

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila
NINETEENTH CONGRESS
First Regular Session

House Bill No. 2770



Introduced by Representative Eduardo Roa Rama Jr.

EXPLANATORY NOTE

Enshrined in Section 7 of Article III of the 1987 Philippine Constitution is our fundamental right to information on matters of public concern, through the right to access official records, documents and papers pertaining to official government acts, decisions and data used by government for policy development. However, the same provision specifies the need for an enabling law, as although the right to information shall be afforded to the people, the same shall be subject to limitations provided for by law.

The constitutional right to information on matters of public concern is anchored on the time honored principles of transparency and accountability, which are principles that exist to further promote a healthy constitutional democracy. The aforementioned right serves as a safeguard against possible abuses committed by those in whom public trust is given by ensuring that the public are made aware or may easily access official government papers, documents and records.

A system where the people may be granted access to matters of public concern would create an environment of meaningful discourse and the exercise of this fundamental right enables the public to properly exercise related constitutional liberties such as the freedom of speech, of the press and the freedom to organize and seek redress of grievances from government. This would lead to improved policy development and implementation.

In view of the foregoing, this representation earnestly seeks the passage of this bill.

A handwritten signature in black ink, appearing to be "Eduardo Roa Rama Jr.", written in a cursive style.

REP. EDUARDO ROA RAMA JR.

HOUSE BILL NO.2770

AN ACT ENABLING THE PEOPLE'S CONSTITUTIONAL RIGHT OF ACCESS TO INFORMATION

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

CHAPTER I GENERAL PROVISIONS

SECTION. 1. *Short Title.* – This Act shall be known as the “Freedom of Information Act of 2022.”

SEC. 2. *Declaration of Policy.* – The State recognizes the vital role of communication and information in nation-building. It 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 the procedures and limitations provided by this Act. As a democratic country, it shall be the declared policy of the state to promote transparency, increased meaningful participation of the people in government decision-making, and public accountability.

It is also the policy of the State to protect the fundamental human right of privacy, while ensuring the free flow of information to promote innovation and growth.

SEC. 3. *Coverage.* – This Act shall cover all government agencies, and private individuals or entities dealing, contracting, or transacting, of whatever nature, with a government agency when such transaction utilizes public funds. Government agencies shall include the executive, legislative and judicial branches as well as 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, regulatory agencies, chartered institutions, government-owned or -controlled corporations (GOCCs) including wholly-owned or controlled subsidiaries, government financial institutions (GFIs), government instrumentalities with corporate powers (GICP), government corporate entities (GCE), and non-chartered GOCCs, state universities and colleges (SUCs), local water districts (LWDs), the Armed Forces of the Philippines (AFP), the Philippine National Police (PNP), all offices of the Congress of the Philippines including the offices of Senators and Representatives, and the Supreme Court and all lower courts established by law.

CHAPTER II DEFINITION OF TERMS

SEC. 4. *Definition of Terms.* – For purposes of this Act, the following definitions shall hereby apply:

- (a) “Access to information” shall mean 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.
- (b) “Electronic Freedom of Information (e-FOI) Portal or www.foi.gov.ph” – a centralized web-based platform which provides government information, track request, and receive information requested online simultaneously. This mode promotes demand-driven transparency and accountability as it is also designed to assist government offices in receiving, processing, and responding to the requests that they received online.

- (c) "Information" shall mean any records, documents, papers, reports, letters, contracts, minutes and transcripts of official meetings, maps, books, photographs, data, research materials, films, sound and video recordings, magnetic or other tapes, electronic data, computer-stored data, or any other like or similar data or materials recorded, stored or archived in whatever format, whether offline or online which are made, received or kept in or under the control and custody of any government office pursuant to law, executive order, rules and regulations, ordinance or in connection with the performance or transaction of official business by any government agency.
- (d) "Official record/records" refers to information produced or received by a public officer or employee, or by a government agency in an official capacity or pursuant to a public function or duty.
- (e) "Personal information" refers to any information whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual.
- (f) "Public Officials" includes elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.
- (g) "Public record/records" refers to information required by laws, executive orders, rules, or regulations to be entered, kept and made publicly available by a government agency.
- (h) "Public Service Contractor" refers to a private entity that has a dealing, contract or transaction of whatever nature with the government or a government agency that utilizes public funds.
- (i) "Records management" refers to the managerial activities involved with respect to the records, creation, records maintenance and use, transmission, retention, and records disposition in order to achieve adequate and proper documentation of policies and transactions of government for its efficient, effective and economical operations.
- (j) "Requests" refers to any of the following:
 - (1) Simple Requests – requests submitted by requesting parties to a government office or agency which only require providing readily available information or records published from the agency's website;
 - (2) Complex Requests – requests submitted by requesting parties to a government office or agency which include seeking information and collating raw data from a single source; or,
 - (3) Highly Technical Requests – requests submitted by requesting parties to a government office or agency which include seeking information from multiple sources and/or large numbers of documents or records, collecting information over multiple years, collating and correlating raw data, and providing findings: *Provided*, That the government office or agency is not required to create, develop, or collate information or data that does not already exist or are not available in its records management system. These requests also include those which require the use of technical knowledge, specialized skills and/or training in the processing and/or evaluation thereof.

