

S.B. No. 3273

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INTRODUCED BY SENATORS ALAN PETER "COMPAÑERO" S. CAYETANO,  
PIA S. CAYETANO, AND JUAN MIGUEL F. ZUBIRI

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### EXPLANATORY NOTE

Article III, Section 7 of the 1987 Philippine Constitution states that, "The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to limitations as may be provided by law."

For emphasis, the Philippine Constitution devotes a full article, Article XI, to discuss the accountability of public officers. Section 1 of the same Constitution enshrines the principle that public office is a public trust and that **public officers and employees must at all times be accountable to the people**. What is most important and urgent is that a mechanism is put in place to secure such accountability and implement the constitutional right of the people to have access to information held by the government. Recognizing this, the framers of our Constitution elevated this right to no less than the level of fundamental guarantees of the land.

As further emphasis, the Constitution also declares that the state adopts and implements a policy of full public disclosure of all its transactions involving public interest.

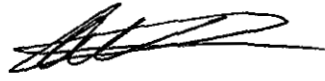
The Supreme Court, in the case of *Chavez vs. Public Estates Authority* (G.R. No. 133250, 9 July 2002), expounds on the link between the constitutional provisions on access to information and accountability:

"These twin provisions are also essential to hold public officials "at all times x x x accountable to the people," for unless citizens have the proper information, they cannot hold public officials accountable for anything. Armed with the right information, citizens can participate in public discussions leading to the formulation of government policies and their effective implementation. An informed citizenry is essential to the existence and proper functioning of any democracy."

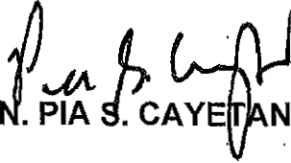
More than 20 years after the ratification of our Constitution, and with various quarters even already proposing to revise the same, Congress has yet to provide a legislation that will set in full motion this constitutional guarantee. No wonder accountability in public office is in such a sorry state. The Senate has been witness to inquiries after inquiries on brazen corruption and government irregularities, but what we have been overlooking is our constitutional duty to secure the much-needed legislation.

In the year 2000 report by the United Nation Commission on Human Rights Special Rapporteur, Mr. Abid Hussain, on the promotion and protection of the right to freedom of opinion and expression, he noted the "continuing concern about the tendency of governments and the institutions of government to withhold from the people information that is rightly theirs", and urged governments to either review or adopt new legislation on access to information.

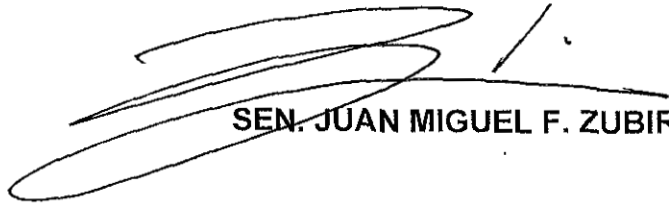
The adoption of a Freedom of Information Act is therefore long overdue. The immediate approval of this bill is earnestly sought.



SEN. ALAN PETER "COMPAÑERO" S. CAYETANO



SEN. PIA S. CAYETANO



SEN. JUAN MIGUEL F. ZUBIRI

FOURTEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
Second Regular Session )

OFFICE OF THE SECRETARY

9 MAY 25 P2:54

SENATE

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INTRODUCED BY SENATORS ALAN PETER "COMPAÑERO" S. CAYETANO,  
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**AN ACT**

**PROVIDING A MECHANISM TO IMPLEMENT THE RIGHT OF THE PEOPLE TO INFORMATION ON MATTERS OF PUBLIC CONCERN GUARANTEED UNDER SECTION SEVEN, ARTICLE THREE OF THE 1987 CONSTITUTION AND THE STATE POLICY OF FULL PUBLIC DISCLOSURE OF ALL ITS TRANSACTIONS INVOLVING PUBLIC INTEREST UNDER SECTION TWENTY EIGHT, ARTICLE TWO OF THE 1987 CONSTITUTION, AND FOR OTHER PURPOSES**

*Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:*

**SECTION 1. *Title.*** - This Act shall be known as the "People's Right to Information Act of 2009".

**SEC. 2. *Declaration of policy.*** - It is the policy of the State to recognize the right of the people to have full and unrestricted access to information in its custody or control, and to implement full public disclosure of all its transactions involving public interest, subject only to exceptions provided by law.

