ● Blind Peer Reviewer ● ● ● ● ● ●

Table 4. Communications Agency

	Fundamental Functions	Receive and Respond to Requests	Proactive Disclosure	Records Management
Leadership (directs)	Engagement ● ● Strategic Planning ●			Engagement ● ●
Rules (guide)	Guidelines ● ● ● ● Instructions/plans ● ● ● ●	Guidelines for receiving/processing ● ● Guidelines for responding ● Guidelines for internal review ● Instructions/plans ●	Guidelines ● Instructions/plans ●	Guidelines ● ● Instructions/plans ●
Systems (order)	Public awareness raising ● ●	System for receiving/processing ● ● System for transfer/responding ● ●	System for proactive disclosure ●	Classification ● Manage Records ● ● Retrieve Records ● ●
Resources (enable)	Staffing ● ● ● ● Training ● ● ● Infrastructure ● Budget ●	Infrastructure ●	Staffing ● ● Training ● Infrastructure ●	Staffing ● ● Training ● ● Infrastructure ●
Monitoring (adjust)	Internal oversight ● Reporting ● ● Performance monitoring ●	Capturing of statistics ●	Capturing of statistics ● Reporting ●	Reporting ●
Wildcard	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●

Table 5. Ministry of Education

	Fundamental Functions	Receive and Respond to Requests	Proactive Disclosure	Records Management
Leadership (directs)	Engagement ●● Strategic Planning ●			Engagement ●●
Rules (guide)	Guidelines ●●●● Instructions/plans ●●●●	Guidelines for receiving/processing ●● Guidelines for responding ● Guidelines for internal review ● Instructions/plans ●	Guidelines ● Instructions/plans ●	Guidelines ●● Instructions/plans ●
Systems (order)	Public awareness raising ●●	System for receiving/processing ●● System for transfer/responding ●●	System for proactive disclosure ●	Classification ● Manage Records ●○ Retrieve Records ○○
Resources (enable)	Staffing ●●●● Training ●●● Infrastructure ● Budget ●	Infrastructure ●	Staffing ●● Training ● Infrastructure ●	Staffing ●○ Training ●● Infrastructure ●
Monitoring (adjust)	Internal oversight ● Reporting ●● Performance monitoring ●	Capturing of statistics ●	Capturing of statistics ● Reporting ●	Reporting ●
Wildcard	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●

Table 6. Ministry of Finance

	Fundamental Functions	Receive and Respond to Requests	Proactive Disclosure	Records Management
Leadership (directs)	Engagement ●● Strategic Planning ●			Engagement ●●
Rules (guide)	Guidelines ●●●● Instructions/plans ●●●●	Guidelines for receiving/processing ●● Guidelines for responding ● Guidelines for internal review ● Instructions/plans ●	Guidelines ● Instructions/plans ●	Guidelines ●● Instructions/plans ●
Systems (order)	Public awareness raising ●●	System for receiving/processing ●● System for transfer/responding ●●	System for proactive disclosure ●	Classification ● Manage Records ●● Retrieve Records ●●
Resources (enable)	Staffing ●●●● Training ●●● Infrastructure ● Budget ●	Infrastructure ●	Staffing ●● Training ● Infrastructure ●	Staffing ●● Training ●● Infrastructure ●
Monitoring (adjust)	Internal oversight ● Reporting ●● Performance monitoring ●	Capturing of statistics ●	Capturing of statistics ● Reporting ●	Reporting ●
Wildcard	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●

Table 7. Ministry of Governance

	Fundamental Functions	Receive and Respond to Requests	Proactive Disclosure	Records Management
Leadership (directs)	Engagement ● ● Strategic Planning ●			Engagement ● ●
Rules (guide)	Guidelines ● ● ● ● Instructions/plans ● ● ●	Guidelines for receiving/processing ● ● Guidelines for responding ● Guidelines for internal review ● Instructions/plans ●	Guidelines ● Instructions/plans ●	Guidelines ● ● Instructions/plans ●
Systems (order)	Public awareness raising ● ●	System for receiving/processing ● ● System for transfer/responding ● ●	System for proactive disclosure ●	Classification ● Manage Records ● ● Retrieve Records ● ●
Resources (enable)	Staffing ● ● ● ● Training ● ● ● Infrastructure ● Budget ●	Infrastructure ●	Staffing ● ● Training ● Infrastructure ●	Staffing ● ● Training ● ● Infrastructure ●
Monitoring (adjust)	Internal oversight ● Reporting ● ● Performance monitoring ●	Capturing of statistics ●	Capturing of statistics ● Reporting ●	Reporting ●
Wildcard	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●