- (k) "Sensitive personal information" shall be that defined under the Republic Act (RA) 10173 or the Data Privacy Act of 2012 and shall refer to personal information:
- (1) about an individual's race, ethnic origin, marital status, age, color and religious, philosophical or political affiliations;
 - (2) about an individual's health, education, genetic or sexual life of a person or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings;
 - (3) issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers previous or current health records, licenses or its denials, suspension or revocation and tax returns; and,
 - (4) Specifically established by an executive order or an act of Congress to be kept classified.

CHAPTER III FREEDOM OF INFORMATION COMMISSION

SEC. 5. *Freedom of Information Commission.* – There is hereby created an independent, quasi-judicial, collegial and autonomous body to be referred as the "Freedom of Information Commission", hereinafter referred to as the Commission.

The Commission shall implement this Act and its implementing rules and regulations, if applicable, provide technical guidance on matters concerning public information, set service standard for its disclosure, and settle disputes through adjudication, mediation, or other non-litigious manner.

SEC. 6. *Composition of the Commission.* – The Commission shall be composed of a Chairperson and four (4) Commissioners. The Chairperson and the Commissioners shall have ranks of cabinet secretary and undersecretary, respectively. Candidates to the positions shall be appointed by the President from the following sectors: government, business, academe, labor, rural or urban poor, or members of concerned civil society organizations, non-government organizations, or people's organizations.

Sec. 7. *Term of Office.* – The term of office of the Chairperson and Commissioners shall be seven (7) years without reappointment. Of the first set of appointees, the Chairperson shall hold office for seven (7) years and of the first four (4) Commissioners, two (2) shall hold office for a term of seven (7) years and two (2) for a term of five (5) years. The Chairperson and the Commissioners shall enjoy security of tenure and shall not be suspended or removed from office except for just cause as provided by law.

SEC. 8. *Vacancies.* – Any vacancy in the Commission created by the death, resignation, or removal of any Commissioner shall be filled by the appointment of a new Commissioner to complete the unexpired period of the term of the member concerned. In no case shall any Commissioner be appointed or designated in a temporary or acting capacity.

SEC. 9. *Qualifications.* – The Commissioners must be of good moral character, unquestionable integrity and known probity, and have distinguished themselves in public life with proven knowledge, experience and eminence in the fields of law, governance, public administration, human rights, social development, journalism, information and communications technology (ICT), or management.

Sec. 10. Prohibitions and Disqualifications. – The Commissioners shall not, during their tenure, hold any other office or employment. They shall not, during their tenure, directly or indirectly practice any profession, except in a teaching capacity, participate in any business, or be financially interested in any contract with, or any franchise, or special privileges granted by the government or any subdivision, agency, or instrumentality thereof, including government-owned and -controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office. They shall not be qualified to run for any office in the election immediately succeeding their cessation from office: *Provided*, That the election mentioned hereof is not a *Barangay* election or a *Sangguniang Kabataan* election. *Provided*, they shall not be allowed to personally appear or practice as counsel or agent on any matter pending before the Commission for two (2) years following their cessation from office.

Sec. 11. Quorum. – Three (3) members of the Commission shall constitute a quorum and the affirmative vote of three (3) members shall be necessary for the adoption of any rule, ruling, order, resolution, decision or other acts of the Commission.

Sec. 12. Executive Director – The Commission shall appoint an Executive Director of the Commission. The Executive Director shall have relevant experience in any of the fields of law, governance, public administration, human rights, social development, journalism, ICT, or management for at least ten (10) years.

SEC. 13. Functions and Duties of the Commission. – The Commission shall have all the powers, direct or incidental, as necessary to undertake its functions under this Act, including but not limited to the following:

- (a) Oversee the implementation of all FOI and e-FOI programs for all the Branches of the Philippine Government and monitor compliance therewith;
- (b) Monitor compliance of government agencies covered in Section 3 especially to information that are excluded from disclosure pursuant to Section 27 of this Act;
- (c) Issue policies, orders and guidelines in the implementation of this Act;
- (d) Develop programs and mechanisms to enhance the capacity of the Branches of the Government to comply with FOI programs;
- (e) Conduct and facilitate the necessary capacity and institutional building programs for all the Branches of the Philippine Government;
- (f) Provide vetting mechanism on the disclosure of information and documents of the government;
- (g) Coordinate and participate with local and international civil society organizations or any non-government institutions in any initiatives relative to the implementation and enforcement of this Act;
- (h) Enter into any agreement with any public or private entities or organizations relative to the implementation of this Act;
- (i) Prescribe the schedule of fees which must be reasonable based on the principle of proactive disclosure, in regard to providing information;
- (j) Provide assistance on matters relating to the Right of Access to information upon request by any of the covered agencies pursuant to Sec. 3 of this Act;

- (k) Ensure compliance of FOI Focal Officers and FOI Receiving Officers of all government agencies with the provisions of this Act;
- (l) Act as the official representative of the Philippine government in right to information matters;
- (m) Provide guidelines on the digitization and use of open format of records and information held by government agencies and bodies covered by this Act;
- (n) Promote the integration in the school curriculum of the principles of the right to information, accountability and transparency, democracy, leadership, and good governance in the elementary level and in such subjects as Social Studies and Makabayan or its equivalent subjects in the high school level, and in subjects as may be determined in the tertiary level, consistent with the objectives of this Act; and
- (o) All other functions and duties necessary and incidental for the enforcement and implementation of this Act.

