

## Proposed Freedom of Information Act and the Practice of Journalism

Introduced by Danilo Araña Arao

The proposed Freedom of Information Act (FOIA) – as may be gleaned from the contents of House Bill No. 3732; Senate Resolution No. 11; and Senate Bill Nos. 16, 109, 576, 592, 1578 and 2571 – aims to strengthen the right of the people to have access to information, a right that is explicitly guaranteed in the 1987 Constitution.

The Access to Information Network (ATIN) submitted a position paper on the pending bills. ATIN said that the Senate should consider taking “SB 2571 as starting point because this bill is closest to the version approved by the [House of Representatives]”. It added: “With SB 2571 as the starting point, the unique and progressive provisions of the other Senate Bills can then be incorporated.” Using this approach, ATIN came up a proposed consolidated bill which is reproduced in full in this issue of *Plaridel*.

Indeed, having access to information is important for a person to exercise his or her other basic freedoms, particularly of speech and of expression. Through this proposed measure, a person is guaranteed that he or she will not be deprived of information deemed important in his or her decision-making.

There is cogent reason for the people to support the proposed FOIA though journalists should be wary of the implications of certain provisions. The media can also benefit more from the proposed measure if it includes the release of previously classified documents with historical and social value after a certain period of time.

Given that information gives power to those who have access to it, the proposed FOIA could be empowering to marginalized sectors of society that are normally deprived not only of basic services but also of adequate information regarding their

plight. The provisions in the proposed FOIA give clear guidelines in requesting needed information.

### **Special Provision for Journalists' Access to Information**

In the context of journalism, however, there is a need to analyze the implications of Sections 9(e) and 11 of the proposed FOIA which state that a “government agency shall comply with [the person’s] request within ten (10) calendar days” within which days also a government agency shall inform the person if his or her request is denied, whether “in whole or in part”.

Since deadlines are an everyday reality for print, broadcast and online journalists, government compliance with or denial of information requests within a 10-day time frame is both unrealistic and unacceptable.

Even if journalists can be passionately persistent and remarkably creative in information gathering, government agencies should ensure expeditious granting of their requests. In order to discourage a journalist from circumventing the law in his or her quest to get the elusive information, the government should be transparent in providing necessary information and efficient in acting on such requests.

It is necessary that a special provision be included for the government agencies’ expeditious granting or denial of information requests from journalists, subject to the same “procedure of access” as stated in Section 9(a) of the proposed FOIA.

In pushing for this provision, it must be stressed that special treatment is not being requested for journalists. Expeditious granting or denial of information requests from journalists should be seen in the context of government’s commitment to provide an atmosphere conducive to the exercise of press freedom. The government’s cooperation with media organizations would surely help fulfill the latter’s sworn duty to provide relevant and up-to-date information to the people.

## Declassification of Selected Confidential Documents

What also proves to be missing in the proposed FOIA is the declassification of certain confidential documents after a certain number of years. It may be recalled that then U.S. President Bill Clinton signed Executive Order No. 12958 in April 1995 which authorized the release of previously classified national security documents “more than 25 years old and [and deemed] to have permanent historical value under title 44, United States Code” (Sec. 1.6c of EO 12958).

As a result of the inclusion of certain previously classified national security documents under the US Freedom of Information Act, the people were better informed of what the US government has done through the years. *The Baltimore Sun*, for example, requested and got hold of two previously classified Central Intelligence Agency (CIA) manuals titled “KUBARK Counterintelligence Interrogation - July 1963” and “Human Resource Exploitation Training Manual – 1983” (Cohn, Thompson & Matthews 1997).

The latter gave details on torture methods used against suspected subversives in Latin America in the 1980s, effectively refuting past denials of the CIA. By requesting the classified information, details like these were published in a January 1997 article by *The Baltimore Sun*: “Torture methods taught in the 1983 manual include stripping suspects naked and keeping them blindfolded. Interrogation rooms should be windowless, dark and soundproof, with no toilet” (Cohn, Thompson & Matthews 1997).

If such a provision were included in the proposed FOIA in the Philippines, the media and the public can greatly benefit from the full disclosure of certain confidential documents that have historical and social value, particularly those that are related to burning issues of the day, all of which clearly have historical contexts. Declassified national security documents could provide more details, for example, of what life was during Martial Law from 1972 to 1986.

In this context, it would do well for the proposed FIA to provide for the full disclosure of classified documents more than 25 years old if they are deemed to have permanent historical and social value.

Through these revisions to the proposed FIA, the government may uphold freedom of the press and implement “full public disclosure of all...transactions involving public interest (Art. II, Sec. 28 of 1987 Constitution).”

