

Alicia Grace and others v. the United Mexican States
(ICSID Case No. UNCT/18/4)

ANNEX A

Transparency Schedule

**Respondent's Requests for Protection of Information
- Claimants' objections of July 13, 2020**

No.	1. Información de Pemex de carácter confidencial
Identificación de los pasajes editados (documento, párrafo, página):	Párrafos 91, 155 y 159, así como el pie de página 122.
Motivos de la solicitud de edición:	<p>La Demandada considera como información confidencial aquella transcrita en el pie de página 122 (y contenida en el R-0089), al ser información técnica y comercialmente sensible para Pemex, conforme la §4 (i) de la RP 3.</p> <p>Asimismo, la información señalada en la tabla del párrafo 91, la información del párrafo 155 y la imagen del párrafo 159 constituye información reservada en materia financiera y comercial de Pemex, de conformidad con la §4 (i) de la RP 3.</p> <p>La divulgación de esta información podría causar un perjuicio grave a Pemex, situación por la cual se solicita que sea protegida.</p>
Objeciones a la solicitud de edición:	<p>Claimants object to Respondent's proposed redactions to paragraphs 91 and 155.</p> <p>Claimants object to the redaction of information regarding the Oro Negro Contract terms contained in paragraph 91 because it is public information. The Rig names, contract dates, and daily rates were included unredacted in paragraph 67 of Claimants' Statement of Claim. Mexico did not request to redact this</p>

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	<p>information in the Statement of Claim, and thus, under Section 5(iii) of the Tribunal’s Procedural Order No. 3 (“PO3”), this information will be made public when the Statement of Claim and Statement of Defense are published.</p> <p>Claimants object to the redaction of daily rates listed in paragraph 155 because they are publicly available and were included unredacted in paragraph 85 of Claimants’ Statement of Claim. Mexico did not request to redact this information in the Statement of Claim, and thus, under Section 5(iii) of PO3, this information will be made public when the Statement of Claim and Statement of Defense are published. Moreover, this information is publically available. <i>See.</i>: https://www.stamdata.com/documents/NO0010700982_CI_20161201.PDF.</p> <p>For clarity, Claimants do not object to the proposed redactions to paragraph 159 and footnote 122.</p>
Decisión del Tribunal:	<p>The Tribunal accepts Respondent’s proposed redaction of paragraph 159 and footnote 122 in the absence of an objection by the Claimants.</p> <p>The information contained in Respondent’s proposed redaction of paragraph 155 is publicly available and Respondent has not requested such redaction for the same information to be found in paragraph 85 of Claimants’ Statement of Claim. The Tribunal accordingly rejects Respondent’s proposed redaction of paragraph 155.</p>

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No.	2. Información relacionada con competidores de Perforadora Oro Negro
Identificación de los pasajes editados (documento, párrafo, página):	Párrafos 200, 206, 208, 210, 213, 228, 229, 230, 231, así como los pies de página 290 y 310.
Motivos de la solicitud de edición:	<p>El Escrito de Contestación de Demanda contiene información de competidores de Perforadora Oro Negro, particularmente relacionada con tarifas de renta diaria de equipos de perforación; números de equipos de perforación; reducciones de tarifas de reducción; montos reclamados en litigios, así como información sobre comunicaciones entre Pemex y proveedores.</p> <p>Esta información es sensible comercialmente para Pemex, además constituye información financiera e información de proveedores y comunicaciones confidenciales, de conformidad con la §4 (i) de la RP 3.</p> <p>Su divulgación podría causar un grave perjuicio a las actividades comerciales de Pemex.</p>
Objeciones a la solicitud de edición:	<p>Claimants object to certain portions of Respondent’s proposed redactions to paragraphs 200, 206, 208, 210, and 228-231.</p> <p>Claimants object to the redaction of paragraphs 200 that contain publicly available information regarding competitors. Specifically, the names of competitors, the number of Rigs they leased to Pemex, and the names of the Rigs leased to Pemex are publicly available and thus do not constitute confidential information pursuant to section 4(i) of PO3. <i>See, e.g.:</i></p> <ol style="list-style-type: none">1. Grupo R: https://www.grupor.com.mx/en/blog/2016/08/01/cantarell-cantarell-ii/;2. Seamex: https://gcaptain.com/seadrill-secures-pemex-jack-up-contracts/;3. Perforadora Mexico: https://expansion.mx/negocios/2015/07/08/que-hace-german-larrea-para-ser-petrolero;

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4. **Perforadora Latina:** <https://www.cplatina.com/Docs/Inversionistas/2017/FinalStatements/financial-statements-santa-maria-offshore-limited-2017.pdf>:

5. **CICSA:** <https://www.reuters.com/article/slim-pemex/slims-mexican-builder-rents-oil-rig-to-pemex-for-415-mln-idUSL2N0DP02X20130508>.

