

## **Importance of Proper Handling and Protection of Vital and Legal Documents**

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### **INTRODUCTION**

Public records are essential to the administration and operation of all government offices, whether national or local, including GOCC's and government financial institutions (GFI's). Public records contain information which allows government programs to function, provide officials with a basis for making decisions and ensure continuity with past operations. They document the legal responsibility of government, protect the rights of citizens and provide citizens with a means of monitoring government programs and measuring the performance of public officials. Records of government offices, whether local or national, GOCC's and GFI's also reflect the historical development of the government and of the citizens which it serves. Such records need to be systematically managed to ensure preservation of historically valuable materials, to provide ready access to vital information and to promote the efficient and economical operation of government. (Rule 1, Article 2, Implementing Rules and Regulations of RA 9470)

#### **A. Legal basis for the requirement to properly handle and protect vital and legal documents.**

##### **1. Philippine Constitution**

###### **A. Section 1, Article XI – Accountability of Public Officers**

Public Office is a public trust. Public officers and employees must at **all times be accountable to the people**, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives.

###### **B. Section 7, Article III - Bill of Rights**

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

**2. RA 6713, Code of Conduct and Ethical Standards for Public Officials and Employees.**

A. Section 4 (A) – Every public officials and employees **shall observe** the following standards of personal conduct in the discharge and execution of official duties:

(e) **Responsiveness to the Public** – Public officials and employees shall extend prompt, courteous and adequate service to the public. Unless otherwise provided by law or **when required by the public interest**, public officials and employees shall provide information on their policies and procedures in clear and understandable language, ensure openness of information, public consultation and hearings whenever appropriate, encourage suggestions, simplify and systematize policy, rules and procedures, avoid red tape and develop understanding and appreciations of the socio-economic conditions prevailing in the country, especially in the depressed rural and urban areas.

B. Section 5 – In the performance of their duties, **all public officials and employees are under obligation** to:

(a) **Act promptly on letters and requests** - All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request.

(b) **Process documents and papers expeditiously** – All official papers and documents must be processed and completed within a reasonable time from the preparation thereof, the official next-in-rank or officer-in-charge shall sign for and in their behalf.

(c) **Act immediately on the public's personal transactions** – All public officials and employees must attend to anyone who wants to avail himself of the services of their office and must, **at all times, act promptly and expeditiously**.

- (d) **Make documents accessible to the public** – All public documents must be made accessible to, and readily available for, inspection by the public within reasonable working hours.

C. Section 11- Penalties

- (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity committing any violation of this Act, shall be punished with a **fine not exceeding the equivalent of six (6) months salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense.**
- (b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.

**3. Revised Rules on Evidence**

- (a) Section 7, Rule 130 – When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof.
- (b) Section 26, Rule 130 – Any public record, an official copy of which is admissible in evidence, must not be removed from the office in which it is kept, except upon order of a court where the inspection of the record is essential to the just determination of a pending case.

**4. RA 9470, The National Archives of the Philippines (NAP) Act of 2007 and its Implementing Rules and Regulations dated January 24, 2008.**

**Salient Provisions of the Implementing Rules of RA 9470:**

- 1. **Rule 2 Article 3** – These Rules shall cover all **public records with archival value**, held by either government offices or private collections with archival value, and shall cover archival and records management programs and activities in all branches of government,

whether national or local, constitutional offices, GOCC's, GFI's, S/LUC's, Philippine embassies, consulates and other Philippine offices abroad.

**Public records** – Refer to records or classes of records, in any form, in whole or in part, created or received, whether before or after the effectivity of RA 9470 (May 21, 2007), by a government agency in the conduct of its affairs, and have been retained by that government agency or its successors as evidence or because of the information contained therein.

**Archival value** – Value attached to records that remain useful for the three (3) branches of the government – legislative, executive, judiciary, and the general public because those records make government accountable to its citizens; provide evidence, about public policies and programs; protect or verify individuals' right and entitlements; and provide information about the important people, issues, places and events that make up the story of the Philippines' history.

2. **Rule 20 Article 30** - All government offices shall each establish a separate Archives and Records Office/Unit from their organic personnel in coordination with either DBM or the highest approving body of an agency and the National Archives of the Philippines within a year from the date of effectivity of RA 9470. It shall plan, formulate and implement a records management and archival administration program for the efficient creation, utilization, maintenance, retention, storage, preservation, conservation and disposal of public records including the adoption of security measures and vital records protection program for the agency.
3. **Rule 22 Article 35** – It shall be the responsibility of every public official and employees to:
  - a. Adequately document the transaction of public business and the services and programs for which such persons are responsible;
  - b. Retain and adequately protect all public records in their custody;
  - c. Cooperate with the National Archives of the Philippines and Records Officers in their respective offices, agencies or institutions in the establishment and maintenance of an active and continuous

program for the economical and efficient management of public records.