## References

- Cohn, J., Thompson, G., & Matthews, M. (1997, January 27). Torture was taught by CIA; declassified manual details the methods used in Honduras; Agency denials refuted. *The Baltimore Sun*. Final edition. Retrieved March 9, 2009 from <http://www.hartford-hwp.com/archives/40/055.html>
- White House, The. (1995, April 17). Executive Order 12958: Classified National Security Information. Retrieved March 9, 2009 from <http://www.fas.org/sgp/clinton/eo12958.html>

*Editor's Note: The introduction draws heavily from a position paper the author submitted to the Senate Committee on Public Information and Mass Media in time for the latter's hearing on the proposed FOLA on 18 February 2009.*



## **Proposed Consolidated Bill on Freedom of Information**

**In substitution of Senate Bill Nos. 16; 109; 576; 592; 1578 and 2571**

### **Access to Information Network**

**17 February 2009**

#### **The Need for Legislation**

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

*“The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to limitations as may be provided by law.”*

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

*“Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.”*

Despite these Constitutional provisions and its affirmation in a number of Supreme Court decisions, we are still far from the full realization of the people’s right to information as well as the avowed policy of full public disclosure of transactions involving public interest. Citizens remain in constant struggle with government agencies for access to important official information.

A key problem is lack of legislation. While the Supreme Court has upheld the enforceability of the constitutional right to information, its

effective implementation has for the past two decades suffered from the lack of the necessary substantive and procedural details that only Congress can provide.

We summarize the legal gaps that legislation must address:

- First, there is no uniform, simple and speedy procedure for access to information. Access to information is differently and inconsistently applied across government agencies. There is no uniform manner of making and responding to requests<sup>1</sup>. Agencies are thus able to use the absence of uniform procedure to frustrate the exercise of the right.
- Second, the specification of the coverage of the guarantee, particularly the general rule on what information may be exempted, needs legislation. The constitutional provision states that access to information shall be afforded our citizens “*subject to such limitations as may be provided by law*”. Congress has yet to fulfill this mandate. To address the gap, the Supreme Court has stepped in by enumerating a number of exceptions through jurisprudence, but the expected lack of exactness in the absence of legislation opens the enumeration to wide interpretation.
- Third, because of the lack of definite procedure as well as the absence of a definite scope, it is difficult to enforce any available administrative or penal sanctions for violations of the right. There is thus no compelling deterrent to the unlawful withholding of information.

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<sup>1</sup> The closest to a statutory procedure is found in Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees). Among the duties of public officials and employees as provided in Section 5 (e) of RA 6713 is to make all public documents accessible to the public, within reasonable working hours. Instead of applying this plain provision to make information available upon request, most agencies apply instead Section 5 (a) which directs public officials and employees to act promptly on letters and requests sent by the public within fifteen days from receipt thereof. Thus requests are often met with a letter within fifteen days from request acknowledging receipt of the request, and stating that the request is being considered. If one does not follow up on the request, often the acknowledgement letter will be the end of it.

- Fourth, the present remedy, which is judicial, is inaccessible to the public.
- Finally, the Supreme Court in the case of *Chavez v. NHA* (G.R. No. 164527; August 15, 2007) noted that while Section 7 of the Bill of Rights contemplates a duty upon government to permit access to information upon request, the declaration of policy under Section 28, Article II, in contrast, contemplates a government duty to bring into public view all the steps and negotiations leading to the consummation of transactions involving public interest and the contents of the perfected contract, without need of demand from anyone. However, there remains no enabling law that provides the mechanics for the implementation of such compulsory duty.

To highlight the lack of legislation, the Supreme Court in the case of *Chavez vs. PCGG* (G.R. No. 130716, 9 December 1998) noted that “there are no specific laws prescribing the exact limitations within which the right may be exercised or the correlative state duty may be obliged.” It was even more emphatic in the earlier-cited case of *Chavez vs. NHA*, where it observed:

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

Such enabling law has come closer to seeing the light of day when the Lower House approved on third reading, and transmitted to the Senate on 12 May 2008, House Bill 3732, or the Freedom of Information Act of 2008. What is left is for the Senate to pass its counterpart measure.