Respondent has also failed to cite a legal basis for their redactions of public information.

Claimants object to the proposed redactions to paragraph 206 that contain publicly available information regarding the names of competitor Rigs. Specifically, Claimants object to the redaction of the names *West Oberon* and *West Titania*. See above, and <https://www.bloomberg.com/news/articles/2015-09-01/pemex-cuts-rig-rates-for-oro-negro-seadrill-as-finances-pinched> Respondent. The rates are also public. See <https://ml-eu.globenewswire.com/Resource/Download/20d790c9-00a1-4b0f-bffd-b42196c27bf3>.

Respondent has also failed to cite a legal basis for their redactions of public information.

Claimants object to the portions of Respondent's proposed redactions to paragraph 208 that contains publicly available information regarding Seamex's daily rates. See <https://mb.cision.com/Public/18925/2990612/9cb72eb94040f0f5.pdf>; <https://www.worldoil.com/news/2016/8/22/pemex-cancels-contract-for-seadrill-s-west-pegasus-semisubmersible>. Respondent has also failed to cite a legal basis for their redactions of public information.

Claimants object to the parts of the proposed redactions to paragraph 210 that contain publicly available information regarding Pemex's intent to terminate its contract with Seamex for the *West Pegasus*, the potential for litigation this termination could beget, and the ultimate agreement between Seamex and Pemex, as this information is publicly available. See <https://www.nasdaq.com/articles/seadrill-sdrl-west-pegasus-contract-terminated-by-pemex-2016-08-23>; <https://www.worldoil.com/news/2016/8/22/pemex-cancels-contract-for-seadrill-s-west-pegasus-semisubmersible>; <https://www.oedigital.com/news/448564-seadrill-disputes-pemex-rig-termination>; <https://www.eleconomista.com.mx/empresas/Pemex-cancela-contrato-de-plataforma-con-Seadrill-20160824-0114.html>. Respondent has also failed to cite a legal basis for their redactions of public information.

Claimants object to parts of Respondent's proposed redactions to paragraphs 228 to 231 because the information is not confidential business information that, if disclosed, could cause significant business

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	<p>injury, to the extent they include public information regarding the names of Oro Negro’s Bondholders. Respondent has also failed to cite a legal basis for their redactions of public information.</p> <p>As to all of the above, disclosure of the information will not “cause significant business injury” as required by Section 4(i) of the protective order because the information is already public. Thus, additional disclosure in this brief is very unlikely to do additional harm or “significant business injury.”</p> <p>For clarity, Claimants do not object to the proposed redactions to paragraphs 213 and footnotes 290 and 310.</p>
<p>Decisión del Tribunal:</p>	<p>The Tribunal accepts Respondent’s proposed redaction of paragraph 213 and footnote 290 and 310 in the absence of an objection by the Claimants.</p> <p>The Tribunal finds that the information in Respondent’s proposed redactions to paragraphs 200, 206, 208, 210, and 228-231 qualifies as confidential business information in the meaning of para 4 (i) of PO3. The Tribunal recalls that PO3 protects only confidential business information, which, if disclosed, could cause significant business injury. The Tribunal acknowledges that Claimants have demonstrated that part of this information may be available online. This partial information is however only available in pieces through various news reports. In the present situation, the Tribunal accepts that the disclosure of the information could cause significant business injury in the meaning of para 4 (i) of PO3.</p> <p>The Tribunal accordingly accepts Respondent’s proposed redactions to paragraphs 200, 206, 208, 210, and 228-231.</p>