**SEC. 3. *Coverage.*** This Act shall cover all government agencies, which include any executive, legislative, judicial, or constitutional body of the Republic of the Philippines, local government units, including but not limited to the national government and all its departments, bureaus, offices, and instrumentalities; local governments and all their agencies; national or local commissions, boards, or bodies exercising governmental functions; regulatory agencies; chartered institutions; government-owned or controlled corporations; the constitutional commissions and all other constitutionally-mandated bodies; the Congress of the Philippines and all the committees and offices therein, including the offices of the Senators and Members of the House of Representatives; and the Supreme Court and such lower courts as may be established by law.

**SEC. 4. *Keeping of records.*** - Every government body shall maintain its records in a manner that facilitates the exercise of the people's right to information.

**SEC. 5. *Guidelines and general duty to disclose.*** - Every government body shall make their respective guidelines within three (3) months from the effectivity of this Act to ensure and make accessible and available for public knowledge, inspection, copying or reproduction all information and records thereof in its custody or under its control, including, but not limited to:

- a) Acts of public officers done in the pursuit of their official functions;
- b) Judicial, quasi-judicial, and policy decisions of public officers, boards, commissions, or tribunals;

- c) Transactions, contracts and agreements, including definite propositions of the government leading to the consummation of such transactions, contracts or agreements;
- d) Loans obtained or guaranteed by the government;
- e) Government research data used as basis for policy development; and,
- f) Writings and communications coming into the hands of public officers in connection with their official functions.
- g) Guidelines

## **SEC. 6. *Mandatory disclosure.***

- a. ***Transactions involving public interest.*** – All government agencies shall post on their bulletin boards and upload on their websites all the steps, negotiations and key government positions pertaining to definite propositions of the government, as well as the contents of the contract, agreement or treaty in the following transactions involving public interest:
  - 1. Compromise agreements entered into by a government agency with any person or entity involving any waiver of its rights or claims;
  - 2. Private sector participation agreements or contracts in infrastructure and development projects under Republic Act No. 6957, as amended by Republic Act No. 7718, authorizing the financing, construction, operation and maintenance of infrastructure projects by the private sector;
  - 3. Procurement contracts entered into by a government agency;
  - 4. Construction or concession agreements or contracts entered into by a government agency with any domestic or foreign person or entity;
  - 5. Loans, grants, development assistance, technical assistance and programs entered into by a government agency with official bilateral or multilateral agencies, as well as with private aid agencies or institutions;
  - 6. Loans from domestic and foreign financial institutions;
  - 7. Guarantees given by any government agency to government owned or - controlled corporations and to private corporations, persons or entities;
  - 8. Public funding extended to any private entity;
  - 9. Bilateral or multilateral agreements and treaties in defense, trade, economic partnership, investments, cooperation and similar binding commitments; or
  - 10. Licenses, permits or agreements given by any government agency to any person or entity for the extraction and/or utilization of natural resources.
- b. ***Information involving public health, public safety, and environment.*** – Any public official or employee who is in possession or has personal knowledge of any information about the existence of a risk of significant harm to the health and safety of the public, or to the environment, shall immediately report such information to the head of his or her agency. The head of agency shall then make the appropriate arrangement for the timely disclosure of the information to the public.

**SEC. 7. *Exceptions.*** – A request for access to information may be denied, or mandatory disclosure may be omitted, when:

- a. The revelation of the information will create a clear and present danger of war, invasion or any external threat to the State as determined by the Office of the President and/or the Secretary of the Department of National Defense: Provided, That the courts may, upon complaint by any citizen, inquire into the sufficiency of the factual basis for such determination;
- b. The information pertains to the positions of the Republic of the Philippines in an ongoing negotiation for a bilateral or multilateral agreement or treaty, when its revelation would unduly weaken the position of the Philippines in such negotiation, or pertains to another sovereign state, when its revelation would seriously jeopardize diplomatic relations with said state;
- c. The information pertains to internal and external defense and law enforcement, when the revelation thereof would render a legitimate military operation ineffective, unduly compromise the prevention, detection or suppression of a criminal activity, or endanger the life or physical safety of confidential or protected sources or witnesses, law enforcement and military personnel or their immediate families. Information relating to the details of the administration, budget and expenditure, and management of the defense and law enforcement agencies shall always be accessible to the public;
- d. The information pertains to the personal information of a natural person and its disclosure would constitute a clearly unwarranted invasion of his or her personal privacy, unless it forms part of a public record, or the person was an official of a government agency and the information relates to his or her public function;
- e. The information pertains to trade, industrial, financial or commercial secrets of a natural or juridical person, obtained in confidence by a government agency, whenever the revelation thereof would seriously prejudice the interests of such natural or juridical person in trade, industrial, financial or commercial competition, unless such natural or juridical person has consented to the disclosure of the information;
- f. The information is privileged from production in legal proceedings by law or by the Rules of Court, unless the person entitled to the privilege has waived it;
- g. The information is exempted by law, in addition to those provided in this section;
- h. The information consists of drafts of decisions of any judicial body in the exercise of its judicial functions, whenever the revelation thereof would reasonably tend to impair the impartiality of verdicts, or otherwise obstruct the administration of justice.
- i. The information is obtained by any committee of either House of Congress in executive session.

**SEC. 8. *Qualifications.*** – Even if the information falls under the exceptions set forth in the preceding section, access to information shall not be denied if:

- a. The information may be reasonably severed from the body of the information which would be subject to the exceptions; or
- b. The public interest in the disclosure outweighs the harm to the interest sought to be protected by the exceptions.

- c. The requesting party is either House of Congress, or any of its Committees, unless the disclosure will constitute a violation of the Constitution.

**SEC. 9. Waiver of exceptions.** The President, the Supreme Court, the Senate or the House of Representatives may, in an appropriate Executive Order or Resolution, waive any of the exceptions listed in Section 7 of this Act, with respect to any information originating from their respective branches and remaining in their custody.

**SEC. 10. Procedure for access.** - Any person who wishes to obtain information shall notify the government agency concerned in writing, reasonably describing the information required and the reason for the request. The request may be addressed to the person officially in custody of the information or record thereof. If such person be not known, the request may be addressed to the head of the office in custody of such information or record. All government agencies shall prepare and provide the necessary request form and no other information shall be required except those stated in the request form. An individual who is unable, because of illiteracy or disability, to make a written request for information may make an oral request, and the official who receives such oral request shall reduce it to writing.

The stated reason, or the failure to state the reason for the request of the information, shall not be used as a ground to deny the request or to refuse the acceptance of the request. If the request is submitted personally, the requester shall show a current identification card issued by any government agency, or government or private employer or school. If the request is submitted by mail or through electronic means, the requester may submit a photostatic or electronically scanned copy of the identification, or other convenient means as determined by the agency.

**SEC. 11. No denial of request by reason of its generality.** - No request for information shall be denied by reason of its generality. Where the request fails to reasonably describe the information required, the official receiving the request shall preliminarily disclose the relevant classes of information in its custody, and provide adequate assistance so that a reasonable description of the information required may be made.

**SEC. 12. Period to disclose information.** - Each government body, upon any request for information, shall immediately communicate such information or afford access to its record which in no case shall be more than seven (7) working days after its receipt. Such government body may charge a reasonable fee to recover costs of search and reproduction.

**SEC. 13. Means of disclosure.** - Where a request indicates a preference as to the form by which the information is to be communicated, such as but not limited to a true copy, an electronic file, or an opportunity to examine and copy a record thereof, the government body shall communicate the information in the form requested.

**SEC. 14. Denial of request for access to information.** - Any denial of request for access to information or record thereof shall be fully explained in writing, stating the name and office of the person making the denial, and the grounds upon which such denial is based. Failure to afford access within the prescribed period, without any written explanation or extension, shall be deemed a denial of the request for access to information and entitles the party concerned to assert any of the judicial or administrative remedies provided in this Act.

**SEC. 15. Administrative appeal.** - Every denial of any request for access to information may be appealed to the person or office next higher in authority to the person or office making the prior denial. The person or office to whom or which the denial is appealed shall decide within three (3) days after its receipt, stating the name and office of the person rendering the decision and the grounds upon which such decision is based. Failure to decide the appeal within the said person shall be deemed

a denial of the request for access to information. If the denial appealed from is reversed, the official information shall be made available within the periods prescribed in Sec. 12 of this Act. The rules on administrative appeal for contested cases in the Administrative Code of 1987 or its subsequent revisions shall apply to the extent not modified by this Act.

