

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

SEVENTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 1055

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Introduced By: REPRESENTATIVE MAGNOLIA ROSA C. ANTONINO

EXPLANATORY NOTE

Section 7 of the Constitution explicitly provides that "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 a basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law."

This expressed Constitutional mandate being not a self-executing provision will remain a paper right of citizens if no enabling Act shall ever be passed by Congress to effectively implement the aforementioned provision.

It is therefore in pursuance of this Constitutional guarantee that this bill seeks to strengthen the right of citizens to information on matters of public concern and access to official records, documents and transactions pertaining to official acts. The foremost objective of this important piece of legislation is to effectively promote transparency in the government for the benefit of the Filipino people.

It is worthy to note that the promotion of transparency in the government shall not serve as a valid license to intrude into the personal or private acts, transactions and records of public officials as the provision of the Constitution itself strictly limits the information and access only to official acts, records and transactions. Therefore, personal matters such as Income Tax Returns (ITR), Statement of Assets, Liabilities and Net Worth (SALN) and the like which have no bearing at all to one's position in the government must be kept beyond public scrutiny. Otherwise, government officials will fall prey to enterprising individuals who will use the documents to cast aspersion upon them or even for extortion purposes. Under this situation, the performance of public officials concerned will be severely affected as they will be spending government's time to fend off criticisms hurled against them to the detriment of public service.

The Senate and the House of Representatives had already stamped their approval on this bill during the Fourteenth and Fifteenth Congress. It was also approved by the Committee on Public Information and the consolidated version was filed for Second Reading during the Sixteenth Congress. However, due to lack of material time, the same was not enacted into law.

The approval therefore of this important legislation is earnestly sought.

[Signature]
MAGNOLIA ROSA C. ANTONINO
Representative
Fourth District, Nueva Ecija

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HOUSE BILL NO. 1055

Introduced By: REPRESENTATIVE MAGNOLIA ROSA C. ANTONINO

AN ACT
STRENGTHENING THE RIGHT OF CITIZENS TO INFORMATION ON
MATTERS OF PUBLIC CONCERN, ACCESS TO OFICIAL RECORDS AND
DOCUMENTS AND PENALIZING ANY VIOLATION THEREOF

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

SECTION 1. *Short Title.* – This Act shall be known as the “*Freedom of Information and Transparency Act of 2016.*”

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 full public disclosure of all its transactions involving public interest, subject to the procedures and limitations provided under this Act. This right is indispensable to the free exercise of the right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision-making.

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

Sec. 4. *Definition of Terms.* – As used in this Act, the following terms shall mean:

- (a) Information shall mean any knowledge, record, document, paper, report, letters, contract, minutes and transcripts of official meetings, maps, books, photographs, research data, material, film, sound and video recordings, magnetic or other 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, received or kept in or under the control and custody of any government agency pursuant to law, executive

order, rules and regulations, 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 the 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 and controlled corporations, government financial institutions, state universities and colleges, the Armed Forces of the Philippines, the Philippine National Police, all offices in both the Senate and the House of Representatives of the Philippines, the Supreme Court and all lower courts established by law;
- (c) Official records shall refer to information produced by the 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 public available by a government such as, but not limited to, the following offices:
 - (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; and
 - (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 clear and convincing evidence that the information requested should not be disclosed.

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 a basis for policy development, regardless of their physical form or format in which they are contained and by whom they were made.

Nothing herein contained shall allow personal acts, transactions or records, including Income Tax Returns, Statement of Assets, Liabilities and Networth (SALN) and the like, of public officials and private individuals to be the subject of mandatory disclosure under this Act.

