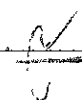


FIFTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

SENATE
OFFICE OF THE SECRETARY

10 JUL 19 110 50

SENATE
S. No. 1528

RECEIVED BY 

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

Public office is a public trust. Transparency and accountability are the cornerstones of good governance.

The Constitution, Article III, Section 7 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.

This provision of the Constitution seeks to promote transparency in policy-making and in the operations of the government, as well as provide the people sufficient information to enable them to exercise effectively their constitutional rights. Armed with the right information, citizens can participate in public discussions leading to the formulation of government policies and their effective implementation. An informed citizenry is essential to the existence and proper functioning of any democracy.

This Act aims to provide for the management, custody, and access to presidential records consistent with the constitutional mandate of transparency and accountability in government. It does not, however, seek to confirm, limit, or expand the President's executive privilege.¹


MIRIAM DEFENSOR SANTIAGO

¹ This bill was originally filed in the Fourteenth Congress, Second Regular Session

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Introduced by Senator Miriam Defensor Santiago

1 AN ACT
2 PROVIDING FOR THE MANAGEMENT, CUSTODY, AND ACCESS TO PRESIDENTIAL
3 RECORDS
4

5 *Be it enacted by the Senate and the House of Representatives of the Philippines in*
6 *Congress assembled:*
7

8 SECTION 1. *Short Title.* – This Act shall be known as the “Presidential Records Act.”

9 SECTION 2. *Definitions.* – As used in this Act –

10 (a) The term “documentary material” means all books, correspondence, memoranda,
11 documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films,
12 and motion pictures, including, but not limited to, audio, audiovisual, or other electronic or
13 mechanical records.

14 (b) The term “Presidential records” means documentary materials, or any reasonably
15 segregable portion thereof, created or received by the President, his or her immediate staff, or a
16 unit or individual of the Executive Office of the President whose function is to advise and assist
17 the President, in the course of conducting activities which relate to or have an effect upon the
18 carrying out of the constitutional, statutory, or other official or ceremonial duties of the
19 President. Such term –

20 (i) includes any documentary materials relating to the political activities of
21 the President or members of his or her staff, but only if such activities relate to or
22 have a direct effect upon the carrying out of constitutional, statutory, or other
23 official or ceremonial duties of the President; but

24 (ii) does not include any documentary materials that are (i) official records
25 of an agency; (ii) personal records; (iii) stocks of publications and stationery; or

1 (iv) extra copies of documents produced only for convenience of reference, when
2 such copies are clearly so identified.

3 (c) The term “personal records” means all documentary materials, or any reasonably
4 segregable portion thereof, of a purely private or nonpublic character which do not relate to or
5 have an effect upon the carrying out of the constitutional, statutory, or other official or
6 ceremonial duties of the President. Such term includes –

7 (i) diaries, journals, or other personal notes serving as the functional
8 equivalent of a diary or journal which are not prepared or utilized for, or
9 circulated or communicated in the course of, transacting Government business;

10 (ii) materials relating to private political associations, and having no
11 relation to or direct effect upon the carrying out of constitutional, statutory, or
12 other official or ceremonial duties of the President; and

13 (iii) materials relating exclusively to the President’s own election to the
14 office of the Presidency; and materials directly relating to the election of a
15 particular individual or individuals to public office, which have no relation to or
16 direct effect upon the carrying out of constitutional, statutory, or other official or
17 ceremonial duties of the President.

18 (d) The term “Director” means the Director of the National Archives of the Philippines.

19 (e) The term “former President”, when used with respect to Presidential records, means
20 the former President during whose term or terms of office such Presidential records were created.

21 SECTION 3. *Ownership of Presidential Records.* – The Republic of the Philippines shall
22 reserve and retain complete ownership, possession, and control of Presidential records; and such
23 records shall be administered in accordance with the provisions of this Act.

24 SECTION 4. *Management and Custody of Presidential Records.* –

25 (a) Through the implementation of records management controls and other necessary
26 actions, the President shall take all such steps as may be necessary to assure that the activities,
27 deliberations, decisions, and policies that reflect the performance of his or her constitutional,
28 statutory, or other official or ceremonial duties are adequately documented and that such records

1 are maintained as Presidential records pursuant to the requirements of this section and other
2 provisions of law.

