

REPUBLIC OF THE PHILIPPINES)
HOUSE OF REPRESENTATIVES)
FIFTEENTH CONGRESS OF THE)
Second Regular Session)

NO. _____

FREEDOM OF INFORMATION ACT OF 2011
Through "Indirect Initiative", Sections 3(b) and 11 of R.A. 6735
or the Initiative and Referendum Act

Introduced by the Ang Kapatiran Party

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. As observed by the Philippine Supreme Court in the case of *Baldoza vs. Dimaano* (Adm. Matter No. 1120-MJ, 5 May 1976), "(T)here can be no realistic perception by the public of the nation's problems, nor a meaningful democratic decision-making if they are denied access to information of general interest." 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. This, in turn, advances economic efficiency and competitiveness.

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 of the people to information held by governments is being recognized by a rapidly growing number of countries around the world. In 2006 about sixty-eight 68 countries already have laws giving citizens the right to access government information.

The Philippines can pride itself on being one of the few that have elevated this right as a distinct Constitutional guarantee. As early as 1973, the Philippines has recognized the right to information in Section 6 of the Bill of Rights of the Constitution.

The 1987 Constitution has strengthened the guarantee further. 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. It does not require any enabling legislation for it to become enforceable.
- 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. Only the manner of examining records may be reasonably regulated. 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. One important element is an express legislative determination that all information in the possession or control of any government agency is of public interest. This provides operational teeth to the legal theory that agencies have no discretion in making this determination. What is left as limitations to the covered information are the express exceptions, which the bill tries as far as practicable to

narrow and to subject to clear standards, and which may be overridden by a greater public interest in disclosure.

2. A clear, uniform and speedy procedure for access to information. The procedure provides for a quick and certain period of compliance, and the manner of making, and responding to, requests.
3. A proscription against excessive costs of access to information.
4. A system of accessible and speedy remedies that a citizen who has been denied access to information may resort to.
5. 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.
6. Clear administrative, criminal and civil liability for violation of the right to information. To the extent that both the scope of the covered information as well as the procedure for access has been made more definite by this law, then the system of sanctions and penalties will have greater enforceability, and will act as a counterbalance to the culture of secrecy in government.

Hence, immediate approval of this bill is earnestly requested.

Signed
Manuel K. Dayrit
Chairman
Ang Kapatiran Party

Signed
Norman V. Cabrera
Secretary General
Ang Kapatiran Party