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

- (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 of this Act: *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:

- (a) The revelation of the information will create a clear and present danger of war, invasion or any external threat to the Secretary of the National Defense: *Provided*, That the Supreme Court may, upon complaint by any citizen, inquire into the sufficiency of the factual basis for such determination;
- (b) The information pertains to the foreign affairs of the Republic of the Philippines, when its revelation would unduly weaken the negotiating position of the government in an on-going bilateral or multilateral negotiation or seriously jeopardize the diplomatic relations of the Philippines with one or more states with which it intends to keep friendly relations, except that such information must always be accessible to either House of Congress;
- (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 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;
- (d) The information pertains to the personal information of a third party natural person, unless it forms part of a public record, or the third party is or was an official of a government agency and the information relates to his or her public function;
- (e) The information pertains to trade, industrial, financial or commercial secrets of a third party natural or juridical person, obtained in confidence by a government agency 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;
- (h) The information is obtained by any committee of either House of Congress in executive session; and
- (i) Drafts of decisions of any executive, administrative, judicial or quasi-judicial body in the exercise of their adjudicatory functions are being requested.

SEC. 9. 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. 10. 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 such 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 shall be deemed a denial of the request for access to information.

SEC. 11. Remedies in Cases of Denial. – (a) In the executive and legislative branches and 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 the Section (Strict liability) 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) calendar from filing. Failure of the government agency to decide within the aforesated period shall constitute a denial for the appeal; and
- (2) Instead of appealing or after the denial of the appeal, the person denied access 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 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 will govern offices under its jurisdiction;

(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 of 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 immediate executory, without prejudice to review in accordance with the Rules of Court;

(g) In case the requesting party has limited or no financial capacity, the Public Attorneys Office (PAO) shall be mandated to provide legal assistance to him or her in availing of the remedies provided under this Act.

SEC. 12. *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 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:

- (3) A true copy of the information in permanent or other form;
- (4) An opportunity to inspect the information, using equipment normally available to the government agency when necessary;
- (5) An opportunity to copy the information using personal equipment;
- (6) A written transcript of the information contained in a sound or visual form;
- (7) 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
- (8) 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 for the following:

- (1) To search for and collect the requested information from field or other establishments that are separate from the other 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. 13. *Mandatory Disclosure of Information Involving Public Interest.* – Subject to Sections 7 and 8 of this Act, all government 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:

- (a) Compromise agreements entered into by a government agency 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 No. 6957, as amended by Republic Act No. 7718, authorizing the financing, construction, operation and maintenance of infrastructure projects;
- (c) Procurement contracts entered into by a government agency;
- (d) Construction or concession agreements or contracts entered into by a government agency with any domestic or foreign person or entity;
- (e) 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;
- (f) Loans from domestic and foreign financial institutions;
- (g) Guarantees given by any government agency to government-owned or 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; or
- (j) Licenses, permits or agreements given by any government agency to any person or entity for the extraction and/or utilization of natural resources.

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 the following:

- (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, performance targets and accomplishments, and budgets, 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 it holds and/or publishes, the procedure for obtaining access by the public to such information, the person or office responsible with the duty to act on 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 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 networth 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 as to best practices in relation to information disclosure, records maintenance and archiving.

SEC. 15. *Strict Civil Liability.* In case a request for information is denied and subsequently reversed by the final and executory judgment of the Ombudsman or the courts, the government agency shall be liable to pay the requesting party 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 section shall be without prejudice to the actual, moral and exemplary damages that may be adjudicated under the law.

SEC. 16. *Guidelines.* – (a) For the full implementation of this Act within the executive branch of government, the Office of the Press Secretary, particularly the Public Information Agency (PIA) 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, and shall adhere in the establishment of their specific guidelines for the access to information, which shall include the following:

- (1) The location of the head, regional, provincial or field office or other established places where public can obtain information or submit requests therefore;
- (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 PIA 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 will govern under their respective jurisdictions. The Secretaries of the Senate and the House of Representatives, the head of the Supreme Court Public Information Office and the Public Information Officers of the Constitutional bodies shall be responsible in 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 11 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. 17. *Act Not a Bar to Claim of Right of Information Under the Constitution.* – No provisions 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 Constitution.

SEC. 18. *Separability Clause.* – If, for any reason or reasons, any portion or provisions of this Act shall be held unconstitutional or invalid, the remaining provisions not affected thereby shall continue to be in full force and effect.

SEC. 19. *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 entitled Promulgating Rules Governing Security of Classified Matter in Government Offices, as amended dated August 14, 1964, and Section 3, Rule IV of the Rules Implementing Republic Act No. 6713 otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, are hereby amended, repealed or modified accordingly.

Approved,