

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

8 AUG 27 P6:44

SENATE
S.B. No. 2571

RECEIVED BY: 

Introduced by Senator Loren Legarda

EXPLANATORY NOTE

The right to information in the Philippines is guaranteed by no less than our fundamental law. Section 7 of the Bill of Rights of the 1987 Constitution reads:

“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 limitations as may be provided by law.”

Article II (Declaration of Principles and State Policies), Section 28 also states:

“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.”

Despite the Constitutional guarantee and its affirmation in a number of Supreme Court decisions, we are not unaware of the wanton violation by many government agencies of the right of Filipinos to information of public interest and concern.

A key problem is lack of legislation. While the Supreme Court has upheld the enforceability of the constitutional right to information, its effective implementation has for the past two decades suffered from the lack of the necessary substantive and procedural details that only Congress can provide. The Supreme Court, in the recent case of Chavez v. NHA (G.R. No. 164527; August 15, 2007) observes:

“It is unfortunate, however, that after almost twenty (20) years from birth of the 1987 Constitution, there is still no enabling law that provides the mechanics for the compulsory duty of government agencies to disclose information on government transactions. Hopefully, the desired enabling law will finally see the light of day if and when Congress decides to approve the proposed “Freedom of Access to Information Act.””

This bill fulfills the long overdue legislative obligation of Congress, by putting in place the following major features:

- An expansive scope in terms of government agencies as well as information covered.
- A narrow list of exceptions circumscribed by clearly stated public harm that we wish to avoid in withholding certain information.
- To further counterbalance the exceptions, we provide citizens an opportunity and right to override a recognized exception when there is greater public interest in information disclosure.
- We provide a clear, uniform and speedy procedure for access to information.
- We put in place a provision implementing the automatic disclosure of transactions of public concern as required by Section 28, Article II of the constitution.
- We put in place a system of accessible and speedy remedies that a citizen who has been denied access to information may resort to.
- We institute mechanisms to promote a culture of openness within government.
- We introduce clear administrative, criminal and civil liability for violation of the right to information.

To us members of the 14th Congress lies the challenge and opportunity to secure for our people a very important right – a key foundation to the effective exercise of cognate rights such as the freedoms of speech, of the press, and of expression, as well as the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making. In doing so we also provide them with a key instrument to effectively battle the corruption that has been a major stumbling block to the country's development.


Immediate approval of this bill is earnestly requested.


LOREN LEGARDA
Senator

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

8 AUG 27 P6:44

SENATE

RECEIVED BY: 

S. B. No. 2571

Introduced by Senator Loren Legarda

AN ACT
IMPLEMENTING THE RIGHT OF ACCESS TO INFORMATION ON MATTERS
OF PUBLIC CONCERN GUARANTEED UNDER SECTION TWENTY-EIGHT,
ARTICLE II AND SECTION SEVEN, ARTICLE III OF THE 1987 CONSTITUTION
AND FOR OTHER PURPOSES

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

SECTION 1. *Title.* – This Act shall be known as the “Freedom of Information Act of 2008”.

SEC. 2. *Declaration of Policy.* – The State recognizes the right of the people to information on matters of public concern, and adopts and implements a policy of full public disclosure of all its transactions involving public interest, subject to limitations provided by this Act. This right is indispensable to the exercise of the related freedoms of speech, of expression, and of the press, as well as the right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision making.

SEC. 3. *Coverage.* – This Act shall cover all government agencies as defined in Section 4 of this Act.

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

- a. “Information” shall mean any knowledge, 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 processing records, 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” shall include the executive, legislative and judicial branches as well as the 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, 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 records" shall refer to information produced or received by the public officer or employee, or by a government agency in an official capacity or pursuant to a public function or duty, and is not meant to be a stage or status of the information.
- d. "Public records" shall include information required by law to be entered, kept and made publicly available by a government agency such as, but not limited to, the:
 - 1. Office of the Civil Registry;
 - 2. National Statistics Office;
 - 3. Register of Deeds;
 - 4. Land Transportation Office;
 - 5. Land Transportation Franchising and Regulatory Board;
 - 6. Securities and Exchange Commission;
 - 7. Intellectual Property Office; or
 - 8. Business Permits and Licenses Office and Assessor's Office of the various local government units.