Table 8. Ministry of Health

	Fundamental Functions	Receive and Respond to Requests	Proactive Disclosure	Records Management
Leadership (directs)	Engagement ●● Strategic Planning ●			Engagement ●●
Rules (guide)	Guidelines ●●●● Instructions/plans ●●●●	Guidelines for receiving/processing ●● Guidelines for responding ● Guidelines for internal review ● Instructions/plans ●	Guidelines ● Instructions/plans ●	Guidelines ●● Instructions/plans ●
Systems (order)	Public awareness raising ●●	System for receiving/processing ●● System for transfer/responding ●●	System for proactive disclosure ●	Classification ● Manage Records ●● Retrieve Records ●●
Resources (enable)	Staffing ●●●● Training ●●● Infrastructure ● Budget ●	Infrastructure ●	Staffing ●● Training ● Infrastructure ●	Staffing ●● Training ●● Infrastructure ●
Monitoring (adjust)	Internal oversight ● Reporting ●● Performance monitoring ●	Capturing of statistics ●	Capturing of statistics ● Reporting ●	Reporting ●
Wildcard	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●

Table 9. Ministry of Statistics

	Fundamental Functions	Receive and Respond to Requests	Proactive Disclosure	Records Management
Leadership (directs)	Engagement ● ● Strategic Planning ●			Engagement ● ●
Rules (guide)	Guidelines ● ● ● ● Instructions/plans ● ● ●	Guidelines for receiving/processing ● ● Guidelines for responding ● Guidelines for internal review ● Instructions/plans ●	Guidelines ● Instructions/plans ●	Guidelines ● ● Instructions/plans ●
Systems (order)	Public awareness raising ● ●	System for receiving/processing ● ● System for transfer/responding ● ●	System for proactive disclosure ●	Classification ● Manage Records ● ● Retrieve Records ● ●
Resources (enable)	Staffing ● ● ● ● Training ● ● ● Infrastructure ● Budget ●	Infrastructure ●	Staffing ● ● Training ● Infrastructure ●	Staffing ● ● Training ● ● Infrastructure ●
Monitoring (adjust)	Internal oversight ● Reporting ● ● Performance monitoring ●	Capturing of statistics ●	Capturing of statistics ● Reporting ●	Reporting ●
Wildcard	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●	Researcher ● Blind Peer Reviewer ●

Focal Group Narrative³⁴

At the conclusion of Pilot Phase III of the IAT, researcher Marvin Pol and colleagues from Acción Ciudadana convened a focus group comprised mainly of civil society actors with experience in advocating for and using the right of access to information. The focal group participants were selected for their experience in access to information and transparency. Among those engaging in the focal group were researchers and consultants that enriched the pool of knowledge and information on the practice of ATI in Guatemala.

