

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

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SENATE

S. B. No. 1206

Introduced by Senator Ramon Bong Revilla, Jr.

EXPLANATORY NOTE

A government maintains the allegiance and support of the citizens by keeping them informed on matters affecting their interest and well-being. Without it, the reservoir of public trust dries up, and government soon enough loses the basis of popular support, and cannot be maintained except against the people's will.

For this reason, the Bill of Rights provides: "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 such limitations as may be provided by law." Upon this right is anchored the basic right of the citizens to be informed of the process and decisions made by the government in the process of governance.

Without transparency and proper information, the future of the nation is left solely in the hands of public officials and decision makers at the expense of utilizing the active participatory process of governance provided under the Constitution. Without it, public officers are unduly emboldened in the belief that their actions, even when wrong and injurious to the public interest, could be screened away from public knowledge. By guaranteeing the citizen access to official records, documents and papers pertaining to official acts, transactions and decisions of the government, the Filipino people have actively participated in the decision-making and legitimizing process of governance.

Moreover, in this process, public officers are also made more keenly aware of their accountability to the public. Yet even the freest and most open government requires a measure of secrecy for some of the things it does to enable it to carry out its duties more effectively than if everything were promptly disclosed in the marketplace.

The security and defense of the State from internal subversion and external threats, the stability of its currency and reserves, and the preservation of law and order often require the adoption of certain measures which lose their effect in the glare of publicity, and which therefore are best covered by the mantle of secrecy, so that the government may be able to secure the best advantage to the national interest. The security and defense of the nation would be severely impaired if anyone who might wish to do it harm had free access to official information relating to security and defense.

Still, under the pretext of keeping certain information secret, a government may become over-secretive and keep secret even those which it has no just reason to keep secret. The national interest is harmed as much by indiscriminate disclosure as by excessive secrecy. This proposed measure, therefore, enhances the free flow of information and the formation of a vigorous, free and enlightened public opinion, while paying proper regard to the need to protect official information pertaining to national security.

In view of the foregoing concerns, the early approval of this bill is being earnestly sought.



RAMON BONG REVILLA, JR.
Senator

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AN ACT
TO ENSURE PUBLIC ACCESS TO OFFICIAL
INFORMATION AND FOR OTHER PURPOSES

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

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

SEC. 2. *Declaration of Policy.* – It is hereby declared the policy and purpose of this Act to secure the constitutional right of the citizens to have free access to official information, subject only to the limitations imposed by the rights of individuals, public order and safety, the defense, and foreign relations of the country. In particular, the State shall take adequate steps to prevent the unauthorized disclosure of confidential documents. In no case, however, shall official information be classified and withheld to conceal official error, misconduct or inefficiency, to restrain free initiative, or to shield a public officer or office from embarrassment.

SEC. 3. *Definition of Terms.* – For purposes of this Act:

- a) “**Government**” – means the national government.
- b) “**Agency**” – means any instrumentality of the government including government-owned or controlled corporations.

c) **“Official Information”, “Official Records”, “Documents”** – means documents or parts of documents, records in writing, on film or tape or by other means pertaining to official acts, transactions or decisions, or articles or things which are owned by, or in the custody of, or from part of the records of the government, or any of its agencies and instrumentalities, or of its officials and employees in their official capacities, such as contracts, correspondence, drawings, plans, master plans, development plans, feasibility studies, engineering designs, sketches, tracings, paintings, prints, photographs, photocopies, photographic negatives, or any abstract, reproduction or summary thereof, models, designs, patterns, specimens, codes, words, countersigns and passwords.

d) **“Cabinet Papers”** – means records of the proceedings of the Cabinet and Cabinet committees, including written proposals, briefs and other documents or papers, in whatever form, and the circulation of which is limited to the Cabinet or Cabinet committees.

e) **“Foreign Relations”** – means relations between the government of the Philippines and any other country or any international body the members of which are governments.

f) **“Defense Contract”** – means any contract, agreement or undertaking which is awarded, with or without public bidding, by the government or any of its agencies, in favor of a qualified person, natural or juridical for the supply of materials, equipment spare parts, supplies, or services, for the construction, repair or improvement of buildings, depots, quarters, arsenals, shipyards, camps or similar installations, or facilities, intended for, adapted to or suitable for the defense of the country from internal attack or external aggression.

g) **“Communicate”** – means to divulge, disclose, make known, or pass, transfer or transmit, in any manner or to any extent, any official information.

SEC. 4. Access to Information. –

(1) Each agency shall make available for public inspection and copying official records unless they are promptly published or copies thereof offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes official records.