SEC. 5. *Presumption.* – There shall be a legal presumption in favor of access to information. Accordingly, government agencies shall have the burden of proof of showing by clear and convincing evidence that the information requested should not be disclosed.

SEC. 6. *Access to Information.* – 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 basis for policy development, regardless of their physical form or format in which they are contained and by whom they were made.

SEC. 7. *Qualifications.* – Even if the information falls under the exceptions set forth in the succeeding section, access to information shall not be denied if:

- a. The information may be reasonably severed from the body of the information which would be subject to the exceptions; or
- b. The public interest in the disclosure outweighs the harm to the interest sought to be protected by the exceptions.

SEC. 8. *Exceptions.* – Subject to the qualifications set forth in Section 7: *Provided*, That the information is specifically designated and described, and the facts and reasons for preserving the confidentiality are precisely and specifically recited, and: *Provided, further*, That such information shall be available to either House of Congress at all times, access to information may be denied when:

- a. The revelation of the information will create a clear and present danger of war, invasion or any external threat to the State as determined by the Office of the President and/or the Secretary of the Department of National Defense: Provided, That the Supreme Court may, upon complaint by any citizen, inquire into the sufficiency of the factual basis for such determination;
- b. The information pertains to the positions of the Republic of the Philippines in an ongoing negotiation for a bilateral or multilateral agreement or treaty, when its revelation would unduly weaken the position of the Philippines in such negotiation, or pertains to another sovereign state, when its revelation would seriously jeopardize diplomatic relations with said state: Provided, that such information must always be accessible to either House of Congress;
- c. The information pertains to internal and external defense and law enforcement, when the revelation thereof would render a legitimate military operation ineffective, unduly compromise the prevention, detection or suppression of a criminal activity, or endanger the life or physical safety of confidential or protected sources or witnesses, law enforcement and military personnel or their immediate families. Information relating to the details of the administration, budget and expenditure, and management of the defense and law enforcement agencies shall always be accessible to the public;
- d. The information pertains to the personal information of a third party natural person, unless it forms part of a public record, or the third party is or was an official of a government agency and the information relates to his or her public function;
- e. The information pertains to trade, industrial, financial or commercial secrets of a third party natural or juridical person, obtained in confidence by a government agency whenever the revelation thereof would seriously prejudice the interests of the third party in trade, industrial, financial or commercial competition, unless the third party has consented to the disclosure of the information;
- f. The information is privileged from production in legal proceedings by law or by the Rules of Court, unless the person entitled to the privilege has waived it;
- g. The information is exempted by statutes of Congress, in addition to those provided in this section;
- h. The information is obtained by any committee of either House of Congress in executive session; and
- i. Drafts of decisions of any executive, administrative, judicial or quasi-judicial body in the exercise of their adjudicatory functions are being requested.

SEC. 9. *Procedure of Access.* –

- a. Any person who wishes to obtain information shall submit a request to the government agency concerned, as much as practicable in writing or through electronic means, reasonably describing the information required, the reason for the request of the information and the means by which the government agency shall communicate such information to the requesting party.

- b. 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.
- c. The request may indicate the following preferred means of communication:
 - 1. A true copy of the information in permanent or other form;
 - 2. An opportunity to inspect the information, using equipment normally available to the government agency when necessary;
 - 3. An opportunity to copy the information using personal equipment;
 - 4. A written transcript of the information contained in a sound or visual form;
 - 5. A transcript of the content of an information, in print, sound or visual form, where such transcript is capable of being produced using equipment normally available to the government agency; or
 - 6. A transcript of the information from shorthand or codified form.
- d. A government agency may communicate information in a form other than the preferred means whenever such preferred means would unreasonably interfere with the effective operation of the agency, or be detrimental to the preservation of the record.
- e. The government agency shall comply with such request within ten (10) calendar days from the receipt thereof.
- f. The time limits prescribed in this section may be extended during unusual circumstances where, in the production of the requested information, there is a need:
 - 1. To search for and collect the requested information from field facilities or other establishments that are separate from the office processing the request;
 - 2. To search for, collect and appropriately examine a voluminous amount of separate and distinct information which are demanded in a single request;
 - 3. For consultation, which shall be conducted in all practicable speed, with another government agency or among two (2) or more components of the government agency having substantial interest in the determination of the request; and

4. To consider fortuitous events or other events due to *force majeure* 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: Provided, That no such notice shall specify a date that would result in an extension of more than fifteen (15) calendar days.

