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Journal

SESSION NO. 45
Monday, January 27, 2014

SIXTEENTH CONGRESS
FIRST REGULAR SESSION

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CALL TO ORDER

At 3:13 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

Sen. Vicente C. Sotto III led the prayer, to wit:

Grant us, O Lord, the wisdom and discernment to walk the road towards Your will, not ours.

Thus, with all humility, Lord, we beg You for Your divine assistance to shower us with Your infinite wisdom to free our hearts of hatred, our souls of doubts, and our minds of misgivings, and lead us to the path of righteousness as we perform our task, always mindful of our weaknesses and flaws.

Enlighten us, O Lord, and give us strength to realize the true meaning of life.

Touch our hearts and minds that we may know the true concept of Your gift.

Help us that we may succeed to pass fair and just laws that will serve the country better.

For this we pray, dear God, through Jesus Christ, our Lord.

Amen.

NATIONAL ANTHEM

The Senate Choir led the singing of the national anthem and thereafter rendered the song, entitled "*Hilumin Mo, Bayan Ko.*"

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Atty. Oscar G. Yabes, called the roll, to which the following senators responded:

Angara, S.	Honasan, G. B.
Aquino, P. B. IV B.	Lapid, M. L. M.
Binay, M. L. N. S.	Osmeña III, S. R.
Cayetano, A. P. C. S.	Poe, G.
Defensor Santiago, M.	Recto, R. G.
Drilon, F. M.	Sotto III, V. C.
Enrile, J. P.	Trillanes IV, A. F.
Escudero, F. J. G.	Villar, C. A.
Estrada, J.	

With 17 senators present, the Chair declared the presence of a quorum.

Senator Cayetano (P), who was on official mission, arrived after the roll call.

Senators Guingona, Legarda and Pimentel were on official mission abroad.

Senator Marcos was likewise on official mission.

Senators Ejercito and Revilla were absent.

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APPROVAL OF THE JOURNAL

Upon motion of Senator Cayetano (A), there being no objection, the Body dispensed with the reading of the Journal of Session No. 44 (January 22, 2014) and considered it approved.

**ACKNOWLEDGMENT
OF THE PRESENCE OF GUESTS**

At this juncture, Senator Cayetano (A) acknowledged the presence in the gallery of students of the Don Bosco Academy from Mabalacat, Pampanga, headed by class president Clark Shuba and class adviser Yasmin Sia.

Senate President Drilon welcomed the guests to the Senate.

REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

BILLS ON FIRST READING

Senate Bill No. 2075, entitled

AN ACT INTEGRATING AN AGRICULTURAL SCIENCE SUBJECT IN THE PHILIPPINE ELEMENTARY AND HIGH SCHOOL EDUCATIONAL SYSTEM

Introduced by Senator Defensor Santiago

To the Committees on Education, Arts and Culture; and Agriculture and Food

Senate Bill No. 2076, entitled

AN ACT IMPOSING A COMPULSORY EVALUATION OF SKILLS CERTIFICATION PROGRAMS

Introduced by Senator Defensor Santiago

To the Committee on Labor, Employment and Human Resources Development

Senate Bill No. 2077, entitled

AN ACT PROVIDING SOCIAL

**SERVICES FOR THE DEPENDENTS
OF FARMERS**

Introduced by Senator Defensor Santiago

To the Committees on Agriculture and Food; Social Justice, Welfare and Rural Development; Ways and Means; and Finance

Senate Bill No. 2078, entitled

AN ACT DESIGNATING THE DEPARTMENT OF ENERGY AS THE LEAD AGENCY FOR COORDINATING NATIONAL GOVERNMENT AND LOCAL ASSISTANCE PROVIDED TO PROMOTE ENERGY RETROFITTING OF SCHOOLS

Introduced by Senator Defensor Santiago

To the Committees on Energy; and Finance

Senate Bill No. 2079, entitled

AN ACT INSTITUTING A FERTILIZER SUBSIDY PROGRAM FOR RICE FARMERS

Introduced by Senator Defensor Santiago

To the Committee on Agriculture and Food

Senate Bill No. 2080, entitled

AN ACT IMPOSING DEATH PENALTY IN THE PHILIPPINES

Introduced by Senator Sotto III

To the Committees on Constitutional Amendments and Revision of Codes; and Justice and Human Rights