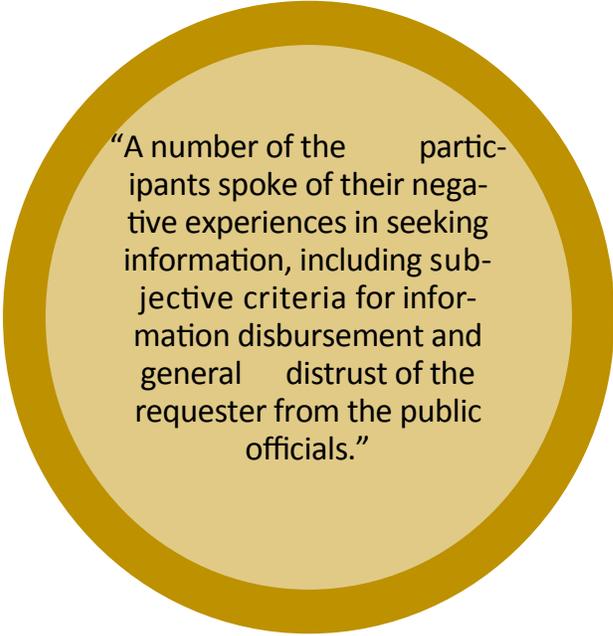
This objective of the focal group was to share the preliminary IAT findings from the seven Guatemalan public institutions in which it was applied and to discuss the experiences of the participants in relation to the specific indicators, thus cross-checking the results in light of their practical experiences. Overall, the focal group confirmed the IAT findings, validating the weakness in leadership, rules, systems and monitoring. The experts particularly emphasized a lack of awareness of ATI principles and insufficient training in good implementation practice.

In reviewing the indicators and findings related to receiving and responding to requests, the focal group participants agreed that the agencies do not appear to have made great strides in implementation. A number of the participants spoke of their negative experiences in seeking information, including subjective criteria for information disbursement and general distrust of the requester from the public officials. For example, often times the ATI information officers first asks who the requester is and why the information is needed before they will process the request.

The focal group experts attributed these problems to a lack of awareness of the law and insufficient specialized training on ATI. Some of them said that

the functionary that takes the request in the ATI office has a fear of being fired if he or she gives access to information without consulting the supreme authority of the institution – even if the information is public or that the public officer does not know that it is mandatory to release a notice that they are processing the request.

With regard to documents received through requests, the focal group participants noted the poor quality of the information and the lack of standards in the delivery of information from the authorities. Another important issue considered by the focus group was payment for ATI documents. They found that there is an absence of guidelines to



“A number of the participants spoke of their negative experiences in seeking information, including subjective criteria for information disbursement and general distrust of the requester from the public officials.”

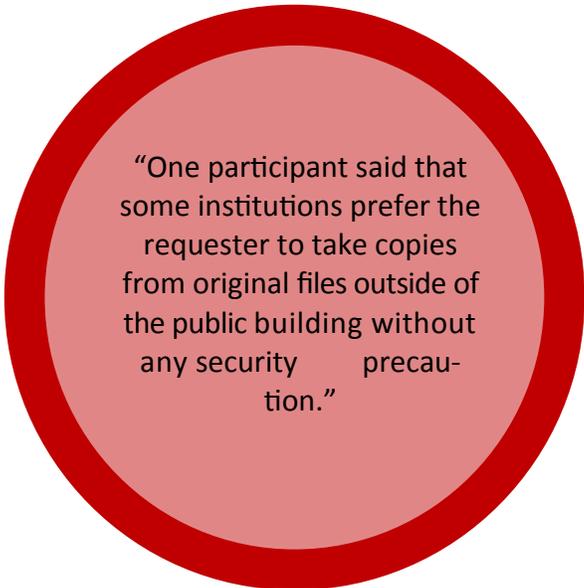
³⁴The focal group findings were drawn from the narrative drafted by researchers Manfredo Marroquin and Marvin Pol Álvarez.

determine the procedures for paying for the reproduction of documents. One participant said that some institutions prefer the requester to take copies from original files outside of the public building without any security precaution. The researchers also perceived that this could be an opportunity for public servants/functionaries to receive a monetary benefit for reproduction of copies.

Regarding compliance with the time allowed for an agency to respond to an ATI request and the manner of response was extremely variable, including a number of failures by the agency to issue written denials. They felt that this could be attributed to a lack of guidelines or instructions for processing a request.

Further, the focus group agreed with the IAT findings related to proactive disclosure, noting that the agency failures to automatically publish information are notoriously widespread. The participants also opined that is difficult to find information from public institutions, even when it is proactively disclosed. The conclusion of the focal group was that the IAT reflected the reality that public institutions do not meet good practices for proactive disclosure. They pointed to the absence of guidelines, plans, systems and responsible officers as well as the need for more training and monitoring.

