

FOURTEENTH CONGRESS OF THE REPUBLIC)  
OF THE PHILIPPINES )  
Second Regular Session )

SENATE  
OFFICE OF THE SECRETARY

9 FEB -3 P3:03

SENATE  
S. No. **3034**

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Introduced by Senator Miriam Defensor Santiago

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#### 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.

*Miriam Defensor Santiago*  
MIRIAM DEFENSOR SANTIAGO

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AN ACT  
PROVIDING FOR THE MANAGEMENT, CUSTODY, AND ACCESS TO  
PRESIDENTIAL RECORDS

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

3  
4 SECTION 1. *Short Title.* -- This Act shall be known as the "Presidential Records  
5 Act."

6 SECTION 2. *Definitions.* -- As used in this Act --

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

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

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

1           (ii) does not include any documentary materials that are (i) official  
2 records of an agency; (ii) personal records; (iii) stocks of publications and  
3 stationery; or (iv) extra copies of documents produced only for  
4 convenience of reference, when such copies are clearly so identified.

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

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

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

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

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

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

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

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

2           (a) Through the implementation of records management controls and other  
3 necessary actions, the President shall take all such steps as may be necessary to assure  
4 that the activities, deliberations, decisions, and policies that reflect the performance of his  
5 or her constitutional, statutory, or other official or ceremonial duties are adequately  
6 documented and that such records are maintained as Presidential records pursuant to the  
7 requirements of this section and other provisions of law.

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

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

16                   (i) the President obtains the views, in writing, of the Director of the  
17 National Archives concerning the proposed disposal of such Presidential  
18 records; and

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

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

1 (e) The Director of the National Archives shall request the advice of the  
2 Committee on Accountability of Public Officers and Investigations and the Committee on  
3 Public Information and Mass Media of the Senate and the Committee on Good  
4 Government and Public Accountability and the Committee on Public Information of the  
5 House of Representatives with respect to any proposed disposal of Presidential records  
6 whenever he or she considers that –

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

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

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

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

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

27 SECTION 5. *Restrictions on Access to Presidential Records.* –

28 (a) Prior to the conclusion of his or her term of office, the President shall specify  
29 durations, not to exceed twelve (12) years, for which access shall be restricted with

1 respect to information, in a Presidential record, within one or more of the following  
2 categories:

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

7 (ii) specifically exempted from disclosure by statute, provided that  
8 such statute

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

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

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

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

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

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

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

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

1                   (3) upon a determination by the Director that such  
2                   record or reasonably segregable portion thereof, or of any  
3                   significant element or aspect of the information contained  
4                   in such record or reasonably segregable portion thereof, has  
5                   been placed in the public domain through publication by  
6                   the former President, or his or her agents.

7                   (ii) During the period of restricted access specified pursuant to  
8                   subsection (b) (i), the determination whether access to a Presidential  
9                   record or reasonably segregable portion thereof shall be restricted shall be  
10                  made by the Director of the National Archives, in his or her discretion,  
11                  after consultation with the former President. The Director shall establish  
12                  procedures whereby any person denied access to a Presidential record  
13                  because such record is restricted pursuant to a determination made under  
14                  this paragraph, may file an administrative appeal of such determination.  
15                  Such procedures shall provide for a written determination by the Director  
16                  or his or her duly authorized representative, within 30 working days after  
17                  receipt of such an appeal, setting forth the basis for such determination.

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

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

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

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

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

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

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

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

12 (iii) to either House of Congress, or, to the extent of matter within  
13 its jurisdiction, to any committee or subcommittee thereof if such records  
14 contain information that is needed for the conduct of its business and that  
15 is not otherwise available; and

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

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

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

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

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



1           SECTION 9. *Vice-Presidential Records.* – Vice-Presidential records shall be  
2 subject to the provisions of this Act in the same manner as Presidential records. The  
3 duties and responsibilities of the Vice President, with respect to Vice-Presidential  
4 records, shall be the same as the duties and responsibilities of the President under this Act  
5 with respect to Presidential records. The authority of the Director of the National  
6 Archives with respect to Vice-Presidential records shall be the same as the authority of  
7 the Director under this Act with respect to Presidential records.

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

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

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

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

20           Approved,

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