Pursuant to the functions of the FOI Commission, it shall ensure that public officers and employees are adequately trained to improve awareness of the Constitutional right on access to information and the provisions of this Act, all government agencies must adopt their own best practices relating to information disclosure and records management.

SEC. 14. Powers of the Commission. – For the purpose of performing its functions and duties as provided in the preceding section, the Commission shall have the power to:

- (a) Hold inquiries and require any person to appear before it;
- (b) Examine a person under oath or affirmation and require such person where necessary to produce any information which is in that person's possession; *Provided*, That the information which is exempted from disclosure under Chapter VI shall be examined in confidence;
- (c) Inspect any information held by a government agency, including information denied by it under the provisions of this Act;
- (d) Direct a government agency to provide information in a particular form;
- (e) Direct a government agency to publish any information withheld by a said agency from the public, subject to the provisions of Chapter VI hereof;
- (f) Expeditiously hear and determine any appeals made to it by any aggrieved person;
- (g) Direct a government agency to reimburse fees charged when there has been a delay on the transaction;
- (h) Investigate, hear and decide on cases involving any violation of this Act and other existing right to information laws *motu proprio* or upon receipt of a verified complaint from an interested party, and institute the appropriate administrative or criminal proceedings;
- (i) Impose sanctions, fines or penalties for any noncompliance with or breach of this Act and punish for contempt;

- (j) Compel or petition any entity, government agency or instrumentality to abide by its orders or take action on a matter affecting the right to information;
- (k) Deputize any and all enforcement agencies of the government or enlist the aid and support of any private institution, corporation, entity or association, in the implementation of its powers and functions;
- (l) Recommend to the Department of Justice (DOJ) the prosecution and imposition of penalties specified in this Act;
- (m) Coordinate with other government agencies and the private sector on efforts to formulate and implement plans and policies to strengthen the right to information in the country; and
- (n) All other powers determined to be necessary for the implementation and enforcement of this Act.

Sec. 15. Immunity from Suit. – The Chairperson, the Commissioners, officers, employees and agents of the Commission shall not be subject to any action, claim or demand in connection with any act done or omitted by them in the performance of their duties and exercise of their powers except for those actions and omissions done in evident bad faith or gross negligence.

Sec. 16. Indemnity. – Unless the actions of the Commission or its Chairperson, any of its Commissioners, officers, employees and agents are found to be in willful violation of this Act, performed with evident bad faith or gross negligence, the Commission, its Chairperson, Commissioners, officers, employees and agents are held free and harmless to the fullest extent permitted by law from any liability, and they shall be indemnified for any and all liabilities, losses, claims, demands, damages, deficiencies, costs and expenses of whatsoever kind and nature that may arise in connection with the exercise of their powers and performance of their duties and functions.

CHAPTER IV RIGHT TO ACCESS TO INFORMATION PROCEDURES

SEC.17. Access to information. – Every person has a right to and shall, on request, be given access to any information, official records, public records, and documents and papers pertaining to official acts, transactions or decisions, or of public concern under the control of a government agency regardless of the physical form or format in which they are contained.

SEC. 18. Presumption. – There shall be a legal presumption in favor of access to information. No request for information shall be denied unless it clearly falls under the exceptions Provided under this Act. Accordingly, government agencies shall have the burden of showing by clear and convincing evidence that the information requested is exempted from the disclosure by this Act.

SEC. 19. Procedure for making a request. –

- (a) Any person or requesting party who wishes to obtain information shall submit a request to the government agency concerned personally, by mail, or through electronic means, including the eFOI portal.
- (b) A person who is unable to make a written request for information, because of illiteracy or disability, may make a verbal request, and the FOI Receiving Officer (FRO) who

receives the verbal request shall reduce the same in writing, including his or her name and position within the government agency, and give a copy thereof to the requesting party.

- (c) The request shall state the name and preferred contact information of the requesting party, and reasonably describe the information requested, and the preferred means by which the government agency shall communicate such information to the requesting party.
- (d) If the request is submitted personally, the requesting party shall present his or her valid identification card issued by any government agency, government or private employer, or school.
- (e) If the request is submitted by mail or through electronic means, the requesting party may submit a photostatic or electronically scanned copy of verifiable identification, or other convenient means as determined by the agency: *Provided*, that the government agency shall, by reasonable means, prevent the disclosure to the public of the government-issued identification card of any requesting party.
- (f) The FRO receiving the request shall provide reasonable assistance, free of charge, to enable all requesting parties, and particularly those with special needs, to comply with the requirements for a valid request under this section.
- (g) The request shall be stamped by the FRO, indicating the date and time of receipt, and the name, rank, title and position of the FRO with the corresponding signature, and a copy thereof furnished to the requesting party. In case the request is submitted by electronic means, the FRO shall provide for an equivalent means by which the requirements of this paragraph shall be met. Each government agency shall establish a system to track the status of all requests for information received by it.
- (h) The request may indicate the requesting party's preferred mode and means of receiving the information requested; *Provided*, That the mode and means are reasonable, taking into consideration equipment normally available to the concerned government agency.

