

Republic of the Philippines
HOUSE OF REPRESENTATIVES
THIRTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 2123

Introduced by Reps. SATUR C. OCAMPO, TEODORO A. CASIÑO, JOEL G. VIRADOR,
CRISPIN B. BELTRAN, RAFAEL V. MARIANO, LIZA L. MAZA, ABRAHAM B. MITRA,
LORENZO R. TAÑADA III, EDUARDO C. ZIALCITA

Explanatory Note

The people's right to official information is an indispensable element of a functioning democracy. The ideal of a government by the people presupposes that the people collectively and individually have access to information on matters of public concern in order to effectively exercise their sovereignty.

The free flow of information about the policies and activities of government asserts the fundamental principle of accountability and transparency in government. It provides the institutional foundation for a more responsive government by enhancing the capacity of the people to receive information and provide feedback on issues, programs and policies that concern their life and future. The bottomline is: a government which has nothing to hide should not be afraid of an informed and enlightened citizenry.

Access to official information is a constitutional imperative. The pertinent provision under the Constitution, Art. III, Sec. 7, recognizes it as a fundamental political and public right and an essential premise of a meaningful right to speech and expression: *"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."*

The people's right to official information goes hand-in-hand with the constitutional policies of full public disclosure and honesty in public service. Art. II, Sec. 28 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."*

The right to information of matters of public concern is a self-executory provision which can be invoked by any citizen. It determines the rules by which the duty to afford access to sources of information is enforced. While the manner of examining public records may be subject to reasonable regulation by the government agency in custody thereof, the duty to disclose the information of public concern and to afford access to public records cannot be discretionary on their part. Otherwise, the enjoyment of the constitutional right will be negated by any whimsical exercise of agency discretion.

Unfortunately, despite the constitutional guarantee and the judicial affirmation of the right to information, denial of access to information on matters of public concern remains widespread in the government bureaucracy. Varying measures have been instituted which, instead of promoting the guaranteed access to covered information, have confused if not stifled the exercise of the right.

This situation can be corrected by specific appropriate legislation that would prescribe common baseline standards which complement the constitutional guarantee and relevant jurisprudence, and more importantly, provide teeth to the extant but scant provision of Republic Act 6713 (The Code of Conduct and Ethical Standards for Public Officials and Employees). RA 6713 states these general working principles: 1) "Make documents accessible to the public. – All public documents must be made accessible

to, and readily available for inspection by the public within reasonable working hours"; 2) "Disclosure and/or misuse of confidential information. – Public officials and employees shall not use or divulge, confidential or classified information officially known to them by reason of their office and not made available to the public either to further their private interests or give undue advantage to anyone, or to prejudice the public interest."

A legislative enactment is needed to rationalize the harsh exemptions provided for in the April 21, 1989 Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees (RA 6713) promulgated by the Civil Service Commission and to provide effective means for redress of violations of the right. Consistent with the constitutional policy on transparency of transaction and access to information, Congress must be able to substantiate and government agencies should be able to implement access to covered information which of necessity assures full public disclosure of all transactions involving public interest.

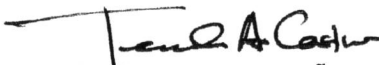
This bill addresses the foregoing issues. It seeks the elimination of esoteric and hardly comprehensible and excessively broad jargon of exemptions to the exercise of the right to official information. Since the exceptions signal official high-handedness and brashness, they have often been the cause for the lackadaisical exercise of access to matters of public concern. In this regard, the bill proposes to simplify the limitations to *"Except when it is clear that the purpose of the examination is to abet or promote or commit crime or wrongdoing or to engage in sheer and idle curiosity."* By the restatement of the exceptions to levels capable of ordinary understanding, this bill reduces instances of brash rejection of requests for access to official information and in the process stresses the basic postulate that the people can be trusted with information which in the first place they ought to know being the source of all government authority.

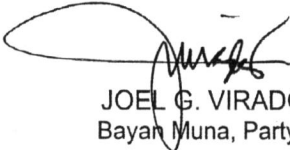
This bill puts in place a uniform, simple, speedy and effective means of enforcing the right to information. It organizes the scope of the guarantee by codifying definitions of its coverage and clarifying situations for its reasonable exercise; provides a corrective measure against anti-people and criminal acts; and institutes precise penalties for unlawful denial of access to official information.