Senate Bill No. 2081, entitled

AN ACT BANNING THE USE OF FIRECRACKERS EXCEPT IN DESIGNATED AREAS DONE BY PROFESSIONALS

Introduced by Senator Sotto III

To the Committees on Public Order and Dangerous Drugs; and Local Government

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Senate Bill No. 2082, entitled

AN ACT DECLARING RICE SMUGGLING AS ACT OF ECONOMIC SABOTAGE, PRESCRIBING PENALTIES THEREFOR AND FOR OTHER PURPOSES

Introduced by Senator Joseph Victor Ejercito

To the Committees on Ways and Means; and Agriculture and Food

RESOLUTIONS

Proposed Senate Resolution No. 458, entitled

RESOLUTION URGING THE PROPER SENATE COMMITTEES TO EVALUATE THE CURRENT NBI CLEARANCE APPLICATION PROCESS WITH THE INTENTION OF RECOMMENDING MEASURES FOR A FASTER AND ACCESSIBLE NBI CLEARANCE APPLICATION SYSTEM NATIONWIDE

Introduced by Senator Maria Lourdes Nancy S. Binay

To the Committee on Justice and Human Rights

Proposed Senate Resolution No. 459, entitled

RESOLUTION CALLING FOR AN INVESTIGATION, IN AID OF LEGISLATION, ON THE DISEASE OUTBREAK IN EVACUATION CENTERS IN ZAMBOANGA CITY

Introduced by Senator Maria Lourdes Nancy S. Binay

To the Committee on Health and Demography

Proposed Senate Resolution No. 460, entitled

RESOLUTION HONORING AND COMMENDING 103-YEAR-OLD WORLD WAR II VETERAN BONIFACIO AGACER

Introduced by Senator Maria Lourdes Nancy S. Binay

To the Committee on Rules

COMMITTEE REPORT NO. 2 ON SENATE BILL NO. 1733

(Continuation)

Upon motion of Senator Cayetano (A), there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1733 (Committee Report No. 2), entitled

AN ACT IMPLEMENTING THE PEOPLE'S RIGHT TO INFORMATION AND THE CONSTITUTIONAL POLICIES OF FULL PUBLIC DISCLOSURE AND HONESTY IN THE PUBLIC SERVICE AND FOR OTHER PURPOSES.

SUSPENSION OF SESSION

Upon motion of Senator Cayetano (A), the session was suspended.

It was 3:24 p.m.

RESUMPTION OF SESSION

At 3:25 p.m., the session was resumed.

Upon resumption, the Chair recognized Senator Poe, sponsor of the measure, and Senator Defensor Santiago for her interpellation.

INTERPELLATION OF SENATOR DEFENSOR SANTIAGO

Preliminarily, Senator Defensor Santiago said that while she has not yet recovered from her chronic fatigue syndrome, she attended the session to show her support for the bill. However, she noted that due to the many tricky constitutional issues involved, it was important to ensure that the bill is inviolate when it is passed in the Senate so that it could prevail over those who might file a petition in the Supreme Court to question its constitutionality.

To elaborate, she noted that the bill contains two seemingly conflicting provisions of the Bill of Rights – 1) Article III, Section 3 which provides that “the

privacy of communication and correspondence shall be inviolable except... as otherwise provided by law"; and Section 7 which states that "the right of the people to information on matters of public concern shall be recognized." She said that the first constitutional provision protects the inviolable privacy of communication while the other puts emphasis on the right of the public to know.

As regards Section 3 (*Definition of Terms*), Senator Defensor Santiago asked whether the categories of information listed under the *Definition of Terms* adequately and accurately cover the categories of information found in Section 7, Article III, Bill of Rights of the Constitution. She noted that the constitutional right to information covers three categories of information which are "matters of public concern," namely, (1) official records; (2) documents and papers pertaining to official acts, transactions and decisions; and (3) government research data used in formulating policies which was reiterated in the landmark case of *Chavez vs. Public Estates Authority*.

