

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

Thirteenth Congress
First Regular Session

HOUSE BILL NO. 2993

Introduced by

Reps. Emmanuel Joel J. Villanueva, Del R. De Guzman, Lorenzo R. Tañada III,
Loretta Ann P. Rosales, Mario J. Aguja and Ana Theresia Hontiveros-Baraquel

EXPLANATORY NOTE

The people's right to official information is an indispensable element of a functioning representative democracy. The ideal of a "government by the people" presupposes that the people have access to information on matters of public concern in order to effectively exercise its governing power. As observed by the Philippine Supreme Court in one case¹, "(T)here can be no realistic perception by the public of the nation's problems, nor a meaningful democratic decision-making if they are denied access to information of general interest." The free flow of information about the affairs of government paves the way for debate in public policy, and fosters accountability in government.

The people's right to official information is not only a political imperative. It is also essential in economic life. A free flow of official information results in better government policies. It provides the institutional foundation for a more responsive government planning by enhancing the capacity of the public to provide timely feedback to government. The availability of official information widens the base for the generation of more knowledge about key development issues, not only by researchers and academic institutions, but also by the public at large. It promotes constructive and informed debate between and among government and stakeholders, and builds consensus around policy objectives and design. All these promote more informed government interventions supported by a solid and broad-based constituency.

A free flow of official information is also a vital safeguard against corruption and rent seeking in government. The economic costs of corruption and rent seeking are well known. There is loss in consumer surplus arising from higher prices, as well as loss in output because resources are wasted in rent-seeking activities such as bribery. Secrecy in government makes corruption and rent seeking flourish. It gives government officials and

¹ Baldoza vs. Dimaano, Adm. Matter No. 1120-MJ, 5 May 1976

rent seekers alike a wider room for maneuver and a greater cover for any evidence in corruption. In contrast, transparency exposes the vested interests involved, leads to the identification of corrupt officials, and eventually develops a more level playing field among economic actors.

Finally, a free flow of official information enhances economic performance. The availability of information on official rules, policies, programs, and resource allocation enables the private sector to make sound long-term economic decisions. This, in turn, advances economic efficiency and competitiveness.

The Philippine Constitution guarantees the right of its people to information on matters of public concern. 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.”

Jurisprudence has so far clarified key aspects of the right of the people to information on matters of public concern, particularly its nature and scope. As regards its nature, the Philippine Supreme Court has proclaimed that the right to information is not a private right, but a public right, which may be asserted by any citizen. Regarding its enforceability, the Philippine Supreme Court in the case of *Legaspi vs. Civil Service Commission*² has held that the Constitutional provisions on the right to information are self executing. As to the scope of the guarantee, it covers such information that relates to matters of public concern.

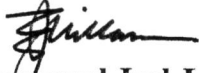
Despite the Constitutional guarantee and the judicial affirmation of the right, denial of access to information on matters of public concern in the Philippines remains widespread. This situation can be mitigated by a law on public access to official information that will complement the existing Constitutional guaranty and relevant jurisprudence.

In view of this, this bill seeks to:

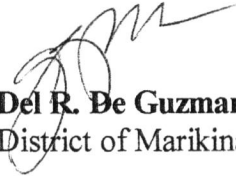
- (a) put in place a uniform, simple, speedy and effective means of enforcing the right to information;
- (b) provide a clear penalty for the unlawful denial of access to official information; and
- (c) clarify further the scope of the guarantee by defining its coverage and prescribing reasonable limitations.

² GR No. 72119; 29 May 1987

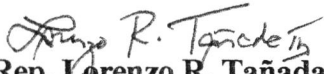
Immediate passage of this bill is therefore of utmost importance.



