

he 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 EMC WdThione Ctalar())ter

focus efforts and resources to ensure full and effective implementation, thus advancing the ability of the Mexican people to enjoy the myriad benefits of the right of access to information.

Contributors to the development and piloting of the IAT include:

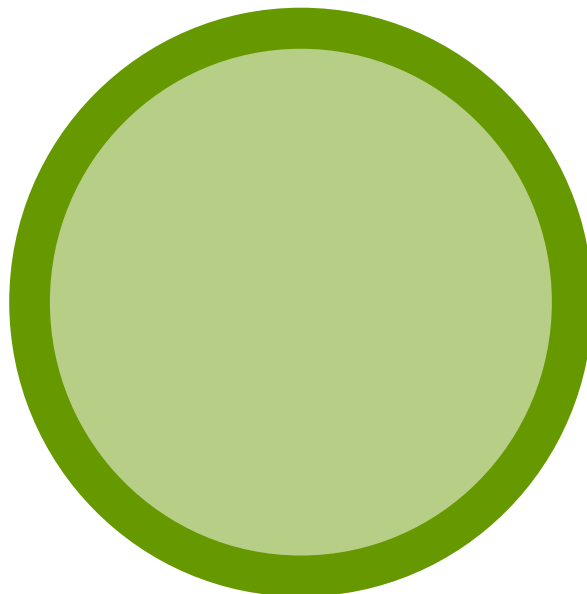
he right of access to information is a powerful tool in the fight against corruption and in achieving good governance and development. It serves both government and its citizens by increasing citizen confidence as governments become more transparent and accountable. It enables citizens to participate more fully i

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

(" 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

he 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

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.

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 coun-

o 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.

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

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 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

In 1977, Article 6 of the Mexican Constitution was amended to read: "access to information will be guaranteed by the State." It took 25 years for the Mexican government to act on that guarantee, but on April 30, 2002, the Congress unanimously approved the Federal Law on Transparency and Access to Official Information. The law was aimed at guaranteeing the right to access public information contained in the documents held by federal agencies.

Law on Transparency and Access to Official Information.⁹

Nevertheless, such attempts have been made. In 2006, two Senators from the National Action Party proposed an amendment to the law governing the Federal Administrative Tribunal that would grant it the power to arbitrate freedom of information disputes. This amendment was never passed. Similarly, President Felipe Calderon proposed reforms that would undermine the role of the IFAI in settling freedom of information disputes under the guise of improving efficiency.¹⁰ These proposed reforms elicited a tremendous response from ATI advocates, who argued that they violated the Constitution as amended in 2007.¹¹ Calderon's proposal was passed by the Senate in 2010 but was removed from a larger bill in the Chamber of Deputies. According to Freedom Info, the defeat of the proposed provisions was largely due to a "tweet war," or barrage of Twitter messages, which was organized by a group called Fundar.¹²

In 2011, Mexico became a founding member of the Open Government Partnership (OGP). Among other commitments through the OGP, Mexico pledged to increase and improve proactive disclosures.¹³ And in February 2014, President Enrique Pena Nieto signed a new set of transparency reforms that will strengthen the IFAI's autonomy once they go into effect.

Committee is formed by the Head of the Liaison Unit, the Head of the Internal Control Office and a public servant appointed by the Head of the Ministry or Agency.

In 2012 a new Archives Federal Law was implemented, which establishes a general framework that regulates the organization of all documents and files that are in the Federal Public Administration's possession (including creation, access, circulation and retrieval). In addition, the General Archive of the

Notably, use of the law varies according to location. Mexico City accounts for about 41 percent of requests. Citizens in rural areas are much less likely to make a request for information. Similarly, citizens with access to the Internet are far more likely to utilize the law. Requests can be filed in person or by mail, but the vast majority are made online. In fact, as of 2006, 92 percent of requests were made on Mexico's Internet Portal.²⁴

Requesters have several avenues for enforcement of the right to information. They can appeal decisions to the body that they originally filed the request with, the courts, or the IFAI. The IFAI is empowered to investigate responses to requests for information. In 2005, 2,639 appeals, or 5 percent of all requests,

17 percent in favor of the agency (the remaining appeals were dismissed for various reasons).²⁵ Yet, IFAI is severely limited in its ability to compel agencies to produce information when they rule in favor of the requester, relying on the Ministry of Public Administration to enforce its rulings. Compliance with these rulings varies by agency.