Senator Defensor Santiago explained that an understanding of the categories as well as the different types of information is essential in distinguishing between the mandatory duty to disclose and permit access to information. She pointed out that while it is government's duty to make matters clear to the public, on the other hand, it also has the duty to permit access to information. She cited the explanation of the Supreme Court in the recent 2012 case of *Ideals v. PSALM* that unlike the disclosure of information which is mandatory as provided in the Constitution, the other aspect of the people's right to know requires "a demand or request for one to gain copies of this document." She pointed out that the duty to disclose covers only transactions involving public interest while the duty to allow access has a broader area of information which embraces not only transactions involving public interest but any matter contained in official communications and public documents of the government agency.

Thereafter, asked whether there was need for the provision on *Definition of Terms* to classify the categories of information which could be considered of "public concern," Senator Poe believed that anything that will provide clarification as to the kind of information that should be allowed under the bill ought to be considered in the period of amendments. Senator Defensor Santiago expressed

her intention to present her amendments on this matter at the proper time.

Senator Defensor Santiago asked whether the Committee has studied all the other laws and executive issuances and determined whether there was a distinction between official records and those considered to be public records. Senator Poe replied that she has looked over particular laws that have been discussed, such as those concerning presidential privilege or information that need to be divulged, as well as E.O. No. 464 which is a compilation of the many court cases that have brought about the distinction between communication that may be deemed as privileged and the right of the President to withhold from the courts, Congress or from the public.

Senator Defensor Santiago sought clarification as to whether the definition of "information" was consistent with the Data Privacy Act and other laws. She noted that there appeared to be some confusion between what is information and the manner by which the information was stored as stated in Section 5 (*Access to Information*). She pointed out that the section refers to a record under the control of a government agency regardless of physical form or format, but there was no distinction between information and records kept in a governmental capacity which means occasions wherein the government exercises the usual duties of governance, peace and order, regulation of the economy, or those kept in a proprietary capacity, which refers to when the government engages in what otherwise will be a valid function of the private sector like entrepreneurship or private ownership of a certain public utility. Therefore, she believed that in order to be consistent with the Data Privacy Act, the measure ought to draw the distinction between what is information and the manner by which information is stored, by differentiating when the government acts in a governmental capacity and when it acts in a proprietary capacity. She said that at the proper time, she would translate her question into an amendment.

Senator Poe welcomed the advice and suggestions that would ensure that the proposed bill does not cause any confusion.

Asked by Senator Defensor Santiago whether the terms used to identify the covered government entities are accurate and consistent with other laws, specifically the Administrative Code, and whether

the Committee has compared the language of the Administrative Code with the language of the proposed bill, Senator Poe replied that the Committee took into consideration the Administrative Code as regards the language of the bill particularly on "Coverage" in Section 4.

Senator Defensor Santiago noted that in the second paragraph of Section 4 of the bill, it would appear that private entities that act as public service contractors are covered by the bill, but she pointed out that the constitutional principles on the right to information refer to information under the control and custody of government. She explained that the inclusion of private entities under the provision on "Coverage" in the bill may run counter to the principle of the Freedom of Information Act which applies only to documents and other information within the control of the state. She asked whether the service provided by private entities that act as public contractors should be considered as part of the collection and retention by the government of relevant information so that the public may exercise the right of information against it. She asked the Committee to take note that in mining transactions, for instance, the Supreme Court, in a prior case, held that under certain provisions of the Philippine Mining Act, RA 7942, in particular Section 94, paragraph (f), the DENR is required to maintain the confidentiality of certain information supplied by contractors who are parties to mineral agreements or financial and technical assistance agreements. With that in mind, she underscored the need to explain the reasonable ground for the inclusion in the bill of documents and information from private service contractors since there are already existing laws that protect the confidentiality of the very same transactions covered by the proposed bill.