## **Consolidating the Senate Measures**

Pending before the Senate Committee on Public Information and Mass Media are six measures on the people’s right to information. These are:

- SBN 16, entitled “AN ACT TO ENSURE PUBLIC ACCESS TO OFFICIAL INFORMATION AND FOR OTHER PURPOSES”, introduced by Senator Ramon Bong Revilla, Jr.;
- SBN 109, entitled “AN ACT IMPLEMENTING THE CONSTITUTIONAL RIGHT OF ACCESS TO INFORMATION, PRESCRIBING GUIDELINES THEREFOR, AND FOR OTHER PURPOSES”, introduced by Senator Mar Roxas;
- SBN 576, entitled “AN ACT TO ENSURE PUBLIC ACCESS TO OFFICIAL INFORMATION AND FOR OTHER PURPOSES”, introduced by Senator Jinggoy Ejercito Estrada;
- SBN 592, entitled “AN ACT TO IMPROVE PUBLIC DISSEMINATION OF GOVERNMENT INFORMATION”, introduced by Senator Jinggoy Ejercito Estrada;
- SBN 1578, entitled “AN ACT IMPLEMENTING THE RIGHT OF ACCESS TO INFORMATION ON MATTERS OF PUBLIC CONCERN GURANTEED UNDER SECTION SEVEN ARTICLE III OF THE CONSTITUTION AND FOR OTHER PURPOSES”, introduced by Senator Manny Villar; and
- SBN 2571, entitled “AN ACT IMPLEMENTING THE RIGHT OF ACCESS TO INFORMATION ON MATTERS OF PUBLIC CONCERN GURANTEED UNDER SECTION TWENTY-EIGHT, ARTICLE II AND SECTION SEVEN, ARTICLE III OF THE 1987 CONSTITUTION AND FOR OTHER PURPOSES”, introduced by Senator Loren Legarda.

We outline the key principles that should guide us in the consolidation of the bills:

- (1) It must provide an expansive scope in terms of government agencies as well as information covered.
- (2) It must identify only a narrow list of clearly defined and reasonable exceptions.



- (3) It must provide citizens with the opportunity and right to override an exception whenever there is greater public interest in the disclosure of information.
- (4) It must introduce a clear, uniform, and speedy procedure for public access to information.
- (5) It must provide the mechanics for the compulsory duty of government agencies to disclose information on government transactions pursuant to Article II, Section 28 of the Constitution.
- (6) It must provide adequate and accessible remedies on cases of denial of access to information.
- (7) It must provide for clear administrative, criminal, and civil liabilities for violation of the right to information.
- (8) It must create the obligation upon all government agencies to actively promote openness and transparency.

The six measures before the Senate, taken together, have the elements that can be consolidated into a responsive and progressive law on access to information, following the guiding principles that we have laid down. In consolidating the measures, we propose that the Committee consider taking SB 2571 as starting point because this bill is closest to the version approved by the Lower House. This is a prudent approach as the House version already went through a committee and technical working group process that considered the inputs of various stakeholders, including the various government branches and agencies, public interest organizations, and media organizations. Also, based on our evaluation, the said version conforms to the principles we have enumerated. Finally, adopting the said bill as starting point will reduce to a minimum the potential differences for reconciliation by the two chambers. With SB 2571 as the starting point, the unique and progressive provisions of the other Senate Bills can then be incorporated.

Proceeding from this formula, we respectfully submit our following proposed consolidated bill, with our annotations on the sections, herewith attached as Annex “A”.

## Our Appeal to the Senate

The right of the people to information held by governments is being recognized by a rapidly growing number of countries around the world. Today over 70 countries have adopted laws giving citizens the right to access government information.


The Philippines is one among countries that have elevated the right to information into a Constitutional guarantee. Such high level of legal importance accorded to the right to information is only proper given the key role that the right to information plays in securing democracy, good governance, and development.

The people's right to information is an indispensable element of a functioning democracy. The ideal of a "government by the people" presupposes that the people have access to information on matters of public concern. The free flow of information about the affairs of government paves the way for public participation, and fosters accountability in government.

The people's right to information is not only a political imperative. It is also essential in economic life. It provides the institutional foundation for a more responsive government planning by enhancing the capacity of the public to provide timely feedback to government, and builds consensus around policy objectives and design. The availability of information on official rules, policies, programs, and resource allocation also enables the private sector to make sound long-term economic decisions.

A free flow of government information is also a vital safeguard against corruption. Secrecy in government allows corruption to flourish. It provides a greater cover for any evidence of corruption. In contrast, transparency exposes the vested interests involved and leads to the identification of corrupt practices.

We call on the members of the Senate Committee on Public Information and Mass Media, as well as on all members of the Senate, to fulfill the constitutional duty of Congress to give full effect to the people's right to information. Let a progressive freedom of information act be the legacy of the Fourteenth Congress to the Filipino people — a responsive legislation in pursuit of democracy, good governance, and national development.



