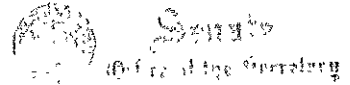


**SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES
First Regular Session**



19 JUL 11 1955

SENATE

S. No. 64

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Introduced by **Senator Gregorio B. Honasan II**

EXPLANATORY NOTE

Legislation on Freedom of Information (FOI) has been recognized for nearly 250 years, with the first FOI law enacted in Sweden in 1766 under the Freedom of the Press Act. This was followed in 1789 by the French Declaration of the Rights of Man, which called for the right of citizens to review government expenditures.

On December 14, 1946, the United Nations General Assembly passed the resolution stating unequivocally that: Freedom of information is a fundamental human right and is the touchstone of all freedoms to which the United Nations is consecrated. The significance of this concept was further explained in Article 19 of the UN Declaration of Human Rights, which provides that: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, and regardless of frontiers.

General principles on freedom of information may have been declared by the United Nations and other international treaties, but national laws have to be adopted to ensure that citizens are able to exercise this right.

The First Principle in our Constitution states that, "The Philippines is a democratic and republican state. Sovereignty resides in the people and all government authority emanates from them." (Section 1, Article II, Declaration of Principles and State Policies of the 1987 Constitution)

As such, our democratic government is a government of the people, by the people, and for the people. But the prevailing reality is that most of our less privileged Filipino brethren are born, struggle to survive, and die without knowing that they are the rightful and constitutional owners of this beautiful country.

It is government's responsibility to centralize information so as to govern effectively. It is the keeper of information on its territory, its land and resources, its people, without which there would be no government. The three branches of government also safeguard information related to the policies and programs needed to carry out the functions of governance. The centralization of personal records in government agencies does not in any way imply that the government owns its citizens. In fact, it is the other way around. Government is an instrument owned by the people, and all information in the custody of the State should be available for people to access for their well-being and benefit. Section 16, Article XIII of our Constitution, on Social Justice and Human Rights, mandates that, "The right of the people and their organizations to

effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged."

If we are serious about sustainable development of our democracy as we are about our economy, transparency and open government must be at its core.

Under Article II, Section 28 of our Constitution, it is a declared policy that, "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." It is further mandated under Article III, Section 7 of our fundamental law that, "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 to citizen, subject to such limitations as may be provided by law." As early on observed by Justice Wendell Holmes in the 1928 case of *Springer vs. Government of the Philippine Islands*, however, "the great ordinances of our constitution do not establish and divide fields of black and white [with mathematical precision into watertight compartments]. Even the more specific of them are found to terminate in a penumbra shading gradually from one extreme to another."

In the 2008 decision involving the Japan-Philippines Economic Partnership Agreement (JPEPA), the dissenting opinion of former Chief Justice Reynato Puno acknowledged that, "the Philippines does not have a comprehensive freedom of information law that enumerates the exceptions or sources of exceptions to the right of information." In response to this challenge and to the call of our people, this measure seeks to fortify the people's right of ownership over information held by the people's government.

Following the fall of the Berlin Wall, a trend to enact comprehensive laws for access to government-held information swept across Europe where, notably, countries in Central and Eastern Europe had already been enacting freedom of information laws as part of their transition into democracies. Incidences of corruption, human rights violations, and other political scandals in many countries have fueled a global campaign for the right of information, with the World Bank, the International Monetary Fund, and other institutions adding pressure for countries to enact laws to reduce corruption and make financial systems accountable.

There is a valid observation that decisions leading to environmental degradation, human rights violations, and graft and corruption are often made behind closed doors. Political machinations, where failures are hidden under a shroud of secrecy, enable the guilty to escape responsibility, and the avowed reasons for secrecy become the very same reasons for the isolation, if not downfall, of governments.

There are understandable exemptions, especially in areas involving foreign policy and national security, which have been regrettably used to justify decisions sometimes resulting in unnecessary loss of life and limb, and even the destruction of entire communities. Under the pretext of national security, costly decisions have been carried out, which could have been avoided had there been honest disclosure of information.

The non-disclosure of information can only be justified if withholding it outweighs the harm of disclosure. Other than that, the restriction on access to information, even on national security concerns or during emergencies, should not be permanent, automatic or absolute. The government must also set up the proper mechanisms to review any

denial of information, especially amid suspicions that state instruments have been used by officials to pursue hidden agendas or persecute political opponents under the pretext of national security.