Indicator question:	Mexico Agriculture	Mexico Customs	Mexico Education	Mexico Finance	Mexico Health	Mexico Justice	Indicator
Does the agency monitor its ATI functions and duties?	Finding: green A	Finding: yellow B	Finding: yellow B	Finding: yellow B	Finding: yellow B	Finding: green A	22 Does the agency monitor its ATI functions and duties?
Does the agency report on its ATI functions and duties?	Finding: green A	Finding: green A	Finding: green A	Finding: green A	Finding: green A	Finding: green A	23 Is an agency report on its ATI functions and duties?
Does the agency's internal oversight body/audit mechanism take into account ATI functions and duties?	Finding: green A	Finding: green A	Finding: green A	Finding: green A	Finding: green A	Finding: green A	24 Does the agency's internal oversight body/audit mechanism take into account ATI functions and duties?
Does the agency's performance review take into account ATI functions and duties?	Finding: green A	Finding: red B	Finding: red B	Finding: red B	Finding: red B	Finding: green A	25 Does the agency's performance review take into account ATI functions and duties?

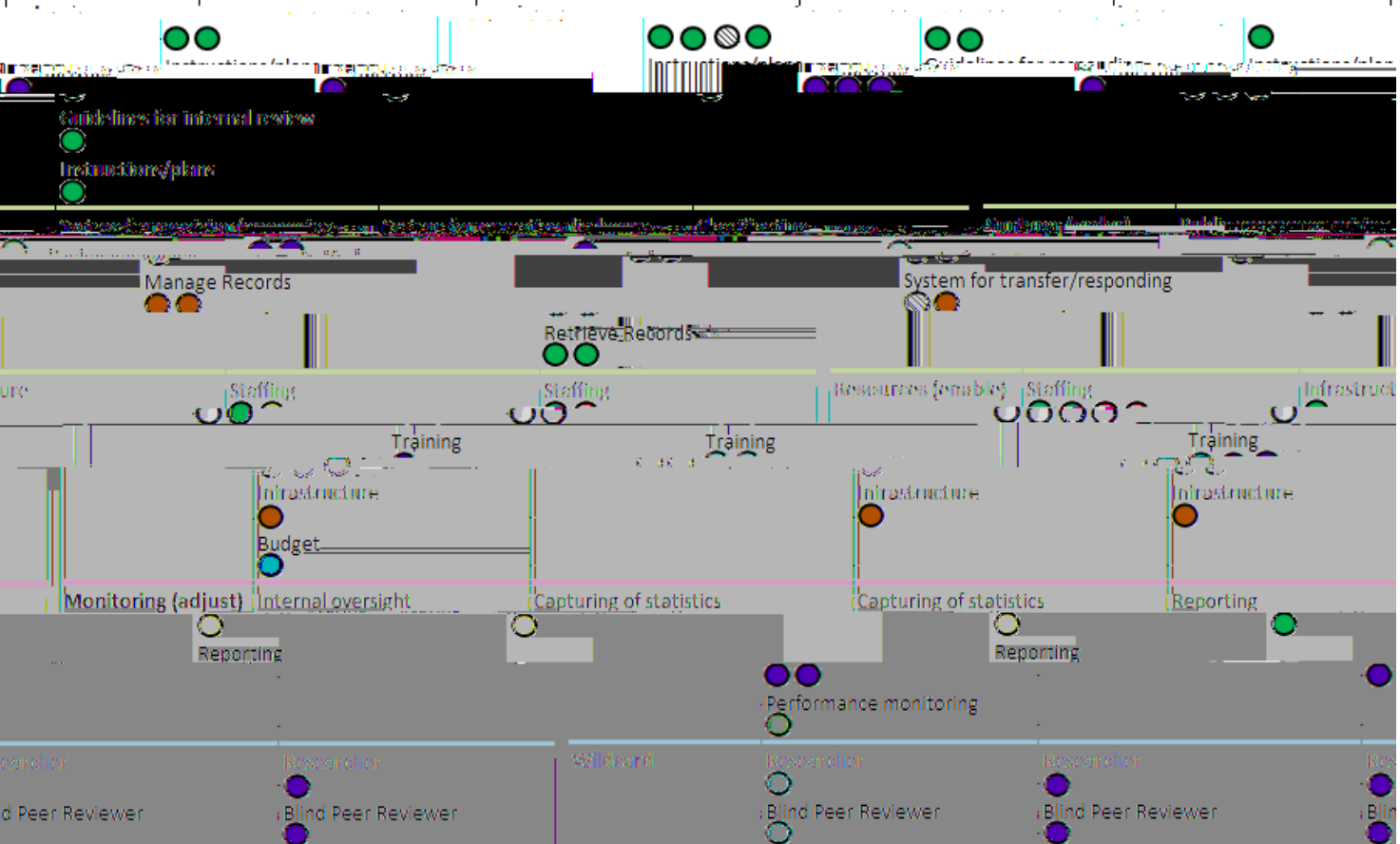
Fundamental functions, Wild Card

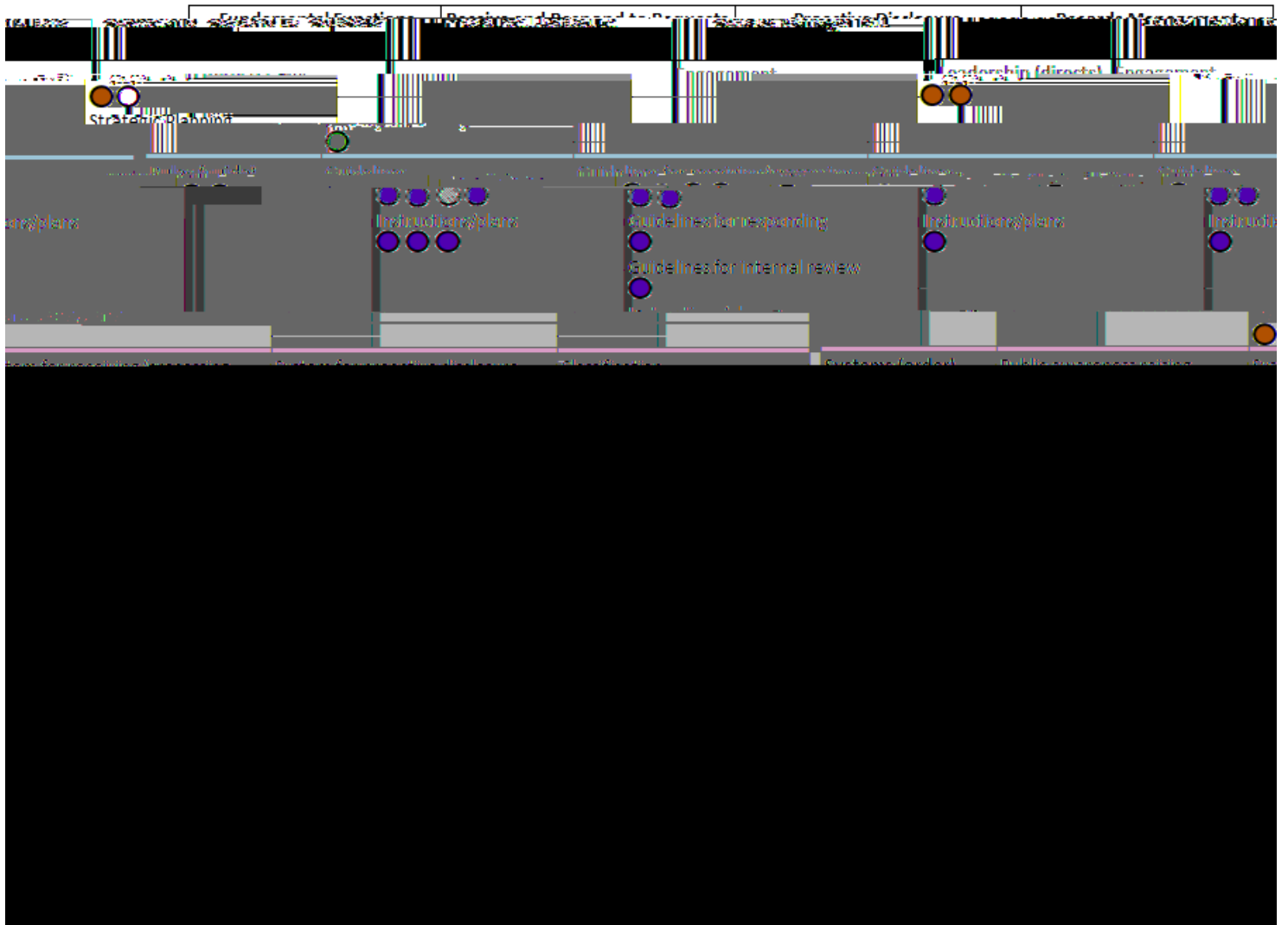
26	In your expert opinion, in practice does the agency effectively fulfill its fundamental function related to access to information?	Finding: yellow B	Finding: yellow B	Finding: green A	Finding: green A	Finding: green A	Finding: yellow B
----	--	-------------------	-------------------	------------------	------------------	------------------	-------------------

