

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



Senate  
Office of the Secretary

13 JUL -3 P2:28

SENATE  
S. No. 392

RECEIVED BY: *ju*

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 3, 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.<sup>1</sup>

*aw*  
*Miriam Defensor Santiago*  
MIRIAM DEFENSOR SANTIAGO

<sup>1</sup> This bill was originally filed in the Fourteenth Congress, Second Regular Session.

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

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

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

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

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

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

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

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

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

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

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

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

20 (d) The term "Director" means the Director of the National Archives of the Philippines.

21 (e) The term "former President", when used with respect to Presidential records, means  
22 the former President during whose term or terms of office such Presidential records were created.

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

26 SECTION 4. *Management and Custody of Presidential Records.* --

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

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

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

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

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

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

27 (e) The Director of the National Archives shall request the advice of the Committee on  
28 Accountability of Public Officers and Investigations and the Committee on Public Information  
29 and Mass Media of the Senate and the Committee on Good Government and Public

1 Accountability and the Committee on Public Information of the House of Representatives with  
2 respect to any proposed disposal of Presidential records whenever he or she considers that –

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

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

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

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

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

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

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

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

1 (ii) specifically exempted from disclosure by statute, provided that such  
2 statute

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

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

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

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

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

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

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

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

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

28 (ii) During the period of restricted access specified pursuant to subsection

29 (b) (i), the determination whether access to a Presidential record or reasonably

1 segregable portion thereof shall be restricted shall be made by the Director of the  
2 National Archives, in his or her discretion, after consultation with the former  
3 President. The Director shall establish procedures whereby any person denied  
4 access to a Presidential record because such record is restricted pursuant to a  
5 determination made under this paragraph, may file an administrative appeal of  
6 such determination. Such procedures shall provide for a written determination by  
7 the Director or his or her duly authorized representative, within 30 working days  
8 after receipt of such an appeal, setting forth the basis for such determination.

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

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

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

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

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

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

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

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

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

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

13 SECTION 8. *Regulations.* -- The Director of the National Archives shall promulgate  
14 regulations necessary to carry out the provisions of this Act. Such regulations shall include --

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

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

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

23 SECTION 9. *Vice-Presidential Records.* -- Vice-Presidential records shall be subject to  
24 the provisions of this Act in the same manner as Presidential records. The duties and  
25 responsibilities of the Vice President, with respect to Vice-Presidential records, shall be the same  
26 as the duties and responsibilities of the President under this Act with respect to Presidential  
27 records. The authority of the Director of the National Archives with respect to Vice-Presidential



1 records shall be the same as the authority of the Director under this Act with respect to  
2 Presidential records.

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

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

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

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

Approved,