It is assumed that genuine national security means saving lives and property, but it has also been shown that lies can be perpetuated and wrong decisions made by using national security as an excuse. Maintaining secrecy or its opposite, making baseless pronouncements - is costly business, but nothing could be more costly than decisions with unintended results, results that are euphemized and sanitized as collateral damage. It is a situation that is further complicated when mistakes are not officially brought to light because of the privilege of national security.

In an "open society," people do not exist for the "national security state" where "Big Brother" is supposed to know best. Today, the State is justified only up to the point that it serves the people, and its security and stability largely depend on the mutual accessibility of its agencies and the people it is expected to serve.

Sunshine laws like Freedom of Information provide a healthy environment for decision-making, where citizens get better treatment from their institutions, and are, at the same time, empowered to sort out options for their own contributions to government. FOI will afford citizens the opportunity to look into the workings of the three branches of government and the different agencies, allowing them to better define their roles in the whole system of democratic governance.

Freedom of Information is guided by the principle of honest and maximum disclosure of state-controlled information. If there are exceptions, these should be explicitly defined, and it must be proven that in this instance, it will clearly be more beneficial to public interest to withhold information than to disclose it. The freedoms of speech and of the press will always have to be balanced with the right to life and honor as constitutional principles. But in all instances, the balance between disclosure and secrecy must always be guided by the north star of public interest.

A government of the people, by the people and for the people is a government owned by the people. And only when the people are empowered with information and the truth can there be genuine democracy.



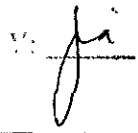
GREGORIO B. HONASAN II
Senator

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

13 JUL -1 11 55

SENATE

S. No. 64



Introduced by **Senator Gregorio B. Honasan II**

AN ACT
FORTIFYING THE PEOPLE'S RIGHT OF OWNERSHIP OVER INFORMATION HELD
BY THE PEOPLE'S GOVERNMENT

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 "**People's Ownership of Government Information (POGI) Act of 2013.**"

SEC. 2. Declaration of Policy. - Pursuant to the First Principle declared in Our Constitution that Sovereignty resides in the people and all government authority emanates from them, the right of the people to effective and reasonable participation at all levels of social, political and economic decision making, the right of the people to information on matters of public concern, and the policy of full public disclosure of all government transactions involving public interest, it is hereby declared that All Government Information is Owned by the People and that public access to all government information, as a general rule, serves the public interest and exceptional instances restricting access thereto, as provided herein, shall only be allowed also by reason of public interest.

SEC. 3. Coverage - This Act shall cover all branches, departments, and instrumentalities of government, including all local government units, collectively referred to as government agencies defined under Section 4 of this Act, .

SEC. 4. Definition of Terms. - As used in this Act:

(A) "Information" shall mean any record, document, paper, report, letters, contract, minutes and transcripts of official meetings, maps, books, photographs, data, research material, film, sound and video recordings, magnetic or other tapes, electronic data, computer stored data, or any other like or similar data or material recorded, stored or archived in whatever form or format, which are made, received or kept in or under the control and custody of any government agency pursuant to law, executive order, rules and regulations, ordinance or in connection with the performance or transaction of official business by any government agency.

(B) "Government agency/agencies" shall include the executive, legislative and judicial branches as well as constitutional bodies of the Republic of the Philippines including, but not limited to, the national government and all its agencies, departments, bureaus, offices and instrumentalities, constitutional commissions and constitutionally mandated bodies, local governments and all their agencies, regulatory agencies, chartered institutions, government-owned or controlled corporations, including wholly-owned or controlled subsidiaries, government financial institutions, state universities and colleges, the Armed Forces of the Philippines, the Philippine National Police, all offices in the Congress of the Philippines including the offices of Senators and Representatives, the Supreme Court and all lower courts established by law.

(C) "Official record/records" shall refer to information produced or received by a public officer or employee, or by a government agency in an official capacity or pursuant to a public function or duty, regardless of whether the information is in the draft, final, or any other stage or status.

(D) "Public record/records" shall include information required by law, executive orders, rules, or regulations to be entered, kept and made publicly available by a government agency.

(E) "People's ownership of government information" shall refer to a Filipino citizen's right of access to government held information as provided by Article III, Section 7 of the 1987 Constitution and by this Act.