Rep. Emmanuel Joel J. Villanueva
CIBAC Party List



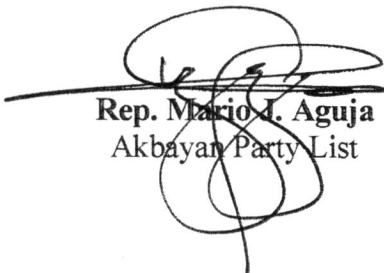
Rep. Del R. De Guzman
Lone District of Marikina



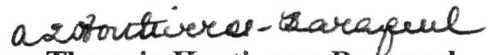
Rep. Lorenzo R. Tañada III
4th District, Quezon Province



Rep. Loretta Ann P. Rosales
Akbayan Party List



Rep. Mario J. Aguja
Akbayan Party List



Rep. Ana Theresia Hontiveros-Baraquel
Akbayan Party List

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AN ACT
IMPLEMENTING THE RIGHT OF ACCESS TO INFORMATION ON
MATTERS OF PUBLIC CONCERN GUARANTEED UNDER 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 Access to Information Act of 2004.”

SEC 2. *Statement of Policy* – It is the policy of the State to afford its citizens full access to information in its custody or control, consistent with the people’s constitutional right to information on matters of public concern. This right is subject only to reasonable limitations as may be prescribed by law on account of national security, individual rights, and public order and safety.

SEC 3. Coverage – This Act shall cover all offices, agencies and instrumentalities of government within the Legislative, Executive and Judicial Branches, including all Constitutional Bodies, local government units, the Armed Forces and government-owned and controlled corporations, whether created by its own charter or by registration with the Securities and Exchange Commission, and all such other entities where the government has substantial interest in.

SEC 4. Access to Information; Exceptions– Every government agency shall make available for public information, scrutiny, copying and reproduction all information, in any form whatsoever, in its custody or under its control, except when:

- a) The information has been declared by the President, through an Executive Order duly published in the Official Gazette or in a national newspaper of general circulation, to be confidential by reason of the serious damage upon national security that in the President's opinion will result from its disclosure: Provided, that the Supreme Court may, upon complaint by any citizen, inquire into the sufficiency of the factual basis for the President's determination, and: Provided, further, that such information shall be reviewed every five years by the head of the appropriate agency concerned for purposes of declassification and making available to the public, and which shall in any case be deemed declassified and open to the public after a period of fifteen years from the date of publication in the Official Gazette or in the newspaper of general circulation, whichever was first published, of the Executive Order.
- b) The information pertains to internal and external defense and law enforcement, but only when the reproduction or revelation thereof would:
 - (1) Actually render a legitimate military and law enforcement operation ineffective; and
 - (2) Endanger the life or physical safety of confidential sources, law enforcement and military personnel or their immediate families.

- c) The information pertains to personal information of a third party natural person, but only when its revelation would constitute an undue invasion of personal privacy; and
- d) The information is exempted by any other law, provided they reasonably fall within the permissible categories of exemption specified in Section 2 of this Act.

However, any information reasonably segregable from the exempt portion shall be accessible to the public.

SEC 5. *Keeping of Records* - Every government body shall maintain its records in a manner that facilitates easy identification, retrieval, and communication to the public.

The following shall not be destroyed until fifteen (15) years from their archival:

1. Records pertaining to loans obtained or guaranteed by the government;
2. Records of government contracts involving amounts exceeding ten million pesos (P10,000,000.00);
3. The declaration under oath of the assets, liabilities, and net worth of public officers and employees as required by law;
4. Records of official investigation on graft and corrupt practices of public officers; and
5. Other records where there is a significant public interest in their preservation, or there is likely to be such interest in the future.

SEC 6. *Duty to disseminate information*. Every government body shall regularly disseminate to the public, in print or electronic means, 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, projects and performance targets and accomplishments;
4. Important rules and regulations, orders, or decisions;
5. Current and important database and statistics that it generates;
6. Mechanisms or procedures by which the public may participate in or otherwise influence the formulation of policy or the exercise of its powers;
7. A guide containing adequate information about its record-keeping system, the types of information it holds and/or publishes, and the procedure for obtaining access by the public to such information; and
8. Bidding processes, requirements, and details of contracts it will enter into.

