

**FOURTEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
First Regular Session )**

**SENATE**

**S. No. \_\_\_\_\_**

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**INTRODUCED BY**

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**EXPLANATORY NOTE**

The people’s right to government information is an indispensable element of a functioning representative democracy. The ideal of a “government by the people” presupposes that the people have access to information on matters of public concern in order to effectively exercise its governing power. 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 makes corruption flourish. It provides a greater cover for any evidence in corruption. In contrast, transparency exposes the vested interests involved and leads to the identification of corrupt officials.

The right to information in the Philippines is guaranteed by no less than the 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.”

Jurisprudence has laid down the key principles in applying the right to information, as follows:

- ***The guarantee is self-executing.***
- ***The right to information is a public right.*** This makes the people the real party in interest, and the petitioner who anchors his or her case on such public right need not show that he or she has any special interest in the result.
- ***Government agencies are without discretion in refusing access to information of public concern.*** The performance of the duty to disclose the information cannot depend upon the discretion of the agency, otherwise the right will be rendered worthless.
- ***Not being discretionary, the performance of the duty to afford access to information of public concern may be compelled by a writ of mandamus.***

Despite the Constitutional guarantee and the judicial affirmation of the right, denial of access to government information remains widespread. Among the key problems are the following:

- ***Absence of a uniform, simple and speedy access procedure.***
- ***While in legal theory there is no discretion in giving access to information, it remains discretionary in practice.***
- ***There is still untested, if not insufficient, basis for sanctions in cases of violation of the right to information.***
- ***The remedy to compel disclosure, primarily judicial, remains inaccessible to the general public.***
- ***Government's record-keeping system is in a very poor state.***
- ***There is a very low level of bureaucratic commitment to openness.***
- ***The cost of access to certain information is excessive.***

This situation can be mitigated by a law on public access to official information that will complement the existing Constitutional guaranty and relevant jurisprudence. This bill contains the following essential features:

1. An expansive scope in terms of government agencies as well as information covered.
2. A regime of limited exceptions that identify the serious harm that disclosure will directly cause to a set of clearly and narrowly defined, and broadly accepted interests. It also provides an opportunity and right to override a recognized exception with a clearly greater public interest in the disclosure.
3. A clear, uniform and speedy procedure for access to information.
4. A proscription against excessive costs of access to information.
5. A system of accessible and speedy remedies that a citizen who has been denied access to information may resort to.
6. A mandate to promote a culture of openness within government, and to enhance not only the physical accessibility of information, but its understandability by the general public as well.

7. Clear administrative, criminal and civil liability for violation of the right to information.

In addition, we note the importance of the ruling of the Supreme Court in the very recent case of Chavez vs. NHA (G.R. 164527, August 15, 2007). Before this case, the focus of the Court's decision has been the interpretation of Section 7 of the Bill of Rights. For the first time, the Court in this case gave an interpretation of Section 28, Article II (Declaration of Principles and State Policies) of the constitution. The Court in this case distinguished between "duty to disclose" and "duty to permit access to information". The duty to permit access to information is given by Sec. 7, Art. III of the Constitution. This gateway to information opens to the public the following: (1) official records; (2) documents and papers pertaining to official acts, transactions, or decisions; and (3) government research data used as a basis for policy development. In contrast, Section 28 mandates a "duty to fully disclose all of its transactions involving public interest." The court said:

"x x x 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." The limitation also covers privileged communication like information on military and diplomatic secrets; information affecting national security; information on investigations of crimes by law enforcement agencies before the prosecution of the accused; information on foreign relations, intelligence, and other classified information.

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.

Thus, as the Court stated, the enabling law must provide the mechanics for the compulsory duty of government agencies to disclose information on government transactions. This bill responds to this by incorporating a section for the mandatory disclosure of transactions involving public interest.

Immediate approval of this bill is earnestly requested.

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AN ACT  
IMPLEMENTING THE RIGHT OF ACCESS TO INFORMATION ON  
MATTERS OF PUBLIC CONCERN GUARANTEED UNDER SECTION 28,  
ARTICLE II AND SECTION 7, ARTICLE III OF THE 1987 CONSTITUTION  
AND FOR OTHER PURPOSES

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

**Section 1. Title.** – This Act shall be known as the “Freedom of Information Act of 2007.”

**Section 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 full public disclosure of all its transactions involving public interest, subject to limitations and conditions provided by this Act.

**Section 3. Coverage.** – This Act shall cover all Public Bodies, which 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 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 offices of Senators and Representatives, the Supreme Court and all lower courts established by law.

**Section 4. Access to Information.** – Public bodies shall make available for public scrutiny, copying and reproduction in the manner provided by this Act, all official records, and documents and papers 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. By “official” is not meant a stage or status of the record, document, paper or data, but rather that such record, document, paper or data was produced or received by the public officer or employee or by the public body in an official capacity or pursuant to a public function or duty. .