Senator Poe said that during the period of amendments, the Committee will incorporate the suggestions to avoid confusion. She clarified that "information," as defined in the proposed bill, refers to information produced and received by the government.

On whether private service contractors should be compelled to provide information in their possession which are not in the care of the government, Senator Poe said that the Committee would propose that if a particular private corporation enters into an agreement with the government, that private corporation should provide certain minimum information to be able to

qualify for a contract. For instance, in the case of suppliers, she said that the cost of certain materials should be provided because it is already a standard requirement for them before they could enter into an agreement with the government.

On Section 7 (*Exceptions to Freedom of Information*), Senator Defensor Santiago noted that one of the exceptions under the proposed FOI bill is presidential communications. Relative thereto, she called attention to the fact that the Chief Executive enjoys the constitutionally guaranteed presidential communications privilege which permits him to withhold information from Congress, the courts and, ultimately, the public. But she noted that through Section 7(b), when it states that "once policy has been formulated and decisions made, minutes and research data may be made available for disclosure," it would appear that the bill is limiting the presidential communication privilege which might be in violation of the principle of separation of powers. She explained that it has been a long standing principle of constitutional law that under the presidential communications privilege, the President cannot be compelled to reveal facts or deliberative material even after a decision has been made.

Senator Defensor Santiago stated that, traditionally, the President enjoys "presidential communications privilege" which covers communications of the President and those advisors in operational proximity to him on matters that form the core of presidential authority, and protects from disclosure both facts and deliberative materials, for example, advice, opinions, and recommendations, and continues even after a decision has been made; on the other hand, other executive officials enjoy deliberative process privilege which protects from disclosure only deliberative materials, not facts, and that they only ceased to be protected after a decision has been made. She reiterated that the presidential communications privilege is a form of executive privilege that is rooted in the principle of separation of powers in a tripartite democracy.

Relative thereto, Senator Defensor Santiago cited *United States v. Nixon* which was decided before 1995, to wit:

Whatever the nature of the privilege of confidentiality of Presidential communications in the exercise of Art. II powers, the privilege can

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be said to derive from the supremacy of each branch within its own assigned area of constitutional duties. Certain powers and privileges flow from the nature of enumerated powers; the protection of the confidentiality of presidential communications has similar constitutional underpinnings.

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A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for presidential communications. The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution.

Senator Defensor Santiago stressed that since the presidential communications privilege is rooted in the separation of powers, arguably, Congress cannot remove or limit it without violating the Constitution. She then asked whether Section 7(b) of the bill intends to remove the deliberative process privilege. Senator Poe replied that the proposed FOI bill does not intend to remove such power; in fact, the bill seeks to enumerate the actual exceptions by which the president could invoke such privilege. However, she said that to allay the concerns of Senator Defensor Santiago, and to avoid any misinterpretation, she would accept proposals during the period of amendments.

Senator Defensor Santiago believed that it would be best to clarify the matter during the period of amendments because the rationale for the deliberative process privilege is to prevent premature disclosure of decisions and to preserve the quality of decision-making. She added that executive officials might be less candid with their opinions if these would become public.

Senator Defensor Santiago further explained that the deliberative process privilege has its origins in the common law of England and is normally under the power of Congress. However, she said that the Philippine Supreme Court has recognized the existence of the privilege or something substantially similar to it that is rooted in the Philippine Constitution, when it held in the 2007 case of *Chavez v. National Housing Authority*, that —

Art. II, Sec. 28 compels the State and its agencies to fully disclose “all of its transactions

involving public interest. Thus, the government agencies, without need of demand from anyone, must bring into public view all the steps and negotiations leading to the consummation of the transaction and the contents of the perfected contract. Such information must pertain to “definite propositions of the government,” meaning official recommendations or final positions reached on the different matters subject of negotiation. The government agency, however, need not disclose “intra-agency or inter-agency recommendations or communications during the stage when common assertions are still in the process of being formulated or are in the exploratory stage.

Senator Defensor Santiago believed that it would be wiser to maintain the privilege in order to prevent premature disclosure of decisions and to promote the quality of decision-making.

