

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 133

Introduced by Reps. TEODORO A. CASIÑO and NERI JAVIER COLMENARES

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 on 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.

Approved,


REP. TEODORO A. CASIÑO
Bayan Muna Party-list


REP. NERI JAVIER COLMENARES
Bayan Muna Party-list

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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. This right is indispensable to the exercise of the right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision-making.

SECTION 3. *Duty to Disclose and Coverage.* 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, 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 government units 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 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. *Definition of Terms.* The duty to disclose information shall include official information, official records, and matters of public concern and interest.

"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, computer stored data, including testimony or oral recollection of persons having personal knowledge of the information sought, 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 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, official records, 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.* 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 is exempted from disclosure by this Act.

a) 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.

b) Government agencies shall regularly publish, print and disseminate at no cost to the public and in an accessible form, in conjunction with R.A. 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 description of its mandate, 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) The names of its key officials, their powers, functions and responsibilities, and their profiles and curriculum vitae;
- (4) Work programs, development plans, investment plans, projects, performance targets and accomplishments, and budgets, revenue allotments and expenditures;
- (5) Important rules and regulations, orders or decisions: *Provided*, That they be published within fifteen (15) calendar days from promulgation;
- (6) Current and important database and statistics that it generates;
- (7) Bidding processes and requirements; and
- (8) Mechanisms or procedures by which the public may participate in or otherwise influence the formulation of policy or the exercise of its powers.

c) All government agencies shall upload on their websites, which shall be regularly updated every fifteen (15) days, 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:

- (1) Agreements entered into by a government agency with any person or entity involving any waiver of its rights or claims;
- (2) 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;
- (3) Procurement contracts entered into by a government agency;
- (4) Construction or concession agreements or contracts entered into by a government agency with any domestic or foreign person or entity;
- (5) 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;
- (6) Loans from domestic and foreign financial institutions;

- (7) Guarantees given by any government agency to government-owned or -controlled corporations and to private corporations, persons or entities;
- (8) Public funding extended to any private entity;
- (9) Bilateral or multilateral agreements and treaties in defense, trade, economic partnership, investments, cooperation and similar binding commitments; or
- (10) Licenses, permits or agreements given by any government agency to any person or entity for the extraction and/or utilization of natural resources.

d) A summary list of the foregoing information uploaded in the website shall be posted in the bulletin boards of the concerned government agency.

e) The information uploaded in the website under this Section may be withdrawn after a period of three (3) years from the time of uploading provided, that an abstract of the information withdrawn shall remain uploaded in the website, containing a brief description of the transaction and an enumeration of the information withdrawn, and indicating the dates of posting and withdrawal.

f) Should an agency lack the capacity to comply with this Section, the agency shall initiate a capacity-building program, or coordinate with another appropriate agency, to facilitate substantive compliance not later than one (1) year upon approval of this Act.

g) All government agencies shall create and/or maintain in appropriate formats, accurate and reasonably complete documentation or records of their organization, policies, transactions, decisions, resolution, enactments, actions, procedures, operations, activities, communications, 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;

h) 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.

i) In addition to the specific and classes of official records identified for preservation, 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 on graft and corruption practices of public officers.

j) Government agencies shall prepare, following standards and period promulgated pursuant to Republic Act 9470 or the National Archives of the Philippines Act of 2007, a records management programs that includes the following:

1) A records maintenance system for the creation, selection, classification, indexing and filing of official records, that facilitates 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) 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, in coordination with the National Printing Office as the agency with exclusive printing jurisdiction over the *Official Gazette*, shall maintain a database, and publish the same in print, digital and online form, the following: a) All laws of the Philippines and their amendments, from the period of the Philippine Commission to the present; b) All presidential issuances from November 15, 1935 to the present, including but limited, to executive orders, presidential proclamations, administrative orders, memorandum circulars, general orders, and other similar issuances; c) a database of all appointments made by the President of the Philippines; and d) opinions of the Secretary of Justice.

k) All classified information contained in all government agency records that (1) are more than 25 years old, and (2) have been determined to have historical value shall be automatically declassified whether or not the records have been reviewed. Subsequently, all classified information in such records shall be automatically declassified no longer than 25 years from the date of its original classification.

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. All government agencies shall expeditiously grant information requests from journalists, subject to Section 9.

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 seven (7) 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. *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.

SECTION 13. *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 14. *Repealing Clause.* All laws, decrees, executive orders, rules and regulations, issuances or any parts 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 or amended accordingly.

SECTION 15. *Effectivity.* This Act shall take effect after fifteen (15) days following the completion of its publication in two (2) national newspapers of general circulation.

Approved,