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SENATE
S. No. 126

Introduced by Senator S. R. Osmeña III

EXPLANATORY NOTE

Public office is a public trust. To strengthen his mandate, the Constitution provides in:

Article II, Section 24, "The State recognizes the vital role of communication and information in nation building."

Article II, Section 28, "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."

Article III, Section 7, "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."

These constitutional provisions underscore the crucial need in a democracy for open access to government information by citizens. Importance is attached to accountability in government. This proposed legislation not only affirms the importance, but also the challenge of maintaining openness in government.

To further give meaning to this mandate, this bill establishes an effective access to government information thereby forging an important link between duly constituted authorities and the Filipino people. It requires government agencies: 1) to publish in the official Gazette or in a newspaper of general circulation rules, regulations, procedures issued by them, and official acts performed by said agency; and 2) to make available to the public, upon request, information not otherwise exempted by the bill.

In view of the foregoing passage of this bill is earnestly requested.

SERGIO OSMEÑA III
Senator

SENATE
S. No. 126

RECEIVED

Introduced by Senator S. R. Osmeña III

AN ACT
GIVING MEANING TO THE RIGHT OF THE PEOPLE TO INFORMATION ON
MATTERS OF PUBLIC CONCERN GUARANTEED UNDER THE CONSTITUTION
AND FOR OTHER PURPOSES

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

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

3 SEC. 2. **Definition of Agency.** – For purposes of this Act, the term
4 “agency” refers to the whole executive department, including the Executive
5 Officer of the President and all line agencies down to the municipal level; it shall
6 include all presidential commissions, the military and armed forces, all
7 government-owned or controlled corporation, any independent regulatory
8 agency, the constitutional commissions and other establishments in the
9 executive branch of the government.

10 SEC. 3. **Duty of Government Agencies to Publish.** – Each agency shall
11 currently publish in the Official Gazette, or in a newspaper of general circulation,
12 for the guidance of the public:

13 a. descriptions of its central and field organization and the established
14 places at which, the employees (and in the case of a uniformed
15 service, the members) from whom, and the manner whereby, the
16 public may obtain information, make submittals or requests, or obtain
17 decisions;

- 1 b. statements of the general course and method by which its functions
- 2 are channeled and determined, including the nature and requirements
- 3 of all formal and informal procedures available;
- 4 c. rules of procedures, descriptions of forms available or the places at
- 5 which forms may be obtained, and instructions as to the scope and
- 6 contents of all papers, reports, or examinations;
- 7 d. substantive rules of general applicability adopted as authorized by law,
- 8 and statements of general policy or interpretations of general
- 9 applicability formulated and adopted by the agency; and
- 10 e. each amendment, revision, or repeal of the foregoing

11 **SEC. 4. *Effect of Non-publication.*** – Except to the extent that a person

12 has actual and timely notice of the terms thereof, a person may not in any

13 manner be required to resort to, or be adversely affected by a manner required to

14 be published in the Official Gazette and a newspaper of general circulation not so

15 published. For the purpose of this paragraph, matters reasonably available to the

16 class of persons affected thereby is deemed published in the Official Gazette or a

17 newspaper of general circulation when incorporated by reference therein with the

18 approval of the Director of the National Printing Office or the head of the agency

19 concerned.

20 **SEC. 5. *Records Available to the Public.*** – Unless the materials are

21 promptly published and copies offered for sale, each agency, in accordance with

22 published rules, shall make available for public inspection and copying:

- 23 a. final opinions, including concurring and dissenting opinions, as well as
- 24 orders, made in the adjudication of cases;
- 25 b. those statements of policy and interpretations which have been
- 26 adopted by the agency and are not published in the Official Gazette;
- 27 and
- 28 c. administrative staff manuals and instructions to staff that effect a
- 29 member of the public

1 To the extent required to prevent a clearly unwarranted invasion of
2 personal privacy, an agency may delete identifying details when it make available
3 or publishes an opinion, statement of policy, interpretation, or staff manual or
4 instruction. However, in each case the justification for the deletion shall be
5 explained fully in writing.

6 Each agency shall also maintain and make available for public inspection
7 and copying, current indexes providing identifying information for the public as to
8 any matter issued, adopted or promulgated after 1 January 2005, and required
9 by this Act to be made available or published. Each agency shall promptly
10 publish, quarterly or more frequently, and distribute (by sale or otherwise) copies
11 of each index or supplements thereto unless it determines by order published in
12 the Official Gazette that the publication would be unnecessary and impracticable
13 in which case the agency shall nonetheless provide copies of such index on
14 request at a cost not to exceed the direct cost of duplication. A final order,
15 opinion, statement of policy, interpretation, or staff manual or instruction that
16 effects a member of the public may be relied on, used, or cited as precedent by
17 an agency against a party other than a government agency only if:

- 18 (i) it has been indexed and either made available or published as
19 provided by this sector; or
20 (ii) the party has actual and timely notice of the terms thereof.