On Section 7(d), Senator Defensor Santiago noted that the provision exempts drafts of orders, resolutions, decisions and audit reports from the coverage of the law. She asked whether there is a comprehensive listing of the pertinent laws, issuances or regulations to be affected by Section 7(d). For instance, with regard to the draft of orders, resolutions, decisions and deliberations of the Supreme Court, in its Resolution dated 14 February 2012, it enumerated privileged documents and communications as follows:

- *Court deliberations* or the deliberations of the Members in court sessions on cases and matters pending before the Court;
- *Court records* which are “predecisional” and “deliberative” in nature, in particular, documents and other communications which are part of or related to the deliberative process, i.e., notes, drafts, research papers, internal memoranda, records of internal deliberations, and similar papers;
- *Records of cases that are still pending for decision* are privileged materials that cannot be disclosed, except only for pleadings, orders and resolutions that have been made available by the court to the general public.

As regards the query whether the bill contains a comprehensive list of the pertinent laws, issuances or regulations to be affected by Section 7(d) or at least be content with a reference to a comprehensive list, Senator Poe replied that Section 7(d) is a substantial reproduction of a provision in the Malacañang version

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and in almost all of the bills submitted to the Committee. She explained that drafts are not included in the exceptions because drafts are not considered as filed documents yet; these are mere documents which have no value other than working frameworks. However, she said that if there are suggestions as to how to treat such drafts, the Committee would gladly accept the suggestions and recommendations.

Noting that Section 7(e) exempts information obtained by Congress in an executive session, Senator Defensor Santiago asked whether the provision refers to all kinds of information without qualification and whether Congress, particularly the Senate, has a legislative privilege, in the same way that there is an executive privilege.

In reply, Senator Poe said that there are certain discussions done during executive sessions that may not necessarily be in the exceptions as stated but by the nature of the powers of Congress to withhold what it classifies as confidential information. However, she opined that it may be challenged eventually if the person seeking information feels that it does not fall under the exceptions — that it was not about national security, or the interest of the public, or if it is meant to cover up a wrongdoing or a wrongful act.

Senator Defensor Santiago asked whether the instances of privileged information found in other laws or jurisprudence would still be valid in the event the bill is passed into law. For instance, she noted that there are other exceptions recognized in other laws or by the Supreme Court in decided cases which have not been included in the proposed bill, such as the following:

- Information shared or otherwise provided by a foreign government which have to be exempted pursuant to international law and practice;
- Section 270 of the National Internal Revenue Code punishes any officer or employee of the Bureau of Internal Revenue who divulges to any person, except as allowed by law, information regarding the business, income, or estate of any taxpayer, the secrets, operation, style of work, or apparatus of any manufacturer or producer, or confidential information regarding the business of any taxpayer, knowledge which was acquired by him in the discharge of his official duties;
- Section 14 of R.A. No. 8800 (Safeguard Measures Act) prohibits the release to the

public of confidential information submitted in evidence to the Tariff Commission;

- R. A. No. 8504, Philippine AIDS Prevention and Control Act, Section 3(n) classifies as confidential the medical records of HIV patients;
- R. A. No. 8043, Inter-Country Adoption Act, Section 6 (j) classifies as confidential the records of the adopted child, adopting parents, and natural parents; and
- R. A. No. 7942, Philippine Mining Act, Section 94(f) requires the DENR to maintain the confidentiality of confidential information supplied by contractors who are parties to mineral agreements or financial and technical assistance agreements.

Asked on the possibility of including in the measure exceptions which have been recognized in other laws or have been decided by the Supreme Court in certain cases, Senator Poe pointed out that Section 7(1) of the bill, in fact, provides that if the information requested is exempted from disclosure by law or by the Constitution, there is no reason for such information to be made available.