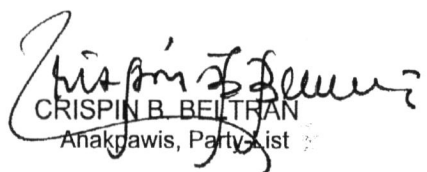
The key features of this bill also include absolute and mandatory access to matters of official information, public concern and public interest in specified cases and the refinement of the concept and operation of covered information in whatever form or nature, whether written, oral or visual, among others.

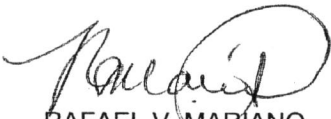
Immediate passage of this bill is earnestly sought.

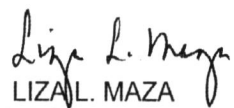

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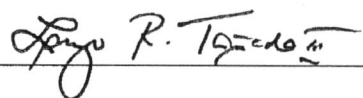

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Hon. 

District _____

Hon. 

District _____

AN ACT TO ENSURE PUBLIC ACCESS TO OFFICIAL RECORDS, DOCUMENTS AND ANY OTHER INFORMATION OF PUBLIC CONCERN

Hon. _____

District _____

Hon. _____

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Hon. _____

District _____

Hon. _____

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Hon. _____

District _____

Hon. _____

District _____

Hon. Eduardo C. Galatin

District Ran 15T Dist.

Hon. _____

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Hon. _____

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**AN ACT TO ENSURE PUBLIC ACCESS TO OFFICIAL RECORDS, DOCUMENTS
AND ANY OTHER INFORMATION OF PUBLIC CONCERN**

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 "An Act to Ensure Public Access to Official Records, Documents and Any Other Information of Public Concern" or, in short, "Freedom of Information Act."

SECTION 2. Declaration of Policy. It is the policy of the State to afford the people broad access to information in its custody consistent with their constitutional right to information on matters of public concern and in furtherance of transparency and accountability in government.

SECTION 3. Duty to Disclose. The duty to disclose and make available for public scrutiny sources of official information and matters of public concern and public interest in any form whatsoever shall be demandable from the executive, the legislative and the judicial branches of the government; the local government units; all departments, agencies and instrumentalities of the Republic of the Philippines, including government-owned or controlled corporations and government financial institutions as well as their respective subsidiaries; state colleges and universities; and individual public officers and employees regardless of status of employment and/or contractual undertaking.

Except when it is established by substantial evidence in a court proceeding or court process that the purpose of the examination is to abet or promote or commit criminal acts defined and/or enumerated in existing statutes or to engage in sheer and idle curiosity, the duty to disclose shall not be denied by reason of the motives, reasons and objects of the person seeking access to the records or exercise of the right. Government agencies and individual personalities having the duty to disclose under this Section are without discretion in refusing disclosure of or access to official information or items of public concern and interest, although without prejudice to the imposition of reasonable regulations on the manner in which the right to information may be exercised by the public but confined to prescribing the manner and hours of examination so that damage to or loss of the records may be avoided or that undue interference with the duties of the custodian of the books and documents and other employees may be prevented, and that the right of other persons entitled to make inspection may be insured.

SECTION 4. Covered Information. The duty to disclose information shall include official information and matters of public concern and interest. "Information" shall be understood to mean any knowledge that can be communicated regardless of its physical form or the format in which it is contained, whether in tape, photographic, or electronic format, that is owned by, produced by or for, or is under the control of, including testimony or oral recollection of persons having personal knowledge of the information sought under the employ or control or supervision of, the concerned government agency under Section 3 hereof. The form in which information is maintained shall not affect its availability.

Among the official information and matters of public concern and interest covered under the duty

to disclose are –

1. Official acts of public officers done in the pursuit of their official functions;
2. Judicial or quasi-judicial decisions or orders as well as records of court cases in whatever stage, and policy decisions of public officers, boards, commissions or tribunals;
3. Transactions, contracts and agreements imbued with public interest, whether the government is a nominal or active contracting or counter-party, including negotiations or definite propositions of the government leading to the consummation of the transactions, contracts and agreements;
4. Government research data used as basis for policy development, enactment of statutes, rules and regulations, and execution of transactions, contracts and agreements imbued with public interest, whether the government is a nominal or active contracting or counter-party, including negotiations or definite propositions of the government leading to the consummation of the transactions, contracts and agreements;
5. Laws, policies, rules and procedure, work programs, projects and performance targets, performance reports;
6. Public and private writings coming into the hands of public officers in connection with their official functions;
7. Books of account, ledgers, and other documents of whatever nature or character used as basis for applications, reports or returns or other documents regardless of nature or character submitted to the government; and
8. All other information required by law to be accessible to the public.