SEC. 10. Access Fees. – Government agencies may charge a reasonable fee to reimburse the cost of searching, reproduction, copying or transcription and the communication of the information requested.

SEC. 11. Notice of Denial. – If the government agency decides to deny the request, in whole or in part, it shall, within ten (10) calendar 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 indicate the name, rank, title or position of the person making the denial, and the grounds for the denial. In case the denial is by reason of a claimed exception, the denial shall also state clearly the legitimate aim or interest sought to be protected in the confidentiality, and the facts and circumstances invoked showing the substantial harm to, or frustration of, the legitimate aim or interest that will result in the disclosure of the information. 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. 12. Remedies in Cases of Denial. –

- a. In the executive and legislative branches and the constitutional bodies –

1. Every denial of any request for access to information may be appealed to the person or office next higher in authority, following the procedure provided in the guidelines as required by Section 17 of this Act: Provided, That the appeal must be filed within fifteen (15) calendar days from the notice of denial and must be decided within fifteen (15) calendar days from filing. Failure of the government agency to decide within the aforesated period shall constitute a denial of the appeal; and

2. Instead of appealing or after the denial of the appeal, the person denied access to information may, within fifteen (15) calendar days from the original denial or denial of the appeal, 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.

- b. In the Judicial Branch – The Supreme Court shall promulgate the remedies that would govern offices under its jurisdiction.

- 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. The Office of the Ombudsman shall promulgate its rules of procedure to effect the purposes of this Act.
- f. 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.
- g. In case the requester 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. 13. *Mandatory Disclosure of Transactions Involving Public Interest.* – Subject to Sections 7 and 8 of this Act, all government agencies shall post on their bulletin boards and upload on their websites all the steps, negotiations and key government positions pertaining to definite propositions of the government, as well as the contents of the contract, agreement or treaty in the following transactions involving public interest:

- a. Compromise agreements entered into by a government agency with any person or entity involving any waiver or its rights or claims;
- b. 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 by the private sector;
- c. Procurement contracts entered into by a government agency;
- d. Construction or concession agreements or contracts entered into by a government agency with any domestic or foreign person or entity;
- e. 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;
- f. Loans from domestic and foreign financial institutions;
- g. Guarantees given by any government agency to government owned or - controlled corporations and to private corporations, persons or entities;
- h. Public funding extended to any private entity;
- i. Bilateral or multilateral agreements and treaties in defense, trade, economic partnership, investments, cooperation and similar binding commitments; or

- j. Licenses, permits or agreements given by any government agency to any person or entity for the extraction and/or utilization of natural resources.

SEC. 14. *Promotion of Openness in Government.* -

- a. Duty to Publish Information – Government agencies shall regularly publish and disseminate, at no cost to the public and in an accessible form, by print and through their website, timely, true, accurate and updated key information including, but not limited to:
 - 1. A description of its structure, powers, functions, duties and decision-making processes;
 - 2. A description of the frontline services it delivers and the procedure and length of time by which they may be availed of;
 - 3. Work programs, development plans, investment plans, projects, performance targets and accomplishments, and budgets, revenue allotments and expenditures;
 - 4. Important rules and regulations, orders or decisions;
 - 5. Current and important database and statistics that it generates;
 - 6. Bidding processes and requirements;
 - 7. Mechanisms or procedures by which the public may participate in or otherwise influence the formulation of policy or the exercise of its powers; and
 - 8. A guide on accessing information containing adequate information about its record-keeping system, the types of information it holds and/or publishes, the procedure for obtaining access by the public to such information, the person or office responsible for receiving the request and routing it to the person or office with the duty to act on the request, the standard forms and procedure for request, and the schedule of access fees.
- b. Keeping of Records – Government agencies shall maintain and preserve their records in a manner that facilitates easy identification, retrieval and communication to the public. They shall establish Management Information Systems (MIS) to strengthen their capability to store, manage and retrieve records, and to facilitate access to public records. 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 networth of public officers and employees, as required by law;

4. Records of official investigations on graft and corrupt practices of public officers; and
 5. Other records where there is a significant public interest in their preservation or where there is likely to be such interest in the future.
- c. **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.
 - d. **Improving Capability** – Every government agency shall ensure the provision of adequate training for its officials to improve awareness of the right to information and the provisions of this Act, and to keep updated of best practices in relation to information disclosure, records maintenance and archiving.