The concerned government agency may communicate the information requested in a form other than the preferred means whenever the agency has no capability in communicating the information in the preferred format, or such preferred means would unreasonably interfere with the effective operation of the agency, or be detrimental to the preservation of the record.

SEC. 20. *Period for Compliance.* – The government agency concerned, through its FRO, shall respond to the request as soon as practicable, and in any case within three (3) working days for simple requests, seven (7) working days for complex requests, and twenty (20) working days for highly-technical requests from receipt thereof.

The government agency shall determine and classify its disclosable information or records that may fall under simple requests, complex requests, or highly technical requests.

The FRO shall, in writing or through electronic means, notify the requesting party of the classification of the request, whether “simple”, “complex”, or highly-technical, setting forth the reasons for such classification, and the date when the information shall be made available, which in no case shall exceed more than twenty (20) working days.

Where the requesting party believes that the information is necessary to safeguard the life or liberty of a person, the requesting party should include a statement to that effect,

including the basis for that belief. The government agency shall respond to the request within two (2) working days from receipt thereof.

SEC. 21. FOI Receiving Officer (FRO). – Every government agency or instrumentality shall, within sixty (60) days from the date of effectivity of this Act, designate at least one (1) FOI Receiving Officer (FRO). The FRO shall preferably come from the Public Assistance or Information Office, or its equivalent, of the Agency. Local or regional offices of the Agency shall assign their respective FROs.

The FRO shall, in addition to any obligations specifically provided for in other sections of this Act, have the following responsibilities:

- (a) Receive, on behalf of the agency, all requests for information from the requesting party and conduct an initial evaluation of compliance to the requirements provided in Section 19 of this Act;
- (b) Acknowledge and/or respond within three (3) working days upon receipt of the request for information, whether the request is forwarded to the appropriate office within their agency for further evaluation or referred to another government agency that has custody of the requested information;
- (c) Provide reasonable assistance, free of charge, to enable all requesting parties and particularly those with special needs, to comply with the requirements in filing a request; and,
- (d) Monitor all FOI requests, including appeals, and compile statistical information as required by the FOI Focal Officer.

Sec. 22. Freedom of Information Focal Officer. – Every government agency or instrumentality shall, within sixty (60) days from the date of effectivity of this Act, designate an FOI Focal Officer. All government agencies must ensure that the public shall have access to relevant information concerning the FOI Focal Officer, including his or her name, function, and contact details. The FOI Focal Officer shall, in addition to any obligations specifically provided for in other sections of this Act, have the following responsibilities:

- (a) to serve as the responsible central officer within the government agency for receiving requests for information, for assisting individuals seeking to obtain information, and for receiving individual complaints regarding the performance of the government agency relating to information disclosure;
- (b) to promote within the government agency the best possible practices in relation to records management; and
- (c) Annually submit to the FOI Commission a report on the activities of the government agency pursuant to, or to promote compliance with, this Act, which shall include information about:
 - i. the number of requests for information received, granted in full or in part, and refused;
 - ii. how often and which sections of the Act were relied upon to refuse, in part or in full, requests for information;
 - iii. Internal review decisions which denied access to, or refusals of request for, information;

- iv. fees charged for requests for information; and,
- v. other activities pursuant to the objectives of this Act.

Sec. 23. Referral and transfer of request. – When a request for information is made in accordance with Sec. 19 of this Act and said information is not held by the government agency but it is believed by its FRO to be held by another government agency, or it is believed to be more closely connected with the functions of another government agency, the government agency to which the request is made shall promptly, and in any case not later than three (3) working days upon receipt, transfer the request to the other government agency and inform the requesting party accordingly.

The government agency, to which the request was referred and transferred, shall act on the referral and transfer of request within the prescribed applicable periods provided in Sec. 20 of this Act. The request shall be treated as an initial request with respect to the government agency to which the request was referred and transferred.

SEC. 24. Fees. – Government agencies shall not charge any fees for accessing information, except for the purpose of reimbursing the cost of reproducing and sending the information based on a recommended fee schedule to be provided by the Commission. No indigent requesting party shall be made to pay any fees, nor shall fees shall be charged for the access of digital data.

The non-payment of fees shall not be a ground for refusing to comply with the provision of this Act.

SEC. 25. Freedom of Information Manual. – All covered agencies shall provide for their Manual indicating the procedures for making a request, period of compliance, list of exempted information or records from disclosure, internal review mechanism, process of referral and transfer of request, fees for reproduction and sending of information to the requesting party, and all other pertinent procedures for the efficient and effective access to information.

SEC. 26. Freedom of Information Portal. – The existing eFOI Portal (www.foi.gov.ph) managed by the Freedom of Information–Project Management Office (FOI-PMO) shall be transferred to the FOI Commission.

The eFOI Portal must apply sufficient information security and data privacy controls in compliance with RA 10173 and other existing laws and relevant regulations. The portal shall also provide information in an open standards format as defined by the Philippine eGovernment Interoperability Framework (PeGIF).