21 **SEC. 6. *Duty of Government Agency Upon Request.*** – Except with
22 respect to the records made available under Section 3 and 5 of this Act, each
23 agency, upon any request for records which (a) reasonably describes such
24 records and (b) is made in accordance with published rules stating the time,
25 place, fees (if any), and procedures to be followed, shall make the records
26 immediately available to any person.

27 **SEC. 7. *Rules Governing Publication.*** – a. Each agency shall
28 promulgate regulations, pursuant to notice and receipt of public comment,
29 specifying a uniform schedule of fees applicable to all constituent units of such

1 agency. Such fees shall be limited to reasonable standard charges for document
2 search and duplication and provide for recovery of only the direct costs of such
3 search and duplication and provide for recovery of only the direct costs of such
4 search and duplication. Documents shall be furnished without charge or at a
5 reduced charge where the agency determines that waiver or reduction of the fee
6 is in the public because furnishing the information can be considered as primarily
7 benefiting the general public.

8 b. On complaint, the appropriate regional trial court (hereafter court)
9 where the complaint resides, or has his principal place of business, or where the
10 agency records are situated, has the power to enjoin the agency from withholding
11 agency records and to order the production of any agency records improperly
12 withheld from the complaint. In such a case, the court shall determine the matter
13 de novo, and may examine the contents of such agency records in camera to
14 determine whether such records regret any part thereof shall be withheld under
15 any of the exemptions set forth in Section 12 of this Act, and the burden is on the
16 agency to sustain its action.

17 c. Notwithstanding any other provision of law, the defendant shall
18 serve an answer or otherwise plead to any complaint made under this subsection
19 within ten (10) days after service of the pleading in which such complaint is
20 made, unless the court directs otherwise for good cause shown.

21 d. Except as to cases the court considers of greater importance,
22 proceedings before the court, as authorized by this subsection, and appeals
23 therefrom, take precedence on the docket over all cases and shall be assigned
24 for hearing and trial or for argument at the earliest practicable date and expedited
25 in every way.

26 e. The court may assess against the Government reasonable
27 attorney's fees and other litigation costs incurred in any case under this section in
28 which the complainant substantially prevailed.

1 f. Whenever the court orders the production of any agency record
2 improperly withheld from the complainant, and the court finds that the
3 circumstances surrounding the withholding raise questions whether agency
4 personnel acted unreasonably, arbitrarily or capriciously raise questions whether
5 agency personnel acted unreasonably, arbitrarily or capriciously with respect to
6 the withholding, the Civil Service Commission (hereafter Commission) shall
7 promptly initiate a proceeding to determine whether disciplinary action is
8 warranted against the officer or employee who was primarily responsible for the
9 withholding. The Commission, after investigation and consideration of the
10 evidence submitted, shall submit its findings and recommendations to the
11 administrative authority of the agency concerned and shall send copies of the
12 findings and recommendations to the officer or employee.

13 g. In the event of non-compliance with the order of the court, the court
14 may punish for contempt the responsible employee, and in the case of the
15 uniformed service, the responsible member.

16 SEC. 8. **Publication of Board Member's Roles.** – Each agency
17 governed by a board or a collegial body shall maintain and make available for
18 public inspection a record of the final roles of each member in every agency
19 proceeding.

20 SEC. 9. **Time Limits for Administrative Decisions.** – Each agency,
21 upon the instruction for records made under Sections 3, 5, or 6 of this Act, shall:

22 a. determine within ten (10) days (except Saturdays, Sundays, and
23 legal public holidays) after the receipt of any such request whether to comply with
24 such request and shall immediately notify the person making such request of
25 such determination and the reasons therefor, and of the right of such person to
26 appeal any adverse determination to the head of the agency; and

27 b. make a determination with respect to any appeal within twenty (20)
28 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt
29 of such appeal. If on appeal the denial of the request for records is in whole or in

1 part upheld, the agency shall notify the person making such request of the
2 provisions for judicial review of that determination under Section 7.