Adverting to Section 8 (*Mandatory Disclosure of Information*), Senator Defensor Santiago asked on the necessity of requiring the mandatory disclosure of the SALN since there are already adequate provisions under the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713), in particular, provisions 1 to 4 and letter (d) on prohibited acts. Senator Poe clarified that the FOI bill seeks to institutionalize the procedures by providing a framework that would make access to information more efficient. She believed that the best way to keep track of the lifestyle of government officials is through the SALN, thus, necessitating the inclusion in the bill of a provision on its automatic uploading. She said that currently, when one requests for the SALN of government officials, only the amounts are released and not the particulars.

Senator Poe added that the FOI measure mandates the actual disclosure of the SALN of the president, vice president, members of the Cabinet, Congress, Supreme Court, Constitutional Commissions and the officials of the Armed Forces with general or flag rank. She then asked on the possibility of including in the mandate for public scrutiny the

SALNs of local government officials which is now required only by the Civil Service Commission (CSC). Senator Defensor Santiago welcomed the proposal, saying that the umbrella of public interest and transparency in good governance is wide enough to cover all public officials. However, she suggested to draw a distinction between certain public officials who are obliged to file their SALNs as imposed by law and those who are not. She cautioned that the move might be drawing a false distinction which might not be sustained by the equal protection clause of the Constitution.

At this point, Senator Defensor Santiago further suggested to include in the bill a provision on the mandatory disclosure of the total monthly income of all public officials from the highest to the lowest rank, a function that could be imposed on the CSC. In so doing, she said that one can already compare the total remuneration or income — not just the basic standard salary but the allowances and other forms of income given by an agency to a certain head of office — to that of a lowest janitor in a government office. She questioned why the basic salary and other perks received by a senator are kept secret when they should not be distinguished from the rest of the citizenry.

Senator Defensor Santiago also proposed that the CSC website also show not only the basic salary but all the other allowances and possible sources of personal income of all government officials, and also the publication of the net income of government officials, such as the president, vice president, senators, cabinet members, justices, judges, the military and even the law enforcement agencies with confidential or intelligence funds so that the people would not go scouring around for information. Senator Poe welcomed the suggestions, but she cautioned that reactions can be twofold, as she noted that some public officials also have spouses who have their own sources of income. Senator Defensor Santiago agreed, stating that the distinction is indeed absolutely necessary in view of the current deleterious state of public opinion concerning the income of public officials especially those elected on a national level like senators.

Senator Poe stated that just recently, there was a television show which discussed the perks received by some heads of government-owned corporations which were much more than what the president is receiving, and that aroused public support for the

need to pay based on capacity and responsibility. Senator Defensor Santiago reiterated the need for transparency to get rid of innuendos as to how much a senator, for instance, receives. She admitted that when she became senator, she was astonished at how much she was receiving, but that when she tried to bring the matter up, she was treated with silence by her colleagues, save for Sen. Juan Flavio Velasco who supported her proposal to disclose to the public all the money that they were receiving.

On another matter, Senator Defensor Santiago asked whether subparagraphs (7) to (10) of paragraph (b) in Section 8 took into consideration the requirements on procurement under Republic Act No. 9184 or the Government Procurement Reform Act. Senator Poe replied that the proposals were reconciled with the regulations as posted in the government website.

Asked whether exceptions would apply under the present bill, for instance, when the Supreme Court noted that Section 94 (f) of R. A. No. 7942 (Philippine Mining Act) requires the Department of Environment and Natural Resources to maintain the confidentiality of confidential information supplied by contractors who are parties to mineral agreements or financial and technical assistance agreements, Senator Poe replied that anything that has been ruled by the courts or by the Constitution as an exception would not be covered by the FOI bill.

Senator Defensor Santiago asked on the effect of the FOI bill on the Data Privacy Act and whether the provisions of the latter were considered in the drafting of the measure. She stressed that “access to information,” as provided for by the FOI bill, must not be construed as a waiver of the individual’s constitutionally guaranteed right to privacy. She stated that with the FOI Act seeking to use the Internet and the information and communications technology (ICT) as means of promoting freedom of information, the provisions of the Data Privacy Act of 2012 must continue to be operative. She stated that making explicit reference to the Data Privacy Act of 2012 strengthens the provisions of the FOI Act, particularly Sections 7, 12, 17, 18, and 19; for instance, the provisions of Section 7 (f) should also be reconciled with pertinent provisions relating to civil records and the manner by which copies or access to content has been permitted under current legislation and rules. Senator Poe welcomed the suggestion to make explicit reference to the Data Privacy Act in the measure.