4. **Rule 22 Article 36** – No officer, member or employee of any agency of the government, whether national or local, or any political subdivision thereof shall destroy, sell or otherwise dispose of any public records or printed records or printed public document in such person's care or custody or under such person's control without first having secured authority from the National Archives of the Philippines of their nature and obtained its authorization.
  
5. **Rule 25 Article 39** – All government offices shall regularly conduct an inventory of their public records and shall be mandated to keep the following data in their respective registry:
  - a. all public records under its custody;
  - b. all public records transferred to the National Archives of the Philippines;
  - c. public records disposed of without authority under Sec. 18 and 19 of RA 9470;
  - d. data of deferred transfer under Sec. 21 of RA 9470;
  - e. a public access register that contains information on:
    1. restrictions on public access to public records imposed under Sec. 31 (g) of RA 9470;
    2. prohibitions imposed under Sec. 36 of RA 9470 on public access to public archives or protected records under the control of the Executive Director;
    3. the grounds for the prohibitions and restrictions stipulated under Sec. 36 and 37 of RA 9470;
    4. the conditions agreed to under Sec. 23 of RA 9470 as to public access for protected records is transferred to the control of the Executive Director.
  
6. **Rule 25 Article 40** - Heads of all government departments, bureaus, agencies and instrumentalities concerned shall endeavor and ensure the full public accessibility of the said Registry.

7. **Rule 26 Article 41** – Complete copies of as-built drawings and specifications including architectural and engineering plans for all buildings and other public works that are on state property, including alterations thereto, shall be deposited with the National Archives of the Philippines.
8. **Rule 26 Article 42** – All government agencies, offices and institutions shall deposit with the National Archives of the Philippines a copy of original deeds of all government-owned properties. The National Archives of the Philippines shall give a receipt for each deed received into its custody.
9. **Rule 27 Article 43** – The National Archives of the Philippines shall, after consultation with appropriate government offices, agencies, or political subdivisions, establish records disposition schedules/s setting forth the minimum length of time that records need to be retained. If any local ordinance or regulation provides a retention period different from that established by the records disposition schedule, the retention period established by law or regulation shall govern.
10. **Rule 28 Article 44** – All government offices including GOCC's and GFI's, shall prepare and submit a Records Disposition Schedule (RDS) in the prescribed form, which upon approval by the Executive Director shall govern the disposition of all records of that government office.
11. **Rule 30 Article 46** – No government department, bureau, agency and instrumentality shall dispose of, destroy or authorize the disposal or destruction of any public records, which are in the custody or under its control except with the prior written authority of the Executive Director.
12. **Rule 31 Article 47** – The Executive Director shall authorize in writing the disposition of public records referred hereunder:
  - a. transferring control of the public records to another government office;
  - b. transferring control of the public records to the Executive Director;
  - c. destroying the public records;

d. selling the public records.

13. **Rule 32 Article 48** – Before authorizing a disposition of public records as prescribed in RA 9470, the **head** of a government office shall give the Executive Director at least thirty (30) days notice prior to:

- a. the intention to transfer control of the public records, with a general list and description of the public records concerned;
- b. the intention to dispose of the public records, with a general list and description of the public records concerned;
- c. The place where additional information may be obtained on the public records concerned and the person whom any comments may be sent.

14. **Rule 33 Article 49** – This Rule shall apply to all public records regardless of whether they were taken possession of before or after the effectivity of RA 9470.(retroactive effect).

15. **Rule 36 Article 57** – A person having custody of public records, at the expiration of his/her term of office or employment, shall deliver to his/her successor, or if there is none, to the National Archives of the Philippines, all public records in his/her custody.

16. **Rule 37 Article 58** – All public records which are in or shall come into the possession of any government agency or political subdivision shall, upon abolition and/or absorption of such agency, be transferred to the custody of the National Archives of the Philippines; Provided, that such transfer is consistent with the provision of any law or ordinance that declared the abolition and/or absorption of that government agency.

17. **Rule 39 Article 63** – The **Records Officer** or any appropriate authority on records management of each government agency and political subdivision shall notify the National Archives of the Philippines of any actual, impending or threatened unlawful removal, defacing, alteration or destruction of records that shall come to his/her attention, and with the assistance of the National Archives of the Philippines shall initiate action through the Office of the Solicitor

General for recovery of such records as shall have been unlawfully removed and for such other redress as may be provided under RA 9470 or any applicable provisions of law.