SEC. 5. Access to Information. – Every Filipino citizen has a right to and shall, on request, be given access to any record under the control of a government agency. Government agencies shall make available to the public for scrutiny, copying and reproduction in the manner provided by this Act, all information pertaining to official acts, transactions or decisions, as well as government research data used as a basis for policy development, subject to the exceptions enumerated under section 7 of this Act, regardless of their physical form or format in which they are contained and by whom they were made.

SEC. 6. Presumption. – There shall be a legal presumption in favor of access to information. No request for information shall be denied unless it clearly falls under the exceptions provided under this Act.

SEC. 7. Exceptions. – Access to information shall be granted unless:

(a) The information is specifically authorized to be kept secret under guidelines established by an executive order, and in fact properly classified pursuant thereto: *Provided*, That 1) The information directly relates to national security or defense and its revelation may cause serious damage to the national security or internal and external defense of the State; or 2) The information requested pertains to the foreign affairs of the Republic of the Philippines, when its revelation may weaken the negotiating position of the government in an ongoing or proposed bilateral or multilateral negotiation or seriously jeopardize the diplomatic relations of the Philippines with any state. *Provided, further*, That the executive order shall specify the reasonable period after which the information shall be automatically declassified or subject to mandatory declassification review, and that any reasonable doubt as to classification and declassification shall be settled in favor of the right to information;

(b) The information consist of records of minutes, records of advice given or records of opinions expressed during decision-making or policy formulation, invoked by the Chief Executive to be privileged by reason of the sensitivity of the subject matter or by reason of the impairment of the Chief Executive's Presidential communications privilege that would result from the disclosure thereof.

(c) The information requested pertains to internal and/or external defense, law enforcement, and border control, when the disclosure thereof may:

(1) compromise or interfere with any legitimate military or law enforcement operation, or

(2) compromise or interfere with the legitimate prevention, detection or suppression of criminal activity, or the legitimate implementation of immigration controls and border security, or

(3) lead to the disclosure of the identity of a confidential source, including a government, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a law enforcement authority in the course of an investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, or

(4) disclose legitimate techniques and procedures for law enforcement investigations or prosecutions, or would disclose legitimate guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(5) endanger the life or physical safety of any individual.

(d) The information requested consists of drafts of orders, resolutions, decisions, memoranda or audit reports by any executive, administrative, regulatory, constitutional, judicial or quasi-judicial body in the exercise of their regulatory, audit and adjudicatory function.

(e) The information requested is obtained by either House of Congress, or any committee thereof, in executive session.

(f) The information requested pertains to the personal information of a natural person other than the requesting party, and its disclosure would constitute an unwarranted invasion of his or her personal privacy, unless it forms part of a public record, or the person is or was an official of a government agency and the information relates to his or her public function or the person has consented, in writing, to the disclosure of the information;

(g) The information requested pertains to trade secrets and commercial or financial information obtained from a natural or juridical person other than the requesting party, obtained in confidence or covered by privileged communication, and/or filed with a government agency, whenever the revelation thereof would prejudice the interests of such natural or juridical person in trade, industrial, financial or commercial competition.

(h) The information is classified as privileged communications in legal proceedings by law or by the Rules of Court.

(i) The information requested is exempted from disclosure by law or by the Constitution, in addition to those provided in this section.

(j) The information is of a nature that its premature disclosure would: (1) in the case of an agency that regulates or deals with currencies, interest rates, securities, commodities, or financial institutions, be likely to lead speculations in currencies, interest rates, securities, or commodities market; or in (2) in the case of other agencies, be likely to frustrate the effective implementation of a proposed official action: *Provided*, That the information shall be disclosed once the abovementioned dangers have ceased.

(k) The information has already been made accessible as provided in Section 13 of this Act.

For letters (c) to (k) of this section, the determination whether any of these grounds shall apply shall be the responsibility of the head of office of the government agency in custody or control of the information, or any responsible central or field officer/s duly designated by him. *Provided, That:*

(1) The exceptions are strictly construed;

(2) The exceptions are not used to cover-up a crime, wrong-doing, graft, or corruption;

(3) The President, the Supreme Court, the Senate, the House of Representatives, and the Constitutional Commissions may waive an exception with respect to information in the custody of offices under their respective supervision or control, when they deem that there is an overriding public interest in disclosure;

(4) The exceptions do not constitute authority to withhold information from Congress, nor authority for the executive branch of a local government unit to withhold information from the legislative body of such local government unit;

(5) Whenever the information requested is part of a record, whose other parts are covered by an exception, but may be reasonably severed from a record, the responding official shall communicate the information not covered by the exception to the requester; and

(6) The exceptions set forth in this section may be overcome if the requester is able to prove before the Ombudsman or a court of competent jurisdiction that the public interest in the disclosure of information outweighs the public interest in keeping the information secret or confidential.