Asked whether Section 12 (*Procedure of Access*) and Section 13 (*Access and Processing Fees*) are intended to apply across agencies, and whether the *Procedure of Access* intends to apply regardless of the nature of the demand or request, and regardless of the nature of information sought to be examined or copied, considering that (a) there may be access procedures already in place with regard to certain forms of information; and (b) there are decided cases that offer some guidance on the manner by which the right is to be protected or recognized by government. She said that with regard to requests pertaining to official information relevant to ongoing negotiations, the Supreme Court in the case of *Chavez v. Public Estates Authority* that was decided in 2002, said that “[t]he right only affords access to records, documents and papers, which means the opportunity to inspect and copy them. One who exercises the right must copy the records, documents and papers at his expense. The exercise of the right is also subject to reasonable regulations to protect the integrity of the public records and to minimize disruption to government operations, like rules specifying when and how to conduct the inspection and copying.”

With regard to the public bidding process involving disposition of property, for instance, prior to contract consummation, Senator Defensor Santiago stated that the agency must, without need of demand, disclose to the public the size, location, technical description and nature of the property being disposed, as well as the terms and conditions of the disposition, the parties qualified to bid, the minimum price and other similar information which must be made available at the start of the disposition process. However, she pointed out that information on the ongoing evaluation or review of bids or proposals being undertaken by the bidding or review committee is not immediately accessible under the right to information, because if the evaluation or review is still ongoing, there are no “official acts, transactions, or decisions” on the bids or proposals. She said that it is only when the committee makes its official recommendation that there arises a “definite proposition” on the part of the government, and from that moment, the public’s right to information is attached, and any citizen can access all the non-proprietary information leading to such definite proposition, as in the case of *Ideals v. PSALM* that was decided in 2012.

In consideration thereof, Senator Defensor Santiago suggested that a provision be added to

recognize what has already been laid down by law for a certain agency and what has already been laid by the Supreme Court decisions. Senator Poe agreed, stating that one of the overarching principles in the FOI bill is the promotion of best practices to encourage sound, civil, and efficient FOI communication as provided for in Section 19. She also expressed her willingness to accept the amendment to ensure that any form of efficient system will not be disregarded.

On Section 17(a) (*Keeping of Records*) which considers the presumption in favor of access, Senator Defensor Santiago asked if the information and records created and retained in the section are subject to disclosure or access, and whether the authority in favor of the requesting party to compel not only disclosure or provision of access, but also the creation of information or records, for instance, written transcript of minutes where only audio recording would be available. She pointed out that in the case of *Chavez v. Public Estates Authority*, 384 SCRA 152, the Supreme Court said that “the petitioner may access the following information on the renegotiation of the JVA: evaluation reports, recommendations, legal and expert opinions, minutes of meetings, terms of reference and other documents attached to such reports or minutes, all relating to the JVA. However, the right to information does not compel PEA to prepare lists, abstracts, summaries and the like relating to the renegotiation of the JVA.” Senator Poe replied that although all citizens are afforded the right to information, the Constitution does not accord them the right to compel custodians of official records to prepare abstracts, summaries and similar outputs in their desire to acquire information on matters of public concern as ruled in *Valmonte v. Belmonte* (G.R. No. 74930, February 13, 1989). She stated that pieces of information that are matters of public concern and that are readily available are the subjects of the FOI bill.

Regarding paragraph (e) of the same section, Senator Defensor Santiago asked if the charter of the UP Law Center would be amended accordingly, and if the reference to the law center is not specific to the Office of the National Administrative Register (ONAR). She further inquired if a study has been made on the capacity of the UP Law Center to further undertake the responsibilities under paragraph (e). She said that she wanted to know if new positions in the UP Law Center would be created or salaries of existing personnel would be increased. Senator Poe said that the issue merits concern since

the UP Law Center maintains the *Official Gazette*, but she pointed out that the *Official Gazette* will have an online version. She explained that the National Computer Center under the DOST is tasked to help government agencies and even the UP Law Center to be compliant with the requirements in the FOI bill. She said that request for budget increase for purposes of complying with the FOI would warrant her support.

