

THIRTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
First Regular Session

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SENATE

RECEIVED BY: 

S. No. 1112

Introduced by Senator Franklin M. Drilon

EXPLANATORY NOTE

The public's right to information on matters of public concern and access to official records pertaining to official acts and transactions are recognized to be principles of utmost importance in a free society. Thus, our Constitution provides:

"Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest." (Art. II, Section 28)

and corollary thereto,

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

Pursuant, therefore, to these constitutional dictates, this bill seeks the passage of legislation that will ensure that the State shall remain fully accountable to the people by:

- a) providing for disclosure of all government information in order to facilitate informed public participation in policy formulation and promote transparency and fairness in government decision-making; and
- b) giving the people the right of access to information on matters involving public interest and/or of public concern.

Approval of this bill is earnestly requested.


FRANKLIN M. DRILON

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AN ACT
TO ENSURE PUBLIC ACCESS TO INFORMATION
AND PRESCRIBING GUIDELINES THEREFOR

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

SECTION 1. Short Title. – This Act shall be known as the “*Freedom of Information Act of 2004.*”

SECTION 2. Declaration of Policy. – Pursuant to the Constitutional mandate adopting a policy of full public disclosure by the State of all its transactions involving public interest, recognizing the right of the people to information on matters of public concern and affording them access to official acts, transactions, or decisions, it is hereby declared the policy of the State, subject to reasonable limitations, to ensure that it is fully accountable to the people by:

- a) providing for the disclosure of all government information in order to facilitate informed public participation in policy formulation and promote transparency and fairness in government decision-making; and
- b) giving the people the right of access to information on matters involving public interest and/or of public concern.

SECTION 3. Definition of Terms. – As used in this Act:

- (a) "Government body" or "government bodies" shall mean any executive, legislative, judicial, or constitutional body of the Government of the Republic of the Philippines, including but not limited to the national government, local government, government agency, national agency, local agency, department, bureau, office, instrumentality, regulatory agency, chartered institution, government-owned or controlled corporation, as such terms are defined in Executive Order No. 292, as amended, or any other national or local commission, board or body which exercises governmental functions and any other public or private

person, partnership, corporation, or entity acting in behalf of and/or in place of any government body.

- (b) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound and video recordings, magnetic or other tapes, electronic data processing records, computer stored data, electronic mail messages, or any other like or similar data or material, recorded, stored or archived in whatever form or format, which are made, received or kept in or under the control and custody of any government body pursuant to law, executive order, rules and regulation, ordinance or in connection with the performance or transaction of official business by any government body.
- (c) "Trade secret" shall mean any information, including a formula, pattern, compilation, program, device, product, method, technique or process, that is used, or may be used, in business or for any commercial advantage; derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; is the subject of reasonable efforts to prevent it from becoming generally known, and the disclosure of which would result in harm or improper benefit.

SECTION 4. Coverage. – All public records, as herein defined, which are in the custody or under the control of a government body shall be made accessible and available for public scrutiny, copying and reproduction, except:

- (a) records or information specifically authorized to be kept secret or considered classified in the interest of national security by an Executive Order duly published in at least two (2) newspapers of general circulation.
- (b) records or information that is presently, or in the future, exempt from disclosure by law.
- (c) records or information which would not be available by law or the Rules of Court to an opposing party in litigation.
- (d) records or information gathered by any government body in closed or executive session.
- (e) records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency, to the extent that the disclosure of the records or information: (i) could reasonably be expected to interfere with the prevention, detection, suppression, or investigation of any criminal activity or with law enforcement proceedings, (ii) would deprive a person of a right to a fair trial or an impartial adjudication, (iii) could reasonably be expected to constitute

an unwarranted invasion of personal privacy, (iv) could reasonably be expected to disclose the identity of a confidential source, including a foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, (vi) could reasonably be expected to endanger the life or physical safety of any individual, (vii) facilitate the commission of an offense, or (viii) harm the security of any property or system, including a building, vehicle, computer or communications system: *Provided*, however, that records or information relating to the administration, management and direction of a law enforcement agency shall be public.

- (f) records or information subject to attorney-client or doctor-patient relationship and any other records or information which are considered privileged communication either by law or the rules of court.
- (g) trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.
- (h) scientific and technological secrets and the security plans of military and law enforcement agencies.
- (i) records or information which could reasonably be expected to result in damage to the environment or interfere with the conservation or preservation of heritage sites, environmental or natural preserves, fossil sites, sites that have an anthropological or archaeological value, endangered, threatened or vulnerable species, subspecies or race of plants, vertebrates or invertebrates, and any other rare or endangered living resources.
- (j) record of a question that is to be used on an examination or test.
- (k) preliminary drafts, notes, impressions, working papers, draft regulations, or other similar records.
- (l) record or information that is available for purchase by the public or that which shall be published or released to the public within ten (10) days after the applicant's request is received.
- (m) records or information the release or disclosure of which would constitute an unwarranted invasion of personal privacy.

In cases where access is requested to a record or information that is exempt from disclosure pursuant to this Act, the public shall have the right of access to the remainder of the record provided that the exempt

portion of the record can be reasonably severed or deleted from the record.