SEC. 15. Criminal Liability. – The penalty of imprisonment of not less than six (6) months but not more than one (1) year, with the accessory penalty of suspension from office for the same duration, shall be imposed upon:

- a. Any public officer or employee receiving the request under Section 9 of this Act who shall knowingly refuse, or because of gross negligence fail, to promptly forward the request to the public officer 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. Any public officer or employee responsible for officially acting on the request, who shall:
 1. Knowingly refuse, or because of gross negligence fail, to act on the request within the periods required by this Act;
 2. Knowingly deny the existence of existing information;
 3. Deliberately destroy information being requested for the purpose of frustrating the requester's access thereto;
 4. Claim an exception under Section 8 of this Act, or under the Constitution, when the claim is manifestly devoid of factual basis; or
 5. Refuse to comply with the decision of his immediate supervisor, the Ombudsman or the court ordering the release of information that is not restrained or enjoined by a court;
- c. The head of office of the government agency directly and principally responsible for the negotiation and perfection of any of the transactions enumerated in Section 13 of this Act, who shall knowingly refuse, or because of negligence fail, to direct the mandatory posting or uploading of such transaction. The same penalty shall be imposed upon the public officer or employee who, despite a directive from the head of office, shall knowingly refuse, or because of negligence fail, to post or upload any of the transactions enumerated in Section 14 of this Act;

- d. Any public officer or employee who shall destroy, or cause to destroy, records of information covered by Section 14(b) of this Act;
- e. Any public officer who intentionally formulates policies, rules and regulations manifestly 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; or
- f. Any public or private individual who knowingly induced or caused the commission of the foregoing acts under this section.

SEC. 16. *Strict Civil Liability.* – In case a request for information is denied and subsequently reversed by final and executory judgment of the Ombudsman or the courts, the government agency shall be liable to pay the requester damages in the amount of One thousand pesos (P1,000.00) per day from the date of notice of denial until the date of compliance with the request, which amount shall be automatically appropriated. The public officer or employee and the private individual responsible for the denial shall be solidarily liable with the government agency, unless he can prove that such denial was made without fault or negligence, or was not done arbitrarily or in manifest bad faith. The liability under this section shall be without prejudice to actual, moral and exemplary damages that may be adjudicated under the law.

SEC. 17. *Guidelines.* –

- a. For the full implementation of this Act within the executive branch of the government, the Office of the Press Secretary, particularly the Philippine Information Agency, shall, through a consultative process, promulgate within six (6) months from the passage of this Act, the general guidelines to which the government agencies controlled, supervised or situated under the Office of the President, and shall adhere in the establishment of their specific guidelines for access to information, which shall include:
 - 1. The location of the head, regional, provincial or field offices, or other established places where the public can obtain information or submit requests therefor;
 - 2. The types of information it holds and/or publishes;
 - 3. The person or office responsible for receiving the request and for routing it to the person or office with the duty to act on the request, and the standard forms and procedures for the request;
 - 4. The procedure for the administrative appeal of any denial for access to information; and
 - 5. The schedule of fees which shall be limited to the reasonable and standard charges for document search and reproduction, and the recovery of the direct costs thereof.

Each of the abovementioned government agency, office and instrumentality shall submit to the Philippine Information Agency a copy of its guidelines for review to ensure the standardization of the procedure and the uniformity of fees, without

prejudice to the right of the different agencies, offices and instrumentalities to adopt appropriate procedures for their unique functions and responsibilities.

- b. The legislative and judicial branches and the constitutional bodies shall promulgate their own guidelines that would govern offices under their respective jurisdictions. The Secretary of the Senate, the House of Representatives' Secretary General, the head of the Supreme Court Public Information Office and the public information officers of the constitutional bodies shall be responsible in furnishing copies of their respective guidelines to the Philippine Information Agency.
- c. The Office of the Ombudsman shall likewise promulgate its special rules of procedure for the immediate disposition of complaints filed pursuant to Section 12 of this Act.

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

SEC. 18. *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. 19. *Separability Clause.* – If, for any reason, any section or provision of this Act is held unconstitutional or invalid, no other section or provision shall be affected.

SEC. 20. *Repealing Clause.* – All laws, decrees, executive orders, rules and regulations, issuances or any part thereof inconsistent with the provisions of this Act, including 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.

SEC. 21. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,