SECTION 5. *Mandatory Compliance.* No public officer, employee or government institution falling under Section 3 hereof shall withhold public scrutiny of sources of official information or matters of public concern and interest under Section 4 hereof on the grounds of national security, public order and safety or that the information is specifically exempted from disclosure by any other statute, common law and international law principles, and pertinent jurisprudence. PROVIDED, that the sole and only exception to this rule on mandatory compliance is when it is established by substantial evidence in a court proceeding or process that the purpose of the examination is to abet or promote or commit criminal acts defined and/or enumerated in existing statutes or to engage in sheer and idle curiosity.

SECTION 6. *Necessity for Court Order.* The government agency or individual public officer or employee whose pertinent records and other sources of information have been sought for public access, as herein defined, has the burden of showing by substantial proof that the information requested is not official information or matter of public concern or interest, or, if it is official information or a matter of public concern and interest, that the purpose of the examination or inquiry is to abet or promote or commit criminal acts defined and/or enumerated in existing statutes or to engage in sheer and idle curiosity. In the absence of a court order, process or writ denying or prohibiting access to official information and matters of public concern or interest, no public officer, employee, government institution or office, falling under Section 3 hereof, shall withhold public scrutiny of sources of official information or matters of public concern and interest under Section 4 hereof.

SECTION 7. *Jurisdiction over Matters Concerning Right.* All matters arising from this law, including but not limited to the process or procedure of securing a court order, writ, or process denying or prohibiting access to official information and matters of public concern or interest, shall fall within the exclusive and original jurisdiction of the Regional Trial Court having territorial jurisdiction over the office or branch of the public officer, employee, government institution or office or private enterprises whose pertinent records and other sources of information have been sought for public access, or alternatively, over the place of residence of the party requesting such information.

SECTION 8. *Requests for Access to Information.* Any person who wishes to obtain information shall notify the government body concerned in writing, reasonably describing the information required.

SECTION 9. *Period to Disclose Information.* Each government body, upon any request for information, shall afford access to the appropriate source of official information being requested within five (5) working days after its receipt. In no case shall this period be extended unless there is a need to sort, search or

collect the specific official information being requested from voluminous sources of information, in which case, the person making the request shall be duly notified of the extension and reasons therefor. In no case shall the extension be more than ten (10) working days counted from the expiration of the fifth working day. The government body, public officer or employee so requested may charge a reasonable and standard fee to recover costs of search and reproduction.

SECTION 10. *Criminal Penalties in Case of Unlawful Denial.* Any government agency or public officer or employee falling under Sec. 3 hereof found guilty of denying access to information without valid ground or in violation of the provisions herein set forth shall be punished with a fine of not more than Twenty Thousand Pesos (P20,000.00) or imprisonment of at least (6) months and one (1) day but not more than six (6) years with all the accessory penalties provided by law, or both, at the discretion of the court. The penalty shall be limited to the payment of fine in the case of juridical persons, without prejudice to the imposition of the appropriate penalties upon the erring personnel thereof.

SECTION 11. *Administrative Penalties in Case of Unlawful Denial.* Denying access to information without valid ground or in violation of the provisions herein set forth by personnel of government agencies under Sec. 3 hereof shall constitute grave misconduct punishable by dismissal from the service with forfeiture of retirement benefits except earned leave credits or suspension from office without pay for a period not exceeding one (1) year at the discretion of the proper administrative body.

SECTION 12. *Separability Clause.* If, for any reason, any part or provision of this Act is declared invalid or unconstitutional, other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SECTION 13. *Repealing Clause.* All laws, decrees, executive orders, rules and regulations, issuances or any parts thereof inconsistent with the provisions of this Act are deemed repealed or amended accordingly.

SECTION 14. *Effectivity.* This Act shall take effect after fifteen (15) days following the completion of its publication in the *Official Gazette* or in a national newspaper of general circulation.

Approved,