**SEC. 16. Civil Action to Disclose Information.-** Without prejudice to filing of the appropriate criminal complaint under Section 17 of this Act, whenever a request for information is denied originally or on administrative appeal, the requesting party may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to disclose the information and to pay the damages sustained by the requesting party by reason of the denial.

**SEC. 17. Criminal liability.** – The penalty of imprisonment of not less than one month but not more than six (6) months, with the accessory penalty of suspension from office for the same duration, shall be imposed upon:

(a) Any public officer or employee responsible for officially acting on the request, who shall:

- (1) Fail to act on the request within the periods required by this Act;
- (2) Knowingly deny the existence of existing information;
- (3) Destroy information being requested for the purpose of frustrating the requesting party's access thereto;
- (4) Claim an exception under Section 8 of this Act, when the claim is manifestly devoid of factual basis; or
- (5) Refuse to comply with the decision of his immediate supervisor, the Ombudsman or the Court ordering the release of information that is not restrained or enjoined by a Court;

(b) The head of office of the government agency directly and principally responsible for the negotiation and perfection of any of the transactions enumerated in Section 6 (a) of this Act, who shall fail to direct the mandatory posting or uploading of such transaction;

(c) Any public officer who formulates policies, rules and regulations manifestly contrary to the provisions of this Act, and which policies, rules and regulations are the direct cause of the denial of a request for information; or

(d) Any public or private individual who knowingly induced or caused the commission of the foregoing acts under this section.

**SEC. 18. Protection to whistleblowers.** No person may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true.

For purposes of this section, wrongdoing includes the commission of a criminal offense, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body.

**SEC. 19. Summary Nature of Proceedings.** - In cases filed for the purpose of exercising the right to information under the Constitution and this Act, the proceedings

shall be summary in nature and shall observe the procedure in the succeeding sections.

**SEC. 20. *Submission of Affidavits.*** -- The parties shall submit affidavits in lieu of oral testimonies. Thus, presentation of testimonial evidence shall be dispensed with. The parties shall submit affidavits of witnesses and other evidences on the factual issues defined therein, together with a brief statement of their positions and arguments relied upon by them.

**SEC. 21. *Filing of Memoranda.*** -- Upon submission of affidavits and counter-affidavits, the parties shall be served copies thereof. The parties shall then be given reasonable time within which to file their memoranda.

**SEC. 22. *Conduct of Hearing.*** -- On the basis of the pleadings or affidavits and other pieces of evidence presented, the judge may render judgment thereon. Otherwise, where the judge deems it necessary to conduct a hearing to clarify factual matters before rendering judgment, he shall set the case for hearing for that purpose. In the said hearing, witnesses whose affidavits were previously submitted may be asked clarificatory questions by both parties and by the Court.

**SEC. 23. *Cross Examination.*** -- In the interest of fair play and justice, upon the discretion of the court, it may allow cross-examination of witnesses whose affidavits have been submitted upon appropriate motion filed by the adverse party clearly showing the necessity for such cross-examination. The Court may, at its direction, limit the time and subject of cross-examination,

**SEC. 24. *Reports.*** On or before March 1 of each calendar year, every government agency shall submit to the Speaker of the House of Representatives and President of the Senate a report on its implementation of this Act covering the preceding year. The report shall include:

- a. Any changes made in the guidelines on access to information;
- b. A summary of the information requests it handled, and their disposition;
- c. Its program and progress for the promotion of transparency and adherence to this Act.

**SEC. 25. *Separability Clause.*** - If, for any reason, any part or provision of this Act is declared invalid or unconstitutional, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

**SEC. 26. *Repealing Clause.*** - All laws, decrees, executive orders, rules and regulations, issuances or any parts thereof inconsistent with the provisions of this Act are deemed repealed or amended accordingly.

**SEC. 27. *Effectivity.*** - This Act shall take effect after fifteen (15) days following completion of its publication in the Official Gazette or in national a newspaper of general circulation.

Approved,