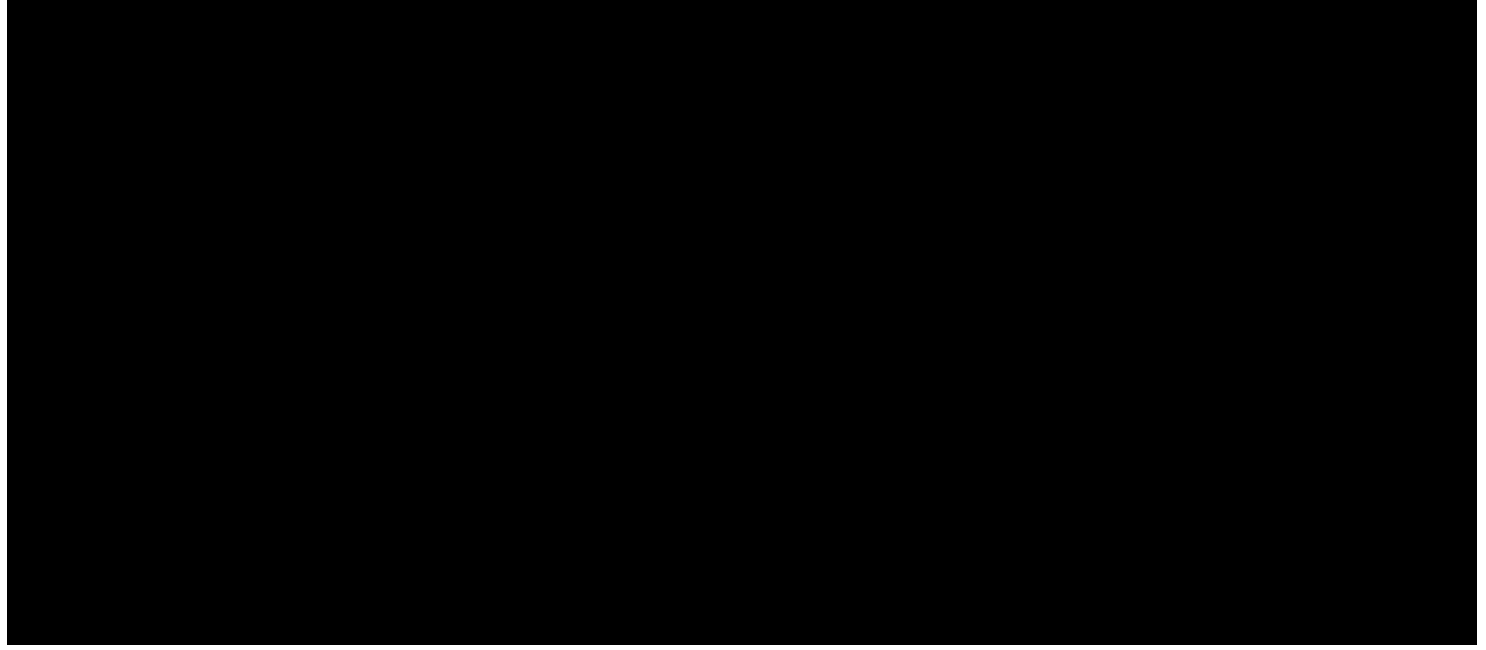
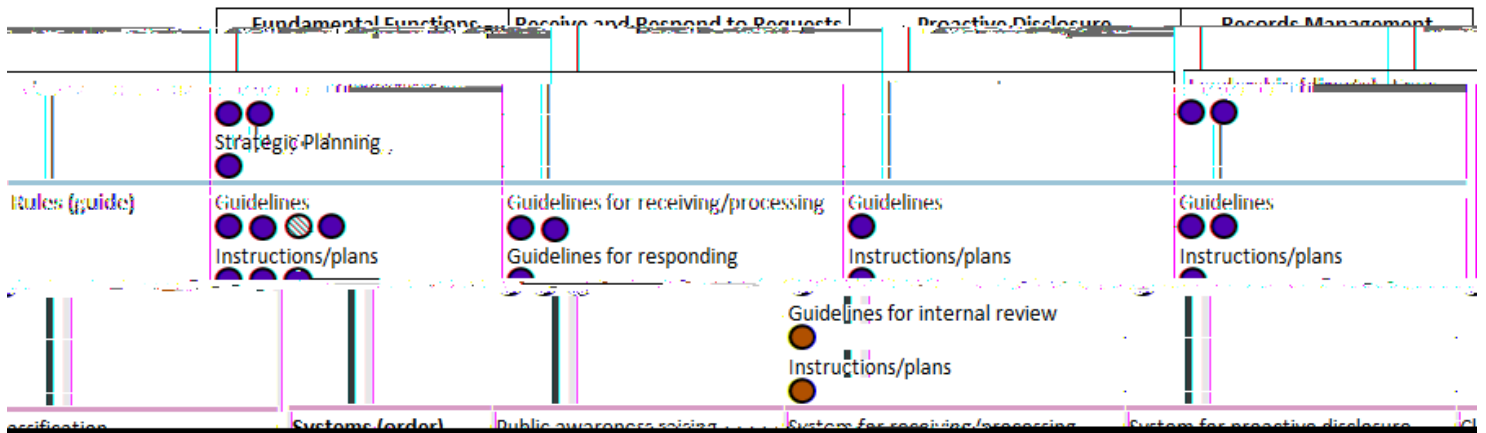
Receive and Respond to Requests, Rules