Finally, with regard to records management, the focus group opinion was that it was so deficient, a reform of the ATI law should be considered to more specifically provide for the government's responsibilities and obligations. The general opinion regarding the reasons for failure were insufficient rules, lack of organization in the agencies/ministries, not placing priority on the importance of records management, and lack of political will.



“One participant said that some institutions prefer the requester to take copies from original files outside of the public building without any security precaution.”

Summary of Findings³⁵

Overall, the ministries and agencies assessed have not made sufficient strides with respect to ATI implementation.

Fundamental Functions

In most cases, it appears that the higher level officials have not been engaged in setting or reviewing the policy and the principles of ATI are not included in the strategic plan. The majority of the agencies have no specific written guidelines that establish instructions for ATI implementation and operation in order to help public officials fulfill their ATI-related responsibilities. Rather, the officials are using the provisions in the ATI law to guide their implementation/operationalization of the right, but these sections lack sufficient detail and direction to meet their obligations.

With regard to resources, the ministries do have officials and staff designated. However, the main official does not have the authority needed to comply with his mandate. Public servants tasked with ATI functions and duties receive basic training, but that training is not sufficient. No systemized formal mechanisms are undertaken by the agency to periodically make public officials aware of basic ATI principles. The training materials are not made available for future reference and there are no financial resources specifically allocated to fulfill ATI functions and duties. Furthermore, the agencies do not engage in public outreach regarding ATI procedures. Also, while most of the agencies at least have dedicated equipment for ATI functions, in some, such as the Ministry of Finance, the photocopiers, printers etc. are shared with other departments.

In a few of the ministries, regular monitoring of ATI functions exist, but written reports with findings

and recommendations are not issued and annual reports have not been released to the public. Performance reviews of relevant officials do not take into account ATI responsibilities for assessment, and the internal oversight body does not monitor ATI functions and duties.

Receiving and Responding to Requests

For receiving and responding to requests, many of the ministries have not established specific systems or guidelines. While the Ministry of Communications has some guidelines in the Manual of Functions and Organization, they are not sufficiently detailed to instruct the agency officials on procedures or processes for addressing requests. Similarly, the Ministry of Education has some systems in place, but they do not identify who holds the information in question, so searching for and finding information is difficult; and the Ministry of Health's existing system does not track requests in one place and there is no system for processing requests. Ironically, while most of the agencies submit annual reports to the Human Rights Ombudsman, the Statistics agency report failed to include statistics on number of requests and responses.

Proactive Disclosure

The function of proactive disclosure faces similar implementation deficits as those mentioned above. The ministries and agencies assessed have not created or adopted written guidelines or