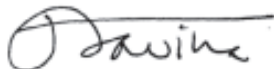
**Atty. Nepomuceno Malaluan**  
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**Dr. Florangel Rosario - Braid**  
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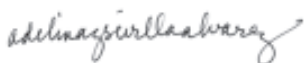
**Mr. Michael Jonathan Biscocho**  
Ateneo Debate Society



**Dean Antonio La Viña**  
Ateneo School of Government (ASoG)



**Prof. Luis Teodoro**  
Center for Media Freedom and  
Responsibility (CMFR)



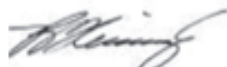
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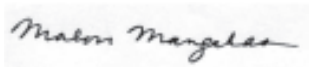
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Annex A

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

SENATE

S. B. No. \_\_\_\_\_

(In substitution of Senate Bill Nos. 16; 109; 576; 592; 1578 and 2571)

Introduced by Senators \_\_\_\_\_

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

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

**SECTION 1. *Short Title.*** – This Act shall be known as the “Freedom of Information Act of 2009”.

**SEC. 2. *Declaration of Policy.*** – The State recognizes the right of the people to information on matters of public concern, and adopts and implements a policy of

We emphasize the importance of including Section 28, Article II of the Constitution in the title, and not just Section 7, Article III, to give expression to the Supreme Court decision in Chavez vs. NHA giving distinct signification to these two provisions. This title fully recognizes the two foundational sources of the following sections of the bill.

This is the simplest title, and identical to the House version. This also reflects the growing global recognition of a right to information, popularly termed “freedom of information”, similar to “freedom of speech”, or “freedom of expression”.

The first sentence reiterates the constitutional provisions in Section 7, Article III and Section 28, Article II. The

full public disclosure of all its transactions involving public interest, subject to limitations provided by this Act. This right is indispensable to the exercise of the related freedoms of speech, of expression, and of the press, as well as the right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision making.

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

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

- a. “Information” shall mean any knowledge, record, document, paper, report, letters, contract, minutes and transcripts of official meetings, maps, books, photographs, data, research material, film, sound and video recordings, magnetic or other

second sentence gives recognition to the indispensability of the right to information to the exercise of other key and related rights also provided by the Constitution, such as the freedoms of speech, expression, and press, as provided by Article III, Section 4 of the constitution, and the right of the people and their organizations to effective and reasonable participation at all levels of decision making, as provided by Article XIII, Section 16 of the constitution.

This section, read together with Section 4 (b) provides for the required expansive scope in terms of government agencies covered, by covering all possible government agency or instrumentality in all branches of government.

The definitions clarify key terms used, to the end that maximum coverage of both government agencies as well as information is secured.

tapes, electronic data processing records, computer stored data, or any other like or similar data or material recorded, stored or archived in whatever form or format, which are made or received by, or kept in or under the control and custody of, any government agency pursuant to law, executive order, rules and regulations, or ordinance, or in connection with the performance or transaction of official business by any government agency.

- b. “Government agency” shall include the executive, legislative and judicial branches as well as the constitutional bodies of the Republic of the Philippines including, but not limited to, the national government and all its agencies, departments, bureaus, offices and instrumentalities, constitutional commissions and constitutionally mandated bodies, local governments and all their agencies, regulatory agencies, chartered institutions, government-owned or – controlled corporations, government financial institutions, state universities and colleges, the Armed Forces of the Philippines, the Philippine National Police, all offices in the Congress of the Philippines including the offices of Senators and Representatives, the Supreme Court and all lower courts established by law.

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

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

This legal presumption gives effect to jurisprudence (see for instance, Legaspi vs. Civil Service Commission, G.R. No. 72119, 29 May 1987) that government agencies are without discretion in refusing

disclosure of, or access to, information of public concern. They may only provide reasonable regulations on the manner in which the right to information may be exercised by the public, solely to the end of avoiding damage to or loss of records, or unduly interfering with the duties of the agency. The Supreme Court explains that the duty to disclose information cannot be discretionary for to do so renders useless the guarantee. Thus, in every denial of access, the government agency has the burden of showing that the information requested is not covered or has been exempted by law from the operation of the guarantee.

**SEC. 6. *Access to Information.*** –

Government agencies shall make available to the public for scrutiny, copying and reproduction in the manner provided by this Act, all information pertaining to official acts, transactions or decisions, as well as government research data used as basis for policy development, regardless of their physical form or format in which they are contained and by whom they were made.

This section, read together with Section 4 (a) and (c) ensures expansive coverage of information regardless of the form or format in which it is stored, by whom it is created, and its stage or status.