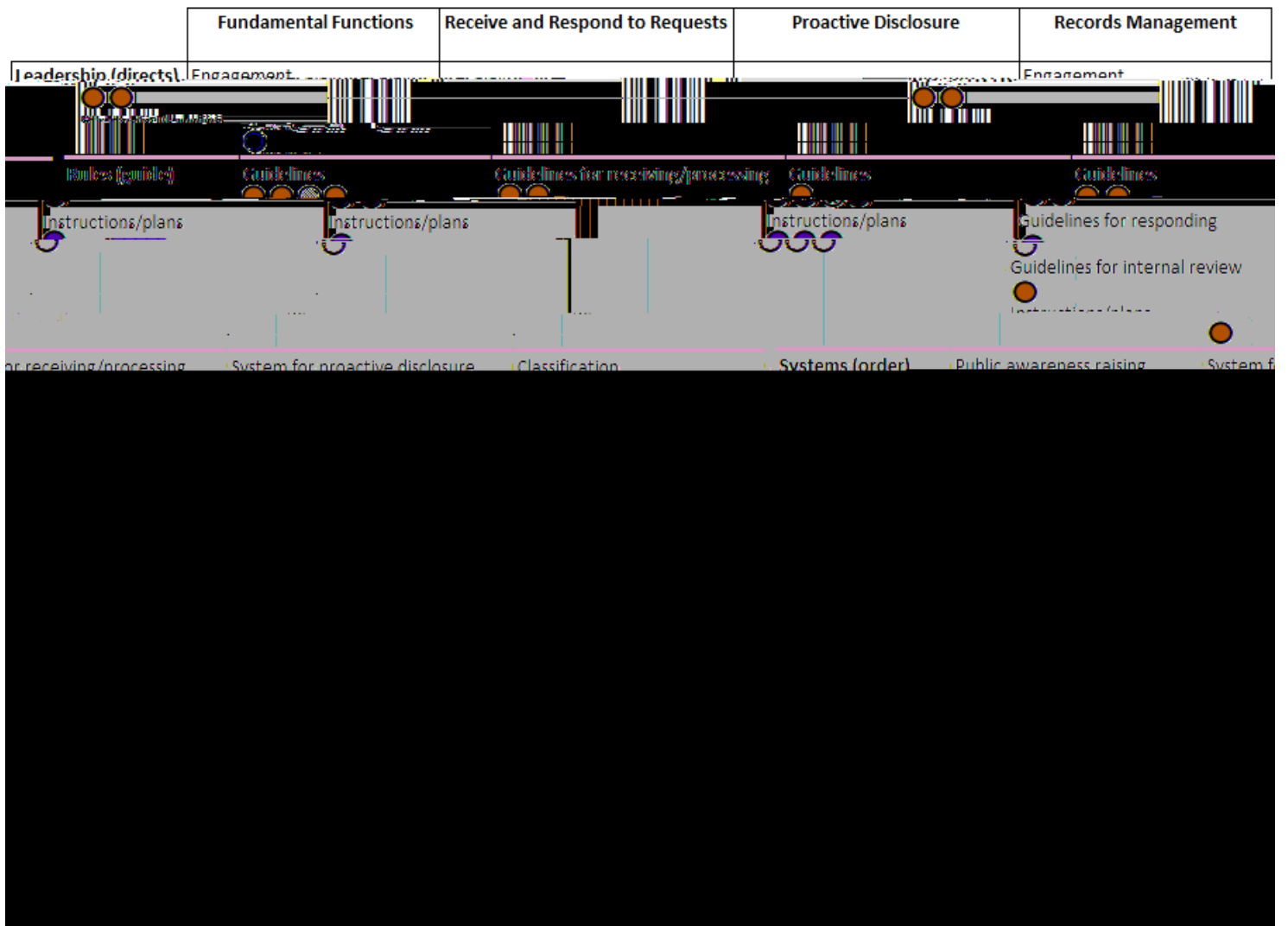
27	Has the agency created or adopted written guidelines for receiving requests?	Finding: green A	Finding: green A	Finding: green A	Finding: green A	Finding: green A	Finding: green A
28	Has the agency created or adopted written guidelines for processing requests?	Finding: green A	Finding: green A	Finding: green A	Finding: green A	Finding: green A	Finding: green A
29	Has the agency created or adopted written guidelines for responding to requests?	Finding: orange B	Finding: orange B	Finding: orange B	Finding: orange B	Finding: orange B	Finding: orange B
30	Has the agency created or adopted written guidelines for internal review?	Finding: green A	Finding: orange B	Finding: orange B	Finding: orange B	Finding: orange B	Finding: orange B