Further, all government agencies when selecting open standards and protocol shall use the PeGIF.

The budget for the web management, maintenance, and hosting shall be shouldered by the FOI Commission which shall be reflected in the General Appropriations Act.

SEC. 27. Proactive Publication. – It is the duty of all government agencies to proactively disclose, within their respective office premises and on their website, the following:

- (a) The agency's mandate and functions;
- (b) Vision, mission, and core values;

- (c) Powers and duties of officials with their position and office contact information;
- (d) The norms set by it for the discharge of its functions;
- (e) The procedure followed in the decision-making process, including channels of supervision and accountability;
- (f) The current and updated service standards or guidance used by the agency and its officials and employees in relation to its dealings with the public, including the rules, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions or the Citizen's Charter;
- (g) Statistical data of its accomplishments;
- (h) The budget allocated to each of its agencies, including the particulars of all plans, proposed expenditures and reports on disbursement made;
- (i) Annual Procurement Plan of each agency;
- (j) Subsidy programs of the government including but not limited to health care, community development, or women and children care. The manner of the execution of these programs, the amounts allocated and beneficiaries;
- (k) Particulars of concessions, permits, or authorizations granted by it;
- (l) The names, designation, contact details of responsible public officers or employees of every agency, appellate authorities and their office contact details;
- (m) The public authority shall also before initiating any project or formulating any policies or program, publish or communicate to the public in general or to the persons likely to be affected by it in a particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interest of natural justice and promotion of democratic principles; and
- (n) Current news and updated events conducted by agencies.

The Commission shall annually update the information for proactive publication; *Provided*, That the enumeration contained in paragraphs (a) to (n) shall not be diminished or removed.

The Commission shall ensure that government agencies, civil society representatives, journalists, researchers, and/or academic institutions are involved in the determination and publication of proactive disclosures of government statistics and information in an open and machine-readable format, to improve people's participation in governance.

CHAPTER V INTERNAL REVIEW AND APPEAL

SEC. 28. Notice of Denial. – If the government agency decides to deny the request, in whole or in part, it shall, as soon as practicable, and in any case within the prescribed applicable period from the receipt of the request, notify the person making the request of such denial in writing or through electronic means. The notice shall indicate the name, rank, title or position of the person making the denial, clearly set forth the ground or grounds for denial and the circumstances on which the denial is based, and indicate available rights of reconsideration

or appeal. 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. 29. *Internal Review Mechanism.* – Government agencies shall establish an internal review mechanism, which shall receive, review, evaluate, and assess the request for review on the denial of a request for access to information.

SEC. 30. *Remedies in Cases of Denial of Request for Information.* – Every denial of a request for access to information, in whole or in part, may be reviewed by the agency's internal review mechanism. The written request to review must be filed by the same person making the request, or his or her authorized representative, within fifteen (15) working days from the receipt of the notice of denial in writing or through electronic means.

The request to review shall be decided by the Agency's Internal Review Mechanism within thirty (30) working days from the filing of said written request to review.

The decision shall indicate the name, rank, title or position of the person making the decision, clearly set forth the ground or grounds and the circumstances on which the grant or denial of decision is based.

Failure of the government agency to act and decide on the request within the period stated in the preceding paragraphs shall constitute a denial of thereof and is deemed to be final; *Provided*, That in case the requesting party fails to file a request to review within the period provided herein, the denial of the request shall be deemed final. *Provided, further*, That in case the requesting party is not satisfied with the decision of the concerned agency's internal review mechanism, said party may file an Appeal to the FOI Commission.

CHAPTER __ SETTLEMENT OF DISPUTES

SEC. 31. *Alternative Dispute Resolution.* – The Commission shall settle disputes through mediation, adjudication, or any other non-litigious manner. The Commission shall preferably resolve a dispute through mediation, unless the parties, in writing, signify that they are unable to settle their dispute amicably. Thereafter, the Commission shall declare the mediation as unsuccessful, and conduct other means of resolution, such as arbitration.

SEC. 32. *Arbitration.* – Arbitration proceedings shall be heard before the Commission sitting *en banc*, or a division thereof composed of three (3) members. Decisions of the Commission, or a division thereof, are appealable to the regular courts.

CHAPTER VI INVENTORY OF EXCEPTIONS

SEC. 33. *Exceptions.* – Access to information shall be granted unless:

- (a) the information is specifically authorized to be kept secret under guidelines established by an executive order, and properly classified pursuant thereto: *Provided*, That (1) the information directly relates to national security or defense and its revelation may cause grave damage to the national security or internal and external defense of the State; or (2) the information requested pertains to the foreign affairs of the Republic of the Philippines, and its revelation shall unduly weaken the negotiating position of the government in an ongoing bilateral or multilateral negotiation or seriously jeopardize the diplomatic relations of the Philippines with one or more States: *Provided*, That sufficient information is disclosed to afford reasonable public participation and government decision-making on bilateral and multilateral agreements: *Provided*,

further, That the executive order shall specify the reasonable period after which the information shall be automatically declassified or be subject to mandatory declassification review after six (6) years, and that any reasonable doubt as to classification and declassification shall be settled in favor of the right to information;

(b) the information discloses investigatory records compiled for law enforcement purposes or information which are contained in such records, but only to the extent that the production of such records or information will:

(1) reasonably be expected to interfere with enforcement proceedings;

(2) deprive a person of the right to a fair trial or an impartial adjudication;

(3) reasonably be expected to constitute an unwarranted invasion of privacy;

(4) the information is furnished by a confidential source and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information is furnished only by the confidential source;

(5) unjustifiably disclose investigative or prosecutorial techniques and procedures;
or

(6) reasonably be expected to endanger the life or physical safety of any individual;

Provided, That convictions by final judgment rendered by judicial or quasi-judicial bodies, and other similar records, shall be disclosable.