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

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

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

The ultimate objective of requiring disclosure or otherwise exempting from disclosure a particular information, is to serve the public interest. The exceptions enumerated in Section 8 represents a legislative determination that such information, from the perspective of public interest, are better kept secret than disclosed.

However, such presumption must give way, on a case-to-case basis, to a proper weighing of the public interest in disclosing or withholding a particular information. If it can be shown by the requester that the public interest will be better served by disclosure, then the information must be disclosed. This is given by Section 7 (b).

The matter of exceptions is always a contentious issue in any access to information legislation. On the one hand, there is a tendency on the part of citizens to demand as limited exceptions as are possible, and on the part of government, to carve out exceptions as broad as possible. In addition to

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| <p>a. The revelation of the information will create a clear and present danger of war, invasion or any external threat to the State as determined by the Office of the President and/or the Secretary of the Department of National Defense: Provided, That the Supreme Court may, upon complaint by any citizen, inquire into the sufficiency of the factual basis for such determination;</p>  | <p>providing the override in Section 7 (b), we submit that we can strike a balance in the exceptions by avoiding exemptions based on classes of information. This is prone to abuse and overbroad interpretation.</p>   |
| <p>b. The information pertains to the positions of the Republic of the Philippines in an ongoing negotiation for a bilateral or multilateral agreement or treaty, when its revelation would unduly weaken the position of the Philippines in such negotiation, or pertains to another sovereign state, when its revelation would seriously jeopardize diplomatic relations with said state: Provided, that such information must always be accessible to either House of Congress;</p> | <p>Instead, exemptions must specify a direct serious harm to an accepted public interest that we seek to prevent in identifying the exemption. This is what each exception under this section tries to provide.</p>   |
| <p>c. The information pertains to internal and external defense and law enforcement, when the revelation thereof would render a legitimate military operation ineffective, unduly compromise the prevention, detection or suppression of a criminal activity, or endanger the life or physical safety of confidential or</p>   | <p>We note the proposed introduction in certain Senate bills of presidential classification of information by way of an executive order as part of the exception. We submit that it will be impractical to require an executive order for every information classified. Given this practical limitation, we fear that such a system will likely lead to a general classification system, which could lead to abuse. In contrast, the enumeration under this section is already equivalent to classification, with the added safeguards that the exempt information is specifically designated and</p> |

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| <p>protected sources or witnesses, law enforcement and military personnel or their immediate families. Information relating to the details of the administration, budget and expenditure, and management of the defense and law enforcement agencies shall always be accessible to the public;</p>   | <p>described, and the facts and reasons for preserving the confidentiality are precisely and specifically recited.</p> |
| <p>d. The information pertains to the personal information of a natural person and its disclosure would constitute a clearly unwarranted invasion of his or her personal privacy, unless it forms part of a public record, or the person was an official of a government agency and the information relates to his or her public function;</p>   |  |
| <p>e. The information pertains to trade, industrial, financial or commercial secrets of a natural or juridical person, obtained in confidence by a government agency, whenever the revelation thereof would seriously prejudice the interests of such natural or juridical person in trade, industrial, financial or commercial competition, unless such natural or juridical person has consented to the disclosure of the information;</p> |  |
| <p>f. The information is privileged from production in legal proceedings by law or by the Rules of Court, unless the person</p>  |  |

entitled to the privilege has waived it;

- g. The information is exempted by statutes of Congress, in addition to those provided in this section;
- h. Drafts of decisions of any executive, administrative, judicial or quasi-judicial body in the exercise of their adjudicatory functions are being requested; and
- i. The information is obtained by any committee of either House of Congress in executive session, whenever such information falls under any of the foregoing exceptions.

**SEC. 9. *Procedure of Access.* –**

- a. Any person who wishes to obtain information shall submit a request to the government agency concerned, as much as practicable in writing or through electronic means, reasonably describing the information required, the reason for the request of the information and the means by which the government agency shall communicate such information to the requesting party.
- b. The request shall be stamped by the government agency, indicating the date and time of receipt and the name, rank, title and position

The procedure for access must provide for a quick and certain period of compliance, for the manner of making and responding to requests, and for the definite attribution of government personnel involved in handling the request, from its receipt up to the determination of whether or not to disclose the information. These standards are met by Sections 9, 10 and 11.

of the receiving public officer or employee with the corresponding signature, and a copy thereof furnished to the requesting party. In case the request is submitted by electronic means, the government agency shall provide for an equivalent means by which the requirements of this paragraph shall be met.