Nothing in this Act shall, however,

- (a) authorize the withholding of information from, or limit the availability of records to, Congress or any of its committees;
- (b) affect the power of any court, tribunal, investigative body, or any government body exercising quasi-judicial functions to compel a witness to testify or to compel the production of documents;
- (c) limit the information otherwise available by law to a party to litigation including a civil, criminal or administrative proceeding;
- (d) prohibit the transfer, storage or destruction of any record pursuant to law, decree, order, ordinance, or rules and regulations;
- (e) prevent access to records maintained in a public office for the purpose of providing the public access to information; or
- (f) restrict disclosure of information for the purpose of a criminal investigation or prosecution.

SECTION 5. *Mandatory Disclosure for Public Interest.* – Any government body which is in the possession or has knowledge of any information, not otherwise declared classified or exempt pursuant to this Act, about the existence of a risk of significant harm to the health and safety of the public, the environment, or which clearly affects public interest shall without delay disclose such information to the public.

SECTION 6. *Procedure for Access.* – Any person who seeks to obtain any information or access to, or copy of, a public record shall make a written request to the public body that has custody or control of the information or record, specifying the subject-matter of the information or record requested with sufficient particulars to enable the government body concerned to identify the record.

SECTION 7. *Response to Request.* – The government body concerned shall respond in writing to the applicant within five (5) days after the request is received, stating whether the applicant is entitled to the information or record or part of the record and, where the applicant is entitled to access, setting out where, when, and how, or the manner in which, access will be given, which in no case shall be no later than five (5) days from receipt by the applicant of the notice of the approval of his request.

Where access to the information or record, or to part of the information or record is refused, the notice must state the reasons for the refusal and the provision of this Act on which the refusal is based.

SECTION 8. *Transfer of Request.* – When the information or record sought is not in the custody or control of the government body to which

the request was filed, the government body requested shall transfer said request, within five (5) days from the time the request is received, to the government body which has possession or custody of the information or record. The government body effecting the transfer shall notify the applicant of the fact of such transfer, the reasons therefor, and the government body to which the request was transferred.

The government body to which the request was transferred shall reply to the request in the manner set forth in Section 7 hereof.

SECTION 9. *Extension of Time.* – The head of the government body concerned may, with due notice to the applicant, extend the time in responding to a request for a period not exceeding fifteen (15) days if:

- (a) the applicant failed to give enough details about the information or record sought to be obtained.
- (b) a large number of records is sought to be obtained in a single request, or when it has received voluminous requests, that compliance with the prescribed period under this Act would unreasonably interfere with its operations.
- (c) additional time is needed to consult with another government body having material or substantial interest in the determination of the request.
- (d) the request requires search and collation of records from its field offices.

SECTION 10. *Access of Records Stored Electronically Or Other Similar Means.* – Access to a record that is a microfilm, film, sound recording, or information stored by electronic or other technological means may be given by the government body concerned by (a) permitting the applicant to examine a transcript of the record; (b) providing the applicant with a copy of the transcript of the record; (c) permitting the applicant, in the case of a record produced for visual or aural reception, to view or hear the record or providing the applicant with a copy of it; or (d) permitting the applicant, in the case of a record stored by electronic or other technological means, to access the record or providing the applicant a copy of it.

SECTION 11. *Payment of Reasonable Fees.* – Copies or reproductions of records may be obtained by the applicant whose request has been approved upon payment of a reasonable fee which shall not exceed the actual cost thereof. Upon request, the government body shall provide a detailed itemization of the costs charged for the reproduction.

No government body may, however, require advance payment of any reproduction fee.

SECTION 12. *Judicial Relief.* – Within fifteen (15) days from receipt of the notice of denial of his request, the applicant may file the appropriate action in the Regional Trial Court where the information or records are held or kept in official custody or control.

SECTION 13. Guidelines. – Each government body shall, within sixty (60) days from the effectivity of this Act, promulgate guidelines specifying the place, office, and employees from whom, and the methods whereby, the public may request access to or obtain information or public records which are kept in or held under its custody or control.

SECTION 14. Declassification of Information or Records. – Any information or record, or any part thereof, which has been declared classified or authorized to be kept secret from the public shall be reviewed for purposes of declassification, five (5) years after the date of its classification: *Provided*, That any classified information or record, or any part thereof, shall be deemed declassified and accessible to the public after the lapse of thirty (30) years from the date of its classification, unless the President in an Executive Order shall provide for its continued classification.

SECTION 15. Penalties. – Any person found guilty by final judgment of having refused to provide access to information and public records, or any part or parts thereof, without sufficient or legal reasons therefor shall be punished by a fine of not less than One Thousand Pesos (P1,000.00) but not more than Three Thousand Pesos (P3,000.00), or imprisonment of not less than one (1) year but not more than three (3) years including all the accessory penalties provided by law, or both, at the discretion of the court.

SECTION 16. Separability Clause. – If for any reason, any section or provision of this Act is held unconstitutional or invalid, other sections or provisions not affected thereby shall remain valid and effective.

SECTION 17. Repealing Clause. – All laws, decrees, orders, rules and regulations, or any part or parts thereof, inconsistent with the provisions of this Act are deemed repealed, amended or modified accordingly.

SECTION 18. Effectivity Clause. – This Act shall take effect after fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Approved,