18. **Rule 39 Article 64** – Upon the request of the Executive Director of the National Archives of the Philippines, the Solicitor General shall have the authority to enjoin, recover and replevin any public records which have been unlawfully transferred or removed in violation of this Rule or otherwise transferred or removed unlawfully through whatever means of equitable relief necessary. Such records shall be returned to the office of origin or to the National Archives of the Philippines.
19. **Rule 73 Article 133** – All public records of the government, whether national or local, and the political subdivisions thereof shall be kept in facilities maintained by the agencies and offices responsible for the creation and maintenance of such records, unless the consent of the National Archives of the Philippines is obtained for their transfer or storage elsewhere.
20. **Rule 73 Article 134** – The **Records Officer** or any appropriate person responsible for maintaining an office or offices wherein public records are created or kept shall establish such safeguards against damage, removal or loss of records as the Records Officer or any appropriate person shall deem necessary and as may be required by rules and regulations issued under authority of these Rules. Such safeguards shall include penalties as provided for under RA 9470.
21. **Rule 74 Article 135** – The National Archives of the Philippines is hereby constituted the central depository for the reports, publications, rules and regulations of the government, whether national or local, and all political subdivisions thereof. It shall be the duty of all government agencies and political subdivisions to deposit with the National Archives of the Philippines Two (2) copies of all reports and publications.
22. **Rule 67 Article 123** – A person who, willfully or negligently, damages a public record or disposes of or destroys a public record in violation of the provisions of RA 9470 or contravenes or fails to comply with any provision of said Act or these Rules shall be deemed to have committed an offense.



**PENAL PROVISIONS**

23. **Rule 68 Article 124** – Any public officer committing any of the unlawful acts or omissions mandated under this act shall be punished by a fine of not less than **Five Hundred thousand Pesos (P500,000.00)** but not exceeding **One Million Pesos (P1,000,000.00)** or be imprisoned for not less than **Five (5) years** but not more than **Fifteen (15) years** and/or both fine and imprisonment at the discretion of the court without prejudice to the filing of administrative charges that would result to such public officer's **perpetual disqualification from office, and forfeiture, in favor of the government, of his salary and other lawful income.**
24. **Rule 68 Article 125** – Any violation of RA 9470 proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him.
25. **Rule 68 Article 126** – Any person who is convicted of an offense under RA 9470 may, in addition to any penalty imposed for violation, be prohibited by order of the court from having access to the National Archives of the Philippines for any period that the court deems appropriate.
26. **Rule 71 Article 129** – No public officer shall be allowed to resign or retire pending an investigation, criminal or administrative, or pending a prosecution against him, for any offense under RA 9470 or under the relevant provisions of the Revised Penal Code.
27. **Rule 71 Article 130** – Administrative proceedings for violation of these Rules shall be in accordance with Civil Service Laws and Rules.
28. **Rule 72 Article 131** – Any public official against whom any criminal prosecution under a valid information under RA 9470 or under the relevant provisions of the Revised Penal Code is pending in court shall be suspended from office.
29. **Rule 72 Article 132** – Should such official or employee be convicted by final judgment, he/she shall lose all retirement or gratuity under any law. However, if acquitted, he/she shall be entitled to reinstatement and to the salaries and benefits denied of him/her

during suspension, unless administrative proceedings have been filed against him/her.

**B. What are vital and Legal Documents that should be properly handled and protected?**

Generally speaking, Documents pertain to anything that contains data and information, which for purposes of government function, is being used interchangeably with the word records.

Under RA 9470, the legal definition of the word RECORD has the following important points:

1. Records are made or received by a government agency either to comply with a law or to conduct public transaction. As a result, they belong to the government rather than to individuals, and their legal disposition depends on the prior approval of the Executive Director of the NAP;
2. Records are, or should be, preserved because they constitute evidence or contain information of value. They document an agency's organization, functions and activities or the persons, places, things, or matters dealt with by an agency;
3. Records vary widely in their physical form or characteristics. They may be on paper, electronic, audiovisual, microform, or other medium.

Thus, it can be deduced that there is actually no distinction between what are vital, and what are so called legal documents. All documents pertaining to government functions are practically legal and vital requiring proper handling and protection.

**C. What are the Legal implications in case of improper handling and/or failure to protect legal documents?**

Records officers, Records handlers and Records custodians are duty-bound to receive, record, store and preserve any and all documents passing through them in the performance of their duties. Failure to perform their respective duties will necessarily expose them to appropriate administrative and criminal prosecutions.

**-THANK YOU VERY MUCH-**