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No.	3. Información relacionada con investigaciones penales
Identificación de los pasajes editados (documento, párrafo, página):	Párrafos 181, 358 359, 362 382 y 383, así como los pies de página 303, 430, 479 y 585.
Motivos de la solicitud de edición:	<p>La información transcrita en los párrafos descritos <i>supra</i> forma parte de las actuaciones realizadas dentro de la carpeta de investigación 787/2018. Asimismo, la información señalada en el párrafo 282 y el pie de página 585 contiene datos sobre dos carpetas de investigación aún en curso.</p> <p>Con base en el artículo 218 del Código Nacional de Procedimientos Penales, “[L]os registros de la investigación, así como todos los documentos, independientemente de su contenido o naturaleza, los objetos, los registros de voz e imágenes o cosas que le estén relacionados, son estrictamente reservados”.</p> <p>El artículo 218 del CNPP establece una obligación legal de preservar información reservada, bajo el sistema jurídico mexicano. De conformidad con la § 4(iii) y (v) de la RP 3, la Demandada solicita que esta información sea protegida.</p>
Objeciones a la solicitud de edición:	<p>Claimants object to Respondent’s redaction of case numbers in paragraph 382 and footnote 585.</p> <p>While Mexican law protects as confidential the <i>contents</i> of a criminal investigation, it does not hold case file numbers themselves as confidential. Specifically, Article 218 of the National Code on Penal Procedure does not reserve as confidential the case file numbers of criminal investigations. <i>See</i> Article 218, “Código Nacional de Procedimientos” (“Los registros de la investigación, así como todos los documentos, independientemente de su contenido o naturaleza, los objetos, los registros de voz e imágenes o cosas que le estén relacionados, son estrictamente reservados.”). No other federal Mexican law supports the contention that the file numbers of a criminal investigation are confidential.</p>

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	For clarity, Claimants do not object to the proposed redactions to paragraphs 181, 358 359, 362, and 383, as well as footnotes 303, 430, and 479.
Decisión del Tribunal:	<p>The Tribunal accepts Respondent’s proposed redaction of paragraphs 181, 358 359, 362, and 383, as well as footnotes 303, 430, and 479, in the absence of an objection by Claimants.</p> <p>The Tribunal finds that the case numbers in paragraph 382 and footnote 585, which Respondent proposed to redact, do not fall within the scope of confidential information under Article 218 of the “Código Nacional de Procedimientos.” Respondent has failed to provide any other legal source to justify why the case file numbers are in the concrete situation protected against being made available to the public, as defined in para 4 (iii) of PO3. In addition, Respondent has failed to demonstrate how the disclosure of these case file numbers would impede law enforcement as defined in para 4 (v) of PO3. The Tribunal accordingly rejects Respondent’s proposed redaction of case numbers in paragraph 382 and footnote 585.</p>

No.	4. Datos personales
Identificación de los pasajes editados (documento, párrafo, página):	Párrafos 446, 447, 448, 449 y 451.
Motivos de la solicitud de edición:	La Demandada ha transcrito ciertos fragmentos de las grabaciones de Black Cube en las que se identifican los nombres de los señores Arturo Henríquez Autrey, Gustavo Escobar Carré, Luis Sergio Guaso Montoya y José Carlos Pacheco.

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	<p>Tales señores no participan en este arbitraje, y hasta donde tiene conocimiento la Demandada estos señores no otorgaron su consentimiento para que sus conversaciones fueran grabadas por los agentes encubiertos de Black Cube.</p> <p>A partir del 11 de octubre de 2019, diversos medios de comunicación nacionales e internacional tuvieron acceso a las grabaciones de Black Cube y señalaron el nombre de los entrevistados. La Demandada no quisiera que la publicación de los nombres de estas personas acapare nuevamente la atención de los medios de manera innecesaria basado en las grabaciones de Black Cube.</p> <p>Lo anterior, considerando que la fracción II del artículo 6° de la Constitución Política de México señala que “[L]a información que se refiere a la vida privada y los datos personales será protegida en los términos y con las excepciones que fijen las leyes”. De igual forma, leyes federales (<i>e.g.</i>, Ley General de Protección de Datos Personales en Posesión de Sujetos Obligados) establecen como “datos sensibles” aquellos que se refieran a la esfera más íntima de su titular, es decir, su nombre.</p> <p>De conformidad con la § 4(iii) y (v) de la RP 3, la Demandada solicita que los nombres de estos individuos sean protegidos.</p>
<p>Objeciones a la solicitud de edición:</p>	<p>Claimants object to Request No. 4 in full.</p> <p>The names of the individuals in the Black Cube recordings do not constitute confidential information as defined under PO3 or any Mexican law.</p> <p>First, as Respondent points out, these names have already been made public through various news reports regarding the recordings. Under Article 22, Section VIII of the General Law for Protection of Personal Data Held by Obligees, cited above by Respondent, names do not constitute confidential information when they are already publicly available, as are the names found in the Black Cube recordings. <i>See</i> Ley General de Protección de Datos Personales en Posesión de Sujetos Obligados, artículo 22, fracción VIII (“El responsable no estará obligado a recabar el consentimiento del titular para el tratamiento de sus datos</p>

