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Centralization of Transparency: A Risk to Data Protection and Access to Information

On International Personal Data Protection Day, we seek to raise awareness of the importance of safeguarding this fundamental right at the international level. Within the framework of this commemoration, it is important to analyze the current context in Mexico after the publication, on December 20, 2024, of the decree that eliminated the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI).

The importance of INAI as an Autonomous Constitutional Body (OCA) lies in its creation of constitutional nature, independent from the Executive, Legislative and Judicial powers. Its main characteristics are functional, financial and technical autonomy; specific powers to fulfill the specialized purpose for which it was created; and the guarantee of non-subordination to other branches of government, which, in matters of transparency, are usually the main subjects of requests for access to information.

As a result of the decree, INAI's functions are transferred to the Executive Branch, which generates significant risks for the impartiality of information, accountability and the protection of fundamental rights such as access to information, privacy and informational self-determination. The concentration of these powers in an entity dependent on the Executive could favor biased decisions, substantially weakening the mechanisms of transparency in public administration and compromising essential principles such as freedom of expression. Without these guarantees, it is difficult to consolidate governments and institutions that promote a rule of law fully aligned with the effective exercise of human rights.

This change reduces the independence necessary to safeguard essential principles in a democracy, affecting the consolidation of institutions aligned with international human rights standards. Despite this, it has been determined that the Secretariat of Anticorruption and Good Governance (formerly the Secretariat of Public Function) will assume INAI's responsibilities through two main bodies: the General Directorate of Platforms for Integrity and Transparency, in charge of powers related to access to information, and the General Directorate of Transparency, focused on the management of information requests and the handling of review appeals. However, there is still no clearly defined organizational structure.

As part of this transition, the head of the Secretariat met with the Plenary of INAI to discuss an orderly, efficient and legally compliant transfer of functions. The meeting highlighted the need to implement cryptographic validators to protect the security and integrity of the National Transparency Platform, a key tool for access to information and accountability. However, neither a comprehensive transfer plan nor the timeframe for its implementation has yet been defined.

The disappearance of INAI as an autonomous entity and the centralization of its functions in other governmental bodies poses a profound challenge for the protection of personal data and transparency in Mexico. This reconfiguration may compromise the impartiality and independence necessary to guarantee true access to information and the defense of citizens' privacy. While the legal framework remains relevant, structural change requires constant vigilance by both social and business actors.

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