Asked if the publication in the online version of the *Official Gazette* would suffice for purposes of publication and in lieu of publication in a newspaper of general circulation, Senator Poe answered in the affirmative.

Senator Defensor Santiago further noted that Section 18 (a) does not refer to all legislative acts and resolutions but only those that are "important." Senator Poe agreed that the word "important" is quite limiting and confusing because it is discretionary in nature, but since the virtual capacity of an online website is almost limitless, she believed that it would be able to contain all possible laws passed in Congress. Senator Defensor Santiago said that the matter would be resolved in favor of importance, and publish it in case of doubt.

On Section 19, Senator Defensor Santiago pointed out that the proposed law relies heavily on Internet communication technology to actualize the dissemination of accurate information. Since digital information can come in various formats, she asked if there are provisions in the bill that will ensure that the information to be presented to the public will be accurate, decipherable and user-friendly. She explained that the principles of the FOI law will be defeated if the file formats used would prevent or hinder analysis and understanding by the public. To illustrate, she said that budget spread sheets scanned as pictures and uploaded as PDF files would further hinder and disallow the public from analyzing of the numeric values of the spread sheet. She added that digital information can also be manipulated; thus, authenticity must be verifiable.

Senator Defensor Santiago also stated that government websites must also provide mechanisms to accept feedback from citizens so that the public would be made aware of whether the agency is complying with the intent and provisions of the FOI law. Senator Poe stated that the Committee would accept amendments at the proper time. She also

informed the Body that the DOST has recently launched "The Integrated Government Philippines (iGovPhil)" project which aims to link relevant government data centers, create a secure government shared network, provide secure payment system for government transactions, among others. She confirmed that there have been efforts to have an IT infrastructure and agreed that the system should be user-friendly and continuously updated.

Lastly, regarding Section 20, Senator Defensor Santiago inquired on the meaning of the phrase "plain language." She said that literacy and communication scholars provided various definitions of the phrase, such as:

- Clear, succinct, and designed to ensure that the reader understands as quickly and completely as possible;
- Clear and effective communication; and
- The idiomatic and grammatical use of language that most effectively presents ideas to the reader.

Senator Defensor Santiago stated that "plain language" means that, as much as possible, obsolete and obsolescent legal language should be avoided and that basic grammar rules should be observed. She said that personally, the most important information on plain language could be found in the book "*Elements of Style*" by Strunk and White.

Senator Poe thanked Senator Defensor Santiago for her interpellation and encouraged the other Members to put forth their questions to improve the bill and expedite its passage into law.

MANIFESTATION OF SENATOR CAYETANO (A)

Senator Cayetano (A) manifested that the Secretariat and the Office of the Majority Leader will coordinate with the chiefs-of-staff of the different senators to expedite the period of interpellations on the bill.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1733

Upon motion of Senator Cayetano (A), there being no objection, the Body suspended consideration of the bill.

SUSPENSION OF SESSION

Upon motion of Senator Cayetano (A), the session was suspended.

It was 4:30 p.m.

RESUMPTION OF SESSION

At 4:31 p.m., the session was resumed.

MANIFESTATION OF SENATOR CAYETANO (A)

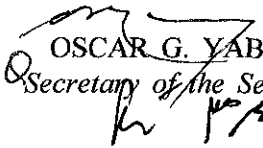
Senator Cayetano (A) informed the Body that Senate Bill No. 2046 (Go Negosyo bill) would be taken up the following day.

ADJOURNMENT OF SESSION

Upon motion of Senator Cayetano (A), there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of the following day.

It was 4:31 p.m.

I hereby certify to the correctness of the foregoing.


OSCAR G. YABES
Secretary of the Senate

Approved on January 28, 2014