3 **SEC. 10. *Extensions of Time.*** – In unusual circumstances as specified in
4 this Act, the time limits prescribed in either 9.1 or 9.2 may be extended by written
5 notice to the person making such request setting forth the reasons for such
6 extension and the date on which a determination is expected to be dispatched.
7 No such notice shall specify a date that would result in an extension for more
8 than ten (10) working days. As used in this Act, “unusual circumstances” means,
9 but only to the extent reasonably necessary to the proper processing of the
10 particular request.

11 a. the need to search for and collect the requested records from the
12 field facilities or other establishments that are separate from the office processing
13 the request.

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

17 c. the need for consultation, which shall be conducted with all
18 practicable speed, with another agency having substantial interest in the
19 determination of the request or among two or more components of the agency
20 having substantial subject matter interest therein.

21 **SEC. 11. *Presumption of Exhaustion of Remedies.*** – Any person
22 making a request to any agency for records under Section 3, 5 or 6 of this Act
23 shall be deemed to have exhausted his administrative remedies with respect to
24 such request if the agency fails to comply with the applicable time limit provisions
25 of this paragraph. If the government can show exceptional circumstances exist
26 and the agency is exercising due diligence in responding to the request, the court
27 may retain jurisdiction and allow the agency additional time to complete its review
28 of the records. Upon any determination by an agency to comply with a request
29 for records, the records shall be made promptly available to such person making

1 such request. Any notification of denial of any request for records under this
2 subsection shall set forth the names and title of positions of each person
3 responsible for the denial of such request.

4 **SEC. 12 *Exempt Matters.*** – This Act shall not apply to matters that are:

5 a. related solely to the internal personnel rules and practices of an
6 agency;

7 b. trade secrets and commercial and financial information obtained
8 from a person which are privileged or confidential;

9 c. personnel and medical files and similar files the disclosure of which
10 would constitute a clearly unwarranted invasion of privacy;

11 d. investigatory records compiled for law enforcement purposes, but
12 only to the extent that the production of such records would: (i) interfere with
13 enforcement proceedings; (ii) disclose the identity of a confidential source, (iii)
14 disclose investigative techniques and procedures; or (iv) endanger the life or
15 physical safety of law enforcement personnel;

16 e. contained in or related to examination, operation, or condition
17 reports prepared by on behalf of, or for the sue of an agency responsible for the
18 regulation or supervision of financial institutions.

19 Any reasonable segregable portion of a record shall be provided to any
20 person requesting such record after deletion of the portions which are exempt
21 under this subsection.

22 **SEC. 13. *Reports.*** – On or before March 1 of each calendar year, each
23 agency shall submit a report covering the preceding year to the Speaker of the
24 House of Representatives and President of the Senate for referral to the
25 appropriate committees of Congress. The report shall include:

26 a. the number of determinations made by such agency not to comply
27 with the requests for records made to such agency under Section 3 and the
28 reasons for such determination.

1 b. the number of appeals made by persons under Sections 9, 10, and
2 11 the result of such appeals and the reason for the action upon each appeal that
3 results in the denial of information;

4 c. the names and titles or positions of each person responsible for the
5 denial of records requested under this Act, and the number of instances of
6 participation of each;

7 d. the result of each proceeding conducted pursuant to Section 7 (5),
8 including a report of the disciplinary action taken against the officer or employee
9 who was primarily responsible for improperly withholding records or an
10 explanation of why disciplinary action was not taken.

11 e. a copy of every rule made by such agency regarding this section;

12 f. a copy of the fee schedule and the total amount of fees collected by
13 the agency for making records available under this section; and

14 g. such other information as indicates efforts to administer fully this
15 section.

16 The Solicitor General shall submit an annual report on or before March 1
17 of each calendar year a listing of the number of cases arising under this section,
18 the exemption involved in each case, the disposition of each case, and the cost,
19 fees, and penalties assessed under Section 7(5), 7(6) and 7(7). Such report shall
20 also include a description of efforts undertaken by the Department of Justice to
21 encourage agency compliance with this section.

22 **SEC. 14. *Separability Clause.*** – If any part, section or provision of this
23 Act shall be held invalid or unconstitutional, no other part, section, or provision
24 shall be affected thereby.

25 **SEC. 15. *Repealing Clause.*** – All existing laws, executive orders, letters
26 of instruction, proclamations, presidential decrees, rules and regulations
27 promulgated thereby, and other government issuances which have the force of
28 law inconsistent with or in conflict with the provisions of this Act, particularly

1 those which provide confidentiality of government records, unless exempted by
2 this Act, are hereby repealed or modified accordingly.

3 SEC. 16. **Effectivity.** – This Act shall take effect fifteen (15) days after the
4 date of its publication in two (2) newspapers of general circulation.

Approved,