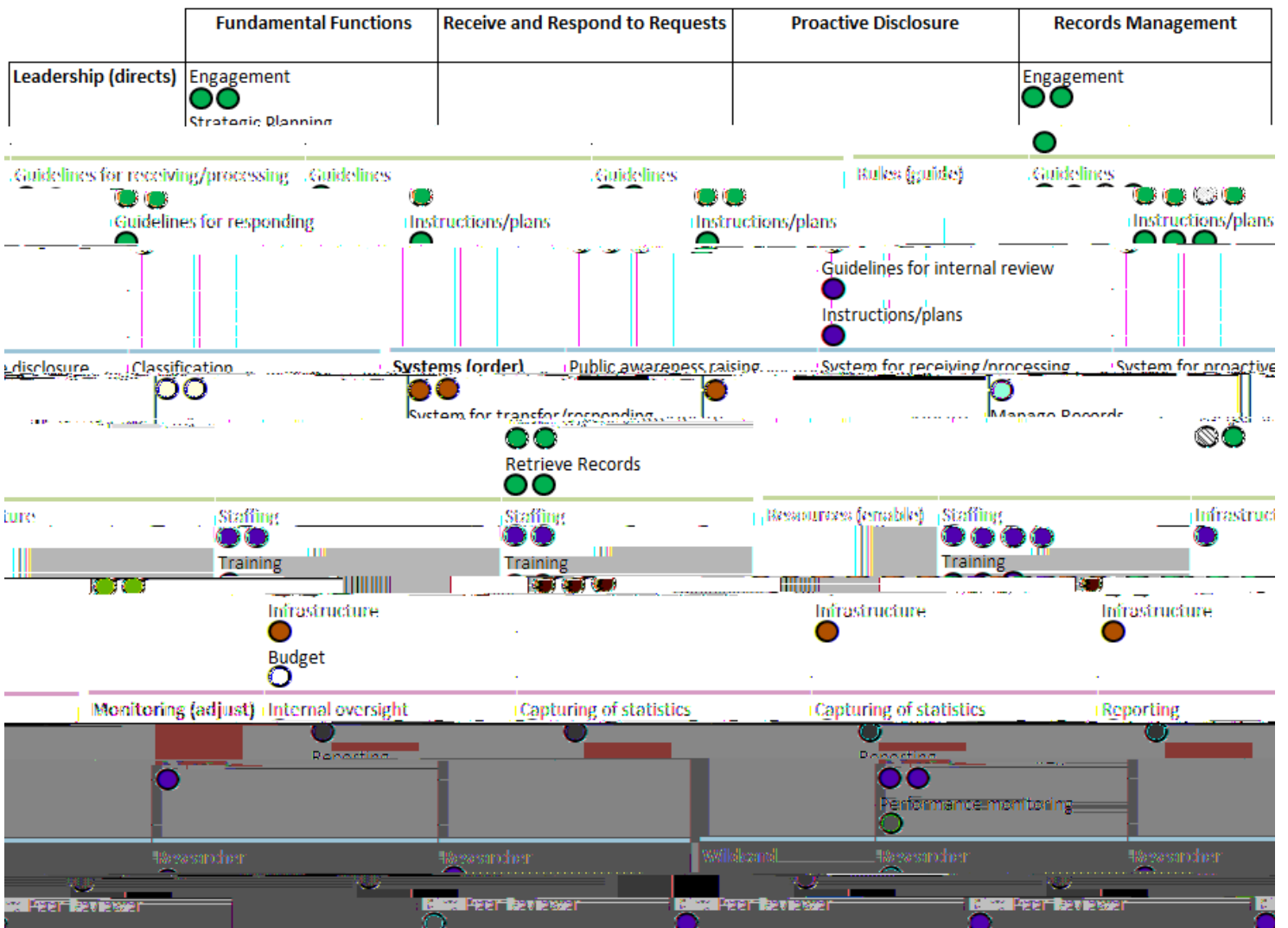
	Fundamental Functions	Receive and Respond to Requests	Proactive Disclosure	Records Management
Leadership (directs)	Engagement ●● Strategic Planning ●			Engagement ●●