3 (b) Documentary materials produced or received by the President, his or her staff, or units
4 or individuals in the Executive Office of the President, the function of which is to advise and
5 assist the President, shall, to the extent practicable, be categorized as Presidential records or
6 personal records upon their creation or receipt and be filed separately.

7 (c) During his or her term of office, the President may dispose of those of his or her
8 Presidential records that no longer have administrative, historical, informational, or evidentiary
9 value if –

10 (i) the President obtains the views, in writing, of the Director of the
11 National Archives concerning the proposed disposal of such Presidential records;
12 and

13 (ii) the Director states that he or she does not intend to take any action
14 under subsection (e) of this section.

15 (d) In the event the Director of the National Archives notifies the President under
16 subsection (c) that he or she does intend to take action under subsection (e), the President may
17 dispose of such Presidential records if copies of the disposal schedule are submitted to the
18 appropriate Congressional Committees at least 60 calendar days of continuous session of
19 Congress in advance of the proposed disposal date. For the purpose of this section, continuity of
20 session is broken only by an adjournment of Congress *sine die*, and the days on which either
21 House is not in session because of an adjournment of more than three days to a day certain are
22 excluded in the computation of the days in which Congress is in continuous session.

23 (e) The Director of the National Archives shall request the advice of the Committee on
24 Accountability of Public Officers and Investigations and the Committee on Public Information
25 and Mass Media of the Senate and the Committee on Good Government and Public
26 Accountability and the Committee on Public Information of the House of Representatives with
27 respect to any proposed disposal of Presidential records whenever he or she considers that –

28 (i) these particular records may be of special interest to the Congress; or

1 (ii) consultation with the Congress regarding the disposal of these particular records is in
2 the public interest.

3 (f) (i) Upon the conclusion of a President's term of office, the Director of the National
4 Archives shall assume responsibility for the custody, control, and preservation of, and access to,
5 the Presidential records of that President. The Director shall have an affirmative duty to make
6 such records available to the public as rapidly and completely as possible consistent with the
7 provisions of this Act.

8 (ii) The Director shall deposit all such Presidential records in a
9 Presidential archival depository or another archival facility operated by the
10 Republic of the Philippines. The Director is authorized to designate, after
11 consultation with the former President, a director at each depository or facility,
12 who shall be responsible for the care and preservation of such records.

13 (iii) The Director is authorized to dispose of such Presidential records
14 which he or she has appraised and determined to have insufficient administrative,
15 historical, informational, or evidentiary value to warrant their continued
16 preservation. Notice of such disposal shall be published in the Official Gazette
17 and a newspaper of general circulation at least 60 days in advance of the proposed
18 disposal date.

19 SECTION 5. *Restrictions on Access to Presidential Records.* —

20 (a) Prior to the conclusion of his or her term of office, the President shall specify
21 durations, not to exceed twelve (12) years, for which access shall be restricted with respect to
22 information, in a Presidential record, within one or more of the following categories:

23 (i) specifically authorized under criteria established by an Executive Order
24 to be kept secret in the interest of national defense or foreign policy and, in fact
25 properly classified pursuant to such Executive Order;

26 (ii) specifically exempted from disclosure by statute, provided that such
27 statute

28 (1) requires that the material be withheld from the public
29 in such a manner as to leave no discretion on the issue, or

1 (2) establishes particular criteria for withholding or refers
2 to particular types of material to be withheld;

3 (iii) trade secrets and commercial or financial information obtained from a
4 person and privileged or confidential;

5 (iv) confidential communications requesting or submitting advice,
6 between the President and his or her advisers, or between such advisers; or

7 (v) personnel and medical files and similar files the disclosure of which
8 would constitute a clearly unwarranted invasion of personal privacy.

9 (b) (i) Any Presidential record or reasonably segregable portion thereof containing
10 information within a category restricted by the President under subsection (a) shall be so
11 designated by the Director of the National Archives and access thereto shall be restricted until
12 the earlier of –

13 (1) the date on which the former President waives the
14 restriction on disclosure of such record, or

15 (2) the expiration of the duration specified under subsection
16 (a) for the category of information on the basis of which access to
17 such record has been restricted; or

18 (3) upon a determination by the Director that such record or
19 reasonably segregable portion thereof, or of any significant
20 element or aspect of the information contained in such record or
21 reasonably segregable portion thereof, has been placed in the
22 public domain through publication by the former President, or his
23 or her agents.