SEC. 8. Mandatory Disclosure of Information. – Government agencies are mandated to regularly disclose the following information in the duration and manner provided hereunder:

(a) In fulfillment of Article XI, Section 17 of the Constitution, the following national officials shall disclose to the public, through their official website, their Statement of Assets, Liabilities, and Net Worth (SALN) on an annual basis:

- (1) the President;
- (2) the Vice- President;
- (3) the Members of the Cabinet;
- (4) the Members of Congress;
- (5) the Justices of Supreme Court;
- (6) the Members of Constitutional Commissions and other constitutional offices; and
- (7) officers of the armed forces with general or flag rank.

(b) All agencies of all branches of government shall upload on their websites, which shall be updated monthly, a register of the following public interest transactions, documents or records, including:

- (1) Annual Budget of Government Agencies;
- (2) Itemized Monthly Collections and Disbursement;
- (3) Summary of Income and Expenditures;
- (4) Component of the IRA Utilization;
- (5) Annual Procurement Plan and Procurement List;
- (6) Items to Bid;
- (7) Bid Results on Civil Works, and Goods and Services;
- (8) Abstract of Bids as Calculated;

- (9) Procurement contracts entered into by a government agency;
 - (10) Construction or concession agreements or contracts entered into by a government agency with any domestic or foreign person or entity;
 - (11) Private sector participation agreements or contracts in infrastructure and development projects under Republic Act No. 6957, as amended by Republic Act No. 7718, authorizing the financing, construction, operation and maintenance of infrastructure projects;
 - (12) Public funding extended to any private entity;
 - (13) Bilateral or multilateral agreements and treaties in trade, economic partnership, investments, cooperation and similar binding commitments;
 - (14) Licenses, permits or agreements granted by any government agency to any person or entity for the extraction and/or utilization of natural resources and a list of the grantees;
 - (15) Guarantees given by any government agency to government-owned or -controlled corporations and to private corporations, persons or entities;
 - (16) Loans from domestic and foreign financial institutions;
 - (17) Loans, grants, development assistance, technical assistance, and programs entered into by a government agency with official bilateral or multilateral agencies, as well as with private aid agencies or institutions;
- and
- (18) Compromise agreements entered into by a government agency with any person or entity.

The register shall contain a brief description of the transaction involved, including, but not limited to: the nature and object of the transaction, the parties and amounts involved, the key steps undertaken towards its conclusion, and the relevant dates provided that contracts and agreements involving an amount of at least fifty million pesos (P50,000,000.00) shall be uploaded in full on the website of the concerned government agency or the *Official Gazette* online. A covered record shall be enrolled in the register not later than thirty (30) working days from its perfection or issuance.

(c) Each government agency shall regularly publish, print and disseminate at no cost to the public and in an accessible form, in conjunction with Republic Act No. 9485, or the Anti-Red Tape Act of 2007, and through their website, timely, true, accurate and updated key information including, but not limited to:

- (1) A People's Ownership of Government Information Manual in full;
- (2) A description of its mandate, structure, powers, functions, duties and decision-making processes;
- (3) A description of the frontline services it delivers and the procedure and length of time by which they may be availed of;
- (4) The names of its key officials, their powers, functions and responsibilities, and their profiles and curriculum vitae;
- (5) Work programs, development plans, investment plans, projects, performance targets and accomplishments, and budgets, revenue allotments and expenditures;
- (6) Important rules and regulations, orders or decisions: *Provided*, That they be published within fifteen (15) calendar days from promulgation;
- (7) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;
- (8) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency, including subsequent amendments;
- (9) Current and important database and statistics that it generates;
- (10) Bidding processes and requirements; and
- (11) Mechanisms or procedures by which the public may participate in or otherwise influence the formulation of policy or the exercise of its powers.

All government agencies shall over time endeavor and build the capacity and practice to upload in full all other contracts, agreements, or treaties covered under this section, specially those that are of the highest public interest by reason of the amounts involved and the impact of the transaction to the public. All government agencies must ensure that they have a compliant website within two (2) years from the effectivity of this Act.