**Section 5. Exceptions.** – Subject to the qualifications set forth in Section 6, and provided that the information is specifically designated and described and the facts and reasons for preserving the confidentiality are precisely and specifically recited, access to information may be denied when:

A. The revelation of the information will create a clear and present danger to the security of the State as personally determined by the President, provided that the Supreme Court may, upon complaint by any citizen, inquire into the sufficiency of the factual basis for the President’s determination.

B. The information pertains to the foreign affairs of the Republic of the Philippines, when its revelation:

1. Would prematurely disclose the position of the government in an ongoing bilateral or multilateral negotiation, but only when such premature disclosure can reasonably be expected to unduly weaken the negotiating position of the government, provided that such information must always be accessible to Congress; or
2. Can reasonably be expected to seriously jeopardize the diplomatic relations of the Philippines with one or more states with which it intends to keep friendly relations.

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 sources, law enforcement and military personnel or their immediate families: Provided, that information relating to the administration, budget and expenditure, management and direction of the defense and law enforcement agencies shall be accessible to the public.

D. The information pertains to personal information of a third party natural person, when its revelation would constitute an undue invasion of personal privacy, unless:

1. The third party has consented to the disclosure of the information;
2. The party making the request is the legal guardian of the third party, or the next of kin or the executor of the will of a deceased party;

3. The third party has been deceased for more than 20 years;
4. The third party is or was an official of a Public Body and the information relates to his or her public function;
5. The documents are in the custody or form part of the records of the following and similar agencies:
  - a. Office of the Civil Registry
  - b. National Statistics Office
  - c. Register of Deeds
  - d. Land Transportation Office
  - e. Securities and Exchange Commission
  - f. Business Permits and Licenses Office and Assessor's Office of the various local government units

E. The information pertains to trade, industrial, financial or commercial secrets of a third party natural or juridical person, obtained in confidence or mandated to be kept in confidence by a Public Body, whenever the revelation thereof would seriously prejudice the interests of the third party in trade, industrial, financial or commercial competition, unless the third party has consented to the disclosure of the information;

F. The information is privileged from production 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 by statutes of Congress, in addition to those provided in this section.

**Section 6. Qualifications.** - Even if the information falls under the exceptions set forth in Section 5, access to information shall not be denied if:

A. The information is already publicly available.

B. The information may be reasonably severed from the information which would be subject to the exceptions.

C. The public interest in the disclosure outweighs the harm to the interest sought to be protected by the exceptions.

**Section 7. Presumption.** - There shall be a legal presumption in favor of access to information. Accordingly, Public Bodies shall have the burden of proof of showing by clear and convincing evidence that the information requested should not be disclosed.

**Section 8. Procedure for Access.** - A. Any person who wishes to obtain information shall submit a request to the Public Body concerned, as much as practicable

in writing or through electronic means, reasonably describing the information required, and the means by which the Public Body shall communicate such information to the requesting party.

B. The request shall be stamped by the Public Body, indicating the date and time of receipt, and the name, rank, title and position 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 Public Body 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 record in permanent or other form;
2. An opportunity to inspect the record, where necessary using equipment normally available to the Public Body;
3. An opportunity to copy the record using personal equipment;
4. A written transcript of the words contained in a sound or visual form;
5. A transcript of the content of a record, in print, sound or visual form, where such transcript is capable of being produced using equipment normally available to the Public Body; or
6. A transcript of the record from shorthand or codified form.

D. A Public Body may communicate information in a form other than the preferred means whenever such preferred means would unreasonably interfere with the effective operation of the body, or be detrimental to the preservation of the record.

E. The Public Body shall comply with such request within three (3) working days from the receipt thereof or within a reasonable period of time mutually agreed upon by the requester and the agency employee concerned in writing.

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

1. To search for and collect the requested records 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 records which are demanded in a single request;

3. For consultation, which shall be conducted in all practicable speed, with another Public Body or among two or more components of the Public Body having a substantial interest in the determination of the request; and
4. To consider fortuitous events or other events from force majeure, or other analogous cases.

G. The Public Body 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) working days.

**Section 9. Access Fees.** – Public Bodies may charge a reasonable fee to reimburse the cost of searching, reproduction, copying or transcription, and communication of the information requested.

**Section 10. Notice of Denial.** – If the Public Body decides to deny the request, in whole or in part, it shall within three (3) working days from the receipt of the request or within the reasonable time mutually set by both parties in writing, notify the person making the request of such denial in writing or through electronic means. The notice shall clearly indicate the name, rank and title or position of the person making the denial and the grounds for the denial. 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.

**Section 11. Remedies in Cases of Denial.** – A. *In the Executive Branch.* 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 Sec. 16 of this Act; provided that, the appeal must be filed within fifteen (15) days from denial, and must be decided within fifteen (15) days from filing. Failure of the Public Body to decide within the aforesated period shall constitute a denial of the appeal.

A. Instead of appealing or after the denial of the appeal, the person denied access to information may, within fifteen (15) days from the original denial or denial of 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) 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. Proceedings in the Office of the Ombudsman shall be summary in nature and

may involve, in the discretion of said Office, *in camera* inspection of records containing the information requested, on-site inspections, and other expedient procedures. The Office of the Ombudsman shall promulgate its rules of procedure to effect the purposes of this Act.

