

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
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SENATE
S. B. No. 14

Introduced by Senator Sergio 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.

S. Osmeña III
SERGIO OSMEÑA III
Senator

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SENATE
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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

1 c. administrative staff manuals and instructions to staff that effect a
2 member of the public

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

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

20 (i) it has been indexed and either made available or published as
21 provided by this sector; or

22 (ii) the party has actual and timely notice of the terms thereof.

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

1 **SEC. 7. Rules Governing Publication.** – a. Each agency shall
2 promulgate regulations, pursuant to notice and receipt of public comment,
3 specifying a uniform schedule of fees applicable to all constituent units of such
4 agency. Such fees shall be limited to reasonable standard charges for document
5 search and duplication and provide for recovery of only the direct costs of such
6 search and duplication and provide for recovery of only the direct costs of such
7 search and duplication. Documents shall be furnished without charge or at a
8 reduced charge where the agency determines that waiver or reduction of the fee
9 is in the public because furnishing the information can be considered as primarily
10 benefiting the general public.

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

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

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

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

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

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

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

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

25 a. determine within ten (10) days (except Saturdays, Sundays, and
26 legal public holidays) after the receipt of any such request whether to comply with
27 such request and shall immediately notify the person making such request of

1 such determination and the reasons therefor, and of the right of such person to
2 appeal any adverse determination to the head of the agency; and

3 b. make a determination with respect to any appeal within twenty (20)
4 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt
5 of such appeal. If on appeal the denial of the request for records is in whole or in
6 part upheld, the agency shall notify the person making such request of the
7 provisions for judicial review of that determination under Section 7.

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

16 a. the need to search for and collect the requested records from the
17 field facilities or other establishments that are separate from the office processing
18 the request.

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

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

26 **SEC. 11. *Presumption of Exhaustion of Remedies.*** – Any person
27 making a request to any agency for records under Section 3, 5 or 6 of this Act
28 shall be deemed to have exhausted his administrative remedies with respect to

1 such request if the agency fails to comply with the applicable time limit provisions
2 of this paragraph. If the government can show exceptional circumstances exist
3 and the agency is exercising due diligence in responding to the request, the court
4 may retain jurisdiction and allow the agency additional time to complete its review
5 of the records. Upon any determination by an agency to comply with a request
6 for records, the records shall be made promptly available to such person making
7 such request. Any notification of denial of any request for records under this
8 subsection shall set forth the names and title of positions of each person
9 responsible for the denial of such request.

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

11 a. related solely to the internal personnel rules and practices of an
12 agency;

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

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

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

22 e. contained in or related to examination, operation, or condition
23 reports prepared by on behalf of, or for the use of an agency responsible for the
24 regulation or supervision of financial institutions.

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

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

5 a. the number of determinations made by such agency not to comply
6 with the requests for records made to such agency under Section 3 and the
7 reasons for such determination.

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

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

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

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

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

21 g. such other information as indicates efforts to administer fully this
22 section.

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

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

4 **SEC. 15. *Repealing Clause.*** – All existing laws, executive orders, letters
5 of instruction, proclamations, presidential decrees, rules and regulations
6 promulgated thereby, and other government issuances which have the force of
7 law inconsistent with or in conflict with the provisions of this Act, particularly
8 those which provide confidentiality of government records, unless exempted by
9 this Act, are hereby repealed or modified accordingly.

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

Approved,