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personales en los siguientes casos: VIII cuando los datos personales figuren en fuentes de acceso público.”); *See e.g.*:

1. **Arturo Henríquez-Autrey:** <https://www.energia.com/wp-content/uploads/2014/02/2014-101-12-Arturo-Henr%C3%ADquez-Interview-2.01.pdf>; <https://www.energia.com/an-interview-with-arturo-henriquez-autrey-pemex-international-corporate-director-of-procurement/>; <https://www.bloomberg.com/profile/person/18627663>;
2. **Gustavo Escobar-Carré:** <https://www.wsj.com/articles/pemexs-procurement-chief-resigns-1442614976>; <https://aristeguinoticias.com/1509/mexico/gustavo-escobar-llega-a-pemex-tras-renuncia-de-henriquez-autrey/>;
3. **Luis Sergio Guaso Montoya:** https://energyconferencenetwork.com/mxc/mexico_oil_gas_operations_summit_speakers/; <https://www.contralinea.com.mx/archivo-revista/2011/11/09/sancion-a-guaso-montoya-por-contrato-irregular-en-pemex/>;
4. **Guillermo García Alcocer:** https://energyconferencenetwork.com/mxc/mexico_oil_gas_operations_summit_speakers/; <https://energiahoy.com/2019/04/21/guillermo-garcia-alcocer-el-simbolo-de-la-autonomia-y-poder/>;
5. **Jose Carlos Pacheco:** <https://www.wsj.com/articles/secret-recordings-describe-extensive-bribery-at-mexicos-pemex-11570804717>; <https://www.eluniversal.com.mx/english/oro-negro-company-accusing-pemex-bribery>.

Second, there is no basis for Respondent’s claim that names constitute “sensitive information” under Mexican law as required to render the names confidential under PO3. To the contrary, the Collegiate Circuit Court in Mexico City explicitly stated that under the Mexican Constitution names do not constitute confidential information because they do not pertain to the “private life” of an individual. *See* Primer Tribunal Colegiado en Materia Administrativa, especializado en Competencia Económica, Radiodifusión y Telecomunicaciones, con residencia en la Ciudad de México y jurisdicción en toda la República, Recurso de reclamación 4/2017. Arturo García Rodríguez. 9 de noviembre de 2017 (“Por tanto, *la publicación regular de las listas de los asuntos ventilados ante los órganos jurisdiccionales, en las que se indica el nombre o denominación de las partes, y que tiene como objeto dar a conocer a los interesados que en el expediente de que se trata se emitió una resolución, no implica la divulgación de información confidencial*

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	<p>ni precisa, por ende, de la anuencia de aquéllas, porque no involucra aspectos relacionados con su vida privada.”).</p> <p>Third, Claimants further object to Respondent’s proposed redaction of Mr. Pacheco’s title of “Vice President” in paragraph 451, because regardless of his title at Pemex, job titles do not constitute confidential information under PO3 or any Mexican law and Respondent fails to cite any basis to support this proposed redaction. The Vice President of Pemex’s drilling and services division is also a public figure and there is no basis to redact the name or title of a public figure. Claimants also note that Respondents did not propose to redact all instances of Mr. Pacheco’s name in this paragraph, further contradicting Respondent’s claim that his name should be considered confidential.</p>
<p>Decisión del Tribunal:</p>	<p>The mere fact that Respondent does not wish that several names be subject to further scrutiny by the media is in itself irrelevant for the Tribunal’s decision. The Respondent must demonstrate that the information is protected because it falls within the scope of protected information pursuant to PO3.</p> <p>Claimants demonstrated that the names are publicly available. The Tribunal is mindful that the Respondent’s request relates not only to the names of the individuals, but to their association with the content of the transcripts.</p> <p>The Respondent has submitted that names can be characterized as sensitive data under Mexican law without however demonstrating how these are in the concrete situation at hand protected against being made available to the public, as defined in para 4 (iii) of PO3. In addition, Respondent has failed to demonstrate how the disclosure of these names would impede law enforcement as defined in para 4 (v) of PO3. The Tribunal accordingly rejects Respondent’s proposed redaction of paragraphs 446, 447, 448, 449 and 451.</p> <p>In light of this conclusion, the Tribunal finds no reason to accept Respondent’s request dated 27 July 2020, to redact the names with the transcripts.</p>