(c) the information pertains to a testimony, report, document, or discussion obtained during an executive session of the Congress of the Philippines or any of its committees;

(d) the information pertains to the personal information of a natural person, whether from the public or the private sector, and its disclosure constitutes an unwarranted invasion of personal privacy, unless such information is specifically required by law to be entered into an official record and made available to the public, or the person has consented in writing to the disclosure of the information. To the extent required to prevent an unwarranted invasion of personal privacy, an agency may redact such information from a record made available to the public. The justification for the redaction shall be explained fully in writing, and the extent of such redaction shall be indicated on the portion of the record which is made available or published;

(e) the information pertains to trade secrets, commercial or financial information, or intellectual property obtained from a natural or juridical person other than the requesting party, and the revelation thereof will seriously prejudice the interests of such natural or juridical person in trade, industrial, financial, or commercial competition;

(f) the information is classified as privileged communications 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 from disclosure by the Constitution or law; and

(h) when prematurely disclosed, the information would, in case of a government agency that regulates financial institutions and the financial markets that they deal in, such as commodities, interest rates, and security markets, likely lead to fraud, manipulation, or other unlawful acts or schemes involving financial instruments, or, in the case of other

government agencies, likely impede the effective implementation of a proposed official action: *Provided*, That the information shall be accessible once the anticipated danger has ceased.

For paragraphs (b) to (h) of this Section, the determination of whether any of these grounds apply shall be the responsibility of the head of office of the government agency in custody or control of the information, or any responsible central or field officer duly designated by the head of office: *Provided*, That with regard to collegial bodies, boards, commissions, or other courts, the chairperson or presiding officer or member is deemed the head of office for purposes of this provision.

The foregoing exceptions shall be reviewed and updated regularly by the Commission in coordination with the Office of the Solicitor General and the Department of Justice. The updated list of exceptions shall be issued by the Commission: *Provided*, That the exceptions contained in paragraphs (a) to (h) shall not be diminished or removed.

SEC. 34. *Qualifiers.* – Even if the information falls under the exceptions 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;
- (b) The public interest in the disclosure outweighs the harm to the interest sought to be protected by the exceptions;
- (c) The requesting party is either House of Congress, or any of its committees and the disclosure is to be made in executive session, unless the disclosure will constitute a violation of the Constitution;
- (d) The requested information concerns cases already decided with finality by the courts, tribunals, commissions, agencies exercising quasi-judicial functions, administrative bodies, or officials in the exercise of their administrative functions; or
- (e) When the person entitled to the privilege or the body holding the information has waived the exception.

SEC. 35. *Classification and Declassification of Government Information or Records.* – Government agencies may classify information or records, as to disclosure, within their control or custody, for a period provided; *Provided*, that all classified information contained in all government agency records that: (1) are more than thirty (30) 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 more than thirty (30) years from the date of its original classification.

CHAPTER VII PENALTIES

SEC. 36. *Criminal Offenses.* – The Commission may, *motu proprio* or upon receipt of complaint by the requesting party, file a criminal case to any individuals for any following acts:

- (a) When a public officer or employee knowingly or willfully obstructs, impedes, frustrates or delays access of any information or records when such the information is necessary to safeguard the life or liberty of a person;

- (b) When a public officer or employee willfully refuses to comply with the decision of the Commission, any court, tribunal, commission, agency exercising quasi-judicial functions, administrative body, official in the exercise of his administrative functions, or any superior authority made within the scope of the jurisdiction of the latter and issued with all the legal formalities ordering the release of information;
- (c) When a public officer or employee willfully interferes with, or obstructs, the work of the Commission or other officer of the Commission;
- (d) When a public officer or employee deliberately conceals or falsifies records or provides false, misleading, incomplete or inaccurate information in response to a request made in pursuant to this Act;
- (e) When a public officer or employee claims an exception under Chapter VI of this Act, knowing such claim is devoid of factual and legal bases;
- (f) When a public officer or employee discloses or releases any information covered under Chapter VI of this Act, by any malicious breach, or inexcusable negligence or ignorance; and,
- (g) When a public officer or employee willfully discloses or releases information that is altered, tampered or modified in a genuine document which changes its meaning, or including in such copy a statement contrary to, or different from, that of the genuine original: *Provided*, That altering or modifying a document for the purpose of severing an exempt information from non-exempt information in a single document shall not be punishable under this Act.

If the violation committed in this Act is induced and assisted by a private individual or a corporation, partnership or any kind of juridical entity, the penalty provided herein shall be imposed on its executive officer and/or other responsible officials.