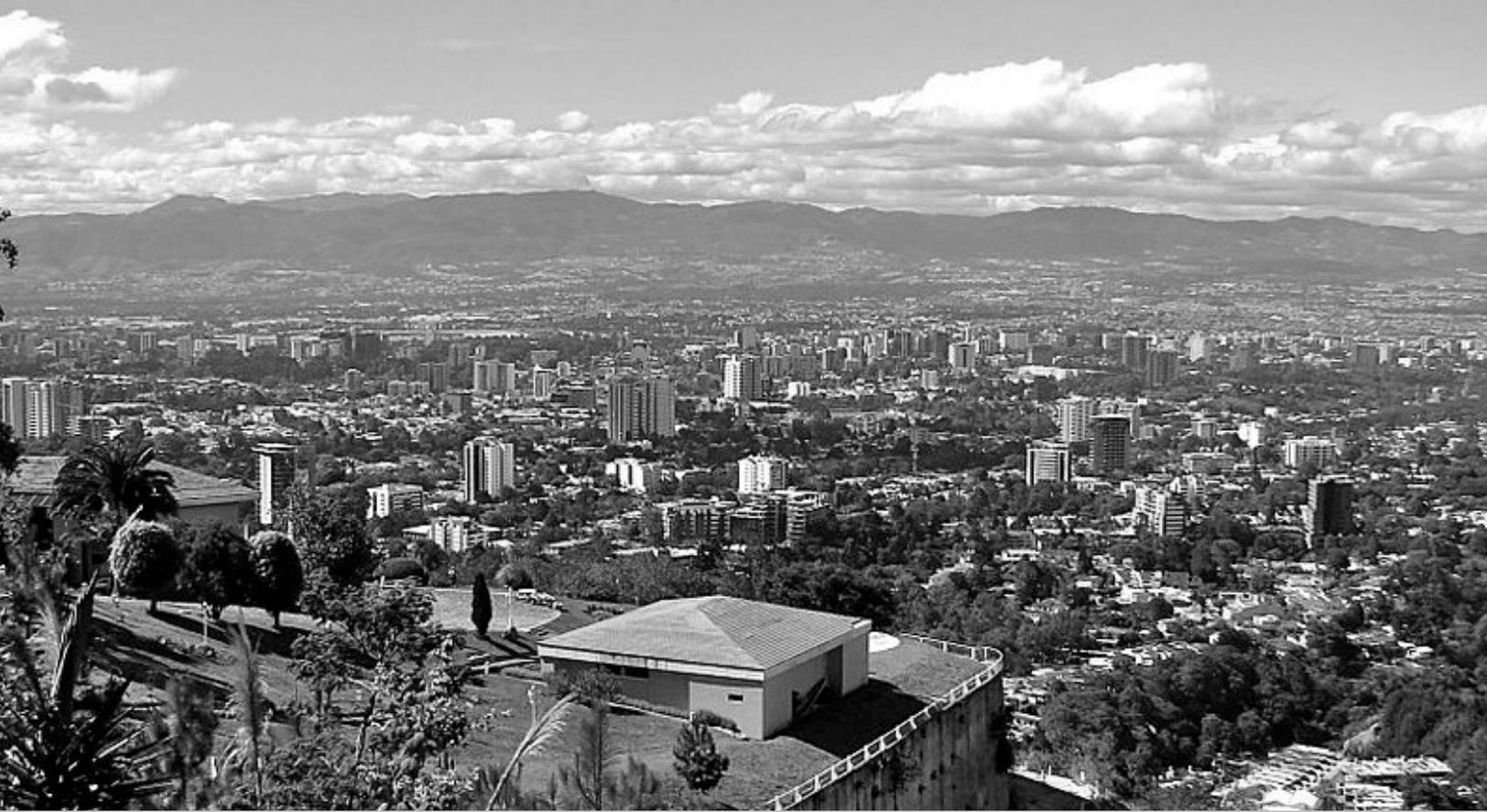
³⁵The summary of findings was largely drawn from the narrative drafted by researchers Manfredo Marroquin and Marvin Pol Álvarez.

systems for proactive disclosure. Though in most cases there is a public official informally tasked with proactive disclosure functions and duties, he/she lacks either the time, staff, and/or training needed to fulfill the responsibilities. The ministries monitoring efforts do not systematically collect statistics related to proactive disclosure, nor do they regularly monitor those activities. The existing rules do not include the development of a publication scheme or an updating and maintenance of the scheme, nor do they specify how documents should be disclosed.

Records Management

Lastly, while some of the agencies, such as Ministry of Agriculture, have been somewhat engaged in creating or adopting written guidelines for records management and classification of documents, the instructions for implementation and operations of a records management system do not exist. The IAT findings reflect the realities that in most cases the agencies lack the capacity to protect, retain, and dispose of records. Additionally, the agencies do not have a paper and electronic records retrieval and access system. While apparently all public officials receive formal communications regarding basic records management procedures, those communications are not continuous and the public official tasked with records management and staff does not receive sufficient training to fulfill their records-management responsibilities. Finally, the ministries have done little to regularly monitor its records-management or improve its systems.

Picture of Guatemala City from El Mirador on back cover courtesy of Rigostar at ms.wikipedia [(https://commons.wikimedia.org/wiki/File:Guatemala_City_%28663%29.jpg) or CC-BY-SA-3.0 (<http://creativecommons.org/licenses/by-sa/3.0/>)], via Wikimedia Commons.



THE
CARTER CENTER



One Copenhill
453 Freedom Parkway
Atlanta, GA 30307
(404) 420-5100 • Fax (404) 420-5145
www.cartercenter.org