Should an agency lack the capacity to comply with the website uploading requirement of this section, the agency shall initiate a capacity-building program, coordinate with another appropriate agency, or use an alternative mechanism, to facilitate substantive compliance not later than three (3) years from the effectivity of this Act. The National

Computer Center shall monitor all government agency websites and render the appropriate support for their development and full compliance with the requirements of this Act.

For purposes of improving capability, every government agency shall ensure the provision of adequate training for its officials to improve awareness of the people's ownership of government information and the provisions of this Act, and to keep updated as to best practices in relation to information disclosure, records maintenance and archiving.

In order to develop accessibility of language and form, every government agency shall endeavor to translate key information into major Filipino languages and present them in popular form and means.

SEC. 9. *Protection of Privacy* – While providing for access to information in public records, this Act also affords full protection of the right to privacy of individuals, as follows:

(a) A government agency must ensure that personal information in its custody or under its control is disclosed only as permitted under this Act;

(b) A government agency must protect personal information in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, or disposal;

(c) An employee, officer or director of a government agency who has access, whether authorized or unauthorized, to personal information in the custody of the agency, must not disclose that information except as authorized under this Act.

SEC. 10. *People's Ownership of Government Information Manual*. – (a) For the effective implementation of this Act, all government agencies shall prepare a People's Ownership of Government Information Manual, setting forth the following:

(1) The location and contact information of the head, regional, provincial and field offices, and other established places where the public can obtain government information or submit requests;

(2) The types of information it generates, produces, holds and/or publishes;

(3) A description of its record-keeping system;

(4) The person or office responsible for receiving requests for information;

(5) The procedure for the filing of requests personally, by mail, or through the identified electronic means;

(6) The standard forms for the submission of request and for the proper acknowledgment of the request;

(7) The process for the disposition of the request, including the routing of the request to the person or office with the duty to act on the request, the decision-making process, and the grant or denial of access and its implementation;

(8) The procedure for the administrative appeal of any denial for access to information;

(9) The schedule of fees;

(10) The process and procedure for the mandatory disclosure of information under Section 8 of this Act: *Provided*, That, should the agency lack the capacity to fully comply therewith, a brief description of its plan to facilitate compliance within three (3) years from the approval of this Act; and

(11) Such other information, taking into consideration the unique characteristics of an agency, that will help facilitate the effective implementation of this Act.

(b) The foregoing information shall also be posted in its website and bulletin boards, and shall be regularly updated;

(c) In no case shall the absence of the aforementioned Manual be a reason for the denial of any request for information made in accordance with this Act.

(d) The heads of each of the departments and agencies may designate liaison units or Committees who shall coordinate with the other units of the agency in implementing this Act. The composition, functions and duties of these liaison units or Committees shall be included in the People's Ownership of Government Information Manual.

SEC. 11. Procedure of Access. – (a) Any person who wishes to obtain information shall submit, free of charge, a request to the government agency concerned personally, by mail, or through electronic means. A person who is unable, because of illiteracy or due to being a person with disability, to make a written request for information may make an oral request, and the public official who receives the oral request shall reduce it to writing, and include his name and position within the government agency, and give a copy thereof to the person who made the request. The request shall state the name and preferred contact information of the requesting party, and reasonably describe the information required, the reason for the request of the information and the preferred means by which the government agency shall communicate such information to the requesting party: *Provided*, That the stated reason shall not be used as a ground to deny the request or to refuse the acceptance of the request, unless such reason is contrary to law. If the request is submitted personally, the requesting party shall show his current identification card issued by any government agency, or government or private employer or school, or a community tax certificate. If the request is submitted by mail or through electronic means, the requesting party may submit a photostatic or electronically scanned copy of the identification, or other convenient means as determined by the agency.

(b) The public official receiving the request shall provide reasonable assistance, free of charge, to enable all requesters and particularly those with special needs, to comply with the request requirements under this section.

(c) The request shall be stamped by the government agency, indicating the date and time of receipt and the name, rank, title and position of the receiving public officer or employee with the corresponding signature, and a copy thereof furnished to the requesting party. In case the request is submitted by electronic means, the government agency shall provide for an equivalent means by which the requirements of this paragraph shall be met. Each government agency shall establish a system to trace the status of all requests for information received by it.

(d) The request may indicate the requesting party's preferred mode and means of receiving the information requested, provided that the mode and means are reasonable, taking into consideration equipment normally available to the concerned government agency.