(2) Each agency shall currently publish in the Official Gazette –

(a) descriptions of its organization, its functions, and the established places at which, the employees from whom, and the methods and procedures whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(b) statements of general policy or interpretations of general applicability formulated and adopted by the agency;

(c) each amendment, revision, or repeal of any of the foregoing.

Except to the records made available under paragraph (1) and (2) of this Section, each agency, upon any request for records which (a) reasonably describes such records and (b) is made in accordance with published rules, stating the time, place, and procedures to be followed, shall make the records promptly available to any Filipino citizen.

(3) Each agency shall promulgate regulations specifying the procedures to be followed by all parties requesting for the production of records, including a uniform schedule of fees to be charged by all constituent units of such agency. Such fees shall be limited to the recovery of only the direct costs of the search and duplication of documents. Documents shall be furnished without charge or at a reduced charge where the agency determines that a waiver or reduction of the fee is in the public interest.

SEC. 5. Request for Records. –

(1) Each agency, upon any request for records made under Section 4 of this Act, shall

(a) decide within ten (10) days (excepting Saturdays, Sundays and legal holidays) after the receipt of any such request whether or not to comply with it: *Provided*, That denial of any request shall be explained fully in writing, and the person making the request shall be advised of his/her right to appeal the decision to the head of the agency concerned; and

(b) decide any appeal within twenty (20) days (excepting Saturdays, Sundays and legal holidays) after the receipt of such appeal. Notice of denial of any request for records under this Section shall set forth the name and title or position of each person responsible for the denial of such request; or

(2) In unusual circumstances, the time limits prescribed above may be extended by written notice to the person making such request, setting forth the reasons for such extension and the date on which a determination is expected to be made: *Provided*, That no extension shall exceed ten (10) working days. As used in this paragraph, "unusual circumstances" means —

(a) the need to search for and collect the requested records from field or other establishments that are separate from the office processing the request;

(b) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(c) the need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(3) Any person making a request to any agency for records shall be deemed to have exhausted his/her administrative remedies with respect to such request if the agency fails to comply with it within the time limits provided in this Section.

SEC. 6. *Judicial Review.* —

(1) On complaint, the proper court may enjoin the Agency concerned from withholding agency records and order the production of any agency records improperly withheld.

(2) If the agency can show that exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may allow the agency additional time to produce the records.

(3) Whenever the court orders the production of any agency records improperly withheld from the complainant and the court additionally issues a written finding that an officer or employee may have acted arbitrarily or capriciously in withholding such records, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the officer or employees concerned. The Administrative authority shall, within thirty (30) days take the corrective action recommended by the Commission.

SEC. 7. Exemptions. – The provisions of Section 4 and 5 of this Act shall not apply to:

- (1) Classified official information as defined in this Act;
- (2) Unpublished information, including position papers, concerning diplomatic negotiations;
- (3) Defense contracts;
- (4) Cabinet papers;
- (5) Information specifically exempted from disclosure by statutes;
- (6) Trade secrets and commercial or financial information;
- (7) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (8) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (9) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would –
 - (a) interfere with enforcement proceedings;
 - (b) deprive a person of a right to a fair trial or an impartial adjudication;
 - (c) constitute an unwarranted invasion of personal privacy;
 - (d) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished by confidential sources;
 - (e) disclosure investigate techniques and procedures; or
 - (f) endanger the life or physical safety of law enforcement personnel.
- (10) Information contained in or related to examination, operation, or situation reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(11) Geological and geophysical information and data, presented in maps, reports, and charts and in particular those required by regulation to be submitted to the government by private government corporations and entities; or

(12) Technical data and information specifically exempted from disclosure by bilateral or multilateral agreements to which the Philippine Government is a party.

This section shall not be construed to limit the powers of courts and administrative agencies with quasi-judicial functions to order the production of records which are relevant to the issues in cases pending before such courts or agencies.

SEC. 8. Security Classification. –

(1) For purposes of this Act, official information relating to national security shall be categorized as follows:

(a) **Top Secret** – Official information the unauthorized disclosure of which would cause exceptionally grave damage to the national security. Examples of “exceptionally grave damage” include but are not limited to armed hostilities against the Philippines or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptographic and communications intelligence systems; the revelation of sensitive intelligence operations; the disclosure of national defense plans or complex cryptographic and communications intelligence systems; the disclosure of scientific or technological developments vital to national security. The classification “Top Secret” shall be used with utmost restraint.