The experts agreed on the benefits of having homogenous/uniform systems and norms across the federal government, as this practice makes it easier for citizens and public officials to exercise their right of access to public information. One commentator celebrated the existence of INFOMEX as a unique platform to submit information requests. However, he stressed that this system also makes the right of access to information somehow elitist, as only 30 percent of Mexicans have access to the Internet. The same commentator criticized the Portal of Transparency Obligations for its difficult interface and lack of sophisticated search engines.

Finally, the experts also agreed that centralized and standardized legal frameworks and guidelines can serve to avoid contradictory and inconsistent criteria in regards to implementation processes and the type information to be classified or disclosed. They emphasized the benefits that the recent Constitutional reform on transparency will bring by aligning existing local laws and procedures with federal ones so that all local authorities and institutions can operation under the same legal framework.

Mexico has a solid regulatory and institutional framework in favor of transparency and access to information at the federal level thanks to the Transparency and Access to Information Federal Law (ATI Law) that establishes clear processes, timelines, tasks and instances necessary for compliance. Nevertheless, this framework will largely change this year as the Congress recently passed a constitutional reform that expands the competences of the Federal Institute for Access to Public Information (IFAI).

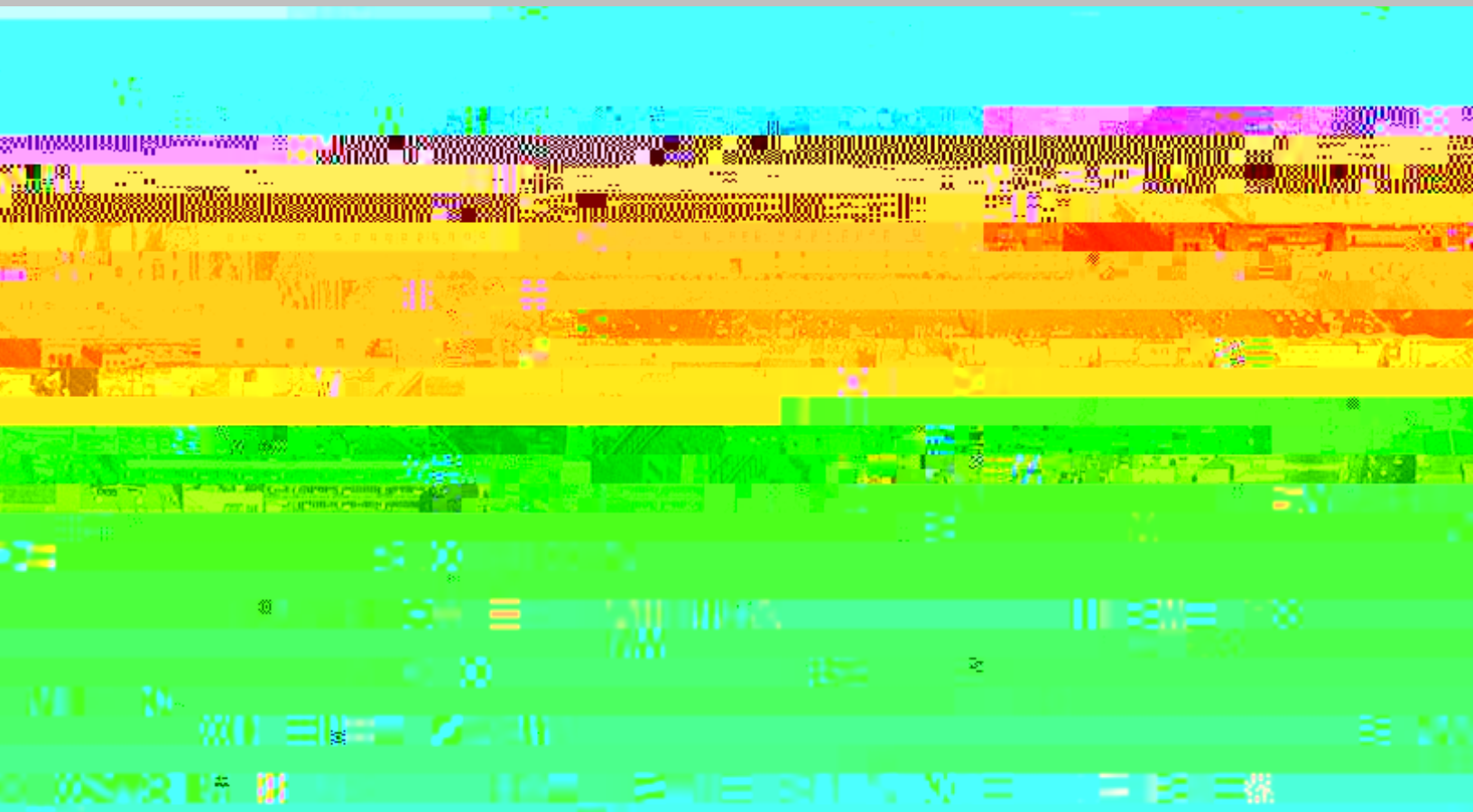
The IFAI will now supervise the performance on transparency and access to information not only of the Federal Public Administration, but also of other authorities such as the Congress, federal unions, local authorities and any entity that receives public resources. Therefore, the current ATI law will be transformed in order to embrace a wider spectrum of subjects and consolidate the culture of access to information in a larger range of public offices.

IFAI has worked as a resourceful quasi-jurisdictional

Office included specific goals and strategies relating to ATI in their institutional plans.

Although according to the law the Information Committees have the authority to dictate ATI pro-

Agencies should upload and update information as mandated in article 7 of the ATI Law. This has forced the agencies to systematize their files for proactive disclosure. As the current centralized and unified Portal of Transparency Obligations seems to meet the




CARTER CENTER