(e) A government agency may communicate the information requested in a form other than the preferred means whenever the agency has no capability in communicating the information in the preferred format, or such preferred means would unreasonably interfere with the effective operation of the agency or be detrimental to the preservation of the record.

(f) The government agency shall comply with such request as soon as practicable, and in any case within fifteen (15) working days from the receipt thereof. The period may be extended whenever the information requested requires a search of the government agency's field or satellite offices, examination of voluminous records, the occurrence of fortuitous events or other analogous cases.

(g) The government agency shall, in writing or through electronic means, notify the person making the request of the extension, setting forth the reasons for such extension and the date when the information shall be made available, which in no case shall result in an extension of more than twenty (20) working days.

(h) Once a decision is made to grant the request, the person making the request shall be notified of such and shall pay the required access and processing fees.

If the information is not held by the government agency to which the request was made, it shall notify the requester that it does not hold the information, and indicate to the requester which agency holds the record, if known. Whenever practicable, the agency receiving the request may also cause the transfer of the request to the appropriate agency that holds the information: *Provided*, That the period to comply with the request under this section shall begin to run only upon the receipt of the agency to which the request is transferred.

SEC. 12. Access and Processing Fees. – Government agencies may charge a reasonable fee to reimburse the actual cost of reproduction, copying or transcription and the communication of the information requested. An agency may waive the fees whenever it is satisfied that the requester is an indigent, or that the cost of reproduction is negligible, or that it is pursuant to a program for proactive disclosure.

SEC. 13. Exemption from Compliance. – The government agency is excused from complying with a subsequent identical or substantially similar request from the same requesting party where it has previously complied with a request for information unless a reasonable interval has lapsed between compliance with the previous request and the making of the current request: *Provided*, That the government agency complies with Section 14 of this Act.

SEC. 14. Notice of Denial. – (a) If the government agency decides to deny the request, in whole or in part, it shall, as soon as practicable, and in any case within fifteen (15) working days from the receipt of the request, notify the person making the request of such denial in writing or through electronic means. The notice shall clearly set forth the ground or grounds for denial and the circumstances on which the denial is based, and indicate available rights of reconsideration or appeal. Failure to notify the person making the request of the denial, or of the extension, shall be deemed a denial of the request for access to information.

SEC. 15. Remedies in Cases of Denial. – (a) In all government agencies other than the judicial branch:

(1) Every denial of a request for access to information may be contested by a Request for Administrative Reconsideration to the same responsible official who originally denied the request or by an Administrative appeal to the Head of Agency, following the procedure mentioned in Section 10 (a) (8) and Section 14 of this Act: *Provided*, That the appeal must be filed within fifteen (15) calendar days from the receipt of the notice of denial and must be decided within fifteen (15) calendar days from filing. Failure to resolve the appeal within the aforementioned period shall constitute a denial of the appeal: *Provided, further*, That every Notice of Denial shall include check-box options to

be checked or marked by the requester for the Immediate Administrative Reconsideration or Appeal to the head of the agency. If the requester, after indicating his desired remedy, submits his Request for Administrative Reconsideration or Appeal with the government official communicating the Notice of Denial to the requester, that government official shall be responsible for immediately coursing the Request for Administrative Reconsideration or Appeal to the appropriate official or head of the agency: *Provided, finally,* That the requester may, in addition to and together with his Request for Reconsideration or Appeal, submit further arguments to strengthen his request;

(2) Instead of appealing or after the denial of the appeal, the person denied access to information may file a verified Complaint with the Office of the Ombudsman, praying that the government agency concerned be directed to immediately afford access to the information being requested. Such Complaint shall be resolved by the Office of the Ombudsman within sixty (60) calendar days from filing, or earlier when time is of the essence, taking into account such factors as the nature of the information requested, context of the request, public interest and danger that the information requested will become moot. The Office of the Ombudsman shall promulgate its special rules of procedure for the immediate disposition of Complaints filed pursuant to this Section. Unless restrained or enjoined, the decisions of the Office of the Ombudsman shall be immediately executory, without prejudice to review in accordance with the Rules of Court;

(3) Instead of filing an Complaint with the Office of the Ombudsman, whenever a request for information is denied originally or on administrative appeal, the requesting party may file a verified petition for mandamus in the proper court, alleging the facts with certainty and praying that judgment be rendered ordering the respondent, immediately or at some other time to be specified by the court, to disclose the information and to pay the damages sustained by the requesting party by reason of the denial. The procedure for such petition shall be summary in nature. Unless restrained or enjoined, the decision of the court shall be immediately executor without prejudice to review in accordance with the Rules of Court;

(4) In resolving a Complaint or Petition brought under the preceding paragraphs (2) and (3), the Ombudsman or the court is empowered to receive the information subject of a claim of exception under Section 7 herein and examine them in camera to determine the sufficiency of the factual and legal basis of such claim, when such sufficiency cannot be reasonably determined through evidence and circumstances apart from the information.