- c. The request may indicate the following preferred means of communication:
  - 1. A true copy of the information in permanent or other form;
  - 2. An opportunity to inspect the information, using equipment normally available to the government agency when necessary;
  - 3. An opportunity to copy the information using personal equipment;
  - 4. A written transcript of the information contained in a sound or visual form.
  - 5. A transcript of the content of an information, in print, sound or visual form, where such transcript is capable of being produced using equipment normally available to the government agency; or

6. A transcript of the information from shorthand or codified form.
- d. A government agency may communicate information in a form other than the preferred means whenever such preferred means would unreasonably interfere with the effective operation of the agency, or be detrimental to the preservation of the record.
- e. The government agency shall comply with such request within ten (10) calendar days from the receipt thereof.
- f. The time limits prescribed in this section may be extended during unusual circumstances where, in the production of the requested information, there is a need:
  1. To search for and collect the requested information from field facilities or other establishments that are separate from the office processing the request;
  2. To search for, collect and appropriately examine a voluminous amount of separate and distinct information which are demanded in a single request;

3. For consultation, which shall be conducted in all practicable speed, with another government agency or among two (2) or more components of the government agency having substantial interest in the determination of the request; and
  4. To consider fortuitous events or other events due to *force majeure* or other analogous cases.
- g The government agency shall, in writing or through electronic means, notify the person making the request of the extension, setting forth the reasons for such extension and the date when the information shall be made available: Provided, That no such notice shall specify a date that would result in an extension of more than fifteen (15) calendar days.

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

**SEC. 11. Notice of Denial.** – If the government agency decides to deny the request, in whole or in part, it shall, within ten (10) calendar days from the receipt of

the request, notify the person making the request of such denial in writing or through electronic means. The notice shall clearly indicate the name, rank, title or position of the person making the denial, and the grounds for the denial. In case the denial is by reason of a claimed exception, the denial shall also state clearly the legitimate aim or interest sought to be protected in the confidentiality, and the facts and circumstances invoked showing the substantial harm to, or frustration of, the legitimate aim or interest that will result in the disclosure of the information. Failure to notify the person making the request of the denial, or of the extension, shall be deemed a denial of the request for access to information.

**SEC. 12. Remedies in Cases of Denial. –**

- a. In the executive and legislative branches and the constitutional bodies –
  - 1. Every denial of any request for access to information may be appealed to the person or office next higher in authority, following the procedure provided in the guidelines as required by Section 17 of this Act: Provided, That the appeal must be filed within fifteen (15) calendar days from the notice of denial and must be decided within fifteen (15)

The existing remedy to compel disclosure is primarily judicial. Judicial remedies remain inaccessible to the general public. We favor a cumulative system of remedies that a citizen may choose from. The citizen may exhaust administrative remedies, or seek the assistance of an intermediate but independent body, or go directly to the courts.

The Office of the Ombudsman is an appropriate intermediate and independent body to provide assistance in cases of denial of access to information.



calendar days from filing. Failure of the government agency to decide within the aforestated period shall constitute a denial of the appeal; and

2. Instead of appealing or after the denial of the appeal, the person denied access to information may, within fifteen (15) calendar days from the original denial or denial of the appeal, file a verified complaint with the Office of the Ombudsman, praying that the government agency concerned be directed to immediately afford access to the information being requested. Such complaint shall be resolved by the Office of the Ombudsman within sixty (60) calendar days from filing or earlier, when time is of the essence, taking into account such factors as the nature of the information requested, context of the request, public interest and danger that the information requested will become moot.

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

Under the Constitution (Section 13 (2), Article XI) and the Ombudsman Act, among the powers, functions and duties of the office of the Ombudsman is to direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as GOCCs with original charter, to perform and expedite any act or duty required by law.

- c. The remedies under this section are without prejudice to any other administrative, civil or criminal action covering the same act.
- d. The remedies available under this Act shall be exempt from the rules on non-exhaustion of administrative remedies and the application of the provisions of Republic Act No. 9285, otherwise known as the Alternative Dispute Resolution Act of 2004.
- e. The Office of the Ombudsman shall promulgate its rules of procedure to effect the purposes of this Act.
- f. Unless restrained or enjoined, the decisions of the Office of the Ombudsman shall be immediately executory, without prejudice to review in accordance with the Rules of Court.
- g. In case the requester has limited or no financial capacity, the Public Attorney's Office shall be mandated to provide legal assistance to the requester in availing of the remedies provided under this Act.