C. 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.

B. *In the Judicial and Legislative Branches.* The House of Representatives, the Senate and the Supreme Court shall promulgate the remedies that would govern offices under their respective jurisdictions.

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

**Section 12. Mandatory Disclosure of Transactions Involving Public Interest.** – Subject to Sections 5 and 6 of this Act, all public bodies shall post on their bulletin boards and upload on their websites, all the steps and negotiations pertaining to definite propositions of the government, as well as the contents of the contract, agreement or treaty once these are perfected, in the following transactions involving public interest:

- A. Compromise agreements entered into by a public body with any person or entity involving any waiver or its rights or claims.
- B. Private sector participation agreements or contracts in infrastructure and development projects under Republic Act 6957, as amended by Republic Act 7718, authorizing the financing, construction, operation and maintenance of infrastructure projects.
- C. Procurement contracts entered into by a public body.
- D. Concession agreements or contracts entered into by a government body with any person or entity.
- E. Loans, grants, development assistance, technical assistance, and programs entered into by a government body with official bilateral or multilateral agencies, as well as with private aid agencies or institutions.
- F. Loans from domestic and foreign financial institutions.
- G. Guarantees given by any public body to government-owned and controlled corporations and to private corporations, persons or entities.
- H. Public funding extended to any private entity.

- I. Bilateral or multilateral agreements and treaties in defense, trade, economic partnership, investments, cooperation and similar binding commitments.
- J. Licenses, permits or agreements for the utilization and disposition of natural resources.

**Section 13. Promotion of Openness in Government.** – A. *Duty to Publish Information.* - Public Bodies shall regularly publish and disseminate, at reasonable 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 structure, powers, functions, duties, and decision-making processes.
2. A description of the frontline services it delivers and the procedure and length of time by which they may be availed of;
3. Work programs, development plans, investment plans, projects and performance targets and accomplishments, budgets, internal revenue allotments, and expenditures;
4. Important rules and regulations, orders, or decisions;
5. Current and important database and statistics that it generates;
6. Bidding processes and requirements;
7. Mechanisms or procedures by which the public may participate in or otherwise influence the formulation of policy or the exercise of its powers; and
8. 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.* Public Bodies 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 investigation on graft and corrupt practices of public officers.
5. Other records where there is a significant public interest in their preservation, or there is likely to be such interest in the future.

*C. Accessibility of Language and Form.* Every Public Body shall endeavor to translate key information into major Filipino languages, and present them in popular form and means.

*D. Improving Capability.* Every public Body 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.

**Section 14. 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:

1. Any public officer or employee receiving the request under Sec. 8 of this Act who shall knowingly refuse, or because of 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.
2. Any public officer or employee responsible for officially acting on the request who shall:
  - (a) Knowingly refuse, or because of negligence fail, to act on the request within the periods required by this Act;
  - (b) Knowingly deny the existence of an existing record;
  - (c) Deliberately destroy a record being requested for the purpose of frustrating the requester's access thereto;
  - (d) Claim an exception under Section 5 of this Act, when the claim is manifestly devoid of factual basis;
  - (e) Refuse to comply with the decision of the Ombudsman ordering the release of a document that is not restrained or enjoined by a court.

3. The Head of Office of the public body directly and principally responsible for the negotiation and perfection of any of the transactions enumerated in Section 12 of this act, who knowingly refuse, or because of negligence fails, 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, knowingly refuse or because of negligence fails to post or upload any of the transactions enumerated in Section 12 of this Act.
4. Any public officer or employee who shall destroy, or cause to destroy, records of information covered by Sec. 12 B. of this Act.
5. 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.
6. Any public or private individual who knowingly induced or caused the commission of the foregoing acts under this Section.

**Section 15. 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 Public Body shall be liable to pay the requester damages in the amount of one thousand pesos (P1,000.00) per day from the date of denial until the date of compliance with the request, which amount shall be automatically appropriated. The public officer or employee and private individual responsible for the denial shall be solidarily liable with the Public Body unless he can prove that such denial was made without fault or negligence. The liability under this section shall be without prejudice to actual, moral and exemplary damages that may be adjudicated under the law.

**Section 16. Act Not a Bar to Claim of Right to Information Under the Constitution.** No provision of this Act shall be interpreted as a bar to any claim of denial of the right to information under Article III, Section 7 of the 1987 Constitution.

**Section 17. 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.

**Section 18. Repealing Clause.** – All laws, decrees, executive orders, rules and regulations, issuances or any parts thereof inconsistent with the provisions of this Act, including Memorandum Circular No. 78 dated 14 August 1964 (Promulgating Rules Governing Security of Classified Matter in Government Offices) as amended, and Section 3, Rule IV of the Rules Implementing Republic Act No. 6713 (Code of Conduct and Ethical standards for Public Officials and Employees), are deemed repealed.

**Section 19. Effectivity.** – This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,