(b) In the Judicial Branch – The Judiciary shall be governed by such remedies as promulgated by the Supreme Court.

(c) The remedies under this section are without prejudice to any other administrative, civil or criminal action covering the same Act.

(d) The remedies available under this Act shall be exempt from the rules on non-exhaustion of administrative remedies and the application of the provisions of Republic Act No. 9285, otherwise known as the *Alternative Dispute Resolution Act of 2004*.

(e) In case the requesting party has limited or no financial capacity, the Public Attorney's Office shall be mandated to provide legal assistance to the requester in availing of the remedies provided under this Act.

SEC. 16. *Keeping of Records.* – (a) Government agencies shall create and/or maintain in appropriate formats, accurate and reasonably complete documentation or records of their organization, policies, transactions, decisions, resolutions, enactments, actions, procedures, operations, activities, communications and documents received or filed with them and the data generated or collected. These shall include working files such as drafts or notes, whenever these have been circulated within the agency for official purpose such as for discussion, comment or approval or when these contain unique information that can substantially contribute to a proper understanding of the agency organization, policies, transactions, decisions, resolutions, enactments, actions, procedures, operations, and activities;

(b) Government agencies shall identify specific and classes of official records in their custody or control that have continuing historical, administrative, informational, legal, evidentiary, or research value for preservation by such agencies or their legitimate

successors, or for transfer to the National Archives of the Philippines. In addition, the National Archives of the Philippines shall likewise identify specific and classes of official records that it shall require agencies to preserve and transfer to it.

(c) In addition to the specific and classes of official records identified for preservation under letter (b) of this Section, the following shall not be destroyed:

- (1) Records pertaining to loans obtained or guaranteed by the government;
- (2) Records of government contracts;
- (3) The declaration under oath of the assets, liabilities and net worth of public officers and employees, as required by law; and
- (4) Records of official investigations pertaining to allegations of graft and corruption of public officers.

(d) Government agencies shall prepare, following standards and period promulgated pursuant to Republic Act No. 9470 or the National Archives of the Philippines Act of 2007, a records management program that includes the following:

- (1) A records maintenance system for the creation, selection, classification, indexing and filing of official records that facilitate the easy identification, retrieval and communication of information to the public;
- (2) A records maintenance, archival and disposition schedule providing a listing of records under current use, for retention by the agency, for transfer to the National Archives, or for destruction: *Provided*, That destruction of the official records may be implemented only upon approval of the National Archives of the Philippines; and
- (3) A specifications of the roles and responsibilities of agency personnel in the implementation of such system and schedule.

(e) In addition to its function as repository of all rules and regulations issued by agencies as provided under Book VII, Chapter II of the Administrative Code of 1987, the University of the Philippines Law Center shall, in coordination with the Office of the

President which has exclusive editorial and printing jurisdiction over the *Official Gazette*, and with other relevant agencies, maintain a database, and publish the same in print in the *Official Gazette* or in digital or online form, the following:

- (1) All laws of the Philippines and their amendments, from the period of the Philippine Commission to the present;
- (2) All presidential issuances from November 15, 1935 to the present, including but not limited, to executive orders, presidential proclamations, administrative orders, memorandum circulars, general orders, and other similar issuances;
- (3) A database of all appointments and designations made by the President of the Philippines; and
- (4) Opinions of the Secretary of Justice.

SEC. 17. *Publication in the Official Gazette.* For purposes of mandatory disclosure as provided in Section 8 of this Act, online publication in the *Official Gazette* website shall be considered official publication provided there shall be a timestamp in the said document.