**SEC. 13. *Mandatory Disclosure.***

- a. Transactions Involving Public Interest.* – Subject to Sections 7 and 8 of this Act, all government

Section 13 (a) gives flesh to the ruling of the Supreme Court in Chavez vs. NHA (G.R. No. 164527; August 15, 2007).

agencies shall post on their bulletin boards and upload on their websites all the steps, negotiations and key government positions pertaining to definite propositions of the government, as well as the contents of the contract, agreement or treaty in the following transactions involving public interest:

1. Compromise agreements entered into by a government agency with any person or entity involving any waiver or 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 by the private sector;
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;

In this case, the Court for the first time made a pronouncement on the meaning and implication of Section 28, Article II of the constitution, in contrast to Section 7, Article III.

The Court said:

“Sec. 28, Art. II compels the State and its agencies to fully disclose “all of its transactions involving public interest.” Thus, the government agencies, without need of demand from anyone, must bring into public view all the steps and negotiations leading to the consummation of the transaction and the contents of the perfected contract. Such information must pertain to “definite propositions of the government,” meaning official recommendations or final positions reached on the different matters subject of negotiation. The government agency, however, need not disclose “intra-agency or inter-agency recommendations or communications during the stage when common assertions are still in the process of being formulated or are in the exploratory stage. x x x

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;	x x x Thus, the duty to disclose information should be differentiated from the duty to permit access to information. There is no need to demand from the government agency disclosure of information as this is mandatory under the Constitution; failing that, legal remedies are available. On the other hand, the interested party must first request or even demand that he be allowed access to documents and papers in the particular agency. A request or demand is required; otherwise, the government office or agency will not know of the desire of the interested party to gain access to such papers and what papers are needed. The duty to disclose covers only transactions involving public interest, while the duty to allow access has a broader scope of information which embraces not only transactions involving public interest, but any matter contained in official communications and public documents of the government agency.”
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.	

***b. Information Involving Public Health, Public Safety, and Environment.***

– Subject to Sections 7 and 8 of this Act, any public official or employee who is in possession or has personal knowledge of any information about the existence of a risk of significant harm to the health and safety of the public, or to the environment, shall immediately report such information to the head of his or her agency. The head of agency shall then make the appropriate arrangement for the timely disclosure of the information to the public.

Section 13 (b), on the other hand, integrates in this proposed consolidated version Section 11 of SB 109.

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

- a. Duty to Publish Information – Government agencies shall regularly publish and disseminate, at no cost to the public and in an accessible form, by print and through their website, timely, true, accurate and updated key information including, but not limited to:
  - 1. A description of its 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

This legislation must not only secure the mechanisms for securing access to requested information, or the mandatory disclosure of transactions of public interest. It must also promote pro-active transparency and openness. This is what this section provides. This section integrates certain provisions in Sec 10, SB 109, and various provisions of SB 592.

by which they may be availed of;

3. A description 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;
6. Current and important database and statistics that it generates;
7. Bidding processes and requirements;
8. Mechanisms or procedures by which the public may participate in or otherwise influence the formulation of policy or the exercise of its powers; and
9. A guide on accessing information containing adequate information about its record-keeping system, the

types of information it holds and/or publishes, the procedure for obtaining access by the public to such information, the person or office responsible for receiving the request and routing it to the person or office with the duty to act on the request, the standard forms and procedure for request, and the schedule of access fees.

- b. Keeping of Records – Government agencies shall maintain and preserve their records in a manner that facilitates easy identification, retrieval and communication to the public. They shall establish Management Information Systems (MIS) to strengthen their capability to store, manage and retrieve records, and to facilitate access to public records. The following shall not be destroyed:
  - 1. Records pertaining to loans obtained or guaranteed by the government;
  - 2. Records of government contracts;
  - 3. The declaration under oath of the assets, liabilities and net worth of public officers and employees, as required by law;

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

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

- a. Any public officer or employee receiving the request under Section 9 of this Act who shall knowingly refuse, or because of

To advance the full enjoyment of the right to information, the remedies available must not only compel disclosure; they must also deter violation. This is the purpose of having sanctions, as provided in Section 15 and 16. Section 15 avoids vagueness by clearly specifying the punishable acts.