24 (ii) During the period of restricted access specified pursuant to subsection
25 (b) (i), the determination whether access to a Presidential record or reasonably
26 segregable portion thereof shall be restricted shall be made by the Director of the
27 National Archives, in his or her discretion, after consultation with the former
28 President. The Director shall establish procedures whereby any person denied
29 access to a Presidential record because such record is restricted pursuant to a

1 determination made under this paragraph, may file an administrative appeal of
2 such determination. Such procedures shall provide for a written determination by
3 the Director or his or her duly authorized representative, within 30 working days
4 after receipt of such an appeal, setting forth the basis for such determination.

5 (c) Upon the death or disability of a President or former President, any discretion or
6 authority the President or former President may have had under this Act shall be exercised by the
7 Director of the National Archives unless otherwise previously provided by the President or
8 former President in a written notice to the Director.

9 (d) The Court of Appeals shall have jurisdiction over any action initiated by the former
10 President asserting that a determination made by the Director of the National Archives violates
11 the former President's rights or privileges.

12 SECTION 6. *Executive Privilege.* – Nothing in this Act shall be construed to confirm,
13 limit, or expand any constitutionally-based privilege which may be available to an incumbent or
14 former President.

15 SECTION 7. *Exceptions to Restricted Access.* – Notwithstanding any restrictions on
16 access imposed pursuant to Section 5 –

17 (a) the persons employed by the National Archives who are engaged in the performance
18 of normal archival work shall be permitted access to Presidential records in the custody of the
19 Director;

20 (b) subject to any rights, defenses, or privileges which the government or any agency or
21 person may invoke, Presidential records shall be made available –

22 (i) pursuant to subpoena or other judicial process issued by a court of
23 competent jurisdiction for the purposes of any civil or criminal investigation or
24 proceeding;

25 (ii) to an incumbent President if such records contain information that is
26 needed for the conduct of current business of his or her office and that is not
27 otherwise available; and

28 (iii) to either House of Congress, or, to the extent of matter within its
29 jurisdiction, to any committee or subcommittee thereof if such records contain

1 information that is needed for the conduct of its business and that is not otherwise
2 available; and

3 (c) the Presidential records of a former President shall be available to such former
4 President or his or her designated representative.

5 SECTION 8. *Regulations.* – The Director of the National Archives shall promulgate
6 regulations necessary to carry out the provisions of this Act. Such regulations shall include –

7 (a) provisions for advance public notice and description of any Presidential records
8 scheduled for disposal pursuant to Section 4 (f) (3);

9 (b) provisions for providing notice to the former President when materials to which
10 access would otherwise be restricted pursuant to Section 5 (a) are to be made available in
11 accordance with Section 7 (b); and

12 (c) provisions for notice by the Director to the former President when the disclosure of
13 particular documents may adversely affect any rights and privileges which the former President
14 may have.

15 SECTION 9. *Vice-Presidential Records.* – Vice-Presidential records shall be subject to
16 the provisions of this Act in the same manner as Presidential records. The duties and
17 responsibilities of the Vice President, with respect to Vice-Presidential records, shall be the same
18 as the duties and responsibilities of the President under this Act with respect to Presidential
19 records. The authority of the Director of the National Archives with respect to Vice-Presidential
20 records shall be the same as the authority of the Director under this Act with respect to
21 Presidential records.

22 SECTION 10. *Authorization of Appropriations.* – To carry out the provisions of this Act,
23 there are authorized to be appropriated such sums as may be necessary for each fiscal year.

24 SECTION 11. *Separability Clause.* – If any provision, or part hereof is held invalid or
25 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain
26 valid and subsisting.

27 SECTION 12. *Repealing Clause.* – Any law, presidential decree or issuance, executive
28 order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent
29 with, the provisions of this Act is hereby repealed, modified, or amended accordingly.

1 SECTION 13. *Effectivity Clause.* -- This Act shall take effect fifteen (15) days after its
2 publication in at least two (2) newspapers of general circulation.

3 Approved,

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