SEC. 37. Penalties. – Any violations of the preceding section will warrant the following penalties and liabilities:

- i. Administrative liability of dismissal from service, perpetual disqualification from holding public office and forfeiture of retirement benefits; and
- ii. Criminal liability of imprisonment of one (1) year to six (6) years or a fine of not less than Five hundred thousand pesos (Php 500,000.00), but not more than One million pesos (Php 1,000,000.00) or both.

Any public officer or employee who willfully destroys, or causes to be destroyed, or sells, information and/or documents being requested under this Act, for the purpose of frustrating the requesting party's access thereto shall suffer a fine of not less than Five hundred thousand pesos (Php 500,000.00) but not more than One million pesos (Php 1,000,000.00) or a penalty of five (5) years but not more than fifteen (15) years, or both, as provided in RA No. 9470 or the National Archives of the Philippines Act of 2007.

SEC. 38. Administrative Offenses. – The Commission may, *motu proprio* or upon receipt of complaint by the requesting party, file an administrative case against any public officer or employee for any following acts:

- a) When a public officer or employee willfully denies or obstructs access to any information or records;

- b) When a public officer or employee willfully fails to act on the request within the compliance periods provided under Sec. 20 of this Act;
- c) When a public officer or employee claims an exception under Chapter VI of this Act, by reason of inexcusable negligence or ignorance and the claim is devoid of factual and legal bases;

SEC. 39. *Administrative Liability.* – Any violations of the preceding section will warrant the following penalties and liabilities:

- a) First Offense: Suspension of not less than one (1) month, but not more than six (6) months;
- b) Second Offense: Suspension of not less than six (6) months, but not more than one (1) year; and,
- c) Third Offense: Dismissal from service.

SEC. 40. *Whistleblower Protection.* – No one may be subjected to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, or any public interest, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety, environment, or public interest. *Provided,* That if it shall be found that the disclosure of information was made contrary to the preceding paragraph, the individual shall be held liable under Sec. 34(f) of this Act and Sec. 29 or 32 of RA 10173.

For purposes of this section, “wrongdoing” includes the commission of a criminal offense, failure to comply with a legal obligation, miscarriage of justice, corruption or dishonesty, or serious maladministration or misconduct of a public official.

CHAPTER VIII DATA PRIVACY AND RECORDS MANAGEMENT

SEC. 41. *Consultation with the National Privacy Commission.* – The FOI Commission may, before coming up with a resolution or decision to a complaint made under this Act, consult with the National Privacy Commission regarding the merits of the case especially if the refusal is grounded on privacy concerns.

SEC. 42. *Right to Privacy.* While providing for access to information in public records, the right to privacy of individuals shall at all times be protected in the following manner:

- (a) A government agency shall ensure that personal information in its custody or under its control is disclosed only as permitted under this Act;
- (b) A government agency shall protect personal information in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, or disposal;
- (c) A public officer or employee of a government agency who has access, whether authorized or unauthorized, to personal information in the custody of the agency, shall not disclose that information except as authorized under this Act.

- (d) Ensure that the processing of Personal Information and Sensitive Personal Information shall conform to the General Data Privacy Principles under the Data Privacy Act and that the rights of the data subject must be protected.

SEC. 43. *Records Management.* – All government agencies shall record and maintain record of all its activities in a manner that facilitates the right to information, as provided in this Act and in accordance with the rules and regulations to be established by the National Archives of the Philippines and the Commission as regards to records management in support to the right to information.

SEC. 44. *FOI Code of Practice.* – The FOI Commission shall issue an FOI Code of Practice within sixty (60) working days from the establishment of the Commission, which may be revised from time to time.

The FOI Code of Practice is a compilation of the best practices in implementing the FOI Program. It aims to guide the implementing government offices in performing their functions and responsibilities, including but not limited to the rules and regulations on the processing of FOI requests, monitoring and evaluation, records management, and all other related processes.

CHAPTER XI CAPACITY BUILDING AND SYSTEMS OF INCENTIVES

SEC. 45. *Capacity-Building, Knowledge Management, Promotion of Best Practices, and Continuous Updating of Appropriate Use of Information Technology.* – The FOI Commission, with the assistance of the DICT, shall oversee and manage the eFOI portal and render the appropriate support including capacity-building program, knowledge management, and coordination with another appropriate agency, utilizing alternative mechanisms and seeking the assistance of private relevant and willing volunteer groups to ensure full compliance with the requirements of this Act.

In the performance of its oversight and management function to the eFOI portal, the FOI Commission shall endeavor to continuously develop, improve and update its information technology system taking into consideration usability and practical accessibility of government documents by the public, with the assistance of DICT.

SEC. 46. *Integration of Freedom of Information in Elementary, Secondary and Tertiary Curriculum.* – The Right of Access to information shall be integrated in subjects such as, but not limited to, *Araling Panlipunan* or its equivalent subjects in the elementary level; in subjects such as, but not limited to, Social Studies or its equivalent subjects in Secondary Level; and in subjects as may be determined in the Tertiary Level.

The Department of Education and the Commission on Higher Education in coordination with the Civil Service Commission, FOI Commission, and other relevant offices shall prepare the necessary modules and teaching programs consistent with the objectives of this Act.