<p>gross negligence fail, to promptly forward the request to the public officer responsible for officially acting on the request when such is the direct cause of the failure to disclose the information within the periods required by this Act;</p>	
<p>b. Any public officer or employee responsible for officially acting on the request, who shall:</p> <ol style="list-style-type: none"> <li>1. Knowingly refuse, or because of gross negligence fail, to act on the request within the periods required by this Act;</li> <li>2. Knowingly deny the existence of existing information;</li> <li>3. Deliberately destroy information being requested for the purpose of frustrating the requester's access thereto;</li> <li>4. Claim an exception under Section 8 of this Act, or under the Constitution, when the claim is manifestly devoid of factual basis; or</li> <li>5. Refuse to comply with the decision of his immediate supervisor, the Ombudsman or the court ordering the release of information that is not restrained or enjoined by a court;</li> </ol>	<p>SB 16 and SB 592 provide for a criminal liability for the disclosure of classified information. We submit that this is not needed, as such act is already penalized under Articles 229 and 230 of the Revised Penal Code, as follows:</p> <p>”Art 229. Revelation of secrets by an officer. – Any public officer who shall reveal any secret known to him by reason of his official capacity, or shall wrongfully deliver papers or copies of papers of which he may have charge and which should not be published, shall suffer the penalties of <i>prision correccional</i> in its medium and maximum periods, perpetual special disqualification and a fine not exceeding 2,000 pesos if the revelation of such secrets or the delivery of such papers shall have caused serious damage to the public interest; otherwise, the penalties of <i>prision correccional</i> in its minimum period, temporary special disqualification and a fine not exceeding 50 pesos shall be imposed. Art. 230. Public officer revealing secrets if private individual. – Any public officer to whom the secrets of any private individual shall become known by reason of his office, who shall reveal such secrets, shall suffer the penalties of <i>arresto mayor</i> and a fine not exceeding 1,000 pesos.”</p>

- c. The head of office of the government agency directly and principally responsible for the negotiation and perfection of any of the transactions enumerated in Section 13 (a) of this Act, who shall knowingly refuse, or because of negligence fail, to direct the mandatory posting or uploading of such transaction. The same penalty shall be imposed upon the public officer or employee who, despite a directive from the head of office, shall knowingly refuse, or because of negligence fail, to post or upload any of the transactions enumerated in Section 14 of this Act;
- d. Any public officer or employee who shall destroy, or cause to destroy, records of information covered by Section 14(b) of this Act;
- e. Any public officer who intentionally formulates policies, rules and regulations manifestly contrary to the provisions of this Act, and which policies, rules and regulations are the direct cause of the denial of a request for information; or
- f. Any public or private individual who knowingly induced or caused the commission of the foregoing acts under this section.

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

**SEC. 17. *Guidelines.*** –

- a. For the full implementation of this Act within the executive branch of the government, the Office of the Press Secretary, particularly the Philippine Information Agency, shall, through a consultative process, promulgate within six (6) months from the passage of this Act, the general guidelines to which the government agencies controlled, supervised or situated under the Office of the President shall adhere to in the establishment of their specific guidelines for access

to information, which shall include:

1. The location of the head, regional, provincial or field offices, or other established places where the public can obtain information or submit requests therefor;
2. The types of information it holds and/or publishes;
3. The person or office responsible for receiving the request and for routing it to the person or office with the duty to act on the request, and the standard forms and procedures for the request;
4. The procedure for the administrative appeal of any denial for access to information; and
5. The schedule of fees which shall be limited to the reasonable and standard charges for document search and reproduction, and the recovery of the direct costs thereof.

Each of the abovementioned government agency, office and

instrumentality shall submit to the Philippine Information Agency a copy of its guidelines for review to ensure the standardization of the procedure and the uniformity of fees, without prejudice to the right of the different agencies, offices and instrumentalities to adopt appropriate procedures for their unique functions and responsibilities.

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

In no case shall the absence of the aforementioned guidelines be a reason for the denial of any request for

information made in accordance with this Act.

**SEC. 18. *Reports.*** On or before March 1 of each calendar year, every government agency shall submit to the Speaker of the House of Representatives and President of the Senate a report on its implementation of this Act covering the preceding year. The report shall include:

- a. Any changes made in the guidelines on access to information;
- b. A summary of the information requests it handled, and their disposition;
- c. Its program and progress for the promotion of openness and adherence to this Act.

**SEC. 19. *Act Not a Bar to Claim of Right to Information Under the Constitution.*** – No provision of this Act shall be interpreted as a bar to any claim of denial of the right to information under Article III, Section 7 of the 1987 Constitution.

**SEC. 20. *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.

This section integrates in the proposed consolidated bill Section 14 of SB 109 and certain elements of SB 592.

Under present jurisprudence, citizens may file a right to information case directly before the Supreme Court. This section clarifies that the passage of this bill does not foreclose direct recourse to the Supreme Court.

**SEC. 21. *Repealing Clause.*** – All laws, decrees, executive orders, rules and regulations, issuances or any part thereof inconsistent with the provisions of this Act, including Memorandum Circular No. 78 dated 14 August 1964 (Promulgating Rules Governing Security of Classified Matter in Government Offices), as amended, and Section 3, Rule IV of the Rules Implementing Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), are deemed repealed.

**SEC. 22. *Effectivity.*** – This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

*Approved,*