For purposes of compliance with Article 2 of the Civil Code of the Philippines, publication of the following in the online version of the *Official Gazette*, with the corresponding timestamps on the document, shall be considered as official publication:

- (a) All important legislative acts and resolutions of a public nature of the Congress of the Philippines;
- (b) All executive and administrative orders and proclamations of general application;
- (c) Decisions or abstracts of decisions of the Supreme Court and the Court of Appeals or other courts of similar rank, as may be deemed by said courts of sufficient importance to be so published;
- (d) Such documents or classes of documents as the President shall determine from time to time to have general application or which he may authorize to be published.

However, other documents or classes of documents as may be required to be published by law, such as petitions and/or legal notices in connection with land titles,

naturalization or special proceedings shall continue to be published in the print version of the *Official Gazette* or in any newspaper of general circulation for purposes of compliance with the publication requirement.

SEC. 18. *Administrative Liability.* – The acts enumerated in this Section shall be tantamount to grave administrative offenses and shall constitute grounds for administrative and disciplinary sanction against any public official or employee who willfully and knowingly commits the following:

- (a) Refusal to promptly forward the request under Section 11 of this Act to the public officer within the same office or agency responsible for officially acting on the request when such is the direct cause of the failure to disclose the information within the periods required by this Act;
- (b) Failure to act on the request within the periods required by this Act;
- (c) Refusal to comply with the decision of his immediate supervisor, the Ombudsman, or of any court ordering the release of information;
- (d) Approval of policies, rules and regulations clearly contrary to the provisions of this Act, and which policies, rules and regulations are the direct cause of the denial of a request for information.

SEC. 19. *Criminal Liability.* – (a) Any public official or employee who falsely denies or conceals the existence of information which is a proper subject for disclosure under this Act shall be liable for the crime of removal, concealment or destruction of documents as defined under Article 226 of the Revised Penal Code.

(b) Any public official or employee who destroys, or causes to be destroyed, information and/or documents being requested under this Act, for the purpose of frustrating the requesting party's access thereto, shall be liable for the crime of removal, concealment or destruction of documents as defined under Article 226 of the Revised Penal Code.

(c) Any individual who knowingly directed, induced or caused the commission of the foregoing acts shall be liable as principal by inducement in the prosecution of public officials or employees under this section.

(d) The penalty of *arresto mayor* shall be imposed upon any public officer or employee responsible for officially acting on the request, who shall claim an exception under Section 7 of this Act, or under the Constitution, when such claim is manifestly devoid of factual basis.

SEC. 20. *No Abuse in the Exercise of Rights and in the Performance of Duties Under this Act.* - Public officials and employees, in the performance of their duties under this Act, as well as citizens in the exercise of their rights under this Act, shall act with justice, give everyone his or her due, and observe honesty and good faith.

Public officials and employees as well as citizens shall endeavor to handle information kept or obtained under this Act with due care, to the end that inaccuracies and distortions are avoided.

Any public official or employee, or citizen who, in the performance of duties or exercise of rights under this Act, willfully or negligently causes loss, damage or injury to another, in a manner that is contrary to law, morals, good customs or public policy, shall compensate the latter for the damage incurred. This is without prejudice to other remedies available to the aggrieved party under any other law for the same acts.

SEC. 21. *Mere Denial in Good Faith Not a Ground for Liability.* – A mere denial in good faith of a request made pursuant to the provisions of this Act shall not constitute grounds for administrative, civil or criminal liability.

SEC. 22. *Act Not a Bar to Claim of Right to Information Under the Constitution.* No provision of this Act shall be interpreted as a bar to any claim of denial of the right to information under Article III, Section 7 of the 1987 Constitution.

SEC. 23. *Appropriations.* – The amount necessary to carry out the provisions of this Act shall be charged against the agencies' current budget and shall thereafter be included in the annual General Appropriations Act.

SEC. 24. *Separability Clause.* – If any section or part of this Act is held unconstitutional or invalid, the other sections or provisions not otherwise affected shall remain in full force and effect.

SEC. 25. *Repealing Clause.* – All laws, decrees, executive orders, rules and regulations, issuances or any part thereof inconsistent with the provisions of this Act, including Sections 18, 24 and 25 of Executive Order No. 292 in relation to Article 2 of Republic Act No. 386, Memorandum Circular No. 78 dated 14 August 1964 (Promulgating Rules Governing Security of Classified Matter in Government Offices), as amended, and Section 3, Rule IV of the Rules Implementing Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), are deemed repealed: *Provided*, That Memorandum Circular No. 78 shall be deemed repealed after one (1) year from the effectivity of this Act or upon issuance of the Executive Order in Section 7(a) whichever comes first.

SEC. 26. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,