SEC 7. *Procedure for access* – any person who wishes to obtain information or any specific records, documents, papers and the like, shall notify the government agency concerned as much as practicable in writing, reasonably describing the information required. The government agency concerned shall comply with such request within two (2) working days from the receipt thereof or within a reasonable period of time mutually agreed upon by the requester and the agency employee concerned. The government agency may charge reasonable reimbursement for the cost of reproduction, copying or transcription of the information requested.

The time limits prescribed in this section may be extended during unusual circumstances where, in the production of the requested information, documents or records, there is a need:

- a) To search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
- b) To search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;
- c) For consultation, which shall be conducted in all practicable speed, with another agency or among two or more components of the agency having a substantial interest in the determination of the request; and

- d) To consider fortuitous events or other events from force majeure, or other analogous cases.

The 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 ten (10) working days.

SEC 8. *Notice of Denial* – If the government agency decides to deny the request, in whole or in part, it shall within two (2) working days from the receipt of the request or within the reasonable time mutually set by both parties, notify the person making the request of such denial in writing or through electronic means.

The notice shall clearly indicate the name, rank and title or position of the person making the denial and the grounds for the denial. Failure to notify the person making the request of such denial, or to give a notice of extension, shall be deemed a denial of the request for access to information.

SEC 9. *Remedies To Compel Disclosure* – 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 Sec. 11 of this Act. Such administrative appeal is without prejudice to the right of the person making the request to file before the Office of the Ombudsman a complaint praying that the government agency concerned be directed to immediately afford access to the information being requested.

Every original denial or denial on administrative appeal of any request for access to information, or inaction by the Office of the Ombudsman, may be treated as a final denial by the person making the request. Within sixty (60) days from the notice of the final denial, the person making the request may file a verified petition for mandamus before the proper court. The court shall proceed, and appeal shall be available, following the procedure for a petition for mandamus and appeal under the Rules of Court.

The remedies under this Section are without prejudice to any other administrative or criminal action covering the same act.

SEC 10. *Penalty* – Any official or employee of the government found guilty by final judgment of the proper court of denying access to information without a valid ground as provided in this Act or shall knowingly release false and/or misleading information shall be punished with 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.

Any private individual found guilty by final judgment of the proper court of having knowingly induced or caused the unlawful denial of access to information in violation of this Act or the release of false and/or misleading information shall likewise be punished with imprisonment of not less than six (6) months but not more than one (1) year.

Any public officer or employee who shall deliberately and knowingly refuse or because of negligence fail to update any information his or her office is required to post, publish, release or make public in any manner shall be administratively penalized with at least three (3) months but not more than six (6) months of suspension from service without pay. A subsequent offense of a similar nature will be a cause for dismissal from service.

SEC 11. *Guidelines* – For the full implementation of this Act within the Executive Branch of 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 government agencies controlled, supervised or situated under the Office of the President, shall adhere in the establishment of their specific guidelines for access to information, which shall include:

a) The location of the head, regional, provincial or field offices or other established places where the public can obtain information or submit requests thereof;

b) The types of information it holds and/or publishes;

c) 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, and the standard forms and procedure for request;

d) The procedure for the administrative appeal of any denial for access to information; and

e) 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 hereof.

Each of the abovementioned government agencies, offices and instrumentalities shall submit to the Philippine Information Agency a copy of its guidelines for review to ensure standardization of the procedure and 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.

The House of Representatives, the Senate and the Supreme Court shall promulgate their own guidelines that would govern offices under their respective jurisdictions. The House of Representatives Secretary General, the Senate Secretary and the Head of the Supreme Court Public Information Office shall be responsible in furnishing copies of their respective guidelines to the Philippine Information Agency.

The Office of the Ombudsman shall likewise promulgate its special rules of procedure for the immediate disposition of complaints filed pursuant to Section 9 of this Act.

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

SEC 13. *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 14. *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.

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

Approved,