SEC. 47. *Incentives, rewards, and building FOI Champions.* – The FOI Commission shall establish a system of special incentives and rewards to be given to appropriate government agency or agencies that initiated and displayed compliance and full participation in the meaningful implementation of this Act. The incentives and rewards may include, but shall not be limited to, social projects, grants-in-aid, national recognition, and similar entitlements, and certification as Freedom of Information Champions.

CHAPTER XII TRANSITORY PROVISIONS

SEC. 48. *Implementing Authority.* – The Director of the Freedom of Information–Project Management Office (FOI-PMO) created under Presidential Communications Operations Office Department Order No. 018, s. 2017, Memorandum Order No. 10, s. 2016 and Executive Order No. 02, s. 2016, shall undertake the implementation of the provisions of this Act and implement the necessary organizational changes within the transition period, or until a Chairperson has been appointed and has assumed office.

SEC. 49. *Effectivity of Existing Policies, and Rules and Regulations.* – All existing policies, and rules and regulations of the FOI-PMO shall continue to remain in full force and effect unless subsequently revoked, modified or amended by the Commission.

All cases and appeals filed during the transition period shall continue to be acted upon by the incumbent until transition shall have been completed and the FOI Commission's operations are in place. Thereafter, the Commission shall correspondingly assume jurisdiction over those cases and appeals. All decisions of the Commission shall thenceforth be appealable to the Court of Appeals under Rule 43 of the Rules of Court.

SEC. 50. *Transfer of Functions, Assets and Obligations.* – All transfer of functions, assets, funds, personnel equipment, properties, transactions, and personnel of the FOI-PMO, and the formulation and implementation of the internal organic structures, staffing patterns, operations systems, and revised budgets of the FOI Commission, shall be completed within six (6) months from the effectivity of the Act, during which existing personnel shall continue to assume their posts in holdover capacities until new appointments are issued.

Accordingly, the following dispositive actions shall be implemented within six (6) months from the effectivity of the Act:

- (a) The allocation of existing equipment, funds, and other assets of the FOI-PMO shall be transferred to the FOI Commission;
- (b) The records and pertinent transactions of the FOI-PMO shall be transferred to the FOI Commission; and,
- (c) The FOI Commission shall cause the creation of additional positions and augment their budget appropriations, as may be necessary, with the approval of the Department of Budget and Management (DBM).

The Commission shall be subrogated to all rights and assume all the liabilities of the FOI-PMO.

SEC. 51. *Absorption or Separation from Service of Employees of the Consolidated Agencies.* – The existing employees of the FOI-PMO shall enjoy security of tenure and shall be absorbed by the FOI Commission, in accordance with their staffing patterns and the selection process as prescribed under RA 6656, otherwise known as the "Government Reorganization Law".

Employees opting to be separated from the service as a consequence of the consolidation and reconstitution under the provisions of the Act shall, within one (1) month from their separation or phase out from the service, receive separation benefits in accordance with existing laws. In addition, those who are qualified to retire shall be allowed to retire and be entitled to all benefits provided, under any of the existing retirement laws.

SEC. 52. *Structure and Staffing Pattern.* – With the approval of the DBM, the Commission shall determine its organizational structure and create new divisions or units as it may deem necessary, and shall appoint officers and employees of the Commission in accordance with the civil service law, rules, and regulations.

SEC. 53. *Transition Period.* – The transfer of functions, assets, funds, equipment, properties, transactions, and personnel of FOI-PMO, and the formulation of the internal organic structure, staffing pattern, operating system of the Commission shall be completed within six (6) months from the effectivity of this Act, during which time, the existing personnel shall continue to assume their posts and hold their positions in a regular capacity: *Provided*, that after the abolition of FOI-PMO, the Commission, in coordination with DBM, shall determine and create new positions, the funding, requirement of which may exceed the equivalent cost of positions abolished.

CHAPTER XIII FINAL PROVISIONS

SEC. 54. *Appropriations.* – The initial sum of Sixty Million Pesos (P60,000,000.00) or so much thereof as may be necessary is hereby authorized to be released from the National Treasury from any fund not otherwise appropriated, including the current year's appropriations of the FOI-PMO. Thereafter, such sums as may be necessary for the continued implementation of the Act shall be included in the annual General Appropriations Act.

SEC. 55. *Separability Clause.* – If any section or part of this Act is held unconstitutional or invalid, the other sections or provisions not otherwise affected shall remain in full force and effect.

SEC. 56. *Repealing Clause.* – All laws, decrees, executive order, rules and regulations, issuances or any part thereof inconsistent with the provisions of this Act are deemed repealed, specifically, Memorandum Circular (MC) No. 78, s. 1964 as amended by MC No. 196, s. 1968 or the Rules Governing Security of Classified Matter in Government Offices, RA No. 10173 or the Data Privacy Act of 2012, and RA No. 11032 or the Ease of Doing Business and Efficient Government Service Delivery Act of 2018: *Provided*, That the provisions of RA No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees, shall continue to be in force and shall not be deemed modified or repealed by any provision of this Act.

SEC. 57. *Effectivity.* – This Act shall take effect fifteen (15) calendar days after its publication in at least two (2) newspapers of general circulation.

Approved.