(b) **Secret** – Official information the unauthorized disclosure of which would cause serious damage to the national security. Examples of “serious damage” include but are not limited to disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security. The classification “Secret” shall be sparingly used.

(c) **Defense-Confidential** – Official information the unauthorized disclosure of which would cause damage to the national security. Examples of “damage” include but

are not limited to impairment of a program or policy directly related to the national security; revelation of routine military plans or intelligence positions; compromise of scientific or technological developments relating to national security.

No documents shall be given more than one (1) classification. In case a series of documents or volumes have more than one (1) classification, the least restrictive shall apply.

(2) **Authority to Classify Documents.** – The authority to originally classify official information shall be limited to:

(a) The President of the Republic of the Philippines, the Secretary of Foreign Affairs, the Secretary of Finance, the Executive Secretary, the Secretary of Justice, and the Secretary of National Defense, the head of the Intelligence community.

(b) Such other officials as may be authorized in writing by the President.

(c) Information shall be deemed as classified within the meaning of this Act if in the case of document, it is marked with any of the three (3) classifications described in this Section.

(d) The responsible Department Secretary or official concerned shall undertake a periodic review of the official information which has been classified by him/her under this Act, for the purpose of ensuring the correct classification of official information at all times.

(e) A Department Secretary may, in the performance of his/her duty and when the national interest requires it, communicate in confidence certain official information classified under this Act to responsible members of mass media for the purpose of providing the latter with adequate background on vital national or international developments.

(f) Regulations concerning the classification, review, declassification and handling of classified official information shall be promulgated by the President.

SEC. 9. *Unlawful Acts.* – Any person who, having in his/her possession or control, any official information classified in accordance with Section 8 of this Act, by reason of his/her holding or having held public office or contract with the government, or by reason of

his/her being employed under a person who holds, or has held such office or contract, communicates directly or indirectly any such classified official information to any person other than a person to who he/she is duly authorized to communicate it, shall be guilty of an offense under this Act, and shall be liable on conviction by the Court to imprisonment for a term ranging from one (1) year to six (6) years or a fine ranging from Php 10,000.00 to Php 100,000.00 or both at the discretion of the Court.

SEC. 10. Other unlawful Acts. –

(1) A public officer or employee who fails to comply with directions of proper authorities about the return or disposal of classified information or the retention of such information contrary to his/her official duty shall be guilty of an offense under this Act and shall be liable on convictions by the Court to imprisonment for a term not exceeding three (3) years and a fine not exceeding Php 50,000.00 or both at the discretion of the Court.

(2) A public officer or private person who, without authority, removes a classification or makes a copy of a classified official information without placing the proper mark, with intent to circumvent the security classification under Section 8 hereof, shall be guilty of an offense under this Act and shall be liable on conviction by the Court to imprisonment for a term not exceeding one (1) year and a fine not exceeding Php 20,000.00 or both, at the discretion of the Court, if the official information involved is classified as **TOP SECRET**; not exceeding six (6) months and a fine not exceeding Php 10,000.00 or both, at the discretion of the Court, if the official information involved is classified as **SECRET**; not exceeding three (3) months and a fine not exceeding Php 5,000.00 or both, at the discretion of the Court, if the official information involved is classified as **DEFENSE - CONFIDENTIAL**.

SEC. 11. Protected Parties. – A legitimate member of the press who gains access to classified information described in Section 8 through reportorial enterprise shall enjoy the constitutional protection of the freedom of the press and shall not be deemed to have committed any unlawful act: *Provided, However,* That he/she secures and uses his/her information in the furtherance of his/her profession in the public interest, and not for the purpose of inflicting exceptionally grave or serious damage to national security: *Provided, Further,* That he/she does not pass it on to third parties for their own illicit purposes.

SEC. 12. *Prosecution.* – No prosecution of an offense under Section 9 hereof shall be instituted without the written approval of the Secretary of Justice, and without a certification of the responsible Department Secretary or official concerned that:

(1) A review has been conducted by the responsible Department Secretary or official concerned of the classification of the official information disclosed without the authority; and

(2) At the time of the disclosure, the official information was properly classified in accordance with Section 8 of this Act.

In case the official information was originally classified by the Secretary of Justice, no criminal proceedings shall commence without the written approval of the President.

SEC. 13. *Separability Clause.* – If, for any reason, any section or provision of this Act shall be held unconstitutional or invalid, the other section or provision not otherwise affected shall remain valid.

SEC. 14. *Repealing Clause.* – All laws, presidential decrees, executive orders, proclamations, rules and regulations which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 15. *Effectivity Clause.* – This Act shall take effect fifteen (15) days from its publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,